

# CRS Report for Congress

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## Excess Defense Articles: Grants and Sales to Allies and Friendly Countries

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### Summary

The Excess Defense Articles (EDA) program provides one means by which the United States can advance foreign policy objectives — assisting friendly and allied nations through provision of equipment excess to the requirements of its own defense forces. The current program is an outgrowth of military assistance programs developed by the United States in the 1950s and 1960s to provide allies and friends with relatively inexpensive military items during the Cold War. Since many EDA recipients already have U.S. military equipment in their inventories, U.S. EDA items can supplement earlier acquisitions at a reduced cost to the recipient. They can be made available through outright grants or sales at a depreciated price. Among objectives furthered by transfer of EDA are assisting modernization efforts of U.S. allies, assisting in multilateral peacekeeping efforts, combating illegal narcotics production and narco-trafficking, and aiding de-mining programs. United States Partnership for Peace (PfP) initiatives have been augmented by providing grant EDA materiel which meets NATO standards; supplying such equipment helps fulfill modernization and standardization needs of eligible PfP partners in a timely and less costly manner.

This report provides background on the EDA program. It gives the rationale for the program, discusses the key elements of the program, and how it operates. It provides data on recent EDA transactions, and also discusses the means by which Congress oversees the program and its uses. The report will be updated only if significant developments occur regarding the EDA program.

### Legal Authority

Authority for the EDA program is found in section 516 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2321j). Under current law, the President is authorized to transfer excess defense articles if:

- such articles are drawn from existing stocks of the Defense Department;

- Defense Department funds used for procurement of defense equipment are not expended in connection with the transfer;
- transfer of the defense articles will not have an adverse impact on the military readiness of the United States;
- transfers made on a grant basis are proposed because they are preferable to transfers made on a sales basis after taking into account foreign policy benefits for the United States of both kinds of transactions;
- the President determines that the transfers of these defense articles will not have an adverse impact on the national technology and industrial base, in particular, that they will not reduce opportunities for entities in the national technology and industrial base to sell new or used equipment to nations to which such articles are transferred;
- transfer of such defense articles is consistent with the U.S. policy framework for the Eastern Mediterranean set out in section 620C of the Foreign Assistance Act of 1961, as amended.

## **Process for Making Excess Defense Articles Available to Recipients**

Excess defense articles are defined in U.S. law as :

...defense articles (other than construction equipment, including tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators and compressors) owned by the United States Government, and not required in anticipation of military assistance or sales requirements, or pursuant to a military assistance or sales order, which is in excess of the Approved Force Acquisition Objective and Approved Force Retention Stock of all Department of Defense Components at the time such articles are dropped from inventory by the supplying agency for delivery to countries or international organizations....<sup>1</sup>

United States military departments determine what items are excess to their requirements. Prior to any item being offered to a foreign country, it must also be excess to the other military departments and agencies, as well as, the Reserves and National Guard. The owning military department is responsible for conducting such screening. Once an item has been declared excess, the Military Department will either propose it be transferred to a foreign country or transfer it to the Defense Reutilization and Marketing Office (DRMO) for further disposition. For major items, (e.g., tanks, ships, and weapons systems) the military departments attempt to fill existing foreign requirements. If they have more items than existing requirements, they will conduct a worldwide survey for interest in these items. Whenever requirements exceed available items, the interagency EDA Coordinating Committee will determine the allocation. Lesser items (e.g., clothing, field equipment and vehicles) are usually transferred to the nearest DRMO for further disposal. A foreign country may obtain items from the DRMOs by submitting a request for them through official channels such as the U.S. Departments of State and Defense either in the United States or overseas.

The EDA Coordinating Committee is co-chaired by the State Department and the Defense Security Cooperation Agency (DSCA) of the Defense Department. It is

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<sup>1</sup>Section 644(g) of the Foreign Assistance Act of 1961, as amended.

comprised of representatives from the Joint Chiefs of Staff, the Commerce Department, and key regional and policy program offices of the Defense Department. The State Department is represented by its Politico-Military Bureau. The EDA Coordinating Committee meets on an ad hoc basis to determine final allocation plans for EDA and makes its recommendations to the State Department for approval. As the executive branch agency responsible for arms transfer policy, the State Department has the ultimate authority to approve or reject recommendations for EDA transfers made by the EDA Coordinating Committee. The U.S. military departments, by regulation, are expressly directed not to make a commitment of EDA items to a prospective recipient until the EDA Coordinating Committee has reviewed and approved any such allocation, and such action has been endorsed by the State Department.

The EDA Coordinating Committee, in reviewing prospective allocations of EDA normally considers the following:

- the ability of the prospective recipient nation to utilize the items effectively;
- correlations of country requirements with items available;
- item location and transportation requirements;
- potential competition of EDA items with comparable new production items; and
- need for regional balancing in distribution of EDA as directed in U.S. law or to achieve the maximum benefit for the United States through the transfer.

Excess defense articles are offered to eligible foreign recipients on an “as, where is” basis. Articles can either be provided on a grant basis to certain eligible countries under section 516 of the Foreign Assistance Act of 1961, as amended, or sold at reduced cost (between 5% to 50% of original acquisition value, depending upon condition) to any Foreign Military Sales (FMS) eligible country under section 21 of the Arms Export Control Act (AECA). Although the excess item may be provided on a grant basis, the recipient is responsible for any required refurbishment and repair of the EDA items, as well as any associated packaging, crating, handling, and transportation costs. Services and follow-on support may be purchased by EDA recipients from the Defense Department through the Foreign Military Sales (FMS) program or commercially.

Although, by law, Defense Department funds are generally not to be expended for “crating, packing, handling and transportation” of excess defense articles, the President may provide for the “transportation” of such articles, without charge to the recipient country, if it is determined to be in the “national interest” of the United States to do so and the following additional criteria are met. The recipient must be a “developing nation” receiving less than \$10 million in Foreign Military Sales Financing or International Military Education and Training (IMET) in the fiscal year the transportation is provided; the total weight of the transfer must not exceed 25,000 pounds, and such transportation must be provided on a “space available basis.”<sup>2</sup>

## **Congressional Role in Oversight of Excess Defense Articles Transfers**

Congress in recent years has indicated its interest in using the Excess Defense Articles program in support of U. S. foreign policy objectives by stipulating in law EDA program

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<sup>2</sup>Section 516(e) of the Foreign Assistance Act of 1961, as amended..

policy and requiring detailed reports from the President to facilitate its oversight of EDA transfers. This interest has heightened as overall levels of U.S. foreign military assistance funding have declined and the EDA program has become more useful as a low cost supplement to America's military aid programs. Congress has stipulated that NATO member countries on the "southern and southeastern flank of NATO" and "major non-NATO allies" on NATO's southern and southeastern flank are to be given "priority to the maximum extent feasible," in the delivery of excess defense articles to other countries.<sup>3</sup> Congress has further set a ceiling of \$425 million on the aggregate value of grant excess defense articles that may be transferred in any fiscal year beginning in FY2000.<sup>4</sup>

Before the President may transfer EDA items that are significant military equipment, as defined by the Arms Export Control Act, (AECA) or excess defense articles valued at \$7 million or more (in terms of original acquisition cost) under either the AECA or the Foreign Assistance Act of 1961, as amended, he must provide notice of such a proposed transfer to specified congressional committees<sup>5</sup> 30 days in advance of such a transfer in accordance with established reprogramming procedures. In the case of all **sales** of EDA, prior to agreeing to such a transfer the President must submit details regarding the proposed EDA transfer by sale at least 15 days in advance to the House and Senate Appropriations Committees.

Once the congressional committees receive notification of prospective grants or sales of excess defense articles, they can request detailed briefings on the prospective EDA transfers if the committees deem them necessary. Current law does not provide for a formal congressional disapproval process of a proposed Excess Defense Article transfer such as it does for regular sales of defense articles and services. However, a practice has developed between the Congress and the executive branch whereby the chairman of one or more of the foreign policy committees or Foreign Operations subcommittees of the Appropriations Committees can place a "hold" on a prospective EDA transfer until such time as questions or concerns regarding it are met through consultations with the executive branch. Even though it is not required to do so by law, as a matter of comity, the executive branch has acknowledged congressional "holds" on proposed EDA transfers, and has suspended them until congressional concerns have been addressed. This means that in some cases, transfers of EDA have been suspended well past the 15 or 30 day statutory notification period. Once a congressional "hold" has been lifted the EDA transfer can commence immediately if the pertinent congressional notification period has passed.

### **Excess Defense Articles Transfer Activity**

In fiscal years 1996 and 1997, the largest share of **grant** EDA offers went been to the Near East and South Asian (NESA) region and to Europe. Based on the current value of the EDA items, in FY1996, the NESA region received \$289 million in grant offers and \$132 million in FY1997; \$101 million in FY1998. During FY1996 the Europe region

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<sup>3</sup>Section 516(c)(2) of the Foreign Assistance Act of 1961, as amended.

<sup>4</sup>Section 516(g) of the Foreign Assistance Act of 1961, as amended.

<sup>5</sup>Under section 634A(a) of the Foreign Assistance Act of 1961, these specified committees are the Senate Foreign Relations Committee, the House Foreign Affairs (International Relations) Committee and the House and Senate Appropriations Committees.

received \$164 million in grant offers. In FY1997, such offers to Europe totaled \$150 million, and in FY1998 totaled \$102 million. During FY1996, the nations receiving the largest grant EDA offers were: Egypt (\$133 million), Bahrain (\$82 million), Greece (\$63 million), Albania (\$33 million), Morocco (\$28 million) and Portugal (\$22 million). In fiscal year 1997, the countries receiving the largest grant EDA offers were: Turkey (\$112 million), Jordan (\$54 million), Greece (\$26 million), Morocco (\$26 million), and Argentina (\$23 million). In fiscal year 1998 the countries receiving the largest grant EDA offers were: Morocco (\$61 million), Portugal (\$55 million), Turkey (\$25 million), Chile (\$23 million), and Bahrain (\$20 million).<sup>6</sup>

Total **sales** of EDA offered during fiscal years 1996 and 1997, by contrast, were smaller than the totals for grant EDA offers during the same periods and were spread primarily among the Near East and South Asia, Europe, and East Asia and Pacific regions. In FY1996, the Near East and South Asia region received \$92 million in EDA sales offers, (based on the items current values), Europe received \$91 million, and East Asia and the Pacific \$79 million. In FY1997, East Asia and the Pacific received \$57 million in EDA sales offers, while Europe received \$11 million. The principal recipients of these EDA sales offers in FY1996 were: Egypt (\$90 million), the United Kingdom (\$76 million), Australia (\$28 million), Taiwan (\$23 million), and New Zealand (\$13 million). In FY1997, the leading recipients of EDA sales offers were: Australia (\$56 million) and Germany (\$7 million). In FY1998 the Near East and South Asia region received \$127 million, while the East Asia and Pacific region received \$17 million in EDA sales offers. In FY1998, the leading recipients of EDA sales offers were: Egypt (\$126 million), Taiwan (\$9 million), Australia (\$7 million), Mexico (\$2) million, and Spain (\$1 million).<sup>7</sup>

The Defense Department has stated that over time a number of excess defense article items have been eliminated from United States defense equipment inventories, as U.S. military forces have been reduced both overseas and at home. Some of these items were transferred to U.S. allies and friends in Europe and in the Middle East in the late 1980s and early 1990s. The Defense Department projects that in the future the overall quantity of EDA available for transfer will decline as it nears the end of military downsizing efforts.

The following table shows the dollar value of Excess Defense Articles that have been **offered** to foreign nations or organizations worldwide by the United States, either by grant or by sale, for fiscal years 1991-1998. Figures are for **current value** of EDA offered.

It should be noted that EDA transfers have not approached the levels of U.S. Foreign Military Sales (FMS) totals, even as FMS figures have declined in the post-Cold War period. For example, during fiscal years 1997 and 1998, the total values of U.S. Foreign Military Sales **agreements** worldwide were nearly \$8.8 billion and \$8.2 billion respectively.<sup>8</sup> The figures for total EDA grants and sales offered worldwide as shown in **Table 1** were, by contrast, \$379 million and \$399 million for fiscal years 1997 and 1998 respectively. The Defense Department notes that less than half of these offers have been accepted. The FY1996 figure for all EDA offers (\$765 million) is the highest annual EDA

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<sup>6</sup>Data provided by Defense Security Cooperation Agency, Department of Defense.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid

offers total to date. It is a figure that is skewed by the fact that it contains within it the values of offers to transfer excess Perry-class frigates and P-3 maritime patrol aircraft. These defense equipment items are much more costly than EDA items typically transferred.<sup>9</sup> An examination of the data in **Table 1** reveals that EDA offers totals have been less than \$400 million in most years in the period from FY1991-FY1998.

**Table 1. Grants and Sales of Excess Defense Articles Offered and Accepted Worldwide, FY1991-FY1998**  
(in millions of dollars)<sup>a</sup>

	Excess Defense Articles Grants Offered	Excess Defense Articles Sales Offered	Total Excess Defense Articles Offered	Total Excess Defense Articles Accepted
FY 1991	406	29	435	NA
FY 1992	178	52	230	NA
FY 1993	290	88	378	141
FY 1994	170	97	267	107
FY 1995	308	196	504	242
FY 1996	495	270	765	368
FY 1997	310	69	379	176
FY 1998	242	157	399	161

<sup>a</sup>Data provided by Defense Security Cooperation Agency, Department of Defense. Comprehensive data on excess defense articles grants and sales values have only been reported to Congress since FY1991. Data on excess defense articles cases accepted were not systematically tracked until FY1993.

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<sup>9</sup>Tbid.

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