

# Principles of Federal Appropriations Law

## THE RED BOOK

Published by:



Government Training Inc.™

[www.GovernmentTrainingInc.com](http://www.GovernmentTrainingInc.com)

This volume includes all updates and revisions as of May 2011.

**ISSUED JANUARY 2004 BY THE:**

**UNITED STATES GENERAL ACCOUNTING OFFICE**

**OFFICE OF THE GENERAL COUNSEL**

**This excerpt shows the Table of Contents from both  
Volume 1 and Volume 2 of The Red Book.**

# **Principles of Federal Appropriations Law**

## **THE RED BOOK**

Published by:



**Government Training Inc.™**

[www.GovernmentTrainingInc.com](http://www.GovernmentTrainingInc.com)

ISBN 978-1-937246-91-4

This volume includes all updates and revisions as of May 2011.

**ISSUED JANUARY 2004 BY THE:**

**UNITED STATES GENERAL ACCOUNTING OFFICE  
OFFICE OF THE GENERAL COUNSEL**

## **About the Publisher – Government Training Inc. <sup>TM</sup>**

Government Training Inc. provides worldwide training, publishing and consulting to government agencies and contractors that support government in areas of business and financial management, acquisition and contracting, physical and cyber security, intelligence operations and grant writing. Our management team and instructors are seasoned executives with demonstrated experience in areas of Federal, State, Local and DoD needs and mandates.

For more information on the company, its publications and professional training, go to [www.GovernmentTrainingInc.com](http://www.GovernmentTrainingInc.com).

Printed in the United States of America.

Government Training Inc. <sup>TM</sup>  
20842 Derrydale Sq.  
Sterling, VA 20165  
Phone: 703-622-1187  
Fax: 703-406-4870

[david.dickson@GovernmentTrainingInc.com](mailto:david.dickson@GovernmentTrainingInc.com)

January 2004

# Principles of Federal Appropriations Law

## Third Edition

## Volume I

This volume supersedes the Volume I, Second Edition of the Principles of Federal Appropriations Law, 1991.

On August 6, 2010, the web versions of the Third Edition of the Principles of Federal Appropriations Law, Volumes I, II and III, were reposted to include updated active electronic links to GAO decisions. Additionally, the Third Edition's web based Index/Table of Authorities (Index/TOA) was replaced by an Index/TOA that incorporated information from Volume I, II and III. These four documents can be used independently or interactively. To use the documents interactively, click on <http://www.gao.gov/special.pubs/redbook1.html> and you will be directed to brief instructions regarding interactive use.

The Security of this file is set to prevent a situation where linked references are appended to the PDF. If this change prevents an Acrobat function you need (e.g., to extract pages), use the the password "redbook" to revise the document security and enable the additional functions.



---

---

## **Abbreviations**

APA	Administrative Procedure Act
BLM	Bureau of Land Management
CDA	Contract Disputes Act of 1978
CCC	Commodity Credit Corporation
C.F.R.	Code of Federal Regulations
EAJA	Equal Access to Justice Act
EEOC	Equal Employment Opportunity Commission
FAR	Federal Acquisition Regulation
FY	Fiscal Year
GAO	Government Accountability Office
GSA	General Services Administration
HUD	Department of Housing and Urban Development
IRS	Internal Revenue Service
NRC	Nuclear Regulatory Commission
OMB	Office of Management and Budget
SBA	Small Business Administration
TFM	Treasury Financial Manual
U.S.C.	United States Code
URA	Uniform Relocation Assistance and Real Property Acquisition Policies Act

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

---

# Foreword

---

We are pleased to present the third edition of Volume I of *Principles of Federal Appropriations Law*, commonly known as the “Red Book.” Our objective in this publication is to present a basic reference work covering those areas of law in which the Comptroller General renders decisions. This volume and all other volumes of *Principles* are available on GAO’s Web site ([www.gao.gov](http://www.gao.gov)) under “GAO Legal Products.”

Our approach in *Principles* is to lay a foundation with text discussion, using specific legal authorities to illustrate the principles discussed, their application, and exceptions. These authorities include GAO decisions and opinions, judicial decisions, statutory provisions, and other relevant sources. We would encourage users to start with at least a brief review of Chapter 1, which provides a general framework and context for all that follows. Chapter 1 includes a note regarding citations to GAO case law and other relevant GAO material and an explanation of those other materials.

We have tried to be simultaneously basic and detailed—basic so that the publication will be useful as a “teaching manual” and guide for the novice or occasional user (lawyer and nonlawyer alike) and detailed so that it will assist those who require a more in-depth understanding. The purpose of *Principles* is to describe existing authorities; it should not be regarded as an independent source of legal authority. The material in this publication is, of course, subject to changes in statute or federal and Comptroller General case law. Also, it is manifestly impossible to cover in this publication every aspect and nuance of federal appropriations law. We have not attempted to include all relevant decisions, and we admit (albeit grudgingly) that errors and omissions probably are inevitable. *Principles* should therefore be used as a general guide and starting point, not as a substitute for original legal research.

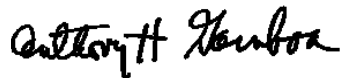
It is also important to emphasize that we have focused our attention on issues and principles of governmentwide application. In various instances, agency-specific legislation may provide authority or restrictions somewhat different from the general rule. While we have noted many of these instances for purposes of illustration, a comprehensive cataloguing of such legislation is beyond the scope of this publication. Thus, failure to note agency-specific exceptions in a given context does not mean that they do not exist.

As with the second edition of *Principles*, we are publishing the third edition in a loose-leaf format. However, it will also be available electronically at [www.gao.gov](http://www.gao.gov). We plan four volumes with annual updates.

Annual updates will only be published electronically. Users should retain copies of their five volumes of the second edition until each volume is revised. We will not update Volume III of the second edition, which was last revised in November 1994. It deals with functions that were transferred to the executive branch by the General Accounting Office Act of 1996 (Public Law 104-316), including claims against the United States, debt collection, and payment of judgments against the United States. Future editions and updates of *Principles* will not include these subjects.

Volume V, published in April 2002, is a comprehensive index and table of authorities covering the entire second edition of *Principles*. It will continue to apply to the second edition volumes until they are revised. As each volume of the third edition is issued, it will contain its own index. Once the third edition is complete, we will publish a new comprehensive index and table of authorities.

The response to *Principles* has been both gratifying and encouraging since the first edition was published in 1982. We express our appreciation to the many persons in all branches of the federal government, as well as nonfederal readers, who have offered comments and suggestions. Our goal now, as it was in 1982, is to present a document that will serve as a helpful reference for a wide range of users. To that end, we again invite comments and suggestions for improvement. We thank our readers for their support and hope that this publication continues to serve their needs.



Anthony Gamboa  
General Counsel

January 2004

---

# Detailed Table of Contents

## Volume I

### Chapters 1–5

---

#### Chapter 1 Introduction

<b>A. Nature of Appropriations Law</b> . . . . .	1-2
<b>B. The Congressional “Power of the Purse”</b> . . . . .	1-3
<b>C. Historical Perspective</b> . . . . .	1-14
1. Evolution of the Budget and Appropriations Process . . . . .	1-14
2. GAO’s Role in the Process . . . . .	1-21
<b>D. “Life Cycle” of an Appropriation</b> . . . . .	1-24
1. Executive Budget Formulation and Transmittal . . . . .	1-25
2. Congressional Action . . . . .	1-26
a. Summary of Congressional Process . . . . .	1-26
b. Points of Order . . . . .	1-29
3. Budget Execution and Control . . . . .	1-31
a. In General . . . . .	1-31
b. Impoundment . . . . .	1-32
4. Audit and Review . . . . .	1-35
a. Basic Responsibilities . . . . .	1-35
b. GAO Recommendations and Matters for Consideration . . . . .	1-36
5. Account Closing . . . . .	1-37
<b>E. The Role of the Accounting Officers: Legal Decisions</b> . . . . .	1-37
1. A Capsule History . . . . .	1-37
a. Accounting Officers Prior to 1894 . . . . .	1-37
b. 1894–1921: Comptroller of the Treasury . . . . .	1-38
c. 1921 to the Present Time . . . . .	1-39
2. Decisions of the Comptroller General . . . . .	1-39
a. General Information . . . . .	1-39
b. Matters Not Considered . . . . .	1-42
c. Research Aids . . . . .	1-45
d. Note on Citations . . . . .	1-45
3. Other Relevant Authorities . . . . .	1-46
a. GAO Materials . . . . .	1-46
b. Non-GAO Materials . . . . .	1-48
c. Note on Title 31 Recodification . . . . .	1-49

---

#### Chapter 2 The Legal Framework

<b>A. Appropriations and Related Terminology</b> . . . . .	2-3
1. Introduction . . . . .	2-3
2. Concept and Types of Budget Authority . . . . .	2-3
a. Appropriations . . . . .	2-4
b. Contract Authority . . . . .	2-6
c. Borrowing Authority . . . . .	2-7
d. Monetary Credits . . . . .	2-8
e. Offsetting Receipts . . . . .	2-9



f. Loan and Loan Guarantee Authority .....	2-10
3. Some Related Concepts .....	2-12
a. Spending Authority .....	2-12
b. Entitlement Authority .....	2-13
4. Types of Appropriations .....	2-13
a. Classification Based on Duration .....	2-13
b. Classification Based on Presence or Absence of Monetary Limit .....	2-14
c. Classification Based on Permanency .....	2-14
d. Classification Based on Availability for New Obligations .....	2-15
e. Reappropriation .....	2-15
<b>B. Some Basic Concepts .....</b>	<b>2-15</b>
1. What Constitutes an Appropriation .....	2-15
2. Specific <i>versus</i> General Appropriations .....	2-21
a. General Rule .....	2-21
b. Two Appropriations Available for Same Purpose .....	2-23
3. Transfer and Reprogramming .....	2-24
a. Transfer .....	2-24
b. Reprogramming .....	2-29
4. General Provisions: When Construed as Permanent Legislation .....	2-33
<b>C. Relationship of Appropriations to Other Types of Legislation .....</b>	<b>2-40</b>
1. Distinction between Authorization and Appropriation .....	2-40
2. Specific Problem Areas and the Resolution of Conflicts .....	2-42
a. Introduction .....	2-42
b. Variations in Amount .....	2-46
(1) Appropriation exceeds authorization .....	2-46
(2) Appropriation less than authorization .....	2-47
(3) Earmarks in authorization act .....	2-50
c. Variations in Purpose .....	2-51
d. Period of Availability .....	2-52
e. Authorization Enacted After Appropriation .....	2-56
f. Two Statutes Enacted on Same Day .....	2-59
g. Ratification by Appropriation .....	2-61
h. Repeal by Implication .....	2-66
i. Lack of Authorization .....	2-69
<b>D. Statutory Interpretation: Determining Congressional Intent .....</b>	<b>2-71</b>
1. The Goal of Statutory Construction .....	2-72
2. The “Plain Meaning” Rule .....	2-74
a. In General .....	2-74
b. The Plain Meaning Rule <i>versus</i> Legislative History .....	2-76

3.	The Limits of Literalism: Errors in Statutes and “Absurd Consequences”	2-78
a.	Errors in Statutes	2-78
	(1) Drafting errors	2-78
	(2) Error in amount appropriated	2-80
b.	Avoiding “Absurd Consequences”	2-80
4.	Statutory Aids to Construction	2-83
a.	Definitions, Effective Dates, and Severability Clauses	2-83
b.	The Dictionary Act	2-83
c.	Effect of Codification	2-84
5.	Canons of Statutory Construction	2-85
a.	Construe the Statute as a Whole	2-85
b.	Give Effect to All the Language: No “Surplusage”	2-87
c.	Apply the Common Meaning of Words	2-89
d.	Give a Common Construction to the Same or Similar Words	2-89
e.	Punctuation, Grammar, Titles, and Preambles Are Relevant but Not Controlling	2-92
f.	Avoid Constructions That Pose Constitutional Problems	2-94
6.	Legislative History	2-96
a.	Uses and Limitations	2-96
b.	Components and Their Relative Weight	2-98
	(1) Committee reports	2-98
	(2) Floor debates	2-100
	(3) Hearings	2-102
c.	Post-enactment Statements	2-103
d.	Development of the Statutory Language	2-105
7.	Presumptions and “Clear Statement” Rules	2-106
a.	Presumption in Favor of Judicial Review	2-106
b.	Presumption against Retroactivity	2-108
c.	Federalism Presumptions	2-111
d.	Presumption against Waiver of Sovereign Immunity	2-113

## Chapter 3 Agency Regulations and Administrative Discretion

<b>A.</b>	<b>Agency Regulations</b>	3-2
1.	The Administrative Procedure Act	3-3
a.	The Informal Rulemaking Process	3-4
b.	Informal Rulemaking: When Required	3-9
c.	Additional Requirements for Rulemaking	3-13
2.	Regulations May Not Exceed Statutory Authority	3-16
3.	“Force and Effect of Law”	3-18
4.	Waiver of Regulations	3-20
5.	Amendment of Regulations	3-24

---

6. Retroactivity . . . . .	3-26
<b>B. Agency Administrative Interpretations . . . . .</b>	<b>3-28</b>
1. Interpretation of Statutes . . . . .	3-28
2. Interpretation of Agency’s Own Regulations . . . . .	3-37
<b>C. Administrative Discretion . . . . .</b>	<b>3-40</b>
1. Introduction . . . . .	3-40
2. Discretion Is Not Unlimited . . . . .	3-42
3. Failure or Refusal to Exercise Discretion . . . . .	3-45
4. Regulations May Limit Discretion . . . . .	3-47
5. Insufficient Funds . . . . .	3-49

---

## Chapter 4 Availability of Appropriations: Purpose

<b>A. General Principles . . . . .</b>	<b>4-6</b>
1. Introduction: 31 U.S.C. § 1301(a) . . . . .	4-6
2. Determining Authorized Purposes . . . . .	4-9
a. Statement of Purpose . . . . .	4-9
b. Specific Purpose Stated in Appropriation Act . . . . .	4-11
3. New or Additional Duties . . . . .	4-14
4. Termination of Program . . . . .	4-17
a. Termination Desired . . . . .	4-17
b. Reauthorization Pending . . . . .	4-18
<b>B. The “Necessary Expense” Doctrine . . . . .</b>	<b>4-19</b>
1. The Theory . . . . .	4-19
a. Relationship to the Appropriation . . . . .	4-22
b. Expenditure Otherwise Prohibited . . . . .	4-27
c. Expenditure Otherwise Provided For . . . . .	4-29
2. General Operating Expenses . . . . .	4-30
a. Training . . . . .	4-30
b. Travel . . . . .	4-31
c. Postage Expenses . . . . .	4-32
d. Books and Periodicals . . . . .	4-33
e. Miscellaneous Items Incident to the Federal Workplace . . . . .	4-33
<b>C. Specific Purpose Authorities and Limitations . . . . .</b>	<b>4-35</b>
1. Introduction . . . . .	4-35
2. Attendance at Meetings and Conventions . . . . .	4-36
a. Government Employees . . . . .	4-37
(1) Statutory framework . . . . .	4-37
(2) Inability to attend . . . . .	4-40
(3) Federally sponsored meetings . . . . .	4-41
(4) Rental of space in District of Columbia . . . . .	4-42
(5) Military personnel . . . . .	4-43
b. Nongovernment Personnel . . . . .	4-44

(1) 31 U.S.C. § 1345 .....	4-44
(2) Invitational travel .....	4-47
(3) Use of grant funds .....	4-50
3. Attorney's Fees .....	4-51
a. Introduction .....	4-51
b. Hiring of Attorneys by Government Agencies .....	4-52
c. Suits Against Government Officers and Employees .....	4-55
d. Suits Unrelated to Federal Employees .....	4-67
e. Claims by Federal Employees .....	4-68
(1) Discrimination proceedings .....	4-68
(2) Other employee claims .....	4-70
f. Criminal Justice Act .....	4-74
(1) Types of actions covered .....	4-75
(2) Miscellaneous cases .....	4-76
g. Equal Access to Justice Act .....	4-77
h. Contract Matters .....	4-82
(1) Bid protests .....	4-82
(2) Contract disputes .....	4-84
i. Public Participation in Administrative Proceedings: Funding of Intervenors .....	4-85
4. Compensation Restrictions .....	4-92
a. Dual Compensation .....	4-93
b. Employment of Aliens .....	4-93
c. Forfeiture of Annuities and Retired Pay .....	4-96
(1) General principles .....	4-96
(2) The Alger Hiss case .....	4-97
(3) Types of offenses covered .....	4-98
(4) Related statutory provisions .....	4-99
5. Entertainment—Recreation—Morale and Welfare .....	4-100
a. Introduction .....	4-100
(1) Application of the rule .....	4-101
(2) What is entertainment? .....	4-102
b. Food for Government Employees .....	4-103
(1) Working at official duty station under unusual conditions .....	4-104
(2) Government Employees Training Act .....	4-107
(3) Award ceremonies .....	4-116
(4) Cafeterias and lunch facilities .....	4-119
c. Entertainment for Government Employees Other Than Food .....	4-120
(1) Miscellaneous cases .....	4-120
(2) Cultural awareness programs .....	4-120

d. Entertainment of Nongovernment Personnel . . . . .	4-123
e. Recreational and Welfare Facilities for Government Personnel . . . . .	4-126
(1) The rules: older cases and modern trends . . . . .	4-126
(2) Child care . . . . .	4-130
f. Reception and Representation Funds . . . . .	4-135
6. Fines and Penalties . . . . .	4-140
7. Firefighting and Other Municipal Services . . . . .	4-146
a. Firefighting Services: Availability of Appropriations . . . . .	4-146
b. Federal Fire Prevention and Control Act of 1974 . . . . .	4-150
c. Other Municipal Services . . . . .	4-151
8. Gifts and Awards . . . . .	4-155
a. Gifts . . . . .	4-155
b. Contests . . . . .	4-161
(1) Entry fees . . . . .	4-161
(2) Government-sponsored contests . . . . .	4-162
c. Awards . . . . .	4-164
9. Guard Services: Anti-Pinkerton Act . . . . .	4-171
a. Evolution of the Law Prior to 57 Comp. Gen. 524 . . . . .	4-171
b. 57 Comp. Gen. 524 and the Present State of the Law . . . . .	4-174
10. Insurance . . . . .	4-175
a. The Self-Insurance Rule . . . . .	4-175
b. Exceptions to the Rule . . . . .	4-179
(1) Departments and agencies generally . . . . .	4-179
(2) Government corporations . . . . .	4-183
c. Specific Areas of Concern . . . . .	4-183
(1) Property owned by government contractors . . . . .	4-183
(2) Use of motor vehicles . . . . .	4-184
(3) Losses in shipment . . . . .	4-186
(4) Bonding of government personnel . . . . .	4-187
11. Lobbying and Related Matters . . . . .	4-188
a. Introduction . . . . .	4-188
b. Penal Statutes . . . . .	4-189
c. Appropriation Act Restrictions . . . . .	4-196
(1) Origin and general considerations . . . . .	4-196
(2) Self-aggrandizement . . . . .	4-199
(3) Covert propaganda . . . . .	4-202
(4) Pending legislation: overview . . . . .	4-203
(5) Cases involving “grassroots” lobbying violations . . . . .	4-207
(6) Pending legislation: cases in which no violation was found . . . . .	4-210

(7) Pending legislation: Providing assistance to private lobbying groups .....	4-213
(8) Promotion of legislative proposals: Prohibited activity short of grass roots lobbying .....	4-215
(9) Dissemination of political or misleading information ..	4-218
d. Lobbying with Grant Funds .....	4-219
e. Informational Activities .....	4-227
f. Advertising and the Employment of Publicity Experts .....	4-229
(1) Commercial advertising .....	4-229
(2) Advertising of government programs, products, or services .....	4-230
(3) Publicity experts .....	4-232
12. Membership Fees .....	4-234
a. 5 U.S.C. § 5946 .....	4-234
b. Attorneys .....	4-240
13. Personal Expenses and Furnishings .....	4-242
a. Introduction .....	4-242
b. Business or Calling Cards .....	4-243
c. Health, Medical Care and Treatment .....	4-245
(1) Medical care .....	4-245
(2) Purchase of health-related items .....	4-250
(3) The Rehabilitation Act .....	4-253
d. Office Furnishings (Decorative Items) .....	4-256
e. Personal Qualification Expenses .....	4-258
f. Photographs .....	4-261
g. Seasonal Greeting Cards and Decorations .....	4-262
(1) Greeting cards .....	4-262
(2) Seasonal decorations .....	4-263
h. Traditional Ceremonies .....	4-263
i. Wearing Apparel .....	4-265
j. Miscellaneous Personal Expenses .....	4-271
(1) Commuting and parking .....	4-271
(2) Flexiplace .....	4-273
(3) Miscellaneous employee expenses .....	4-274
14. Rewards .....	4-276
a. Rewards to Informers .....	4-276
(1) Reward as “necessary expense” .....	4-276
(2) Payments to informers: Internal Revenue Service .....	4-278
(3) Payments to informers: Customs Service .....	4-280
b. Missing Government Employees .....	4-281
c. Lost or Missing Government Property .....	4-282
d. Contractual Basis .....	4-283

e. Rewards to Government Employees .....	4-285
15. State and Local Taxes .....	4-286
a. Introduction .....	4-286
b. Tax on Business Transactions Where the Federal Government Is a Party .....	4-289
(1) General principles .....	4-289
(2) Public utilities .....	4-295
c. Property-Related Taxes .....	4-296
d. Taxes Paid by Federal Employees .....	4-301
(1) Parking taxes .....	4-302
(2) Hotel and meal taxes .....	4-303
(3) Tolls .....	4-305
(4) State and local income withholding taxes .....	4-306
(5) Possessory interest taxes .....	4-306
(6) Occupational license fees .....	4-306
e. Refund and Recovery of Tax Improperly Paid .....	4-307
16. Telephone Services .....	4-308
a. Telephone Service to Private Residences .....	4-308
(1) The statutory prohibition and its major exception ....	4-308
(2) Funds to which the statute applies .....	4-310
(3) What is a private residence? .....	4-311
(4) Application of the general rule .....	4-312
(5) Exceptions .....	4-314
b. Long-distance Calls .....	4-319
c. Mobile or Cellular Phones .....	4-319

## Chapter 5 Availability of Appropriations: Time

<b>A. General Principles—Duration of Appropriations .....</b>	<b>5-3</b>
1. Introduction .....	5-3
2. Types of Appropriations .....	5-4
a. Annual Appropriations .....	5-4
b. Multiple Year Appropriations .....	5-7
c. No-Year Appropriations .....	5-7
3. Obligation or Expenditure Prior to Start of Fiscal Year .....	5-9
<b>B. The <i>Bona Fide</i> Needs Rule .....</b>	<b>5-11</b>
1. Background .....	5-11
a. Introduction .....	5-11
b. The Concept .....	5-12
2. Future Years' Needs .....	5-15
3. Prior Years' Needs .....	5-18
4. Delivery of Materials beyond the Fiscal Year .....	5-22
5. Services Rendered beyond the Fiscal Year .....	5-23

6. Replacement Contracts .....	5-28
7. Contract Modifications and Amendments Affecting Price .....	5-33
8. Multiyear Contracts .....	5-37
a. Introduction .....	5-37
b. Multiple Year and No-Year Appropriations .....	5-39
c. Fiscal Year Appropriations .....	5-41
d. Contracts with No Financial Obligation .....	5-43
9. Specific Statutes Providing for Multiyear and Other Contracting Authorities .....	5-44
a. Severable Services Contracts .....	5-44
b. 5-year Contract Authority .....	5-45
(1) 10 U.S.C. §§ 2306b, 2306c .....	5-45
(2) 41 U.S.C. § 254c .....	5-46
c. Examples of Agency-Specific Multiyear Contracting Authorities .....	5-47
10. Grants and Cooperative Agreements .....	5-48
<b>C. Advance Payments</b> .....	5-50
1. The Statutory Prohibition .....	5-50
2. Government Procurement Contracts .....	5-54
a. Background .....	5-54
b. Contract Financing .....	5-55
c. Payment .....	5-60
3. Lease and Rental Agreements .....	5-62
4. Publications .....	5-63
5. Other Governmental Entities .....	5-65
<b>D. Disposition of Appropriation Balances</b> .....	5-67
1. Terminology .....	5-67
2. Evolution of the Law .....	5-68
3. Expired Appropriation Accounts .....	5-71
4. Closed Appropriation Accounts .....	5-73
5. Exemptions from the Account Closing Procedures .....	5-75
6. No-Year Appropriations .....	5-77
7. Repayments and Deobligations .....	5-78
a. Repayments .....	5-78
b. Deobligations .....	5-80
<b>E. Effect of Litigation on Period of Availability</b> .....	5-81



---

Contents

---

# Detailed Table of Contents

## Volume II

### Chapters 6-11

#### Chapter 6 Availability of Appropriations: Amount

<b>A. Introduction</b> .....	<b>6-4</b>
<b>B. Types of Appropriation Language</b> .....	<b>6-5</b>
1. Lump-Sum Appropriations .....	6-5
a. Effect of Budget Estimates .....	6-10
b. Restrictions in Legislative History .....	6-12
c. “Zero Funding” Under a Lump-Sum Appropriation .....	6-24
2. Line-Item Appropriations and Earmarks .....	6-26
<b>C. The Antideficiency Act</b> .....	<b>6-34</b>
1. Introduction and Overview .....	6-34
2. Obligation/Expenditure in Excess or Advance of Appropriations .....	6-38
a. Exhaustion of an Appropriation .....	6-41
(1) Making further payments .....	6-41
(2) Limitations on contractor recovery .....	6-43
b. Contracts or Other Obligations in Excess or Advance of Appropriations .....	6-46
(1) Proper recording of obligations .....	6-46
(2) Obligation in excess of appropriations .....	6-47
(3) Variable quantity contracts .....	6-48
(4) Multiyear or “continuing” contracts .....	6-51
c. Indemnification .....	6-59
(1) Prohibition against unlimited liability .....	6-61
(2) When indemnification may be permissible .....	6-71
(3) Statutorily authorized indemnification .....	6-77
d. Specific Appropriation Limitations/Purpose Violations .....	6-79
e. Amount of Available Appropriation or Fund .....	6-84
f. Intent/Factors beyond Agency Control .....	6-86
g. Exceptions .....	6-88
(1) Contract authority .....	6-88
(2) Other obligations “authorized by law” .....	6-91
3. Voluntary Services Prohibition .....	6-93
a. Introduction .....	6-93
b. Appointment without Compensation and Waiver of Salary ..	6-95
(1) The rules—general discussion .....	6-95
(2) Student interns .....	6-102
(3) Program beneficiaries .....	6-104
(4) Applicability to legislative and judicial branches .....	6-105
c. Other Voluntary Services .....	6-105
d. Exceptions .....	6-110
(1) Safety of human life .....	6-111
(2) Protection of property .....	6-111

(3) Recent developments .....	6-112
e. Voluntary Creditors .....	6-116
4. Apportionment of Appropriations .....	6-116
a. Statutory Requirement for Apportionment .....	6-117
b. Establishing Reserves .....	6-122
c. Method of Apportionment .....	6-125
d. Control of Apportionments .....	6-127
e. Apportionments Requiring Deficiency Estimate .....	6-129
f. Exemptions from Apportionment Requirement .....	6-134
g. Administrative Division of Apportionments .....	6-136
h. Expenditures in Excess of Apportionment .....	6-139
5. Penalties and Reporting Requirements .....	6-143
a. Administrative and Penal Sanctions .....	6-143
b. Reporting Requirements .....	6-144
6. Funding Gaps .....	6-146
<b>D. Supplemental and Deficiency Appropriations .....</b>	<b>6-159</b>
<b>E. Augmentation of Appropriations .....</b>	<b>6-162</b>
1. The Augmentation Concept .....	6-162
2. Disposition of Moneys Received: Repayments and Miscellaneous Receipts .....	6-166
a. General Principles .....	6-166
(1) The “miscellaneous receipts” statute .....	6-166
(2) Exceptions .....	6-170
(3) Timing of deposits .....	6-175
(4) Money received (or not received) “for the Government” .....	6-177
b. Contract Matters .....	6-184
(1) Excess procurement costs .....	6-184
(2) Other damage claims .....	6-188
(3) Refunds and credits .....	6-189
(4) “No-cost” contracts .....	6-191
c. Damage to Government Property and Other Tort Liability .....	6-194
d. Fees and Commissions .....	6-199
e. Economy Act .....	6-202
f. Setoff .....	6-205
g. Revolving Funds .....	6-206
h. Trust Funds .....	6-208
i. Fines and Penalties .....	6-211
j. Miscellaneous Cases: Money to Treasury .....	6-212
k. Miscellaneous Cases: Money Retained by Agency .....	6-214
l. Money Erroneously Deposited as Miscellaneous Receipts .....	6-216
3. Gifts and Donations to the Government .....	6-222
a. Donations to the Government .....	6-222

---

b. Donations to Individual Employees . . . . .	6-231
(1) Contributions to salary or expenses . . . . .	6-231
(2) Travel-related promotional items . . . . .	6-234
4. Other Augmentation Principles and Cases . . . . .	6-235

---

**Chapter 7**  
**Obligation of**  
**Appropriations**

<b>A. Introduction: Nature of an Obligation . . . . .</b>	<b>7-2</b>
<b>B. Criteria for Recording Obligations</b>	
<b>(31 U.S.C. § 1501) . . . . .</b>	<b>7-6</b>
1. Section 1501(a)(1): Contracts . . . . .	7-10
a. Binding Agreement . . . . .	7-10
b. Contract “in Writing” . . . . .	7-14
c. Requirement of Specificity . . . . .	7-17
d. Invalid Award/Unauthorized Commitment . . . . .	7-18
e. Variations in Quantity to Be Furnished . . . . .	7-19
f. Amount to Be Recorded . . . . .	7-23
g. Administrative Approval of Payment . . . . .	7-26
h. Miscellaneous Contractual Obligations . . . . .	7-27
i. Interagency Transactions . . . . .	7-28
(1) Economy Act agreements . . . . .	7-29
(2) Non-Economy Act agreements . . . . .	7-30
(3) “Binding agreement” requirement . . . . .	7-31
(4) Orders from stock . . . . .	7-33
(5) Project orders . . . . .	7-33
2. Section 1501(a)(2): Loans . . . . .	7-35
3. Section 1501(a)(3): Interagency Orders Required by Law . . . . .	7-37
4. Section 1501(a)(4): Orders without Advertising . . . . .	7-39
5. Section 1501(a)(5): Grants and Subsidies . . . . .	7-39
a. Grants . . . . .	7-40
b. Subsidies . . . . .	7-42
6. Section 1501(a)(6): Pending Litigation . . . . .	7-44
7. Section 1501(a)(7): Employment and Travel . . . . .	7-45
a. Wages, Salaries, Annual Leave . . . . .	7-46
b. Compensation Plans in Foreign Countries . . . . .	7-48
c. Training . . . . .	7-49
d. Uniform Allowance . . . . .	7-49
e. Travel Expenses . . . . .	7-49
f. State Department: Travel Outside Continental United States . . . . .	7-51
g. Employee Transfer/Relocation Costs . . . . .	7-52
8. Section 1501(a)(8): Public Utilities . . . . .	7-54
9. Section 1501(a)(9): Other Legal Liabilities . . . . .	7-55
<b>C. Contingent Liabilities . . . . .</b>	<b>7-55</b>

---

<b>D. Reporting Requirements</b> .....	<b>7-58</b>
<b>E. Deobligation</b> .....	<b>7-59</b>

---

**Chapter 8**  
**Continuing Resolutions**

<b>A. Introduction</b> .....	<b>8-2</b>
1. Definition and General Description .....	8-2
2. Use of Appropriation Warrants .....	8-9
<b>B. Rate for Operations</b> .....	<b>8-10</b>
1. Current Rate .....	8-10
2. Rate Not Exceeding Current Rate .....	8-12
3. Spending Pattern under Continuing Resolution .....	8-15
a. Pattern of Obligations .....	8-15
b. Apportionment .....	8-18
4. Liquidation of Contract Authority .....	8-19
5. Rate for Operations Exceeds Final Appropriation .....	8-19
<b>C. Projects or Activities</b> .....	<b>8-21</b>
<b>D. Relationship to other Legislation</b> .....	<b>8-27</b>
1. Not Otherwise Provided For .....	8-27
2. Status of Bill or Budget Estimate Used as Reference .....	8-27
3. More Restrictive Authority .....	8-29
4. Lack of Authorizing Legislation .....	8-31
<b>E. Duration</b> .....	<b>8-35</b>
1. Duration of Continuing Resolution .....	8-35
2. Duration of Appropriations .....	8-36
3. Impoundment .....	8-38

---

**Chapter 9**  
**Liability and Relief of**  
**Accountable Officers**

<b>A. Introduction</b> .....	<b>9-4</b>
<b>B. General Principles</b> .....	<b>9-5</b>
1. The Concepts of Liability and Relief .....	9-5
a. Liability .....	9-5
b. Surety Bonding .....	9-8
c. Relief .....	9-9
2. Who Is an Accountable Officer? .....	9-11
a. Certifying Officers .....	9-13
b. Disbursing Officers .....	9-14
c. Cashiers .....	9-15
d. Collecting Officers .....	9-16
e. Other Agents and Custodians .....	9-17
3. Funds to Which Accountability Attaches .....	9-20
a. Appropriated Funds .....	9-20
(1) Imprest funds .....	9-20
(2) Flash rolls .....	9-23

(3) Travel advances .....	9-25
b. Receipts .....	9-26
c. Funds Held in Trust .....	9-27
d. Items Which Are the Equivalent of Cash .....	9-28
4. What Kinds of Events Produce Liability? .....	9-29
5. Amount of Liability .....	9-31
6. Effect of Criminal Prosecution .....	9-33
a. Acquittal .....	9-33
b. Order of Restitution .....	9-34
<b>C. Physical Loss or Deficiency .....</b>	<b>9-35</b>
1. Statutory Provisions .....	9-35
a. Civilian Agencies .....	9-35
b. Military Disbursing Officers .....	9-38
2. Who Can Grant Relief? .....	9-40
a. 31 U.S.C. § 3527(a) .....	9-40
b. 31 U.S.C. § 3527(b) .....	9-42
c. Role of Administrative Determinations .....	9-43
3. Standards for Granting Relief .....	9-45
a. Standard of Negligence .....	9-45
b. Presumption of Negligence/Burden of Proof .....	9-46
c. Actual Negligence .....	9-48
d. Proximate Cause .....	9-51
e. Unexplained Loss or Shortage .....	9-54
f. Compliance with Regulations .....	9-57
g. Losses in Shipment .....	9-59
h. Fire, Natural Disaster .....	9-60
i. Loss by Theft .....	9-61
(1) Burglary: forced entry .....	9-62
(2) Robbery .....	9-63
(3) Riot, public disturbance .....	9-63
(4) Evidence less than certain .....	9-64
(5) Embezzlement .....	9-68
j. Agency Security .....	9-69
k. Extenuating Circumstances .....	9-73
<b>D. Illegal or Improper Payment .....</b>	<b>9-75</b>
1. Disbursement and Accountability .....	9-75
a. Statutory Framework: Disbursement Under Executive Order No. 166 .....	9-75
b. Automated Payment Systems .....	9-78
c. Statistical Sampling .....	9-81
d. Provisional Vouchers and Related Matters .....	9-82
e. Facsimile Signatures and Electronic Certification .....	9-84

f. GAO Audit Exceptions . . . . .	9-86
2. Certifying Officers . . . . .	9-88
a. Duties and Liability . . . . .	9-88
b. Applicability of 31 U.S.C. § 3528 . . . . .	9-94
c. Relief . . . . .	9-95
3. Disbursing Officers . . . . .	9-101
a. Standards of Liability and Relief . . . . .	9-101
b. Some Specific Applications . . . . .	9-108
(1) Fraudulent travel claims . . . . .	9-109
(2) Other cash payments fraudulently obtained . . . . .	9-110
(3) Military separation vouchers . . . . .	9-111
(4) Assignment of contract payments . . . . .	9-111
(5) Improper purpose/payment beyond scope of legal authority . . . . .	9-112
4. Check Losses . . . . .	9-113
a. Check Cashing Operations . . . . .	9-113
b. Duplicate Check Losses . . . . .	9-118
c. Errors in Check Issuance Process . . . . .	9-123
5. Statute of Limitations . . . . .	9-125
<b>E. Other Relief Statutes . . . . .</b>	<b>9-128</b>
1. Statutes Requiring Affirmative Action . . . . .	9-128
a. United States Court of Federal Claims . . . . .	9-128
b. The Legislative and Judicial Branches . . . . .	9-129
c. Savings Bond Redemption Losses . . . . .	9-130
2. Statutes Providing “Automatic” Relief . . . . .	9-130
a. Waiver of Indebtedness . . . . .	9-130
b. Compromise of Indebtedness . . . . .	9-130
c. Foreign Exchange Transactions . . . . .	9-131
d. Check Forgery Insurance Fund . . . . .	9-132
e. Secretary of the Treasury . . . . .	9-133
f. Other Statutes . . . . .	9-133
<b>F. Procedures . . . . .</b>	<b>9-134</b>
1. Reporting of Irregularities . . . . .	9-134
2. Obtaining Relief . . . . .	9-135
3. De Minimis Rule: Payments of \$100 or Less . . . . .	9-136
4. Relief versus Grievance Procedures . . . . .	9-136
<b>G. Collection Action . . . . .</b>	<b>9-137</b>
1. Against Recipient . . . . .	9-137
2. Against Accountable Officer . . . . .	9-139
<b>H. Restitution, Reimbursement, and Restoration . . . . .</b>	<b>9-141</b>
1. Restitution and Reimbursement . . . . .	9-141
2. Restoration . . . . .	9-142

---

a. Adjustment Incident to Granting of Relief	9-142
b. Other Situations	9-143

---

**Chapter 10  
Federal Assistance:  
Grants and  
Cooperative  
Agreements**

<b>A. Introduction</b>	<b>10-3</b>
<b>B. Grants versus Procurement Contracts</b>	<b>10-6</b>
1. Judicial and GAO Decisions on the Nature of Grants	10-6
a. Contractual Aspects of Grants	10-6
b. Differences between Grants and Contracts	10-9
c. Grants as “Hybrids”	10-11
2. The Federal Grant and Cooperative Agreement Act	10-13
a. Purposes and Provisions of the Act	10-13
b. Agency Implementation of the Act	10-17
c. Decisions Interpreting the Act	10-18
3. Competition for Discretionary Grant Awards	10-25
<b>C. Some Basic Concepts</b>	<b>10-27</b>
1. The Grant as an Exercise of Congressional Spending Power	10-28
a. Constitutionality of Grant Conditions	10-28
(1) Conditions must be in pursuit of the general welfare and related to the purpose of the expenditure	10-29
(2) Conditions must be unambiguous	10-30
(3) Conditions must be otherwise constitutional	10-32
b. Effect of Grant Conditions	10-34
2. Availability of Appropriations	10-36
a. Purpose	10-36
b. Time	10-39
c. Amount	10-43
3. Agency Regulations	10-45
a. General principles	10-45
b. Office of Management and Budget Circulars and the “Common Rules”	10-47
c. The Federal Financial Assistance Management Improvement Act	10-51
d. The “Cognizant Agency” Concept	10-52
4. Contracting by Grantees	10-53
5. Liability for Acts of Grantees	10-54
a. Liability to Grantee’s Contractors	10-55
b. Liability for Grantee Misconduct	10-58
6. Types of Grants: Categorical versus Block	10-60
7. The Single Audit Act	10-63
<b>D. Funds in Hands of Grantee: Status and Application of Appropriation Restrictions</b>	<b>10-68</b>



---

<b>E. Grant Funding</b>	<b>10-76</b>
1. Advances of Grant/Assistance Funds	10-77
2. Cash Management of Grants	10-78
a. General Rule on Interest on Grant Advances	10-78
b. State Governments and Interest on Grant Advances	10-82
(1) Intergovernmental Cooperation Act	10-82
(2) Decisions under the Intergovernmental Cooperation Act	10-84
c. Other Cash Management Requirements	10-87
3. Program Income	10-89
4. Cost-Sharing	10-92
a. Local or Matching Share	10-93
(1) General principles	10-93
(2) Hard and soft matches	10-96
(3) Matching one grant with funds from another	10-97
(4) Relocation allowances	10-99
(5) Payments by other than grantor agency	10-100
b. Maintenance of Effort	10-102
<b>F. Obligation of Appropriations for Grants</b>	<b>10-106</b>
1. Requirement for Obligation	10-106
2. Changes in Grants	10-107
<b>G. Grant Costs</b>	<b>10-111</b>
1. Allowable versus Unallowable Costs	10-111
a. The Concept of Allowable Costs	10-111
b. Grant Cost Cases	10-117
(1) Scope of judicial review	10-117
(2) Court case examples	10-119
(3) GAO case examples	10-124
c. Note on Accounting	10-126
2. Pre-Award Costs (Retroactive Funding)	10-129
<b>H. Recovery of Grantee Indebtedness</b>	<b>10-132</b>
1. Government's Duty to Recover	10-132
2. Offset and Withholding of Claims Under Grants	10-144

---

Chapter 11  
Federal Assistance:  
Guaranteed and  
Insured Loans

<b>A. Introduction</b>	<b>11-3</b>
1. General Description	11-3
2. Sources of Guarantee Authority	11-8
<b>B. Budgetary and Obligational Treatment</b>	<b>11-12</b>
1. Prior to Federal Credit Reform Act	11-12
2. Federal Credit Reform Act of 1990	11-15
a. Post-1991 Guarantee Commitments	11-16

b. Pre-1992 Commitments .....	11-24
c. Entitlement Programs .....	11-25
d. Certain Insurance Programs .....	11-26
<b>C. Extension of Guarantees .....</b>	<b>11-26</b>
1. Coverage of Lenders (Initial and Subsequent) .....	11-26
a. Eligibility of Lender/Debt Instrument .....	11-26
b. Substitution of Lender .....	11-28
c. Existence of Valid Guarantee .....	11-29
d. Small Business Investment Companies .....	11-35
e. The Federal Financing Bank .....	11-37
2. Coverage of Borrowers .....	11-41
a. Eligibility of Borrowers .....	11-41
b. Substitution of Borrowers .....	11-42
c. Loan Purpose .....	11-43
d. Change in Loan Purpose .....	11-45
3. Terms and Conditions of Guarantees .....	11-46
a. Introduction .....	11-46
b. Property Insurance Programs under the National Housing Act .....	11-47
(1) Maximum amount of loan .....	11-47
(2) Maximum loan maturity .....	11-49
(3) Owner/lessee requirement .....	11-51
(4) Execution of the note .....	11-53
(5) Reporting requirement .....	11-54
(6) Payment of premiums .....	11-55
c. Small Business Administration Business Loan Program ...	11-56
(1) Payment of guarantee fee .....	11-56
(2) Notice of default .....	11-58
<b>D. Rights and Obligations of Government upon Default .11-59</b>	
1. Nature of the Government's Obligation .....	11-59
2. Scope of the Government's Guarantee .....	11-62
3. Amount of Government's Liability .....	11-64
4. Liability of the Borrower .....	11-65
a. Veterans' Home Loan Guarantee Program .....	11-66
(1) Loans closed prior to 1990 .....	11-66
(2) Loans closed after December 31, 1989 .....	11-70
b. Debt Collection Procedures .....	11-71
5. Collateral Protection .....	11-73