

Federal Appropriation Law Refresher & Update

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Objectives

To inform or refresh you about:

- Basic principles of Appropriation Law
- Why there are sometimes limitations on purchases
- Practical applications of appropriation law

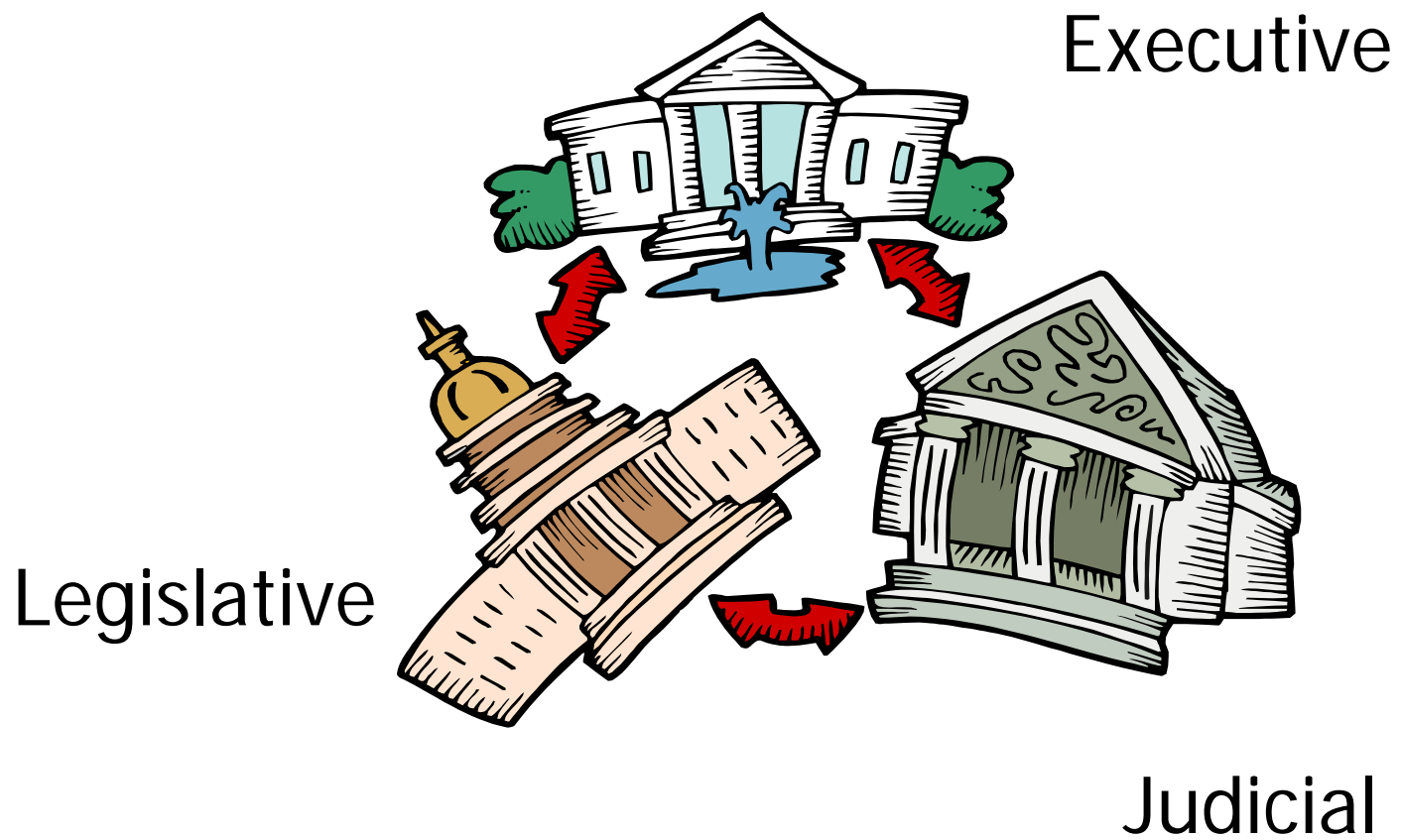
Agenda

- Today we will cover the following:
 - Appropriations and Grants
 - Availability of Appropriations
 - Purpose
 - Time
 - Amount

U.S. Constitution
Article 1, Section 9

**“No money shall be drawn
from the Treasury, but in
consequence of
Appropriations made by
Law”**

Separation of Powers



Constitutional Powers

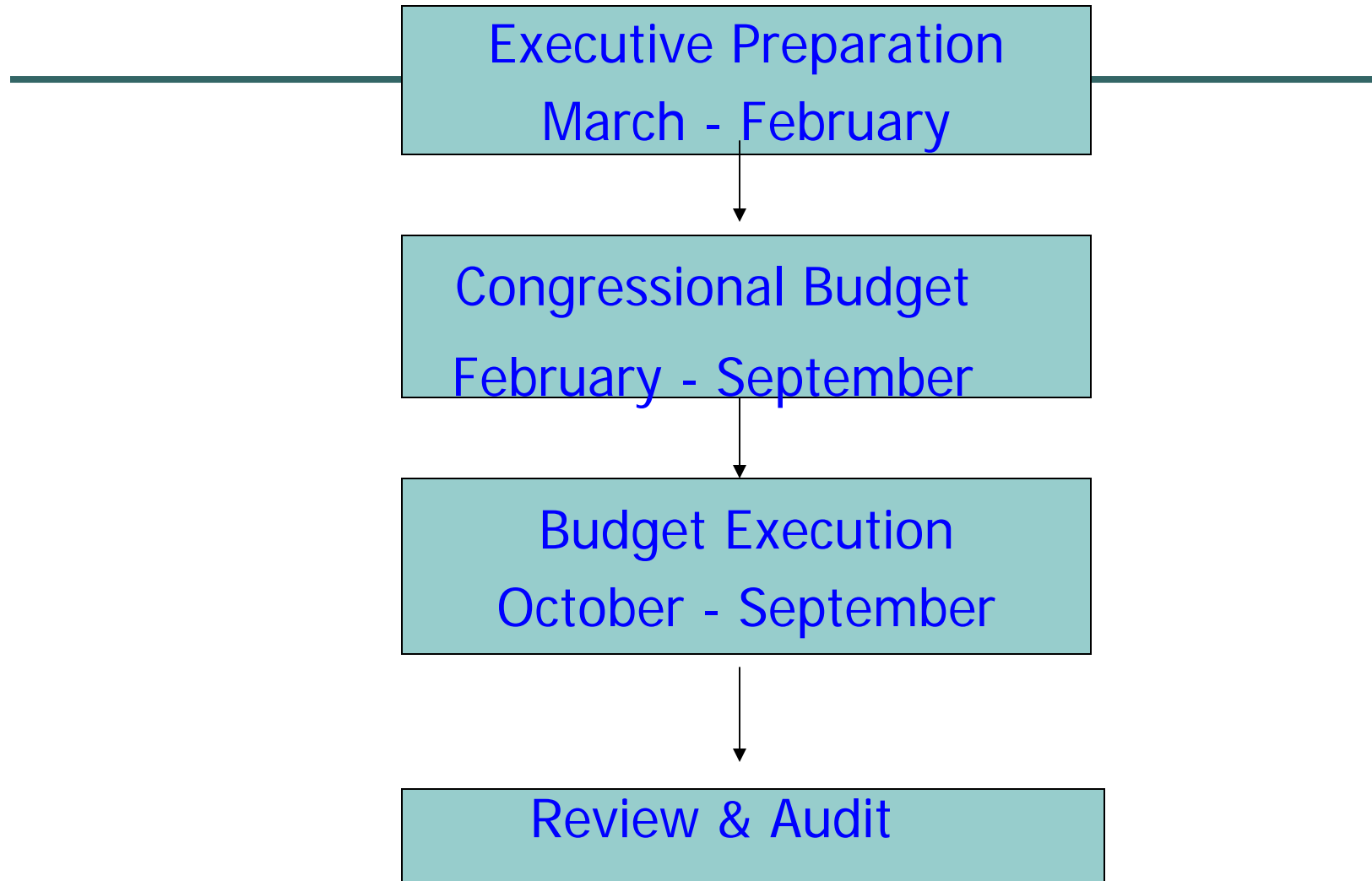
- **Executive:**
 - Power to design and execute Governmental programs
- **Judicial:**
 - Power to arbitrate and interpret laws
- **Legislative:**
 - Power of the Purse

Types of Laws

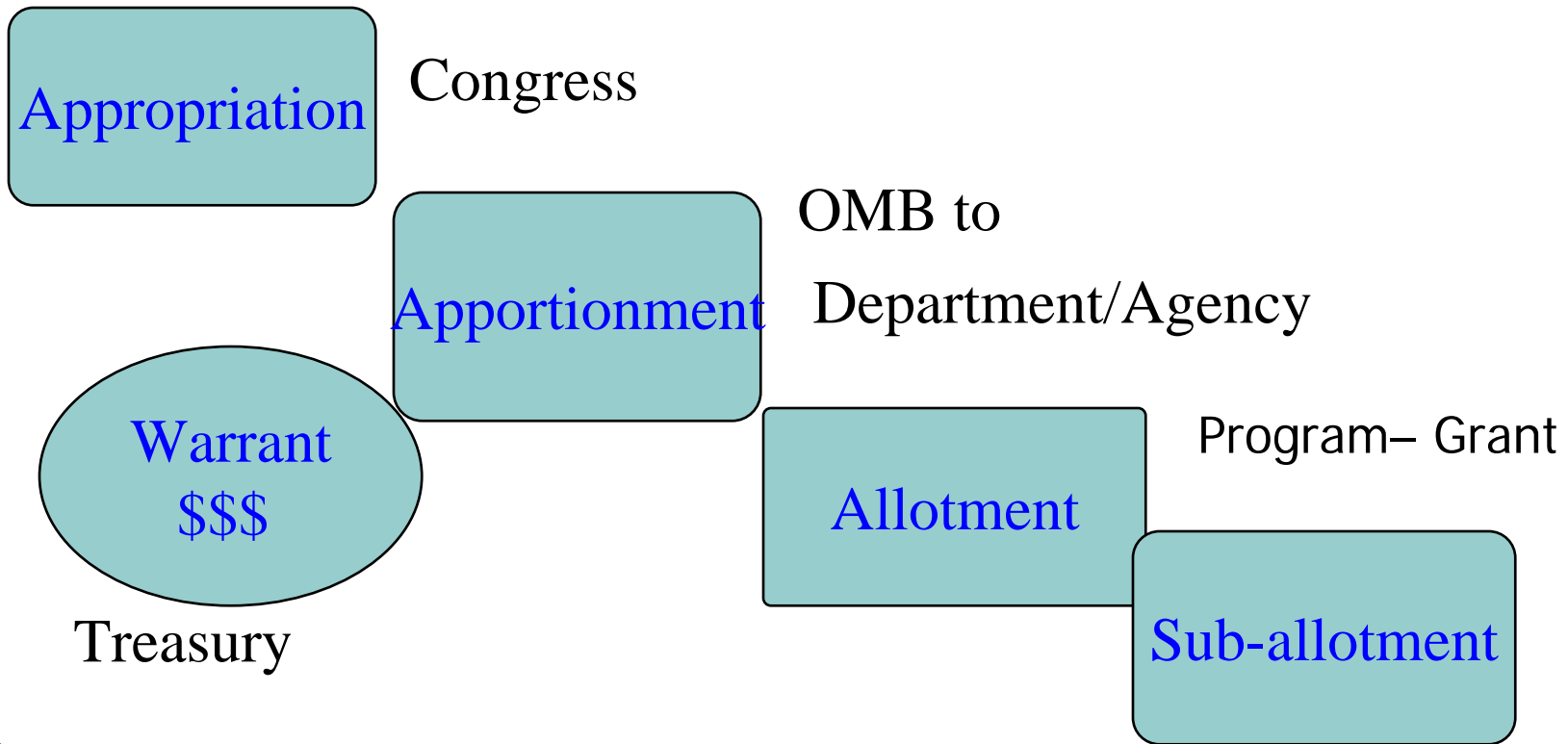
- **Enabling or Organic Legislation**
 - Creates an agency or program within an agency
 - Mission or statement of purpose assigned
- **Budget Authority Granted**
 - Legally binding spending ceiling for agency
 - Contract Authority
 - Borrowing Authority
- **Appropriation**

Let's look at some definitions

Phases of the Federal Budget Process



Flow of Fund Authority



Continuing Resolutions

- How long is a continuing resolution?
- How much can you spend?
- How fast can you spend?
- What can you buy?

Birth of an Agency

- 1. Enabling or Organic Legislation**
- 2. Authorizing Legislation Granted**
- 3. Budget Authority Granted**
 - Appropriation
 - Contracting or Borrowing Authority
 - Authority to obligate and expend offsetting receipts and collections

Legal Availability of Funds

- Appropriation law requires that all Federal expenditures are proper to :
 - Time
 - Purpose
 - Amount
- Congress is deliberate about how they appropriate

Duration

- One year
- Multiple-year
- No-Year (X account)

Purpose

31 U.S.C. 1031 (a)

“Appropriations shall be applied only to the objects for which the appropriations were made except otherwise provided by law.”

Example

NSF Authority

42 USC 1862 - Functions

"The Foundation is authorized and directed--

- (1) to initiate and support basic scientific research and programs to strengthen scientific research potential and science education programs at all levels in the mathematical, physical, medical, biological, social, and other sciences, and to initiate and support research fundamental to the engineering process and programs to strengthen engineering research potential and engineering education programs at all levels in the various fields of engineering, by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific, engineering, and educational activities and to appraise the impact of research upon industrial development and upon the general welfare;"

Appropriation Law & the Certifying Officer

- Allowable Expenditures
- Specific Purpose in Appropriation Act
 - Funds must be used in accordance with the specific purpose
 - For example if funds are appropriated to *repair* equipment, that does not mean to *purchase* equipment with those funds

Effect of Budget Estimates on Use of Funds

- Specific appropriations and/or earmarks require that appropriated funds be used as specified:
 - Research funds are different from operating funds.
 - Grants are different from direct purchases
- Lump sum appropriations are more broad by design.
 - Routine purchases are often in lump sum appropriations

Necessary Expense Doctrine

- This “doctrine” is applied to justify expenditures for miscellaneous or running expenses required to carry out the agency’s work. They must be necessary to carry out the appropriation.
- More common for general or “lump sum” appropriations

Necessary Expense Tests

- Expenditure bears a *logical relationship* to the appropriation charged
- Expenditure *not prohibited by law*
- Expenditure *not covered by another appropriation*, especially if there is a specific appropriation for that purpose

Examples of NSF Appropriations

R&RA- Research and Related Activities

"For necessary expenses in carrying out the National Science Foundation Act of 1950, as amended ... , services as authorized by 5 U.S.C. 3109 [employment of experts and consultants]; maintenance and operation of aircraft and purchase of light services for research support; acquisition of aircraft; and authorized travel; \$5,617,920,000, to remain available until September 30, 2011, of which not to exceed \$570,000,000 shall remain available until expended for polar research and operations support . . . Provided further, That not less than \$147,120,000 shall be available for activities authorized by section 7002(c)(2)(A)(iv) of Public Law 110-69 [EPSCOR]."

MREFC- Major Research Equipment and Facilities Construction

"For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets ... including authorized travel, . . . to remain available until expended:"

Time - Obligations

- The agency may obligate during the year(s) of availability.
- The obligation takes place when the legal liability is created. Typically, this is a grant or a contract.
- All expenses must be made and reported to the agency within 5 years of the end of the appropriation's period of availability.

Grant Oversight and Allowable Costs

- Recipients of assistance awards must use the assistance funds for the purposes for which they were awarded, subject to any conditions that may attach to the award.
- Expenditures or costs that meet the grant purposes and conditions are termed “allowable costs.”
- An expenditure which is not for grant purposes or is contrary to a condition of the grant is not an allowable cost and may not be properly charged to the grant.
- Allowable costs are determined on the basis of the relevant program legislation, regulations, including OMB circulars and the common rules, and the terms of the grant agreement.

Selected examples of costs

- *Back in the USSR. . .*

Any air transportation to, from, between or within a country other than the U.S. of persons or property, the expense of which will be assisted by NSF funding, must be performed by, or under a code-sharing arrangement with, a U.S.-Flag air carrier if service provided by such a carrier is “available” (see Comp. Gen. Decision B-240956, dated September 25, 1991). Tickets (or documentation for electronic tickets) must identify the U.S.-Flag air carrier’s designator code and flight number. (NSF Award and Administration Guide, Ch. VI)

Selected examples (cont)

- **FOOD**, *glorious food*

OMB Circular A-21

J. 16(a) *Employee morale, health, and welfare costs*. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

J. 17 *Entertainment costs*. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

J. 32. *Meetings and Conferences*. Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see section J.17, Entertainment costs.

More selected examples

- *There's gonna be a party tonight!*
J. 3. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

If In Doubt

Remember *The Washington Post* test:

“Congress Investigates Use of NSF Grant Funds by (*fill in your institution’s name here*)”

Or Worse. . .

**“Hill Holds Hearings on
Spending Under NSF
Grants, Congress
Considers Cutting
Agency’s Funding”**

OMB and Grant Management

Grants Management Circulars (www.omb.gov)

- **Cost Principles**

A-21, Educational Institutions, Relocated to 2 CFR, Part 220

A-87, State and local Governments, Relocated to 2 CFR, Part 225

A-122, Non-Profit Organization, Relocated to 2 CFR, Part 330

- **Administrative Requirements**

Agency's award specific terms and conditions (Award letter)

Agency's standard terms and conditions (www.nsf.gov)

OMB Circulars A-110 and A-102 for information on how to comply with these requirements under specific assistance agreements.

[A-102, State and Local Governments](#) (10/07/1994, amended 08/29/1997) [A-110, Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations](#) (11/19/1993, amended 09/30/1999, [Relocated to 2 CFR, Part 215](#) (32 pages, 243 kb))

- **Audit Requirements**

- [A-133, Audits of States, Local Governments and Non-Profit Organizations](#) (includes revisions published in the *Federal Register* 06/27/2003 and 06/26/2007) (34 pages, 173 kb)

Useful Websites

- [nsf.gov](https://www.nsf.gov)
- [omb.gov](https://www.omb.gov)
- [gao.gov](https://www.gao.gov)
 - Legal Resources
 - GAO Red Book “ Principles of Federal Appropriation Law”, Volume II, chapter 10

Summary

We hope you better understand the:

- Budget Process related to funding
- Appropriations
- Availability of Appropriations
- Why sometimes we say “NO”

Remember when you purchase items, think about how it would be perceived by the taxpayers.