

FY2016 Changes to DOD's 1033 Program

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Congress authorized the Department of Defense (DOD) to provide material support to federal, state, local, and tribal law enforcement agencies (LEAs) through the sale or donation of excess personal property ([Section 2576a of Title 10](#), United States Code). The immediate impetus for the creation of the original, temporary iteration of this program in the late 1980s was to reinforce local law enforcement agencies in their efforts to contain the spread of drug cartels. The permanent authority was enacted in the mid-1990s and expanded the intent to bolster both counterdrug and counterterrorism law enforcement activities. The process that implements these property transfers is known as the "1033 Program." Sections 1051 and 1052 of the National Defense Authorization Act for Fiscal Year 2016 ([P.L. 114-92](#)) amended the authorizing statute. Section 1051 requires the Secretary of Defense to create a public website on which to post information on "controlled property" transferred to law enforcement and adds conditions on the transfer of such property. Section 1052 expands the range of law enforcement activities for which LEAs may receive property via transfer under this program.

The Public Website

Section 1051 of the act requires the Secretary of Defense to create a public website listing "all publicly accessible unclassified information pertaining to the request, transfer, denial, and repossession of controlled property under this section...." "Controlled property" is defined in the statute as any item that requires the removal of some military-only capability before it can be released from military control. The new site is to (1) identify all controlled property transferred to federal and state agencies and its recipients, (2) list pending requests for transfer, and (3) post property reports filed by the agencies with the Secretary of Defense.

Conditions on the Transfer of Property

Under the 1033 Program, excess DOD property, such as personal computers, vehicles, and firearms, are made available to qualified federal, state, local, and tribal law enforcement agencies. Congressional interest in oversight of the program grew in the wake of civil unrest seen in Ferguson, MO, in 2014 and Baltimore, MD, in 2015. At that time, the existing statute required that the transfer of such equipment be made from existing excess stocks (i.e., DOD is barred from making purchases solely for the purpose of transferring property to law enforcement), and that the receiving agency accept the property as-is wherever it is located and bear all subsequent costs.

Section 1051 added new conditions. Recipients of controlled property are now required to certify annually that they have "adopted publicly available protocols for the appropriate use of controlled property, the supervision of such use, the evaluation of the effectiveness of such use, including auditing and accountability policies," and that they provide

"annual training to relevant personnel on the maintenance, sustainment, and appropriate use of controlled property."

The statute requires the Secretary of Defense to "enter into an agreement with a federally funded research and development center" (FFRDC) to assess the overall program, evaluate the determination of suitability of agencies to receive controlled property, analyze reported statistics on transfers and incidence of loss, and to review the effectiveness of policies and procedures for the return of controlled property. The act also requires the Secretary to engage an FFRDC to determine whether LEAs use controlled property within a year of its transfer. The Comptroller General is required to prepare an independent report on the program. That report is to evaluate the transfers of property, its subsequent use by law enforcement, the effectiveness of the website in providing public transparency, and determine whether the transfer of property enhances counterdrug and counterterrorism activities.

Expansion of Qualifying Law Enforcement Activities, 1990-2016

Statutory language permitting the Secretary of Defense to transfer excess DOD articles to federal and state LEAs was first enacted in the National Defense Authorization Act for FY1990 and 1991 (Section 1208 of [P.L. 101-189](#)). This authority was temporary, expiring on September 30, 1992, and restricted to articles "suitable for use ... in counterdrug activities." The permanent authorization, codified in [10 U.S.C. 2576a](#), came in Section 1033 of the National Defense Authorization Act for Fiscal Year 1997 ([P.L. 104-201](#)). Until amended in late 2014, it made excess DOD items available for use by law enforcement in counterdrug and counterterrorism activities.

Section 1052 of the National Defense Authorization Act for FY2016 changed the scope of qualifying activities, expanding it to include counterdrug, counterterrorism, and border security activities. The original statute required the Secretary of Defense to consult in these matters with the Attorney General and the Director of National Drug Control Policy. The amendment adds a requirement to consult with the Secretary of Homeland Security, as appropriate.

For additional information regarding the 1033 Program, see CRS Report R43701, [The "1033 Program," Department of Defense Support to Law Enforcement](#), by Daniel H. Else; CRS Report RS20549, [Defense Surplus Equipment Disposal, Including the Law Enforcement 1033 Program](#), by Valerie Bailey Grasso; and CRS Insight IN10138, [The "Militarization" of Law Enforcement and the Department of Defense's "1033 Program,"](#) by Nathan James and Daniel H. Else.