Jason Berlow: Great. Hi, everyone. Welcome to our monthly finance trainings today. Today we’ll be talking about appropriations law. I think just for timing, I think we might go a little over on this one just so everyone knows because there is a lot to cover. And we’ll provide you an overview.

So today we’re going to provide you an overview of the key concepts of appropriations law. But first, I’m going to talk about the finance initiative and our website and survey that I sent out last night. And then we’ll talk about the introductory concepts of appropriations law, what is it. What’s the source, et cetera? And then a critical part of appropriations law, which is the purpose, time, and amount, which is really how you should be thinking about these considerations for obligations and expenditure. And then personal expenses, which is another popular item, we get questions about that. And then food. Food is always the most popular topic in appropriations law because everybody likes to eat, and everybody likes free food. So we will talk about when we can do it and when we can’t.

So just on the finance initiative, these trainings are part of initiative and what we’ve rolled out. So if you haven’t yet, please check out the Field Administrative Officer and Financial Management Resources page on our SharePoint where we’re starting to upload all sorts of best practices documentation to help you and other guidance’s and SOPs, policies, et cetera. So all the trainings since last April are on the Best Practices pages for you to find them. And all the trainings that we’ve done in the past are linked from the ORD website to here. So if you want to find any of the finance trainings, which are all on YouTube, you can look. And then we’ve uploaded some of the communications by emails and other policies that we’ve sent out in the past.

So the other item is you might remember last summer we did a survey through Teams, MS Teams, to ascertain what you’d like to see in training and where you need more training. And we took the survey really to heart, and what we did was if you notice from that survey, almost all the trainings that followed that we’ve done maybe since August have all been from response to that survey. So we sent out a more in-depth survey to try to gather a sense of your abilities and what you—or do you \_\_\_\_\_ [00:02:54] abilities where you’ve had training where you’d like more training and where you think we’ve helped you, and where you think we haven’t helped you because we want to know this.

And our leadership is very attuned to—this whole process is very popular among our leadership for how we help support the field. So please fill out the survey. Anybody on the call really can fill out the survey. If you happen to be a VACO person, we have a section for that, so we’ll be able to separate out, to show the results by different groups. So the deadline is next Friday. The survey should take maybe 10 or 15 minutes, and it’s anonymous because obviously if you’re rating your abilities, there might be some issues there that you’d like it anonymous. You can add your name, if you’d like, which is good if you want us to reach out to you. So please, put your name if you’d like us to contact you on any specific items. It’s always helpful to see the station, but if you want to be anonymous, please keep it anonymous. We just really want to get the information from you to help us tailor what we’re providing.

So back to appropriations law, what is appropriations law? Appropriations law really starts at the Constitution and how funds are appropriated. So the Constitution says, “no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” So the Congress, the administration, the President, submits a budget to Congress. Our budget will be coming out in March. We’re working on it now, so when it does, we’ll share it with you. So Congress has the power of the purse. So they set the rules for how funds can be spent, can be obligated and expended for funding. And for our case, generally it is the Medical and Prosthetics Research Appropriation. And they stay say how much we can spend on our appropriation, how long we can spend it for, and what we can spend it on.

So appropriations law is codified. There’s a bunch of laws, but it’s all codified by GAO, the Government Accountability Office, which is part of the legislative branch. And they’re in charge of federal appropriations law, in addition to some other items. And you heard of all these books, right? The Red Book, the Green Book. Well, GAO updates the Red Book, and it’s called the Red Book because it was a big binder, a massive binder called the GAO Red Book. But obviously these days, it’s more online. So they have multiple volumes for different items, which you’ll see in the next slide.

And then they have federal court rulings, and appropriations law decisions. So there’s cases presented to us every year where an agency is not sure if an item can be funded or not, so they’ll ask for a formal decision from GAO. And what will happen is you can go on the website and review the decisions and see. And the decisions change in appropriations law like case law to make more things permitted or not permitted throughout the years. So they’re very helpful, and they’re all searchable on the GAO website. And if you’ve taken an appropriations law class before, they talk a lot about the opinions and how they’ve impacted appropriations law.

So appropriations law. It’s called the Red Book, and it’s multiple volumes as you can see here. These are all the volumes. If you went to the website, which I have the links here, you’ll see the different volumes which you’ll see later that everything I’m taking from the presentation is coming from these volumes. But the most ones are the purpose, why you’re spending the money; the time, how long you can spend for it; and the amount. And then so these are the main ones. And then continuing resolution, all the other areas. But all in all, it’s probably at least a thousand pages. So it’s a lot to know and a lot to reference, but it’s really important. I’d really recommend that when time permits you at least take a look at that GAO Red Book and start readings some of the sections because it’s where all the information comes from. And often when we—even our office when we’ve asking for opinions from OGC or such, a lot of it comes right from the Red Book, so it’s very helpful to understand.

So today what we’re going to do is give you a framework for the most basic concepts of appropriations law. So we did a class on appropriations law in January; it was to days. The main introduction in appropriations law class is four days. So this training is an hour, so I still highly recommend that you find opportunities to take additional trainings in appropriations law or read the Red Book. We all have different learning styles. What works best for you, doesn’t work best for others. So we’re also look into offering more appropriations law classes for the field because I get a sense that a lot of individuals in the field haven’t taken appropriations law class in the past. And if you’re obligating funding, you should take appropriations law class. And later on in the presentation, I’ll show you some of the key positions where it’s really important to know appropriations law. But I would argue that any federal employee really should at least have a basic overview of appropriations law, beyond if you’re in budget, financing, or contracting or any other procurement area.

So one other thing. So at the end we’re going to answer questions, but for the questions, we might have to take some of them back to OGC or et cetera. We’re not going to provide specific—if the question is general and we can send you to the proper area of appropriations, we will. But if it is very specific, we’re not going to provide an answer on the call because of the sensitivity of prime writing appropriations law guidance in this manner where don’t want to risk providing incorrect guidance.

So what is an obligation? So it’s always important to go right back to the definitions. So an obligation is the action creates a legal liability or definite commitment on the part of the government, and there’s a legal duty to pay it. So generally in appropriations law, you’re asking to create an obligation, and later an expenditure. So GAO has a glossary of terms on the federal budget process, and this is where this is from. It’s very helpful. It’s a good reference. I’ve linked it here, and at the end, there’s other helpful links.

So purpose, time, and amount. I’m sure you’ve heard that before. But as I said, Congress controls the money and determines how the government uses money and what amounts are available for appropriations. So I already said about the no money shall be drawn from the Treasury without consequences of appropriations. But the purpose, time, and amount are the three criteria for appropriations law. And if you know nothing else about appropriations law, you needs to know purpose, time, and amount. So here are the legal requirements and the key considerations.

Here is the—so purpose. So the purpose statute prohibits federal officials from using appropriated funds for purposes other than what they’re appropriated for. In the next slide, I’ll show what they’re appropriated for, specifically referencing the medical research appropriation. And then time, bona fide need, acronym BFN. You’ll see BFN acronym later in the presentation, so when you see that. So the bona fide need requires that the need for which funds are appropriated exists during the period for which the appropriation is made. So that means if we have a bona fide need to purchase some scientific equipment at this time, we purchase it now. But if the bona fide need is in three years, you really shouldn’t be purchasing it now.

And then amount. Amount, or the Antideficiency Act, which I’m sure you’ve heard of, prohibits the following: making an obligation exceeding amount available in appropriation, involving the government in a contract or obligation for appropriations made, making an obligation that exceeds an apportionment—now an apportionment are an OMB tool that controls the flow of funding after an appropriations act is passed. So it’s not really occurring at our level. We more worry about it on ORD level. So you’re not going to really get the money before there is an apportionment. Or to make an obligation that exceeds the amount permitted by agency regulations or an allotment. That’s a situation because you don’t want to—the allotment is really at a higher level than the level we are at this station.

So what is an appropriation? An appropriation is a provisional law, typically an appropriations act that authorizes the obligation or expenditure funding or any amount of funds for a given purposes over a specified time period. This can include annual appropriation, continuing resolution, or supplemental appropriations. So I think you’ve seen this in other presentations before, but this is our appropriation. This is our brand-new FY23 appropriation, fresh off the presses from December. So what I’ve done here is color-coded on the areas so you can see the purpose, time, and amounts in our program authority.

So the first is the purpose. For necessary expenses. The necessary expenses is always really the most important. They all say necessary expenses because there is the necessary expense doctrine, which you’ll see in later slides. So it says that our appropriation is available for necessary expenses related to carrying out programs, the medical research and development. Then next, there’s the amount. The amount $916 million, so that’s the amount. That’s the amount that we have. And then the time in red. The time is two years. So obviously this was appropriated in 2023, so the findings in available for two years, from September 30, 2024.

So one thing to remember is that even though it’s a two-year appropriation and that Congress appropriated us in December, they were late, they don’t give you make-up time. You still have to that deadline. And then there’s our program authority. Our program authority is our legal authority law that says our authority to operate do what we do. So almost every government office or VHA office across the government has different authorities. And again, I’m going to show that in a later slide.

So purpose. What can we fund with research appropriation, approve, or reject? So these buttons may be funny, but I mean I’m sure you get questions like this all the time. And you have to make quick decisions to hit one of these buttons. So the purpose law. Appropriations, the purpose law states appropriations shall be applied only to the objects for which appropriations were made except as otherwise provided. So if we wanted to build a science museum with our appropriation, if you go back to our appropriation, it says medical and research development. So that doesn’t really seem like it applies. So it has to—the item we’re purchasing has to relate to the purpose of our overall appropriation.

So we do have reasonable discretion determining how to carry out the objects of the appropriation. So you don’t want to go to Congress every time or you have to ask a lawyer every time you buy anything, so it has to be—it’ll contribute materially to the authorized appropriation purpose.

So the necessary expense test has three questions. Question 1: Is it logically connected to the—so if you’re going to purchase a scientific instrument, first question you want to say, is it logically connected to the appropriation or an authorized agency function? So we’re doing medical research, and it’s an authorized function under our authority, which I have in a later slide. [Question 2:] Is it not prohibited, so it could—there’s certain things that we can’t purchase, so if it’s prohibited by law. For example, it is not prohibited by another agency law or policy? [Question 3:] Or is not otherwise provided by another appropriation? Which I have more detail on all of this coming up.

So the necessary expense analysis rules says that a three-step analysis—so the first thing is—here’s a little more detail from what I just said earlier, but again there must be a logical connection to the appropriation. It may not be prohibited by law. And it must be an item that falls within the scope of some—it must not be an item that falls within the scope of another appropriation funding scheme, the Pick and Stick Rule, which you might’ve heard about before. And again, I’m going to talk about that more, and there’s actually—in the SharePoint, OGC provided us a two-page opinion on the Pick and Stick Rule, which I’ve uploaded in there. So you can take a look at that, free time.

So the necessary expense rule says that there must be a logical connection to the appropriation or the authorized agency function. So here’s our appropriation, our snippet: For necessary expenses to carry out programs for medical and prosthetic research and development as authorized by our law. So then this is our law. We’re citing our authority, and here’s our authority: The appropriation references the authority for what type of activities research can perform. And here’s a link if you’d like to take a look at it. But in order to carry out more effectively the primary function of the administration in order to contribute to the nation’s knowledge about diseases and disability. The secretary shall carry out a program of medical research in connection with the provision of medical care and treatment to veterans. So it’s pretty general.

And what you’ll notice from our authorities is I’m not sure when this was passed, and they get changed throughout the years. But obviously, laws don’t change so fast versus policy, so sometimes it gets difficult to apply certain things when the authorities don’t always match. But we try to update them throughout years, through the legislative proposal process to try to make the authorities more match our current operations. But laws are not exactly an easy thing to pass.

So the next one is it must not be prohibited by another law or agency policy. So that means that it must not be prohibited by law. So if you look in the purpose, see here in this chapter, the purpose chapter, there’s a whole long list of things that are prohibited that you can’t do. So just because you think you should do it with your appropriation and it’s prohibited, means we can’t do it. So here’s a sample of things that are prohibited without specific statutory authority: lobbying, insurance—the government doesn’t buy insurance really. It self-funds. So then volunteer work, which I have a slide on that, the next slide, because obviously \_\_\_\_\_ [00:19:22] without compensation. We have specifics statutory authority for that, so we could do that. So then compensation restrictions, taxes—the government generally doesn’t pay taxes, like we don’t pay taxes to state. We don’t pay property taxes. So when you’re going to travel and you pay hotel taxes, airline taxes, that’s different because that’s a usage tax, and it’s generally okay to pay that. Membership fees, there’s some application—food, coffee, alcohol, we generally can’t pay for that. I have more detail on that food in the last section.

So membership fees where things might be prohibited. Federal appropriations does not allow direct payment of membership fees. However, there is—on this link from GAO, there’s some updates on that. Often if a membership fee is secondary to a journal or conference, then it’s allowable per appropriations law. And I’ll have some more information about conferences at the end of the presentation. And then without compensation, this is taken from Tony’s presentation on without compensation appointments from January, but here’s our authority for that and that we have authority to accept unpaid services. So the general rule is you can’t accept unpaid services without a specific statutory authority. So that’s why we can do it because it materially contributes to our agency’s missions.

Okay, next thing is, should not be available. The third rule of the necessary expense rule is it should not be available for another appropriation \_\_\_\_\_ [00:21:05] appropriation. So here are some other VHA appropriations that you might interact with in your jobs, and here’s the language from them. So the biggest one is medical support and compliance where we—the VERA funds and such. That’s where it’s funded. So this is why if we have clinical—that’s why research can’t perform clinical roles and vice versa. So it can’t be available from another appropriation. And the medical facilities, we can’t build a facility or do nonrecurring maintenance to our research facility with or research appropriation because it is in the medical facilities appropriation. And the same thing goes for construction, which is a separate appropriation in VA.

So the last thing on the purpose is the Pick and Stick Rule, and it’s really important. It says where two appropriation are available for the same purpose, they usually must pick one, only one to cover the expenses relating to the purpose and stick to that account, unless it notifies Congress of its desire to change the funding mechanism. And running out of money is not an excuse. So there’s some more information here about that, but I’m going to keep going because there’s just a lot of content in this presentation.

So the next thing is time. This is my daughter, Ella, and she was 13 months on Monday, so and time is really important for the bona fide need. So the bona fide need role for time means the balance of an appropriation or fund limited for obligation is available for a definite period, which means when you’re making a decision about obligation, you should have that need during that period or shortly after. So and then here’s the item from the Red Book. A fiscal year appropriation may be obligated only to meet a legitimate or bona fide need arising in some cases prior but continuing to exist in the fiscal year for which the appropriation was made.

So bona fide need and the research appropriation. So we have a two-year appropriation. The bona fide need applies to multiyear appropriations and obligations that are chargeable the first year of a multiyear appropriation for remaining years. And see here, if you Google that, that’s a GAO decision number where that came from. So goods or materials purchased in one year may be delivered in the whole or in part in a subsequent year if the need matches the year of the obligation for a reasonable inventory of supplies or materials. So you can buy for a few months ahead, but you can’t buy for three or four years ahead.

In the coming slides, I actually have an example of an ADA violation from VHA where mail services were bought three years in advance, and an ADA violation occurred. So as you see, our appropriation is two years, so that’s how that applies for us.

Antonio Laracuente: So Jason, I think that one of the things that we might want to talk about here is so a lot of times we do 1358s. And because of the two years, we can overlap year, but we shouldn’t overlap across the second year of the appropriation to a third year. And so if you do a 1358, a lot of fiscal services will now allow you—it’ll be on September 30th of the second year of the appropriation because of this reason.

Jason Berlow: Well, I think that also gets into severable or non-severable, I think, because is an IP considered severable or non-severable?

Antonio Laracuente: Severable.

Jason Berlow: So it’s not technically considered a contract, but maybe this we should clarify more with VHA finance. So it’s permissible for a severable service here, contracts of up to 12 months across fiscal year, so that’s where I think we might have some of the hiccup because determining whether it’s severable or non-severable. And the fiscal is not perhaps understanding if it’s severable or non-severable.

Antonio Laracuente: Yep, we should look at that.

Jason Berlow: Alright. So severable and non-severable is \_\_\_\_\_ [00:25:35] into your conversation when you’re talking about contracts and IAAs and perhaps IPAs. So we’ll explore that more because Tony brings up a good point. The severable task can be separated into components, each of which can be independently to meet a separate need. A severable service is a recurring service that is measured in terms hours or level of effort. So an IPA, I think, would be severable. Another case is equipment maintenance or cutting grass, which obviously landscape is something we’re not funding, but just for example. So it’s permissible for severable services of up to 12 months across fiscal years because that need arises. And then agencies should charge to the fiscal year in which the obligation occurs as determined by the bona fide need rule even though some of the service are performed in the next fiscal year. So, Tony, I think this is the key thing with the IPAs. So what we’ll do is we can dig back into the Red Book and get more, all of the backup because this is just a copy and paste.

So non-severable services cannot be separated into components, but instead it must be performed as a single undertaking to meet a need of the government. These contracts are often longer than 12 months. As with severable contract, they’re charged to the fiscal year in which the obligation occurs. So the big thing with—and I think I didn’t include this here with non-severable contracts is they cannot be incrementally funded because you need to purchase the whole thing to get the end goal. So that’s a really important thing with non-severable. And if you take appropriations law class, they spend time talking about this.

So amount. People always say about the Antideficiency Act, I want to stay out of jail. Nobody really goes to jail, unless it’s criminal, which it generally isn’t. So amount. Congress…. [audio drop]

Unidentified Male: Jason, I think we may have lost your audio.

Jason, if you can hear us, we’ve lost your audio.

Unidentified Male: Yeah, he’s aware. He said standby.

Unidentified Male: Okay.

Unidentified Male: Hang on for one second.

Unidentified Male: Alright, everyone….

Unidentified Male: \_\_\_\_\_ [00:29:03] I’ll start singing.

Unidentified Male: Yep. Alright, everyone, just give us a moment while we work out this technical difficulty. We’ll be right back with you.

And if anyone is just tuning in late, we’re having a slight audio difficulty. We will get it back up and running in just a moment.

Tony, did you want to jump in while we wait for Jason to get back online?

Antonio Laracuente: I don’t have the slides and so \_\_\_\_\_ [00:32:13].

Unidentified Male: I can pull them up right now.

Antonio Laracuente: There he is. I think he’s coming on right now. Lost internet. He lost his internet.

Jason Berlow: I’m back. Sorry about that. I hope people didn’t drop.

Unidentified Male: No. In fact, we have more people.

Jason Berlow: Okay. Yeah, I lost internet. It said I was on mute, and then yeah, that was stressful. Okay, you got to be—I guess you always have to be prepared. This happened to Kerri last month, too. So we’ll have to have a second person with slides ready. So is this where I lost everyone?

Unidentified Male: Yes, I believe so.

Antonio Laracuente: Yes, you said Congress, and then you muted out.

Jason Berlow: Okay, alright. You still can hear me?

Antonio Laracuente: Yep.

Jason Berlow: Okay. Yeah, my internet, I have Fios, it never goes down. I don’t know what happened. Okay, maybe they’re buffering me. Congress determines what’s an appropriation act, the amount, the purpose, the time. So the Antideficiency Act provides that obligations shall not exceed amounts approved or apportioned or allotted, so you can’t go over your amount. Or the other issues that we talked about before. So the act makes individual government officers and employees personally responsible for authorizing or creating any obligation or authorizing any expenditure. So that’s really important.

So oops, we need to add an I here. Amount and the Antideficiency Act, not the “ant” deficiency act. Okay, so this act prohibits federal agencies from operating or expending federal funds in advance of an excess of an appropriation. So that means that if there’s a government shutdown, except in rare circumstances where it’s to protect life or property, you can’t make an obligation. So the Antideficiency Act prohibits federal employees from doing these items, making an obligation in advance of appropriation, paying for an obligation to pay money before funds have been appropriated, and accepting voluntary services—we talked about that earlier—in violation of the purpose statute.

So here are the penalties for the ADA violations. Administrative, that’s more common. It could be a removal or suspension of duties, a letter of reprimand. This is from one of the trainings where there’s some examples, and GAO provides this. And then if you knowingly and willfully commit the offense, it could be a $5,000 fine and imprisonment up to two years. But criminal is a lot more rare. And then here’s the employees most prone to ADA violations, which unfortunately are ourselves, program and budget officials involved with the obligation life cycle. Certifying officers of funds or funds holders. Those who accept free or personal services from employees and contractors. Now with the WOCs, you have the authority, so it’s an authorized thing. Contracting officers, of course, et cetera.

So antideficiency act reporting. It’s pretty significant, so the secretary reports it to the President and Congress with all the relevant facts and statements of action. And they’re actually on the GAO website, so anybody can set anybody can see it. I have some examples of VHA ones from the last few years as an example. But if you want to read more about antideficiency act resources, which I’ve been doing in my spare evenings lately for this presentation, take a look.

So here’s an example of an ADA violation from 2018 from actually the Durham VA. It’s not research, but VA reported an individual found responsible for the violation has since retired. But what happened was the obligated 2015 funds to cover FY2016 and potentially 2017 metered mail costs. So a lot of this happened within the fiscal year when you’re trying to reduce your carryover, you put a lot of money in a contract for something like this. But there obviously wasn’t a bona fide need in 2015 metered mail in 2016 or 2017. So you want to do—for supplies, you can purchase a certain amount to have it be ready when the new fiscal year starts, but not for a full year. So a lot of this comes into reasonableness, but this is a violation in the medical support and compliance account. And then it says the employee was—provided training to employees on the Antideficiency Act. So that’s where that went.

So this one, since the more recent ones also have the secretary’s letter to the comptroller general of the United States, which is the head of the GAO, and this one is actually interesting. This one occurred when I was in my old office. We were working on it, and it was a very big issue with OMB and Congress. Because what would happen was if you go back to the appropriations language, you’ll see that in the medical services accounts, it authorizes funding for state veteran homes, but they charged it to the medical community care account. So it was a violation because that appropriation was otherwise available somewhere else.

So they had to—this one was a large amount, over one billion dollars. So they actually required a legislative fix, which you can see here incorporated into the FY21 budget provide the funding to correct that. So they can get quite political. Obviously, the one earlier wasn’t as high profile as this one. And this is obviously—something like this wouldn’t be something that in our role we would be involved in. But just for examples. And this really shows where it’s really important to understand the appropriations language, and not just our appropriation but the other appropriations because the purpose/time I was really important.

Okay, personal expenses. Now we’re probably getting to the most exciting part of the presentation because we’re talking about individual things we can and can’t pay for. So *Parks and Recreation* did an episode on treat yourself, but unfortunately it’s a personal expense to the government says that you’re free to buy things for yourself for your labors as public employees. But the government shouldn’t be purchasing these things without specific exceptions or legislative authority.

Okay, so the general rule is that appropriated funds are not available for personal expenses. In exchange for our labors, the federal government employees get a salary. In the absence of contrary statutory authority, employees are expected to use this salary rather than appropriations to satisfy their personal needs. So occasionally appropriations are available for personal expenses, but because Congress has enacted specific authority. So if there’s no authority, a determination has to be made at your level to determined that it satisfies necessary expense of your appropriation, meaning our appropriation, which means that purchasing this item for this employee accomplishes the overall intent of the appropriations. So some rules will be childcare costs, community expenses, and apparel.

So you would have a determination, like I said, of the statutory authority. And here is our link again. I guess I’m really pushing the GAO Red Book because I have links everywhere but check the purpose statute. We have a lot more on that. So personal expense examples, clothing. Every employee in the US government—and all this is copy and pasted from the Red Book, so some of it’s funny how they write it. It’s legal talk. Every employee of the US government is required to present themselves at work capable of performing their duties. So generally, we don’t pay for apparel, but legally the government may pay for certain apparel when it meets any of the following criteria: hazardous duty, uniform, occupational health and safety. So I think in our role in a hospital setting, there are items that we could pay for, for employees because obviously there’s certain requirements.

Antonio Laracuente: Yeah, so for research, would be like lab coats and things along those lines.

Jason Berlow: Exactly, yeah. And any safety-related items for a lab. Obviously, also we would pay for—we wouldn’t expect an employee to bear that cost on their own expense. So personal qualification expenses. This is a good one, actually. In the past, professional credentials—and there’s actually a VHA handbook on this. I’ll have to get the link. Originally, they were considered a personal expense; however GAO had an opinion in 2001 where they loosened the boundaries for allowing appropriated funds to pay for professional credentials, licenses, and examinations to get professional credentials and licenses. Because basically under the necessary expense rule, especially professional licenses are required for your job, so the government should bear the cost.

Telework. That’s obviously a big topic these days. But the government can’t pay for your operating expenses like your cable, your internet, but we can pay for some equipment. There’s more details on that. And all of this is subject to internal agency policies, too. And then gifts, the government may not pay for gifts, but there’s exceptions. They should be nominal. Stimulating interest in a charity campaign, for example, CFC. Recruiting, information, retirement, mementos. So in the GAO Red Book, there’s paragraphs and paragraphs and paragraphs and more paragraphs on each one of these items. So if you’d like some more information, check those sections. This is just a high-level overview.

Food. This is obviously the most popular area in appropriations law. So on appropriations law, they always kind of say it depends. Can you do this? Can you not do this? So this group here must prepare an appetizer according to this law 31 U.S.C. § 1301, which is the purpose statute. Good luck. So generally food is not permissible. It’s the same thing as a necessary expensive. So food is an example of the—this is funny, too, the quintessential personal expense. Feeding oneself is a personal expense which a government employee is expected to bear from his or her salary. So that’s again written by a lawyer obviously. So therefore as a general rule, appropriated funds are not available to pay subsistence or to provide free food to government employees at their official duty stations unless specific authority is authorized by statute. So and the no free food rule applies to snacks and refreshments as well as meals. It also applies to the use of appropriated funds to provide food to persons other than federal employees. And so on the food, there is a lot of material in the Red Book about food, so I’m just going to provide an overview here. But if you want more, the nitty-gritty, I really recommend you check the Red Book out.

So when is food permitted to be purchased? Travel status. So obviously if you’re on travel. I know Tony travels a lot, so he’s gone for four or five days. We don’t want him to go hungry, so we have specific statutory authority to provide meals and incidentals to feds on travel status. Because obviously if you’re—and generally travel status is more than 50 miles from your duty station.

So and then employees working on official duty stations under unusual conditions. So if there is unusual conditions, a natural disaster, certain things like than and an employee would have a hardship finding a meal, that’s where we would pay for it. And if you look in the Red Book, there’ll be specific examples about when that would apply. But generally, if an employee—basically purchasing the meal has to meet the necessary expense rule where the meal helps the employee contribute to performing their rules that are underlined in the appropriation authority.

And then training. And I have more on conferences in the coming slide. So the GAO determined that food could be a proper training expense for federal civilian employees and military members where the food was necessary for the employee and members to obtain the full benefit. And this requires reasonable discretion, and I would be careful with this one.

Employees’ food at meetings and organized by a federal entity. The general rule is we cannot use appropriated funds for food at meetings organized by federal entities. Some exceptions apply, which I haven’t put them in the presentation, but I would just check the appropriations Red Book for those exceptions.

And then awards ceremonies. Agencies may use appropriations to provide light refreshments at awards ceremonies under the Government Employees’ Incentive Awards Act.

So cafeterias and kitchen appliances. GAO has approved the purchase of kitchen appliances, ordinarily considered to be a personal expense for common use by employees. But again, these are all subject to agency policies.

Cultural awareness programs. If the food is a sample of a culture and its overall intent is to provide education function, then it is permitted. But it is a sample food, not a meal.

Then bottled water. This one is interesting. Appropriations are available to federal employees. So basically it’s the responsibility of the government agency to provide clean, safe, drinking water at the duty station. However, an agency may purchase bottled water where a building’s water supply is unpotable. So if the water at the duty station has issues, obviously with safety and cleanliness, then we could pay for it. But if it’s a taste issue or people like seltzer better, we can’t pay for it.

Then foods for persons other than government personnel. Usually, the food purchased for persons other government is permissible only when we have specific statutory authority. So Tony may know more about this, but I’m sure there’s instances where we’ve provided food for research participants, especially if they’re probably staying in the facility for some time. So we can do that. Because obviously, paying for the food for research participants materially contributes to our overall mission, so that’s why it’s permitted.

Okay, employee’s food while attending nonfederal meetings. So I think this is a really good one because I know certainly from ORD, VACO, a lot of staff do attend nonfederal meetings for different associations and boards, et cetera. So often when you review the meeting materials on the website there is food, but generally you’re not supposed to pay for food. So nonfederal entities frequently offer food as part of a conference. So appropriations are available to pay for food at a meeting only if the food is incidental to the meeting, which means it’s—for example, if the food—if there was a lunch, but it was an awards ceremony or there was a speaker. And if you didn’t attend that, you would miss out on some of the functions of the conference, then it would not be of a benefit. So then you can pay the conference fees, which include food.

In the second bullet, if a separate charge is made for meals, the government may pay for the meal if the above criteria are met: Attendance of the employee at the meal is necessary for the full participation of the meeting and employee is not free to take meals elsewhere without being absent from formal discussions, lectures, speeches. So with that, I would really also consult appropriations law, because I’ve seen questions where it’s more of a social event or networking event. I think that’s where it gets a little more borderline. But if it’s an event where there’s an agenda, then that’s a better argument than a purely social network event without a set agenda.

And lastly, where the government is authorized to pay for meals under the above principles, the employee normally cannot be reimbursed for purchasing alternate meals. So basically, that means if you go to a conference and you pay for the conference and the meal is provided, then on your travel voucher, you shouldn’t be requesting reimbursement for a meal that you didn’t purchase at your own expense and expect reimbursement.

Alright, okay. So that’s all I have for the presentation. We can do questions now. Again, on the questions, I haven’t seen them yet, so I’m a little nervous about the questions because appropriations law is a broad topic. But we’ll see what we get, and then we’ll—Parker, will you email us the questions after, so we have the ones we didn’t respond to?

Parker Cunneen: Yeah, there’s not actually a ton right now, but I assume they will start streaming in. So I’ll have Brandon pull them up in just a second.

Jason Berlow: Okay, sounds good.

Parker Cunneen: You can go ahead and just read those out.

Jason Berlow: Oh, we’ve seen this question. It’s considered two-years funds because it’s appropriated for two years. Now the reason we’re being forced to feel you have one year to spend it is because of rescissions. So although Congress provides two years for the funding, they also have the power of the purse to take to back. Just like your parents say, whatever I give you, I can take away. Well, Congress is the same. So in the past, we’ve had rescissions in FY20 for $50 million, in FY21 for $20 million. So that’s $70 million of money that was appropriated for research what went back to Treasury that we never used. So that’s why we really encourage the speedier execution of funding.

And the overall unobligated balance is just not—when it’s high, it’s not looked on favorably by Congress. So what happens is soon as the new fiscal year starts, the appropriation committees will be immediately asking what our balances are by appropriation. And the reason they’re doing that is they’re looking for money to rescind. So that’s why we have that speedy process in the fall to try to obligate as much of that as possible to avoid a rescission when we finally get enactment which comes at an undetermined time during the fiscal year.

And if the person has further questions with that one, they’re welcome to follow-up with us through email. Alright, any more questions?

Parker Cunneen: Brandon, is there another one there?

Jason Berlow: Okay, on IAAs, we did a training in October, and if you go to the SharePoint site, you can find the link to the recording from that training. And the slides are in the Best Practices documentation. Collections will be March 15th at 3 p.m. on the reimbursable process for collections. Because the IAA process, although it’s a reimbursable process, the collections process is almost a whole separate topic. So we’ll be doing that March because we know that’s a popular topic.

Tony, do you want to take that one? I believe probably—no, it’s generally facilities.

Antonio Laracuente: So what has to happen with that is that if it’s part of the building, then you cannot use research funds for this. If it’s, for example, cabinetry, you could potentially use it if it’s not attached to the building itself or was not part of a project that was composed as part of the building. So if you want to replace, for example, a portable bench or a portable hood or something along those lines, you could replace it using appropriated dollars. What you can’t do is, for example, buy furniture with the research appropriation dollars. That should come out of the support appropriations. Jason, you want to add to that?

Jason Berlow: Yeah, let me share my screen really quick back to that one slide. Can you see it?

Antonio Laracuente: It’s coming up now.

Jason Berlow: There we go. So medical facilities is billed for maintenance and operation of hospital, domiciliary facilities. So basically, overall maintenance, like Tony said, depending on what it was, it might be medical facility. So that’s where it gets really important for you to specific exactly what you’re paying for. Like Tony said, if it’s like a cabinet or something attached to the building, I think Tony mentioned that it’s facilities.

But if it’s a hood or something more specific to research, then the hood is required for the performance of the medical research. So that’s where it would apply. So that’s where in your questions and reasoning in your justifications, we need to be very clear. And it’s helpful to know the framework of appropriations law to document that and explain it better. Okay, I’m going to stop sharing.

Parker Cunneen: Brandon, I think you can bring up the other questions.

Jason Berlow: How many do we have?

Parker Cunneen: Actually, I’m just seeing one more after that.

Jason Berlow: Okay, we’ll see if any more come. Maybe it was overwhelming. Okay, that was the last one.

Brandon Alexander: The last question I’m seeing in the Q&A is—oop, here we go.

Jason Berlow: That one I can get back to you. I would look in the purpose, the purpose statute. Actually, let me show you. I’m going to show my screen again. Let’s show you Red Book, and we can look up this question. Is this the last one?

Brandon Alexander: Yes, it is.

Jason Berlow: Okay, one second. So dish soap, that’s a good question. Dish soap, paper towel, personal items. So when you go the GAO, let’s actually go to the GAO website, one second. Okay, the GAO website. Here’s the Red Book. So if you go the GAO website, there’s a lot of good stuff here. But if you go to Bid and Appropriations Law, Appropriations Law, and then here’s the decision they talked about ADA resources, the Red Book. So you can click here, and then here is all the volumes. So your question about dish soap would be in the purpose. Personal expenses. Childcare, entertainment, greeting cards, recreation, kitchen, food. Let’s see here, food, cafeteria and kitchen appliances, focus groups, awards, books and periodicals. So you can do a word search for kitchen.

Antonio Laracuente: So, Jason, let me expand—

Jason Berlow: Hold on one second. I think, see it’s right here. I don’t think it’s permitted. See? “It should be clear that appropriated funds will not be used to furnish goods, such as food or eating utensils, to be used in the kitchen area. These remain costs each employee is expected to bear.” So generally, I would think this is not permitted. Go ahead, Tony.

Antonio Laracuente: Yeah. No, but I think what they’re asking also is, is can the appropriation buy soap for use in like research laboratories and things along those lines.

Jason Berlow: Well, that’s different.

Antonio Laracuente: No, but I think that’s where their intent is going, and so yeah, physical safety like hand washing and things along those lines, paper towels. Yes. But that really should be provided by housekeeping.

Jason Berlow: Yeah, that’s back to the necessary expense.

Antonio Laracuente: Correct.

Jason Berlow: Purchasing the soap is a necessary expense to attribute our overall mission. So that as a good case just to show you how to find—yeah, so— Oh, go ahead.

Antonio Laracuente: I have a question from somebody who went it to me on chat that can’t get on the Q&A over there. So can I go ahead and read it out to you?

Jason Berlow: Yeah.

Antonio Laracuente: So the question is you talked earlier about meals and conferences and so forth. So if a meal is included in a conference, you need to not accept the MNI per diem for that day or for that meal. In other words, when you’re doing your travel voucher, you have to recognize that you’re receiving a meal as part of the conference, correct?

Jason Berlow: Yes. That’s be right here, reimbursement for alternate meals not permitted. Where the government is authorized to pay meals under the approved principles, the employee normally cannot be reimbursed for purchasing alternate meals. That’s an employee, for example, who loathes broccoli, \_\_\_\_\_ [01:02:02], will either have to eat it anyway, pay for a substitute meal from his own pocket, or go without. For an employee on travel or temporary duty status, which is where this rule usually manifests itself, per diem is reduced by the value of the meals provided. So that’s where that’s coming from.

Antonio Laracuente: Right, so if you’re on travel status and you receive a meal as part of the conference, then you have to make sure you let the—when you submit your voucher, you have to make sure that they are aware that you had a meal.

Jason Berlow: Yeah, but there’s always wiggle room here. So if the conference was providing a meal that you couldn’t eat for medical or religious reasons, for example, if it’s not kosher or halal, then the employee could be reimbursed. So there’s always—here’s a case right here, and that’s why there’s an exception. Here’s this case number, per diem not required. An Orthodox Jew who could not obtain kosher meals at a conference, purchased substitute meals, so it was approved. So my general rule is always bookmark the Red Book because a lot of your questions will be answered in here. Any other questions?

Parker Cunneen: There is a follow-up to the question about dish soap and other kitchen needs, and they said it was for an employee kitchen.

Jason Berlow: So no. You go back, so that was—I would say it’s not. And whenever somebody has a question, I would copy and paste it from the GAO Red Book. It should be clear that appropriated funds will not be used to furnish goods, such as food or eating utensils, to be used in the kitchen area. These remain costs each employee is expected to bear. For example, appropriations were not available to purchase disposable cups, plates, and cutlery for employees to use where the agency did not demonstrate the provision of the items directly advanced its statutory mission. So the soap in the lab, that’s your statutory mission; but soap in the luncheonette, no. And I get it. I mean, in the private sector, it would make perfect sense to provide these items. My first job, I worked for a nonprofit, and they provided coffee and stuff. Water. But the government is not to generous \_\_\_\_\_ [01:04:37] coffee, so unfortunately appropriations law is not—we don’t always get the answer we want. But I would not—under my interpretation of this, I do not think we can pay for soap, paper towel, or cutlery in a public kitchen area in one of our facilities.

Parker Cunneen: Great, and I see one last one. What are the non-ORD center and VA offices that actually have research included in their appropriations law language? Do they, or do they not, have the authority to use their funds for research?

Jason Berlow: Who asked that question?

Parker Cunneen: Kevin Beck.

Jason Berlow: Oh, okay. Sorry, I didn’t \_\_\_\_\_ [01:05:27], that’s a great question. We get this all the time. Hold on, let me pull up the PowerPoint again. One second, I’ll pull it back up. So the answer is nobody else has medical research in their appropriations language but research. So all these offices say they do research, and if you look at the authorities, I was actually investigating this the other day. Nobody really has authority to do that besides research. So there are these different centers across VHA that do research, but generally staff at those centers are receiving ORD-funded merits. Can you see my screen again?

Unidentified Male: Yeah, I see it.

Jason Berlow: So our appropriations language says here for necessary expenses in carrying out programs of medical research and development. So then if you got the appropriations language of these other appropriation services, support and compliance, facilities. The only one I’m missing is medical community care. Well, they’re not authorized either. So if you look here—and this is what I recommend, if another office is telling you that, I would ask them to show you in law where it says they’re authorized to, in their appropriation language and their authority where they’re authorized to perform medical research. And they’re going to have a hard time providing that to you because I don’t think it’s exists. So if you look here in the medical services, it does not say anything about medical research. Here it does not say anything about medical research. Here it does not say anything about medical research. And that’s generally the rule of the necessary expense rule, says the expenditure must not provided an item that falls that in another appropriation, which is our appropriation. So I hope that answers—and Kevin, sorry to—go ahead, Tony.

Antonio Laracuente: So, Jason, and I actually looked at this the other day in terms of VIReCs and GRECCs and rural health and so forth. And they can support research, but they can’t fund research projects. I mean, I think that’s the bottom line, and we got to be real careful about when they call our research with a big R or research with a little R. And that’s kind of the language that we’re talking about is are they funding a research project, or are they supporting research activities? And so just be careful with how that’s laid out. So that’s why you don’t see—that’s why we don’t accept in the RDIS Part II Report projects that are funded by medical care because they’re not supposed to fund research.

Parker Cunneen: Perfect, and I think that’s the last question for now. Oh, there’s a couple more, but I think I’m going to—since we’re over ten minutes, I think it’s alright if we send you the last two questions.

Jason Berlow: Yeah, if you guys are a tight schedule, that’s fine. Otherwise we can take them. Up to you.

Parker Cunneen: Well, there’s one that should be quick. If we read the Red Book and can’t find the answer to a particular issue/question, who can we ask for advice?

Jason Berlow: I would reach out to our office, and that’s when we’ll engage OGC appropriations law. Her name is Lisa Hardzog, and she will try to provide an answer. And that’s really important. I would wait to get the formal answer. If she can’t provide an answer, which she can, then if it’s really extreme, it goes to GAO for an opinion. So that’s the process for that.

Parker Cunneen: Perfect, thank you.

Jason Berlow: But we’re not heartless. If you have a question, we can try to answer it for you. Generally like you saw with the soap or the paper towel, it’s generally pretty clear. What’s the last question?

Parker Cunneen: The last one is just a reference, not a \_\_\_\_\_ [01:09:40] question.

Jason Berlow: Okay. Well, thank you, everybody. If you have more questions, just send them to us. We’ll answer to the best of our abilities. The presentation is on the SharePoint. I hope you go there. And if anybody else has questions, we’ll try our best to answer them. Thank you, everyone.

Parker Cunneen: And Jason, there was a question up at the beginning. We didn’t post it. It said could you paste the link to the SharePoint in the chat. May be worth sending out via email or if you share it with me, I can send it to everyone registered.

Jason Berlow: Yeah, I will—it at the beginning of the presentation. I can put it in the chat.