

Four4Four Plan To Avoid ADA Violations

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UNLEASHING THE POTENTIAL
of Individuals, Teams, and Organizations

MANAGEMENT
CONCEPTS

Overview

- What is ADA?
- Power of PURSE
- ADA Statistics
- Fiscal Law Box
- ADA Laws
- Plan – Examples of violations
- What can cause violations?
- Punishment
- How to avoid...

What is the Antideficiency Act (ADA)?

- Where Congress exercises its constitutional control of public purse
- Designed to prevent obligations in excess of amounts appropriated
- To prevent obligations in excess of apportionments and sub-divisions of apportionments

Power of the Purse

- Purpose
- Time
- Amount

ADA Violation Statistics Last 11 Years

DA	81	707	4 YR, 5 Mo
DAF	29	482	6 YR, 3 Mo
USN	38	297	4 YR
Agencies	10	223	5 YR, 11 Mo

NOTE: In 2006, NOAA reported 80 ADA violations. They spanned from 1923-1995. They were for open-ended indemnification clauses.

NOTE: In 2011, Health and Human Services reported 47 ADA violations totaling \$1.43 billion. Violations spanned from 2002-2010. Categories of violations encompassed improper, incremental, and forward-funding practices, as well as obligations of expired funds.

Fiscal Law Box

1. Constitution and Laws

2. Case Law

- GAO/Courts/OLC

3. Rules / Regulations

- DOD FMR

4. Necessary Expense

- -3 tests

What laws make up ADA?

- The ADA is not one law, but many...
 - 31 USC 1341 – Appropriations Amount Limitation
 - 31 USC 1342 – Voluntary Services Prohibition
 - 31 USC 1349 – 1351
 - 31 USC 1511 – 1519
- And many more

Four4Four Plan to avoid ADA Violations 4 As

- Appropriation – 31 USC 1341
- Apportionment – 31 USC 1517
- Allotment – 31 USC 1517
- Sub-allotment – 31 USC 1517

Appropriation

- Agency/Account – Army O&M
- When/Where 2012 and 2013 Washington, DC
- Amount – \$6.2 million
- What happened? Army received earmark of \$5 million for Korean War 60th Anniversary Commemoration. Army overspent.

Appropriation

- Agency/Account – AF O&M vs MILCON
- When/Where – 2009 USAFA, CO
- Amount – \$18.3 million
- What happened? O&M funds used for solar array construction project. Exceeded statutory O&M threshold.

Appropriation

- Agency/Account – AF O&M/PROCURE/RDT&E vs MILCON
- When – 2004 – 2009
- Amount – \$64.3 million
- What happened? Used O&M, procurement, and RDT&E for two construction projects instead of MILCON. One project was over \$57 million. Exceeded O&M statutory limitation. Procurement & RDT&E not available for construction.

Appropriation

- Agency/Account – Army O&M vs. MILCON
- When/where – 2011 Bagram, Afghanistan
- Amount – \$18.8 million
- What happened? Total construction project for B-Huts at airfield was funded with O&M. Exceeded \$750,000 minor military construction threshold. Project was split. Was there a “knowing & willful” violation?

Appropriation

- Agency/Account – Air Force ANG MILPERS
- When/Where – 2009 Washington, D.C.
- Amount – \$9.7 million
- What happened? AF ANG over-obligated its MILPERS appropriation due to failure to adjust estimates.

Appropriation

- Agency/Account – USSOCOM Procure vs. RDT&E
- When/Where – 2004-2010 MacDill AFB, FL
- Amount – \$136 million
- What happened? Used procurement for RDT&E project for helicopter development.

Appropriation

- Agency/Account – USACE O&M vs. MILCON
- When/Where – 2007 Fort, Houston, TX
- Amount – \$8million
- What happened? USACE used O&M for a classified information facility. Should have used MILCON.

Apportionment

- Agency/Account – AF Procurement
- When/Where – 2002 Hill AFB, UT
- Amount – \$301 million
- What happened? Obligated funds for missile procurement under CR in excess of authority prior to receipt of apportionment.

Allotment

- Agency/Account – Army Garrison O&M vs. MILCON
- When/Where – 2007 Grafenwoehr, GE
- Amount – \$3 million
- What happened? Army Garrison used O&M for four construction projects instead of MILCON. They split projects.

4 Donts

- Indemnification – 41 USC 6301
- Obligate in advance – 31 USC 1341
- Parking/Banking funds – 10 USC 2773
- Voluntary services – 31 USC 1342

Indemnification

- Agency/Account – Army O&M
- When – 2006
- Amount – \$0
- What happened? Entered into escrow agreements for installation property for three military installations. Army provided full indemnification to escrow agent against all liabilities.

Voluntary Services

- Agency/Account – Army NG O&M
- When/Where – 1998-1999 Oregon Army National Guard
- Amount – \$30,000
- What happened? Civilian technicians conducted training on weekends without compensation.

4 Mays

- Allocation/Allowance – Target 31 USC 1517
- Augmentation – Miscellaneous Receipts 31 USC 3302
- Purpose – 31 USC 1301
- Time – Bona Fide Needs – 31 USC 1502

Allocation/Allowance/Target

- Agency/Account – Navy O&M vs. MILCON
- When – 2007
- Amount – \$6.9 million
- What happened? Navy obligated O&M instead of MILCON for task order for four construction projects. At time, statutory limitation was \$500,000 for O&M.

Augmentation/Miscellaneous Receipts

- Agency/Account – Air Force O&M
- When/Where – 1998-2000 Hanscom AFB, MA
- Amount – \$310,000
- What happened? Collected reimbursements for state port authority into O&M account and then obligated funds. Should have been deposited into Treasury miscellaneous receipts account.

Purpose

- Agency/Account – Navy WCF
- When/Where – 2012 San Diego
- Amount – \$2444
- What happened? Navy procured ball bearings for a trainer aircraft from non-domestic source. NDAA requires purchase from domestic source.

Purpose

- Agency/Account – Army NG O&M
- When/Where – 2000 State of Washington
- Amount – \$55,000
- What happened? Army NG used O&M to procure services of a private attorney for professional services attorney from a private law firm.

Purpose

- Agency/Account – Army Reserve O&M
- When – 2008 & 2009
- Amount – \$81,000
- What happened? Army Reserve delayed reporting employee's termination action, and he continued to receive pay and allowances for one year.

Time

- Agency/Account – Army MILPERS
- When/Where – 2005 Washington, D.C.
- Amount – \$130 million
- What happened? Army made payment to MEDICARE for FY05 using FY04 funds. Was not correctable.

What can cause violations?

- Lack of appropriate timely training
- Internal control is violated
- Minor construction in using O&M
- Equipment using O&M
- Not familiar with CH 4, GAO Red Book
- Severable/Non-severable
- Within scope change/Exceed scope change

Punishment...

- Letter of admonishment
 - Letter of concern
 - Letter of caution
 - Letter of notification
 - Memo of reprimand
 - Oral admonishment
- ✦ Oral counseling
 - ✦ Verbal admonishment
 - ✦ Verbal counseling
 - ✦ Written counseling
 - ✦ Written memorandum

How to avoid...

- Commit to annual training
- Establish & assess internal control
- Focus during annual SOA
- Review GAO emails & databases
- Read appropriation acts each year
- Purpose – watch GPC buys

Thank You

- Questions?
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See you in San Diego!