



UNITED STATES ARMY
THE VICE CHIEF OF STAFF

28 August 2006

MEMORANDUM FOR SENIOR ARMY LEADERS

SUBJECT: Antideficiency Act (ADA) Violations

1. Senior leaders are expected to be responsible stewards of the resources entrusted to them. This includes properly managing and spending appropriated funds only in the manner specified by Congress. ADA statutes are designed to ensure that no one obligates the Government to make payments for which money has not already been authorized. Violations of the ADA are often inadvertently caused by officials acting in a good faith attempt to accomplish their mission. Senior leaders must understand the rules regarding the expenditure of appropriated funds. Failure to understand and follow these rules can place you, your command, and the Army at risk.
2. Attached is an information paper concerning the ADA. Read it, learn from it, and implement its guidance. Consult with your Legal Advisor, Resource Manager, and Contracting Officer, when making decisions about spending or obligating funds. You are all decision makers; ensure that you make well-informed, ethical decisions.

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INFORMATION PAPER

DAJA-AL
21 August 2006

SUBJECT: The Antideficiency Act (ADA)

1. What is commonly referred to as the ADA is not a single statute. Rather, it is a series of laws through which Congress exercises its constitutional control of the public purse. The fiscal principles underlying the ADA are relatively simple. Army officials may not make payments or commit the U.S. to make payments at some future time for goods or services unless there is currently enough money in the “bank” to cover the cost in full. The “bank,” of course, is an available appropriation.

2. Unfortunately, senior leaders who don’t understand or recognize ADA issues often violate the ADA while making a good faith attempt to accomplish their mission. Nevertheless, ADA violators subject themselves to both administrative and criminal sanctions. Senior leaders must understand basic ADA principles and be able to recognize ADA issues.

3. Key ADA principles.

a. First, don’t make or authorize payment or obligation under any appropriation if the money isn’t specifically available in the appropriation (unless specifically authorized by law).

1) Each year Congress appropriates money to DoD to conduct operations. These funds are further subdivided by a series of administrative controls. An “apportionment” is a formal subdivision that distributes amounts available in an appropriation into amounts available for specified time periods, activities, projects, and objects. In addition, formal and informal subdivisions are established within the Army, called “allocations” and “allowances,” respectively.

2) **PRACTICE TIP:** *The ADA often appears counterintuitive. Generally, senior leaders have broad discretion in performing their mission. Often, unless specifically prohibited from taking an action, senior leaders may take that action deemed necessary to accomplish their assigned mission. But this isn’t the case when spending appropriated funds. Rather than asking, “Where does it say I can’t spend these appropriated funds?” senior leaders must find affirmative authority for any expenditure of appropriated funds (i.e., they must find something that specifically says they can spend the funds for that purpose). The same rules usually apply both within the U.S. and when overseas. There are few “contingency” exceptions to the rules regarding the expenditure of funds.*

3) Generally, exceeding an apportionment or formal subdivision will result in an ADA violation. A Command does not violate the ADA when exceeding an informal subdivision, unless a higher headquarters is unable to “cure” the violation. Violations are “cured” by deobligating those amounts charged to the wrong appropriation and obligating the amounts to a proper appropriation. If an agency is unable to “cure” the violation, it will result in an ADA violation. For example, a command cannot “cure” a violation if it either: lacked any

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appropriation available for the object charged; or lacked sufficient budget authority in an otherwise available appropriation.

4) **PRACTICE TIP:** *The prohibition against exceeding an apportionment or formal subdivision is a commonly violated provision of the ADA. Senior leaders must be especially wary of any “innovative” attempt to complete a military construction project using OMA appropriations. Construction projects that exceed \$750,000 must typically be funded using MILCON appropriations. (There is limited statutory authority to use OMA appropriations for larger contingency construction projects, but this authority may be invoked only with prior approval from the Office of the Secretary of Defense and notification to Congress.) Because Commands most often have OMA appropriations at their disposal, they are often tempted to use such appropriations for construction projects. Thus, they violate the ADA by improperly splitting a single project into multiple projects in order in to circumvent the \$750,000 requirement, or attempt to complete a construction project using an existing service contract funded with OMA appropriations (e.g., LOGCAP contract). Because MILCON construction appropriations are limited, and for projects exceeding \$1,500,000, must be specifically specified by Congress, commands that improperly fund construction projects with OMA may cause an ADA violation because it is often impossible to cure the violation.*

b **Second, don’t incur an obligation before funds are appropriated for that purpose** (unless specifically authorized by law).

1) Most unit missions are funded with OMA appropriations, which are one-year appropriations. Thus, senior leaders must ensure that they and their subordinates do not spend money before they receive an annual appropriation for that purpose and those funds are apportioned to the Army. The apportionment may not occur until several days after an Appropriation Act is enacted. Do not prematurely expend funds based on the expectation that your command will receive the money in the future. Moreover, funds are generally available only to satisfy requirements that arise during their period of availability. Thus, if a command expends funds in a current fiscal year that should have been properly paid for with a future appropriation, this could cause an ADA violation.

2) **PRACTICE TIP:** *In recent years, Congress has occasionally failed to pass the annual Defense Appropriation Act before the fiscal year begins. Even where there is a continuing resolution authorizing the expenditure of funds to operate the government, such temporary appropriations are to fund on-going operations. Generally, this authority does not allow agencies to initiate new programs, or expand the scope of existing programs, projects, and activities.*

c. **Third, the Army cannot accept voluntary services or accept personal services** (unless specifically authorized by law). Although there are many exceptions to the prohibition against accepting voluntary services (e.g., emergencies involving the safety of human life or the

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protection of property, or voluntary services accepted to support family support programs), violating these prohibitions will cause an ADA violation.

PRACTICE TIP: *Given the current trends regarding the use of contractor employees in the government workplace, senior leaders should be wary about the manner in which government employees supervise contractor employees. A personal services contract is a contract that, by its express terms or as administered, makes contractor personnel appear to be, in effect, Government employees. If contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee, a personal services contract may be deemed to have been created. A determination whether a prohibited personal services contract has been created must be made on a case-by-case basis, but is characterized by the employer-employee relationship created between the Government and the contractor's personnel. The key question will always be: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract?*

4. Commanders must report suspected ADA violations within 15 days of discovery to HQDA Army (Flash Report) and thoroughly investigate the matter. The Secretary of Defense must report substantiated ADA violations to the President and Congress. Recent cases make clear that a suspected ADA violation may take considerable time to investigate and resolve. This will often delay the promotion and assignment confirmation process for senior officials, even where a suspected ADA violation is later determined to be unsubstantiated.

5. Last, and perhaps most important, it's essential that commanders seek input from their staff, especially the Legal Advisor, Resource Manager, and Contracting Officer, when making decisions about spending or obligating funds. Since commanders and other senior leaders are accountable for decisions they make involving the expenditure of appropriations, they should include the appropriate members of their staff in the decision making process and ensure their advisors know all the relevant facts necessary to properly advise the senior leader on how to proceed.