Antideficiency Act: What NOT to Do!

Overview, Examples, Avoidance

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Agenda

- Antideficiency Act (ADA) Overview
  - History
  - 31 USC 1341/1517
  - 31 USC 1342
  - Augmentation
  - Indemnification
  - Relationship to Purpose and Time
Agenda (cont.)

• Violations Reported 2005–2017
  – How many
  – How much
  – Who
  – Nature of violations
  – Discipline taken
  – Examples

• Preventing ADA Violations
History of ADA

• Congressional “Power of the Purse”
  – Agencies routinely overspent
  – “Deficiency” appropriations common
  – ADA is greatest power that Congress has over the Executive Branch

• Series of acts starting in 1870.
  – Additional provisions in 1905, 1906, 1951, 1956
• 31 USC 1341 and 1517
  – Prohibits obligation or expenditures in advance of or in excess of an appropriation (1341) or an apportionment or other amount permitted by agency regulation (1517).

• 31 USC 1342
  – Prohibits accepting voluntary services or employing personal services unless authorized by law or in emergencies involving protection of life or property
ADA Provisions

• Augmentation
  – Receiving funds from a source without statutory authority, then obligating those funds, is a violation
  – Extension of:
    o Miscellaneous Receipts Statute (31 USC 3302)
    o Purpose Law (31 USC 1301)
    o Supplementation of salary (18 USC 209)

• Indemnification
  – Unlimited indemnification = automatic violation
Relationship to Purpose and Time

• Violations of Purpose Law and Bona Fide Needs rule
  – MAY – or MAY NOT violate the ADA
  – Correctable Purpose and Time violations that do not result in an Amount problem are considered accounting adjustments
  – November 2010 change to FMR
    o Was 3-Part test – Now 2-Part test
  – Some Purpose and Time violations automatically are ADA violations
Violations Reported 2005–2017

• How many
  – Total of 250 violations

• How much
  – Mean = $43,706,000
  – Median = $847,000
  – Largest = $1,636,620,000
  – Smallest = $0.00
ADA Violations Reported 2005-2017

We’re Number 1!
Violation Categories 2005-2017

- Wrong Appropriation: 73
- Exhausted Appn/Apportionment: 50
- Improper Purchases (No Appn Available): 31
- Advance of Appn/Apportionment: 25
- Exceed Statutory Limitation: 23
- Bona Fide Needs: 13
- Voluntary Services/Personal Services: 12
- Augmentation: 9
- Indemnification: 8
- Use of Expired/Canceled Funds: 4
- Failure to Bill for Reimbursement: 1
- Foreign Currency Fluctuation: 1
# O&M/DWCF vs. R&D/Proc/Capital Budget

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I used OMA instead of OPA?
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Discipline Imposed 2005-2017

- None (Retired, Separated, Transferred) 113
- None 94
- Letter of Caution, Concern, Admonition 78
- Oral Counseling 40
- Written Reprimand 30
- Oral Caution/Admonition 28
- Unspecified Discipline 13
- Removal from Federal Service 7
- Suspension 4
- Jail/Probation 4
- Removal from Position (Military) 4
- No One Identified 4
- Demotion 3
- Revoke Contracting Warrant 2
- Reassignment 2
• “Those who cannot remember the past are condemned to repeat it.” – George Santayana

• There are many ways to violate the ADA

• The following examples are representative
System Modernization: Certification/Approval

- 10 USC 2222(a): Certification and approval prior to obligation > $1M for business system modernization

- 10 USC 2222(b): Failure to obtain certification and approval is a violation of the ADA
  - Army Combat Readiness/Safety Center – $2M
  - Madigan Army Medical Center – $2.4M
  - Bureau of Naval Personnel – $8.2M
  - Tinker Air Force Base – $23.3M
Food

- Agency/Account: Air Force O&M
- Amount: $21,730
- Description: Purchased light refreshments over a five year period for regional studies events. Refreshments not authorized under these circumstances.
Food/Gifts

- **Agency/Account:** Navy/O&M (OMN)
- **Amount:** $19,337
- **Description:** O&M funds used to purchase meals and gifts for employees at a banquet. Event was not an award ceremony, training conference, or recruiting function.
Bottled Water

- Agency/Account: Navy/Working Capital Fund
- Amount: $701,480
- Description: Navy WCF used to purchase bottle drinking water, for which appropriations were not available. None of the exceptions for water purchase were met.
Coins

- **Agency/Account:** Army/Chemical Munitions Destruction
- **Amount:** $13,420
- **Description:** “Metallic information products” – or coins, were purchased for ceremonial events as gifts. No appropriation available for such gifts.
Government Purchase Card Misuse

- Agency/Account: Army/CoE Revolving Funds
- Amount: $186,529
- Description: Two cardholders used GPC for personal, non-government purchases. No appropriation is available for such purchases, therefore an ADA violation was incurred.
Hired Non-US Citizen

- Agency/Account: Dept. of Labor/Salaries and Expenses
- Amount: $29,102
- Description: Dept. of Labor paid compensation to an employee who was a Mexican citizen. Non-US citizens may not be paid unless certain exceptions are met.
Failure to Bill for Reimbursement

- **Agency/Account:** Army National Guard/ Milpers & O&M
- **Amount:** $521,790
- **Description:** The Virgin Islands Army National Guard performed hurricane relief support efforts and did not bill the Territory of the Virgin Islands for reimbursement.
Ineligible Recipients

- Agency/Account: DoD Small and Disadvantaged Business Utilization Office/Procurement
- Amount: $9,046,076
- Description: Funds allocated for Historically Black Colleges and a mentor/protégé program went to organizations ineligible to receive such awards.
Bona Fide Needs

- Agency/Account: Army O&M (OMA)
- Amount: $2,183,000
- Description: Interagency agreement with NIH for contract with four option years. At end of each year NIH “rolled over” excess funds into following years, violating bona fide needs rule. Insufficient funds available in FY06 to make correcting adjustments.
Severable Services > 12 Months

- Agency/Account: Navy/O&M
- Amount: $31,650
- Description: Professional services contract was placed for a 14 month period. Law allows only 12 months. Extra two months were obligated in advance of an appropriation.
Excess/Advance of Apportionment

- Agency/Account: Air Force/Missile Proc
- Amount: $301,152,402
- Description: Obligated funds for missile procurement under a continuing resolution, prior to receipt of additional apportionment to cover the requirement.
Reapportionment

- Agency/Account: NASA/Space Flight
- Amount: $1,636,620,000
- Description: NASA obligated $1.6B of FY04 funds that carried over into FY05, without benefit of a reapportionment of carryover funds.
Foreign Currency Fluctuation

- Agency/Account: DoDEA/Construction
- Amount: $451,249
- Description: Obligated $651,249 to fund construction projects. Due to foreign currency fluctuations, relevant account had insufficient authority available.
Untimely Recording of Obligations

• Agency/Account: Army/O&M, Army
• Amount: $2,129,180
• Description: Valid contract obligations were not entered into the accounting system in a timely manner. The command therefore incurred obligations in excess of their budget authority.
Indemnification

- Agency/Account: NOAA/Ops and Research
- Amount: $0
- Description: From 1923 through 2005 agreements with non-profit entities included unlimited indemnification clauses. These constitute open-ended obligations of the Government and therefore violate the ADA.
**Indemnification**

- **Agency/Account:** GSA/Buildings Fund
- **Amount:** $0
- **Description:** GSA signed a contract with a Las Vegas hotel that included an unlimited liability clause. This created an open-ended obligation and therefore violated the ADA.
  - **Note:** This was the only ADA report from the infamous GSA conference in 2010.
Voluntary Services

- **Agency/Account:** Army National Guard/Military Personnel
- **Amount:** $30,220
- **Description:** Civilian technicians conducted training on weekends without compensation
Voluntary Services (cont.)

- Agency/Account: Consumer Product Safety Commission
- Amount: One day of pay
- Description: Employee worked while on furlough (funding lapse). Employee was reprimanded and matter referred to Department of Justice.
Augmentation

- Agency/Account: Navy/O&M
- Amount: $561,906, $285,987, and $842,857
- Description: Amounts received from private sector for work performed were collected as reimbursements and then obligated. They should have gone to Treasury as miscellaneous receipts.
Augmentation

- **Agency/Account:** Air Force/O&M
- **Amount:** $310,381
- **Description:** Collected reimbursements from a state port authority into the O&M account and then obligated the funds. Should have been deposited into Treasury miscellaneous receipts account.
System Processing Errors

- Agency/Account: Army/O&M
- Amount: $3,174,000
- Description: New financial system installed and processing errors caused an understatement of obligations, leading to an overobligation of available funds.
Preventing Violations

• Internal Controls
  – Include ADA as a focus area during annual reviews

• Training
  – Appropriations Law classes for both Fiduciary and Pecuniary certifiers

• Read your appropriations act each year
• Get GAO emails with latest decisions
• Review GAO database of ADA violations
Preventing Violations (cont.)

• Promptly and accurately record obligations
• Remind managers about voluntary services
• Pay attention to government purchase cards
• Question transactions that are unusual or just don’t look right
• If you have doubts about a transaction, resist pressure for immediate action
• Make friends with your agency legal office
Questions???
Thank you for your participation!