
SECURITY ASSISTANCE COMMUNITY

Differences in Authorizations

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The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.

U.S. vs. MacCollom, 426 U.S. 317
(1976)

Moderate caution prevails in efforts to interpret and consistently execute the many fiscal laws enacted each year by the Congress. For a combatant commander (COCOM), consistent interpretation of fiscal laws and policies are essential to the morale and well-being for all personnel assigned within the purview of the commander. In fact, the COCOM has the responsibility to determine what is fair and appropriate for his members and to establish equitable standards, Army Regulation 12-15/SECNAVINST 4950.4A/AFI 16-105, 5 June 2000. Inconsistency is the enemy of the joint combatant comptroller. This is where it gets interesting for financial managers.

Often, Department of Defense (DoD) organizations have anchored their fiscal policy solely on the Appropriations Act and Authorizations Act passed by Congress each fiscal year. However, there is another Act to consider, the *Foreign Assistance Act of 1968* (FAA). It arguably has enough additional authorizations to raise a few eyebrows each time one of the different authorizations gets executed. The major differences are in the source of funds: the Foreign Military Sales (FMS) Trust Fund is appropriated to the DoD, while the Foreign Operations appropriation belongs to the Department of State (DoS) and the legal authorities and restrictions in the FAA and the *Arms Export Control Act* (AECA), which control the use of the funds.

One might ask if the FAA is truly appropriated money. The DoDFMR 7000.14-R, Volume 15 answers that question.

. . . appropriated funds are not limited to those appropriated by Congress to federal agencies from the general fund of the Treasury. Rather, funds available to agencies are considered appropriated, if made available for collection and expenditure pursuant to specific statutory authority. Transactions which involve FMS trust funds can constitute violations of the *Anti-Deficiency Act*.” Issues involving FMS monies need to be carefully evaluated on a case-by-case basis, taking into account all relevant aspects of each case for application of the *Anti-Deficiency Act*.

What kind of differences would raise eyebrows and cause financial managers at COCOMs to cringe every time one is enacted upon? Here are a few examples:

A simple difference to look at first concerns authorization to purchase ice and drinking water for use outside the continental United States (CONUS). An authorized expense for those members occupying billets covered by the FAA. Contrast that to an Air Force organization that may purchase drinking water with appropriated funds only when it is a necessary expense from the government's

standpoint. The circumstances for which they can purchase water are listed in AFI 65-601 Volume 1 Paragraph 4.45:

- The public water supply is unsafe for human consumption as determined by competent medical and environmental authority in writing
- There is an emergency failure of the water source on the installation
- A temporary facility has no drinking water available within a reasonable distance
- There is no water fit for drinking purposes, as determined by competent medical and environmental authority in writing, available without cost or at a lower cost to the government
- The purchase of drinking water (bottled water) with APF ceases to be authorized when the problem with the drinking water has been remedied

Another difference of the FAA is in purchase of uniforms, an authorization used mainly to purchase driver uniforms, usually in the form of a new suit or two for the security assistance office (SAO) Chief's driver. Compare that to the Air Force policy where a civilian clothing is almost never allowed for civilian employees and is a allowance paid only to active duty enlisted members and officers (in the form of a periodic allowance in their paychecks) when stationed overseas. Normally, a civilian driver would be expected to come dressed appropriately for work and therefore purchase of a uniform would not be allowable.

Funding appropriated for Emergency and Extraordinary Expenses is routinely used by Department of Defense (DoD) entities for official representation purposes and is used at the highest levels for entertaining and upholding the prestige and standing of the United States. The FAA has similar representation authorizations but if one begins to delve into the goals of the FAA (funding is for the purposes of or pursuant to the Act) they might suggest use of the funds at a much lower level, to allow such things as "counterpart gifts" and hosting of individuals at a counterpart level.

The FAA also allows procurement of supplies and services without regard to laws and regulations governing the obligation and expenditure of funds of the U.S. government as may be necessary to accomplish the purposes of the Act. Security assistance offices (SAOs) are given authority to purchase from wherever they decide is most efficient and appropriate. They are not required to use DoD systems. They can purchase them from another department or a public firm.

The FAA hints of other differences as well. This kind of information opens up new opportunities for financial managers to compare similar programs in different jurisdictions. Please contact the Defense Security Cooperation Agency (DSCA) at the following web site: <http://www.dsca.mil>.

. . . the DSCA is a DoD organization. Therefore, DoD authorities, policies, and regulations apply unless DSCA has a specific authorization or prohibition in law that differs from DoD authorities, policies, and regulations. . .

The FAA differs from Appropriations and Authorizations Act in their extent and scope. Indeed, from the beginning, financial managers saw an authorization, aimed at changing the fundamental incentives of all people within government and eschewed partial reforms. A review of the literature on FAA reveals there were five more differences:

- Department of Defense financial professionals often contend that the benefits of contracting with individuals for personal service abroad are not sufficient to justify the scrutiny the rest of the DoD would put on them even though such individuals shall not be regarded as employees of the U.S. government for the purpose of any law administered by

the Civil Service Commission. Yet manpower has not been allowed to increase since 1968

- Passenger motor vehicles may be purchased for replacement only and the cost shall not exceed the current market price in the U.S. of a midsize sedan
- Insurance of official motor vehicles or aircraft acquired for use in foreign countries
- Rent or lease outside the U.S. for not to exceed ten years of offices, buildings, grounds, and quarters, including living quarters to house personnel, and payments therefore, in advance; maintenance, furnishings, necessary repairs, improvements, and alterations to properties owned or rented by the U.S. government or made available for use to the SAO
- Printing and binding without regard to the provisions of any other law

The additional authorities contained in the FAA can help security assistance organizations to achieve their missions, realizing the real value in these differences is the purpose for which they are enacted. What has been shown is that these authorities differ in meaningful ways and it is COCOM's responsibility to ensure any one organization will not benefit from these differences while at the same allowing users to take full advantage of budgetary flexibility made available via the FAA. As financial management in the joint environment continues to evolve, new legislation, new requirements, new management initiatives, new missions and the proviso to get the "biggest value for the buck" continually forces resource managers to develop new approaches to resource management to guarantee interoperability of the forces that ensure mission success.