

Avoiding Antideficiency Act Violations



**22ND ANNUAL GOVERNMENT FINANCIAL
MANAGEMENT CONFERENCE
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Agenda



- History
- Antideficiency Act (ADA) Requirements
- Reporting ADA violations
- How to Prevent ADA Violations

History



- **Antideficiency Act of 1870**
 - Act of July 12, 1870, 16 Stat. 251
 - Later codified as Revised Statutes 3679
- **ADA amended: 1905, 1906, 1950, 1956, 1957, 1990**

History



- In 1982, Congress reworded and reorganized the language of the ADA along with the rest of Title 31
 - Intent was to modernize the language of the Act, without changing its meaning

The Antideficiency Act



- **31 U.S.C. sections**
 - 1341 – 1342;
 - 1349 – 1351; and
 - 1511 – 1518
 - See Appendix G of OMB Circular A-11 for crosswalk between provisions of ADA and current language

The Antideficiency Act



- **Prohibits you and any other Federal employee from:**
 - Entering into contracts that exceed the enacted appropriations for the year
 - Purchasing services and merchandise before appropriations are enacted
- **Requires that**
 - OMB apportion the appropriations
 - Subject to OMB approval, the head of each executive agency to prescribe by regulation a system of administrative control of funds

The Antideficiency Act



- **Restricts deficiency apportionments to amounts approved by the agency heads only for “extraordinary emergency or unusual circumstances”**
- **Establishes penalties for ADA violations**
- **Requires the agency head to report any ADA violations to the President, through the OMB Director; Congress; and the Comptroller General**

The Antideficiency Act



- If you obligate or expend more than the amount in the
 - Appropriation or fund
 - Apportionment
 - Allotment
 - Suballotment
 - Any other subdivision of funds that are identified in your agency's fund control regulations as being subject to the ADA

The Antideficiency Act



- **Penalties**
 - **Administrative discipline**
 - ✦ Written reprimand
 - ✦ Suspension from duty without pay
 - ✦ Removal from office
 - **Criminal, if committed willfully and knowingly**
 - ✦ Fine not more than \$5,000
 - ✦ Imprison for not more than 2 years
 - ✦ Or both

31 U.S.C 1341(a)



Limitations on expending and obligating amounts

- (a) (1) An officer or employee of the United States Government or of the District of Columbia government may not –
 - (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;
 - involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

31 U.S.C 1517



Prohibited obligations and expenditures

- (a) An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding –
 - (1) an apportionment; or
 - (2) the amount permitted by regulations prescribed under section 1514(a) of this title.

31 U.S.C 1517



- **(b) If an officer or employee of an executive agency or of the District of Columbia government violates subsection (a) of this section,**
 - the head of the executive agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.
 - A copy of each report shall also be transmitted to the Comptroller General on the same date the report is transmitted to the President and Congress.

31 U.S.C 1342



Limitation on voluntary services

- An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government...
- except for emergencies involving the safety of human life or the protection of property....
- As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

31 U.S.C 1301(a)



The Purpose Act

- Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.
- Few violations of the Purpose Act are also violations of the ADA

ADA Violations



- **Examples of ADA violations**
 - violated a footnote on the apportionment
 - exceeded amounts in a Category A or Category B apportionment
 - Signed a contract with an open-ended indemnification” clause
 - Obligated or expended funds required to be sequestered
- **Do I have to report ADA violations in expired and closed accounts?**
 - Yes

Reporting Antideficiency Act Violations



- Transmittal letter to the Director of OMB
- Letter to the President
- Letters to Congress
- Letters to the Comptroller General

Reporting ADA Violations



Letter to President must include:

- **Title and Treasury symbol (including the fiscal year) of the appropriation or fund account**
- **The amount involved for each violation**
- **Date on which violation occurred**
- **Date violation was discovered**
- **Name and position of the officers(s) or employees responsible for the violation**
- **All facts pertaining to the violation**

Sample letters are in section 145 of OMB Circular A-11

Reporting ADA Violations



- **Type of violation**
 - Overobligation of an appropriation or apportionment
 - Overobligation of any subdivision of fund, including allotment, suballotment, etc.
 - Overexpenditure of an appropriation or apportionment
 - Overexpenditure of any subdivision of fund, including allotment, suballotment, etc.
- **Primary reason or cause**
- **Any statement from the responsible officers(s) or employee(s)**
- **Any germane report by agency's IG and/or agency's counsel**

How to Prevent Antideficiency Act Violations



- **Fund control system**
 - A system of administrative control of funds
 - Includes fund control regulations
- **Financial management system**
 - Must support your agency's fund control system

Fund Control System



- **Required by 31 U.S.C. 1514**
- **Purpose**
 - Restrict both obligations and expenditures from each appropriation or fund account to the lower of the amount apportioned by OMB or the amount available for obligation or expenditure
 - Enable the head of your agency to identify the person responsible for any obligation or expenditure exceeding the amount available in the appropriation or fund account, the OMB apportionment, the allotment or suballotment, any statutory limitations, and any other administrative subdivision of funds made by your agency

Funds Control Regulation



- **Definitions, terminology, and concepts**
- **Responsibility and functions of individual**
- **Actions Prohibited**
 - Violations of the ADA
 - Violations of limitations that do not per se violate the ADA
- **Penalties**
 - Administrative
 - Criminal
- **Procedures to report violations**
- **Apportionment procedures**

Funds Control Regulation



- **Accounting support for fund control systems**
 - Specify that agency accounting system must fully support agency fund control systems
 - Accounting system should provide for:
 - ✦ Recording all financial transactions affecting: apportionment, allotment, suballotment, restrictions, financial plans, obligations and expenditures, anticipated, earned, and collected reimbursements
 - ✦ Preparing and reconciling financial reports that display cumulative obligations, the remaining unobligated balance by appropriation and allotment, and cumulative obligations by budget activity and object class

Funds Control Regulation



- **Policy on allotments and suballotments**
 - Allotments and suballotments will be established at the highest practical level
 - Identify who has authority to issue and change allotments and suballotments
 - At minimum, document the following:
 - ✦ Amount available
 - ✦ Funding source
 - ✦ Time period of availability
 - ✦ Position title of the official responsible
 - ✦ Justification for changes in allotments/suballotments

Funds Control Regulation



- Any changes to your fund control regulations (including updates) must be approved by OMB
- See Appendix H of OMB Circular A-11 for a checklist of information to include in agency's fund control regulations

Financial Management Systems



- **Financial Management Systems Guidance**
- **Financial Management Systems and Internal Control**

Funds Management System Guidance



Current Guidance

Circular A-127
Circular A-130
M-10-26

- FFMIA compliance policy
- Technology policy
- Investment policy

FFMIA
Implementation
Guidance

- FFMIA compliance mechanics

FSIO
Requirements
(January 2006)

- Financial system requirements

Proposed Guidance

Circular A-123
Appendix X
(proposed)

- FFMIA compliance policy

FFMIA
Implementation
Guidance

- FFMIA compliance mechanics

Financial Management
System Requirements
(issued by Treasury)

- Financial management business requirements

Guidance TBD
(proposed appendix to
Circular A-130)

- Financial management system investment policy (included shared)
- Investment review process

Financial Management Systems



- **Internal Controls**
 - Budget Authority
 - Funds Distribution
 - Fund Control

Record Budgetary Authority



- **Record the legal budgetary limitations within the agency**
 - Appropriations
 - Warrants
 - Apportionments
 - Reapportionments
 - Transfer allocations
 - Continuing resolutions

Funds Distribution



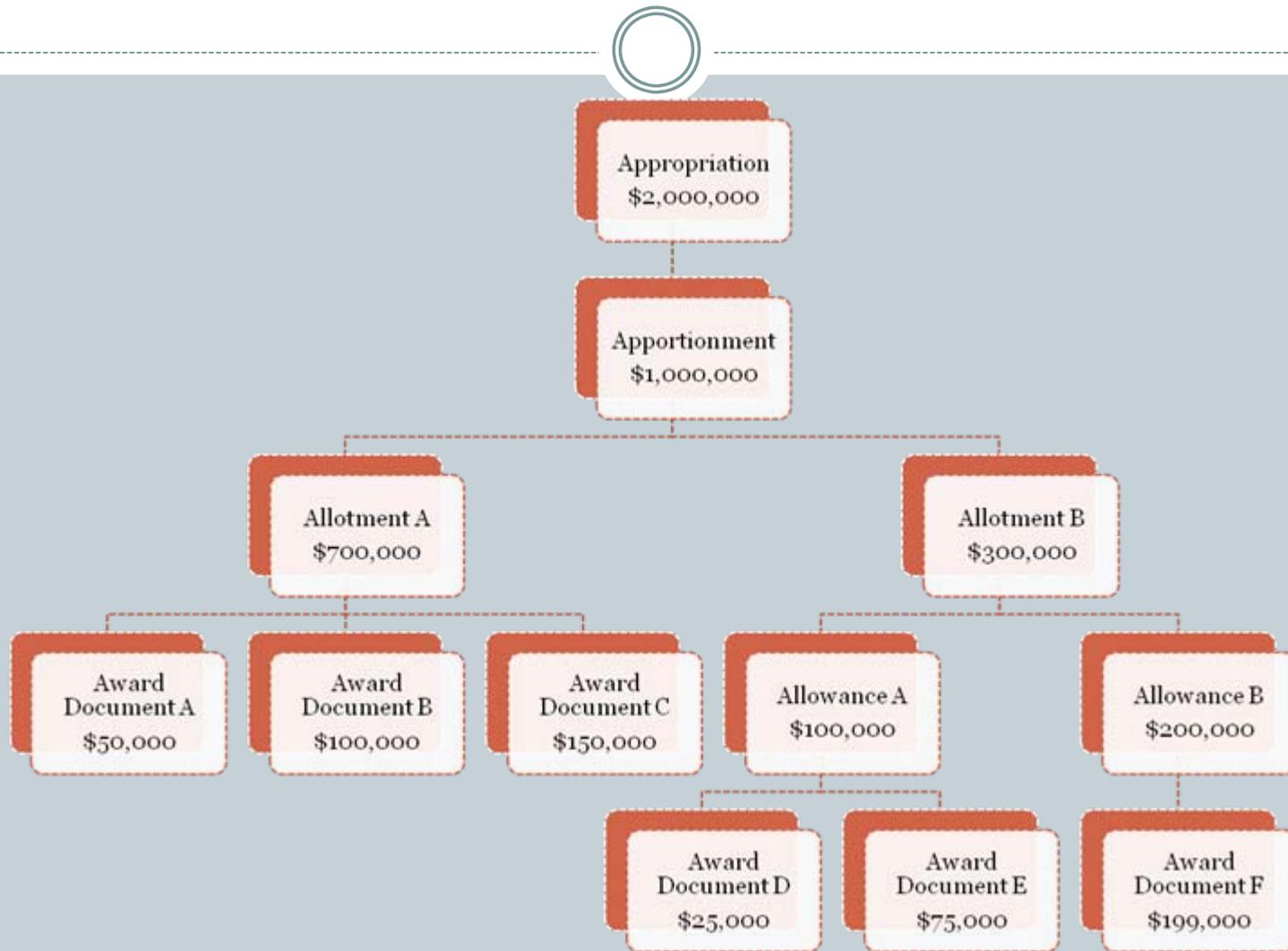
- **Distribute legally apportioned resources within an agency to support missions, programs, and other activities**
 - Capture statutory and administrative limitations on the use of funds
 - Record lower levels or funds limitations
 - ✦ Allotments (to multiple organizational levels or accounting attributes)
 - ✦ Allocations and allowances (to multiple organizational levels or accounting attributes)

Funds Control



- **Prevent the expenditure of funds in excess of established budgetary limitations as established through funds distribution**
 - Funds availability
 - Commitments
 - Obligations
 - Advances

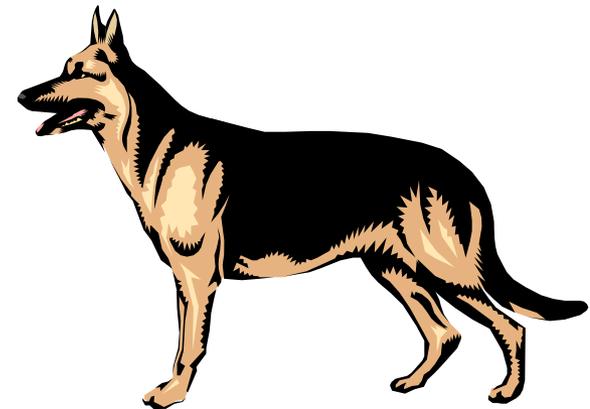
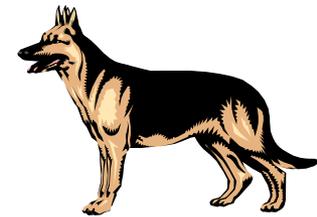
Funds Control Illustration



Watchdogs



- The two very important deterrents against agencies violating the ADA are:
- The Government Accountability Office (GAO) is authorized to audit agencies.
- GAO is not rewarded for finding agencies doing things right.
- Likewise, the agency Inspector Generals (IGs) earn their keep by finding agency staff committing errors.



Past Agency Reports on Violations



- In addition to those for your agency in your agency head's chronological file, a central file is maintained by the GAO. The following is the address:
- <http://www.gao.gov/ada/antideficiencyrpts.htm>
- Please note that the individuals involved are not identified by name on this website because of privacy issues. However, the names of the responsible individuals are required in the reports to the President and the Congress.

Past Agency Reports on Violations



- **As a practical matter, no agency head wants to report to the President and the Congress that his or her agency had violated a law on their watch.**
- **So the reporting requirement has had a deterrent effect on violations.**

Copies of Past Agency Reports on Violations



- Also note that in the Department of Defense, there is an up-or-out policy for military personnel.
- If the report says that the responsible person had received a letter of admonishment, this means the person will not get another promotion and will have to retire shortly.
- If the report says that no administrative discipline was administered because the responsible person had “retired”, normally this means that the person was fired.

Copies of Past Agency Reports on Violations



- It should also be noted that other laws require more severe discipline than the ADA. As a result, the Justice Department will prosecute under those laws rather than the ADA.
- If the matter involves the misuse of a credit card, rather than reporting a violation of the ADA, the agency usually requires the person to repay the agency.
- As for civilian agencies, the report normally does not mention that the person responsible was fired. However, we know of one agency head, one CFO, two GS-15s who left the Federal government within months after a violation was reported.

Copies of Past Agency Reports on Violations



Agency Reports on Violations of the Antideficiency Act

GAO compiles information by fiscal year from Antideficiency Act reports received pursuant to section 1401 of the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, 3192 (Dec. 8, 2004).

- [Antideficiency Act Report Information, Fiscal Year 2010](#) (PDF, 15 pages)
- [Antideficiency Act Report Information, Fiscal Year 2009](#) (PDF, 8 pages)
- [Antideficiency Act Report Information, Fiscal Year 2008](#) (PDF, 14 pages)
- [Antideficiency Act Report Information, Fiscal Year 2007](#) (PDF, 10 pages)
- [Antideficiency Act Report Information, Fiscal Year 2006](#) (PDF, 12 pages)
- [Antideficiency Act Report Information, Fiscal Year 2005](#) (PDF, 6 pages)

