



## Selected Authorities to Obtain DOD Personal Property

Recent controversy in the United States over policing methods has focused attention on transfers of military equipment to police forces nationwide. Under certain circumstances, eligible federal, state, and local agencies may obtain Department of Defense (DOD) *personal property* (e.g., equipment, clothing, vehicles, aircraft, weapons, ammunition) for use in law enforcement, counterdrug, counterterrorism, border security, and/or humanitarian activities. This In Focus describes statutory authorities that give these agencies the ability to obtain, either temporarily or permanently, DOD personal property.

### Background

Authorities that support the *disposal* of excess or surplus military personal property (through reutilization, transfer, donation, or selling) date to the end of World War II and are considered part of DOD’s *personal property disposal process*—a process that excludes real property (land, buildings, and structures) and records. More recent laws authorizing transfers of personal property to law enforcement agencies (LEAs) were frequently tied to counterdrug or counterterrorism efforts following the events of 9/11. DOD also has the authority to temporarily lend equipment to LEAs—separate from property disposal.

Following the 2014 clashes between protesters and police in Ferguson, MO, these authorities—in particular 10 U.S.C. §2576a (*1033 Program*)—gained widespread media attention resulting in legislative and executive efforts to limit their use. After the May 25, 2020 death of George Floyd Jr. in Minneapolis, MN, these authorities again received considerable interest from Congress, leading to several legislative proposals to limit their use. For more information on some of these legislative proposals, see CRS Legal Sidebar LSB10486, *Congress and Police Reform: Current Law and Recent Proposals*, by Joanna R. Lampe.

### What is the Difference Between Excess and Surplus DOD Property?

According to 40 U.S.C. §102(3), *excess property* is defined as "property under the control of a federal agency that the head of the agency determines is not required to meet the agency's needs or responsibilities." Such property typically includes items that are obsolete, not repairable, or are usable, but determined to be excess to the agency’s needs. *Surplus property* is excess property that General Services Administration (GSA) has determined to be no longer needed by *any* federal agency (40 U.S.C. §102(10)).

For information on the federal personal property disposal process, see CRS Report R45876, *Federal Personal Property Disposal: Procedures and Reforms*, by Garrett Hatch.

### Selected Authorities

There are several provisions of law that permit federal, state, and local agencies to obtain DOD property.

#### 10 U.S.C. §2576a (1033 Program)

Under 10 U.S.C. §2576a, the Secretary of Defense has the authority to transfer excess DOD personal property to federal and state LEAs for law enforcement activities, including counterdrug, counterterrorism, and border security activities. Transfers are typically made *without charge to the recipient agency* (except for potential delivery costs), though sale is also permitted. Derived from Section 1033 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1997 (Section 1033 of P.L. 104-201; codified as 10 U.S.C. §2576a), the associated DOD program is known as the *1033 Program*. The Law Enforcement Support Office (LESO) of the Defense Logistics Agency (DLA) administers the program. As of FY 2019, the 1033 Program had transferred over \$7 billion in personal property to eligible LEAs (see **Table 1**).

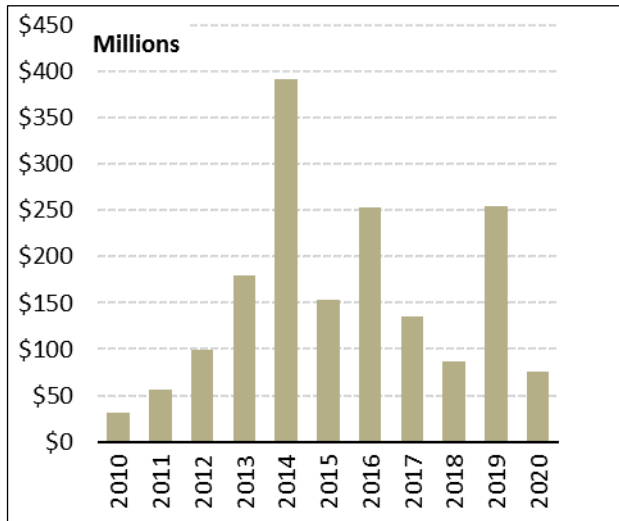
**Table 1. 1033 Cumulative Value of Transferred Property by Fiscal Year**

Fiscal Year	Acquisition Value of Material (FY)	Acquisition Value of Material (Cumulative)
2018	\$276 million	\$7 billion
2017	\$504 million	\$6.8 billion
2016	\$515 million	\$6.3 billion
2015	\$417 million	\$5.8 billion
2014	\$872 million	\$5.1 billion
2013	\$286 million	\$4.2 billion
2012	\$546 million	\$4.1 billion
2011	\$498 million	\$2.6 billion

**Source:** Created by CRS using data from the DOD Comptroller. (Defense-Wide Budget Justification documents for the DLA available at <https://comptroller.defense.gov/Budget-Materials/>).

**Notes:** The DLA Budget provides information on funding for the program in addition to the value of transferred property since the program’s inception. The cumulative transferred value refers to the accumulating amount transferred to state, federal, and tribal LEAs. Information prior to FY2011 is unavailable.

Since calendar year 2010, the acquisition value of personal property items transferred out of DOD through the 1033 program to U.S. states and territories has varied yearly (see **Figure 1**).

**Figure 1. Acquisition Value of Property Transferred to States and Territories per FYs 2010–2020**

**Source:** Created by CRS Graphics using data provided by DLA (see *LESO Property Transferred to Participating Agencies at: <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement/PublicInformation/>*).

**Note:** Data are from January 2010–March 2020. Acquisition value indicates the original value of items purchased by the military multiplied by the quantity of items obtained. No depreciative adjustments are made for the condition or age of equipment.

#### 10 U.S.C. §2576b (Firefighter Property Program)

Under 10 U.S.C. §2576b, the Secretary of Defense has the authority to transfer excess DOD personal property to state firefighting agencies for fire and emergency medical services. Similar to the 1033 program, transfers can be made without charge to the recipient agency (except for potential delivery costs), though sale is also allowed.

The so-called *Firefighter Property Program* (FFP) derives authority from Section 1706 of the FY2001 NDAA (P.L. 106-398). An interagency agreement between DLA and the U.S. Forest Service (USFS), under the authority of the Economy Act, 31 U.S.C. §1535, authorizes USFS to manage firefighting property transferred under the FFP. In FY2018, FFP transferred more than \$124 million in property from DOD to state firefighting agencies.

#### 10 U.S.C. §2557 (Humanitarian Program)

DOD may also transfer non-lethal excess supplies (e.g., medical supplies, clothing, and trucks) to foreign nations under 10 U.S.C. §2557. This authority was first enacted for FY1986 to support national security and pro-democracy objectives in Afghanistan and Latin America (Section 1454 of P.L. 99-145). It was later expanded to include transfers of excess property to veterans programs and for other domestic emergency assistance needs.

#### 10 U.S.C. §272 (Use of Military Equipment and Supplies)

Under 10 U.S.C. §272, the Secretary of Defense has the authority to “make available” any equipment (including associated supplies or spare parts) as well as base or

research facilities, to any federal, state, or local civilian law enforcement official for law enforcement purposes. This authority is derived from Section 905 of the FY1982 DOD Authorization Act (P.L. 97-86). DoDI 3025.21 (enclosure 8) implements this statute, provided that the assistance does not adversely affect military readiness.

#### 10 U.S.C. §281 (1122 Program)

Section 1122 of the NDAA for FY1994 (P.L. 103-160, codified at 10 U.S.C. §281) provides the Secretary of Defense with the authority to establish procedures for state and local governments to purchase, through DOD channels, law enforcement equipment for counterdrug, homeland security, and emergency response activities.

Originally intended to support counterdrug activities, Section 885 of the FY2009 NDAA (P.L. 110-417) expanded the program to include homeland security and emergency response operations.

The U.S. Army is the designated program manager for the *1122 program*. It works with DLA and the GSA, the latter of which produces and maintains a catalog of products available under this program. The *1122 program* allows states and local governments to purchase equipment “by taking advantage of the purchasing power of the federal government to receive discounts commensurate with large volume purchases.”

#### 10 U.S.C. §2576 (Surplus Military Equipment Sales)

Under 10 U.S.C. §2576, the Secretary of Defense is authorized to sell surplus military equipment to state and local law enforcement, firefighting, homeland security, and emergency management agencies *at fair market value*. Equipment that may be purchased under this authority includes “pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, personal protective equipment, and other appropriate equipment.” Such equipment must be deemed suitable for use by such agencies in carrying out law enforcement, firefighting, homeland security, and emergency management activities. Before being sold, such equipment must be certified as necessary and suitable for the operation of an agency by the designated state official and must not exceed, in quantity, the amount requested and certified. Such equipment may not be resold or otherwise transferred by the owning agency.

First enacted in 1968 and limited to local law enforcement and firefighting agencies (Section 403 of P.L. 90-500), this authority was expanded for FY2011 to include homeland security and emergency management activities (Section 1072 of P.L. 111-383).

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