



**DEFENSE SECURITY COOPERATION AGENCY**  
2800 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2800

21 JUL 2022

MEMORANDUM FOR COMMANDERS OF THE COMBATANT COMMANDS DEPUTY  
ASSISTANT SECRETARY OF THE ARMY FOR DEFENSE  
EXPORTS AND COOPERATION  
DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR  
INTERNATIONAL PROGRAMS  
DEPUTY UNDER SECRETARY OF THE AIR FORCE FOR  
INTERNATIONAL AFFAIRS  
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY  
DIRECTOR, SECURITY ASSISTANCE, DEFENSE FINANCE AND  
ACCOUNTING SERVICE  
DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY  
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY  
DIRECTOR, NATIONAL GEOSPATIAL-INTELLIGENCE  
AGENCY  
DIRECTOR, MISSILE DEFENSE AGENCY  
DIRECTOR, DEFENSE LOGISTICS AGENCY  
DIRECTOR, DEFENSE LOGISTICS INFORMATION SERVICE  
DIRECTOR, DEFENSE LOGISTICS AGENCY DISPOSITION  
DEPUTY DIRECTOR FOR INFORMATION ASSURANCE,  
NATIONAL SECURITY AGENCY

SUBJECT: Clarification to 10 United States Code § 333, DSCA Policy Memo 22-20, SAMM E-  
Change 527]

REFERENCES:

- a) Interim Clarification on 10 USC § 333, DSCA Policy Memo 18-38, signed September 5, 2018

Effective immediately, reference (a) is hereby superseded. The guidance contained within e-change #527 herein replaces the prior guidance for Cross Fiscal Year (CFY) and Full Operational Capability (FOC) authorities of Section 333 and updates the Availability of Funds case note text and input responsibility in Security Assistance Management Manual (SAMM) Appendix 6. The other case notes contained in reference (a) remain in force and unchanged, and are restated in this memo. Additionally, Implementing Agencies (IAs) are required to clarify in the case description the use of the CFY, FOC, the long lead time production exception or a mix of these exceptions.

Reference (a) established DSCA's interim guidance for programs executed pursuant to 10 U.S.C. 333 (Section 333) while comprehensive updates to Chapters 11 and 15 of the SAMM are in development. In September 2020, the Department of Defense (DoD) Office of General Counsel (OGC) (Fiscal) issued three clarifications to previous opinions that necessitate additional DSCA guidance.

The following DoD OGC clarifications are incorporated into the guidance provided in Attachment 1:

### **Production/Long Lead Time Exception Clarification**

The Production/Long Lead Time Exception to the Bona Fide Need (BFN) rule allows for the obligation of funds for contractor-provided training or services for equipment that has a long-lead production timeline, as long as the obligation occurs during the funds' period of availability. This exception can also be applied to the obligation of funds for USG-provided services accomplished via a project order or a working capital fund (10 U.S.C. 2208) (e.g. the Defense Working Capital Fund).

If the period of performance of any line on any case (or any Direct Funds equivalent) associated with the program exceeds that which is authorized by each CFY, then all case lines in all cases (and direct funds equivalent) associated with the program must revert back to standard laws and policies governing federal appropriations. Therefore, if any aspect of a congressionally-notified Section 333 program has a period of performance or delivery date beyond the time period permitted by CFY authority, then CFY and FOC authorities are negated for the entire program. A long-lead time material delivery outside the CFY authorized timeframe disqualifies the DoD from using CFY authority to provide any contractor-provided severable services under that Section 333 program. Similarly, any contractor-provided severable services provided under a Section 333 program that also includes a long-lead material delivery (delivery of material beyond of the end of the Fiscal Year (FY) after the FY in which the program began) cannot use FOC or CFY authority. Therefore, the period of performance for the associated contractor-provided severable services cannot extend beyond a 12-month period as authorized by 10 U.S.C. 2410(a).

### **Funds Availability/Period of Performance Clarification**

CFY and FOC authorities are two time-limited exceptions to the BFN rule contained within 10 U.S.C. 333 that allow for the execution of funds in future years as long as funds are obligated during the funds' original period of availability. CFY and FOC authorities may be used simultaneously within an individual Section 333 program.

DoD's provision of training and services conducted by USG personnel (that are not funded by project order or working capital fund) are limited to the funds' period of availability and can not use CFY and FOC authority. However, providing training and services conducted by U.S. contractors, or by USG personnel funded by project order or working capital fund, may use the CFY and FOC authorities.

### **Economy Act Clarification**

The Economy Act (31 U.S.C. 1535 and 31 U.S.C. 1536) is the predominant legal authority used by DSCA to transfer funds to the IAs and Direct Funds recipients for Section 333 program execution.

Title 10 authorities containing CFY authority language (10 U.S.C. 333, 10 U.S.C. 342, and 10 U.S.C. 345) do not override the Economy Act's legal requirement to de-obligate and return funds for services not provided at the end of the funds' period of availability. For any assistance not accomplished by a contract, project order, or working capital fund, the federal organization providing the requested Economy Act support must return to the ordering agency any unused funds not already obligated at the end of the funds' period of availability. The CFY

and FOC authorities within 10 U.S.C. 333 do not provide a means for continued Economy Act support by federal employees (except when funded by project order or working capital fund, refer to Department of Defense Financial Management Regulation (DoD FMR) Volume 11A) after the funds period of availability. The Economy Act limitation also applies to the use of Travel and Living Allowance funds for international military students attending training in the United States under a BPC program.

If you have general questions concerning this guidance, please contact Ms. Caroline Chin, DSCA (Office of Strategy, Plans, and Policy, Execution Policy and Analysis Directorate (SPP/EPA)), [caroline.s.chin.civ@mail.mil](mailto:caroline.s.chin.civ@mail.mil) or (703) 697-9073.



Alan Gorowitz  
Assistant Director  
Strategy, Plans and Programs

Attachment:

1. E-change #527
2. Execution Scenarios

cc:

STATE/PM-RSAT  
SOCOM  
TRANSCOM  
USASAC  
SATFA TRADOC  
NAVSUP WSS  
NETSAFA  
AFSAC  
AFSAT  
MDA  
DSCU

## Attachment #1 - Security Assistance Management Manual (SAMM), E-Change 527

### 1. Delete from Chapter 15:

~~C15.3.4.3. "Cross Fiscal Year" Authority.~~ Congress provided the Section 2282 Program with "cross fiscal year" authority, applicable to both contracted and government sourced services funded with Section 2282 program funds ([See FY 2009 NDAA, P.L. 110 417, Section 2282\(b\)](#)). The cross fiscal year provision was retained in the Section 2282 authority. This authority provides a time limited exception to the bona fide needs rule, which requires that appropriated funds be used only for goods and services during the period of availability for new obligations. Pursuant to the cross fiscal year authority, amounts available for a fiscal year may be used for programs that begin in the fiscal year when funds are available for obligation and end in the subsequent fiscal year. Services and training are obligated during the period of availability, even though the actual commencement of services and training may occur in a later fiscal year. This authority does not extend the period of availability for new obligations; all Section 2282 or Section 2282 funds must be obligated prior to the end of the period of availability. Performance of program services may extend to the end of the subsequent fiscal year (to include services such as travel and government civilian services as they pertain to TDY that is appropriately charged to the program). Funded civilian personnel are not required to cease their Section 2282 or Section 2282 related activities at the end of the appropriation fiscal year. If military pay is part of the reimbursable expense (i.e., under contingency operations), it may be reimbursed from Section 2282 or Section 2282 funds.

~~C15.3.4.4. Full Operational Capability.~~ Section 2282 retains "the cross fiscal year" authority language as described in [Section C15.3.4.3.](#) and adds the "full operational capability" provision in 10 U.S.C. Section 2282(c)(4)(B). The Full Operational Capability authority provides an additional time limited exception to the bona fide needs rule to allow the use of funds from the original period of availability into the fiscal year after the partner nation takes receipt of the equipment and the next fiscal year. Full operational capability authority does not extend the period of availability for new obligations; all Section 2282 funds must be obligated prior to the end of the fiscal year of Congressional Notification.

~~C15.3.4.4.1. Full Operational Capability authority is available only if the equipment under the 2282 program is delivered to the USG before the end of second fiscal year (the fiscal year after Congressional Notification). If articles are not delivered to the USG by the fiscal year after the fiscal year of Congressional Notification, the time extension provided in the full operational capability provision does not apply. In such cases, cross fiscal year authority is still available to procure and deliver long lead items. Funds for services, other than initial operator and maintenance training, following delivery of the equipment default to the limitations of the cross fiscal year authority. Therefore, if such services require additional funds, the CCMD must request current year funds from OSD (SO/LIC).~~

~~C15.3.4.4.2. To enable the partner nation to achieve full operational capability, funding for supplies, training, defense services, and small scale military construction associated with the equipment necessary may be used in the fiscal year the partner nation takes receipt of such equipment and the next fiscal year.~~

2. Insert to Chapter 15:

C15.3.4.3. Exceptions to the Bona Fide Need Rule. The Bona Fide Need (BFN) ([31 U.S.C. 1502](#)) rule is a general fiscal principal that requires appropriations to be obligated only for payment of bona fide need of the requiring agency during the period of availability of funds. An existing exception to BFN that can be applied to [10 U.S.C. 333](#) programs is the use of the production/lead time exception. Additionally, [10 U.S.C. 333](#) contains two time limited exceptions to the BFN rule: Cross Fiscal Year (CFY) Authority and Full Operational Capability (FOC) Authority. The CFY and FOC exceptions to the BFN allow for the execution of funds in future years as long as funds are obligated during the funds' original period of availability.

C15.3.4.3.1. Production/Long- Lead Time Exception. Limited contractor-provided non-severable services (e.g. initial operator training or construction) are permissible to support the delivery of articles and equipment with a long-lead production time when the desired non-severable services or training would fall outside of the allowable period of performance under another authority. Non-severable service contracts may be awarded to support the fielding of a long- lead production article but must be funded entirely with appropriations available for new obligations at the time the contract is awarded, and the period of performance may extend across Fiscal Years (FYs) to support the equipment whenever it is delivered prior to the funds' cancellation date. Therefore, the period of performance for the associated contractor-provided severable services cannot extend beyond a 12-month period as authorized by [10 U.S.C. 2410\(a\)](#).

C15.3.4.3.1.1. Production/Long Lead Time Exception Impact on Cross Fiscal Year and Full Operational Capability. An individual Section 333-funded program using the long-lead time exception is facilitating delivery of equipment outside the authorized period of performance permitted by the CFY or FOC authority. Therefore, any program using the production/long lead time exception is not eligible to use CFY or FOC authority to execute other aspects of the Section 333 program and must revert back to fiscal rules for Operations and Maintenance (O&M) appropriations. Use of the production/long-lead exception could impact other planned activities in the Section 333 program and Implementing Agencies (IAs) will coordinate the use of this exception with DSCA (Office of International Operations, Regional Execution Directorate, Global Capability Development Division (IOPS/REX/GCD)) during the program design phase and prior to Congressional Notification (CN). DSCA (IOPS/REX/GCD) must communicate to all supporting IAs and non-traditional implementers if the production/long lead time exception will be used for a planned program and that any period of performance conforms to the applicable fiscal rules.

C15.3.4.4. Cross Fiscal Year Authority. Specifically, CFY authority per [10 USC 333\(g\)\(2\)\(A\)](#) allows amounts available in a Fiscal Year (FY) to carry out a Section 333 program to be used for programs under that authority that begin in that FY and end not later than the end of the second FY thereafter. CFY is the default funds availability provision.

C15.3.4.4.1. Section 333 Program Definition and Synchronized Start. A Section 333 program, defined as the provision of a particular capability to a specific country (or countries) within a tranche of a CN, begins when the first field activity obligates the first

dollar for the program, not when DSCA receives an apportionment from the Office of the Secretary of Defense, Comptroller (OSD (C)). Examples of a valid obligation include, but are not limited to, signing a contract, approving travel orders, or receiving acceptance on a project order. The planned execution timeline provided to Congress is to be based on when the first field activity will obligate the first dollar and officially start the program. To achieve a synchronized start among all offices supporting a single program requires significant communication and coordination led by DSCA (IOPS/REX/GCD), which also ensures all periods of performance conform to the permissible periods of performance authorized by Section 333.

C15.3.4.4.2. Qualifying for Cross Fiscal Year. The program's planned period(s) of performance may not exceed the time period authorized by CFY. The period of performance begins when the program incurs its first financial obligation. Estimated delivery of articles must occur prior to the end of the CFY time period. If the period of performance or delivery of articles of any line on any case (or any Direct Funds equivalent) associated with the program exceeds that which is authorized by CFY, then all case lines in all cases (and direct funds equivalent) associated with the program must revert back to standard laws and policies governing federal appropriations.

C15.3.4.5. Full Operational Capability Authority. [10 USC 333\(g\)\(2\)\(B\)](#) authorizes an additional exception to the BFN rule, allowing follow-on support (FOS) (in the form of additional defense articles, training, defense services, supplies including consumables, and small-scale construction) for equipment requiring FOC, as denoted on the CN. These FOC activities may begin in the FY when the Benefitting Country takes receipt of the equipment, and may continue until the end of the second FY thereafter.

C15.3.4.5.1. Qualifying for Full Operational Capability. In order for a Section 333 program to qualify for FOC, the USG must receive all equipment requiring FOS and/or services to ensure the Benefitting Country achieves FOC for such equipment before the end of the FY after the FY in which the program incurs the first financial obligation. If all such equipment is delivered to the USG during this time, the USG may provide the Benefitting Country with the FOS associated with the delivered equipment.

C15.3.4.5.2. If the USG does not receive all equipment requiring FOS and/or services before the end of the FY after the first obligation, the program does not qualify for FOC and must revert to the period of performance authorized under CFY authority or basic fiscal law requirements.

C15.3.4.5.3. The USG will make every effort to deliver the equipment to the Benefitting Country within 120 days after acceptance of the items by the USG.

C15.3.4.5.4. Training-only programs do not qualify for FOC authority as FOC authority only applies to the delivery of equipment.

C15.3.4.5.5. Use of Multiple BFN exceptions. The CFY and FOC exceptions are legally available options for DoD to execute Section 333 programs through a multi-year deliberate planning process to deliver enduring capabilities to Benefitting Countries. IAs may utilize

both CFY and FOC authorities while executing a single Section 333 program.

C15.3.4.5.6. Program Completion and Case Closure. As a matter of law, FOC activities and long-lead production equipment delivery (and associated non-severable services) must be completed prior to funds cancellation. This also facilitates timely case closure of Letters of Offer and Acceptance (LOAs) and assists in the assessment, monitoring, and evaluation of security cooperation initiatives.

C15.3.4.6. Economy Act Limitations. DSCA transfers funds to IAs and Direct Funds Recipients to execute Section 333 programs under the authority of the Economy Act ([31 U.S.C. 1535](#)). The Economy Act requires the supporting organization to de-obligate and return to the ordering agency any funds for services (to include training services) not provided or requirements not legally obligated on contract, project order, travel order, or by a working capital fund (e.g. Defense Working Capital Fund (DWCF)) before the appropriation expires. IAs and Direct Funds Recipients must return de-obligated and unused funds to DSCA no later than the end of the first quarter following the expiration of the funds' period of availability. The performance timelines authorized by CFY and FOC authority do not negate this Economy Act requirement.

C15.3.4.6.1. Support services provided by USG personnel (except when operating under a project order or a working capital funds like the DWCF (See [DoD Financial Management Regulation \(FMR\) Volume 11A, Chapter 2](#))), are considered obligated only when the support service is actually provided, not when funds are provided.

C15.3.4.6.2. For case lines supported by USG personnel (with a Source of Supply Code of "S" or "X") where period of performance dates extend beyond funds' expiration, the line note must include language stating USG services are funded with working capital funds or by project order. For Source of Supply Code "X" case lines, if USG personnel are not funded with either working capital funds or by project order, the line note must include language stating USG services will end when funds expire.

C15.3.4.6.3. Travel orders for a Benefitting Country or USG personnel not operating under a project order or a working capital fund, like DWCF, cannot be issued after the appropriation expires.

C15.3.4.6.4. For any service lines the case note must indicate if severable or non-severable services will be provided.

3. Renumber remaining sub-sections in C15.3.4. as needed.

4. Update the LOA note in Appendix 6:

**Availability of Funds Across Fiscal Years**

<b>Note Usage</b>
FMS: No BPC : Yes Mandatory for LOAs that utilize the Section 333 authority. Mandatory for any Modifications and Amendments if not included on the basic case.
<b>References</b>
N/A
<b>Note Input Responsibility</b>
IA
<b>Note Text</b>
<p><a href="#">10 U.S.C. 333(g)(2)(A)</a> provides Cross Fiscal Year (CFY) authority. <b>CFY [will/will not] be utilized on this LOA.</b></p> <ol style="list-style-type: none"> <li>1. CFY allows the period(s) of performance for Section 333 programs that begin in the fiscal year in which funds are available to continue until the end of the second fiscal year thereafter.</li> <li>2. In order for a program* to qualify for the use of CFY, the program's planned period(s) of performance may not exceed the time period authorized by CFY. The period of performance begins when the program incurs its first financial obligation. <b>The first financial obligation for this program [began/or will occur] on [date or TBD].</b> If the period of performance of any line on any case (or any Direct Funds equivalent) associated with the program exceeds that which is authorized by CFY, then all case lines in all cases (and direct funds equivalent) associated with the program must revert back to standard laws and policies governing federal appropriations.</li> <li>3. Only funds legally obligated on contract, project order, travel order, or by a working capital fund such as the Defense Working Capital Fund (DWCF) before the appropriation expires are eligible for CFY authority under <a href="#">10 U.S.C. 333(g)(2)(A)</a>**.</li> </ol> <p><a href="#">10 U.S.C. 333(g)(2)(B)</a> provides Full Operational Capability (FOC) authority. <b>FOC [will/will not] be utilized on this LOA.</b></p> <ol style="list-style-type: none"> <li>1. For a program to qualify for FOC, the program must first meet the requirements of CFY authority. Then, the USG must receive all equipment requiring follow-on support and/or services to ensure the foreign partner achieves full operational capability for such equipment before the end of the fiscal year after the fiscal year in which the program incurs the first financial obligation. If all such equipment is delivered to the U.S. Government during this time, the U.S. Government may provide the foreign partner with defense articles, training (including Human Rights training), defense services (i.e. field service representatives contractor logistical support), supplies, and small-scale military construction (subject to \$1,500,000 limit) associated with the previously-delivered equipment. These FOC activities may begin in the fiscal year when the equipment is delivered to the partner nation, and may continue until the end of the second fiscal year thereafter.</li> <li>2. If the U.S. Government does not receive all equipment requiring follow-on support and/or services before the end of the next fiscal year after the first obligation, the program does not qualify for FOC and must revert to the period of performance authorized under CFY authority.</li> </ol>



The U.S. Government will make every effort to deliver the equipment to the partner nation within 120 days after acceptance of the items by the U.S. Government.

3. Note that FOC authority is not available to extend the period of performance for training-only programs, and that the Economy Act limitations outlined in footnote 2 below also apply to the use of FOC authority.

\*A Section 333 program is defined as the provision of a particular capability to a specific country (or countries) within a tranche of a Congressional Notification. Defense Security Cooperation Agency (DSCA), DSCA (Office of International Operations, Regional Execution Directorate, Global Capability Development Division (IOPS/REX/GCD)) oversees the development and execution of Section 333 programs. The scope of a Section 333 program is dictated by the notification to Congress. A Section 333 program may be executed by multiple Implementing Agencies and recipients of Direct Funds, with multiple LOAs and direct funds transfers, all of which will share a common program start date based on when the program incurs its first financial obligation.

\*\*DSCA transfers funds to Implementing Agencies and Direct Funds Recipients to execute Section 333 programs under the authority of the Economy Act ([31 U.S.C. 1535](#)). The Economy Act requires the supporting organization to de-obligate and return to the ordering agency any funds for services (to include training services) not provided or requirements not legally obligated on contract, project order, travel order, or by a working capital fund, such as the Defense Working Capital Fund (DWCF), before the appropriation expires.

1. Support services provided by U.S. Government personnel, except when operating under a project order or under a working capital fund, like DWCF, are considered obligated when a contract is awarded (e.g. if funds are accepted as direct cite or when the support service is actually provided (not when funds are provided). An order placed or agreement made under the Economy Act obligates appropriated funds provided by the ordering entity. The obligation is reduced to reflect the costs incurred and billed by the performing entity before the end of the period of availability of the appropriation.

Or

1. Support Services provided by U.S. Government personnel, except when operating under a working capital fund, like DWCF, are considered obligated when the performing activity accepts the funds via an Economy Act or reimbursable Project Order, or when a contract is awarded if funds are accepted as direct cite.
2. Travel orders for a foreign partner or U.S. Government personnel not operating under a project order or working capital fund, like DWCF, cannot be issued after the appropriation expires.

Implementing Agencies and Direct Funds Recipients must return de-obligated and unused funds to DSCA no later than the end of the first quarter following the expiration of the funds' period of availability (POA).

**Attachment 2**  
**Execution Scenarios**

For a copy of this attachment, please contact the policy memo POC: Ms. Caroline Chin, DSCA (Office of Strategy, Plans, and Policy, Execution Policy and Analysis Directorate (SPP/EPA)), [caroline.s.chin.civ@mail.mil](mailto:caroline.s.chin.civ@mail.mil) or (703) 697-9073.