

USE IT OR LOSE IT: A PRIMER

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The Acting Secretary of the Army recently issued Army Directive 2016-16, “Changing Management Behavior: Every Dollar Counts,” April 15, 2016. The purpose was to “be innovative and good stewards of taxpayer dollars” and to “adapt financial management practices and improve outcomes.” Probably the most important change to Army thinking was the section on “use or lose” funding practices, which said:

Eliminate “use or lose” funding practices. While the Office of the Secretary of Defense and Congress will hold us accountable for execution metrics that we will have to meet, commanders and staffs will not automatically decrement commands or programs in future allotments when they do not spend all funds without further investigation to evaluate the reason for under-execution and determine if it was a onetime event or funding adjustments are need.

What does this peculiar rhetoric mean? Most money appropriated for federal personnel costs and for contracts for goods and services “expires” and can no longer be used for new obligations or spending after one year. Hence the term “use it or lose it” applies. Generally, shorter periods of availability of appropriations provide greater Congressional control over the operations of the executive branch. Individuals who develop, review and execute budgets look closely at any money that is unused at the end of the year, and generally believe that it may be a good reason to cut the next year’s budget.

Why is this the case with federal appropriations? To begin with, Article I, Section 9, of the U.S. Constitution, provides that “no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” Generally, money is made available in annual appropriations acts. However, some programs (for example, Social Security) are entitlements, where the government has authority to make payments for which appropriations are not provided in advance but, under the law, the U.S. government is legally required to make. See Government Accountability Office, *A Glossary of Terms Used In the Federal Budget Process*, GAO-05-734SP B, September 2005.

Appropriations are frequently classified by duration, or how long the money is available.

CLASSIFICATION OF APPROPRIATIONS BASED ON DURATION

(1)One-year appropriation: An appropriation that is available for obligation only during a specific fiscal year. This is the most common type of appropriation. It is also known as a “fiscal year” or “annual” appropriation. [Example: Operation and Maintenance (“O&M”) Army, O&M Navy, O&M Air Force. These appropriations pay for training and operation costs, including pay of civilians, contract services for maintenance of equipment and facilities, fuel, supplies, repair parts for weapons and equipment, and other annual costs].

(2)Multiple year appropriation: An appropriation that is available for obligation for a definite period of time in excess of one fiscal year. [Example: Aircraft Procurement, Air Force, available for three years].

(3)No-year appropriation: An appropriation that is available for obligation for an indefinite period. A no-year appropriation is usually identified by appropriation language such as “to remain available until expended.” [Example: NATO Security Investment Program].

See Government Accountability Office, *Principles of Federal Appropriations Law*, Chapter 2, The Legal Framework, 4th Ed, 2016, GAO-16-464SP, March 10, 2016, at 2-9.

Here is how it works at a typical federal agency, such as the Department of Defense (“DOD”). To begin with, most funds are available to DOD for obligation for only a specific period of time, with the default period being one year. Annual DOD Appropriations Acts normally contain a general provision stating that “[n]o part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year, unless expressly so provided herein.” In each act, however, there are “standard periods” of availability, usually depending on how long it takes to obligate or spend the money. Procurement for aircraft or complex systems that typically require more than one year to be built, such as ships, which require several years, have a longer availability period. But day-to-day personnel and contracting are normally limited to one year of availability.

AVAILABILITY OF TYPICAL DOD APPROPRIATIONS

Military Personnel -1 Year

Operations and Maintenance -1 Year

Research, Development, Test, and Evaluation - 2 Years

Procurement - 3 Years

Military Construction - 5 Years

Shipbuilding and Conversion, Navy - 5 Years (with some exceptions)

What was the Army trying to do in its new management directive? It was trying to break the two part “bad spending” cycle of many money managers:

- Prevent money-managers from significant spending at the end of a fiscal year in order to avoid losing any portion of their appropriation. Sometimes this last minute spending is made for low priority budget items that would be better left unspent.
- Make managers look closely at any unobligated (unspent) funding to see if there was a good reason for not obligating, and not “cut” future year budgets because the money was lost because it was not used.

In issuing this management directive, perhaps the Army was taking its cue from a study on fixed periods of appropriation availability prepared by faculty of the Harvard Kennedy School of Government, which concluded that:

- There is a surge of spending at the end of the fiscal year
- End of fiscal year spending is of “lower quality”
- Permitting the rollover of spending into subsequent fiscal years could lead to higher quality spending (although this does not normally happen for DOD appropriations).

Liebman, Jeffrey B. and Neale Mahoney, 2013, *Do Expiring Budgets Lead To Wasteful Year-End Spending? Evidence From Federal Procurement*, National Bureau of Economic Research Working Paper 19481, Harvard Kennedy School Faculty Research Working Papers.

It remains to be seen if the Army’s new use or lose policy will improve money management, and if it will be adopted by other parts of the DOD and elsewhere within the government.