

VOLUME 14, CHAPTER 2: “ANTIDEFICIENCY ACT VIOLATIONS”**SUMMARY OF MAJOR CHANGES**

Changes are identified in this table and also denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [***bold, italic, blue and underlined font***](#).

The previous version dated [June 2020](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter has been certified as current.	Current

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CHAPTER 2

ANTIDEFICIENCY ACT VIOLATIONS

1.0 GENERAL

1.1 Purpose

This chapter explains the Antideficiency Act (ADA) and related funding statutes that consist of certain provisions of law prescribed in sections (§) of Title 31, United States Code (U.S.C.). It also provides examples of circumstances in which ADA violations may occur and establishes requirements to prevent ADA violations. Additional requirements are contained in Volume 3, Chapter 11. Any military member or Department of Defense (DoD) employee who violates any provision or limitation imposed by any law may violate the ADA and be subject to discipline and/or criminal penalties.

1.2 Authoritative Guidance

1.2.1. The ADA, prescribed in [31 U.S.C. §§ 1341–1342](#), and [31 U.S.C. § 1517](#), prohibits obligations and expenditures in excess of an appropriation or before an appropriation is available. 31 U.S.C. § 1517 is the primary foundation for the administrative control of funds set forth in Chapter 1. See Figure 2-3 for additional references.

1.2.1.1. Amount Limitation. 31 U.S.C. § 1341 stipulates that any officer or employee of the United States Government or of the District of Columbia government may not:

1.2.1.1.1. Make an obligation, expenditure, or authorize an obligation or expenditure of funds that exceeds the amount available in an appropriation or fund.

1.2.1.1.2. Involve the Government in any contract or obligation for the payment of money before an appropriation is made available, unless the law authorizes such contract or obligation.

1.2.1.2. Voluntary Services Limitation. 31 U.S.C. § 1342 stipulates that an officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services on behalf of the Government or employ personal services in excess of that authorized by law, except as it may be necessary in emergencies involving the safety of human life or the protection of property.

1.2.1.3. Administrative Control of Funds, Amount Limitation. 31 U.S.C. § 1517 stipulates that an officer or employee of the United States Government or of the District of Columbia government may not make an obligation or expenditure or authorize an obligation or expenditure that exceeds an apportionment or amount permitted by a regulation prescribed for the administrative control of an appropriation, including any other formal administrative subdivision of funds designated by a DoD Component. See Chapter 1 for DoD administrative control of funds policy.

1.2.2. [31 U.S.C. § 1301](#), [31 U.S.C. § 1502\(a\)](#), and [31 U.S.C. § 3302\(b\)](#) are additional funding statutes. Noncompliance with these statutes may result in an ADA violation.

1.2.2.1. Purpose Statute. 31 U.S.C. § 1301 stipulates that appropriations must be applied only to the objects for which the appropriations were made, except as otherwise provided by law.

1.2.2.2. Time Limitation. 31 U.S.C. § 1502(a) stipulates that the balance of a fixed-term appropriation is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made and obligated within that period. See Volume 3, Chapter 8 for obligation policy and Volume 3, Chapter 10 for expired and closed account policy.

1.2.2.3. Miscellaneous Receipts Statute. 31 U.S.C. § 3302(b) requires an official or agent of the Government to deposit money received for the Government from any source into the miscellaneous receipts account of the U.S. Treasury without deduction for any charge or claim if the retention of the money is not authorized or exceeds authorized levels.

1.2.3. If sufficient amounts were available in the proper account for the proper fiscal year at the time of the obligation, and the amount is properly recorded as an obligation, then the use of the wrong appropriation (purpose) or the wrong fiscal year funds (time limitation) generally will not result in an ADA violation. It may be possible to adjust the accounts to replace the erroneously obligated funds with the proper funds. Under these conditions, the error can and should be corrected.

1.2.3.1. The use of the wrong appropriation (purpose) can be corrected if the proper funds (appropriation, year, and amount) were available at the time of the erroneous obligation, available during the entire period from the time of obligation until the time of correction, and available at the time of correction. In other words, to correct the error, not only must amounts have been properly available at the time of the error and be available at the time of correction, but the correct amount must be properly recorded as an obligation in the proper account, consistent with paragraph 2.2, thereby requiring accounting adjustments going forward from the time of correction to account for the change in balance. Funds must be available at the lowest level of the administrative subdivision of funds, i.e., the lowest level of the appropriation, apportionment, allotment, suballotment, or allocation at which the ADA violation occurred.

1.2.3.2. The use of the wrong fiscal year funds (time limitation) can be corrected if the proper funds (appropriation, year, and amount) were available during the entire period from the time of obligation until the time of correction, at the time of the erroneous obligation, and at the time of correction. In other words, to correct the error, not only must amounts have been properly available at the time of the error and be available at the time of correction, but the correct amount must be properly recorded as an obligation in the proper account, consistent with paragraph 2.2, thereby requiring accounting adjustments going forward from the time of correction to account for the change in balance. Funds must be available at the lowest level of the administrative subdivision of funds, i.e., the lowest of the appropriation, apportionment, allotment, suballotment, or allocation level at which the ADA violation occurred.

1.2.3.3. See Volume 3, Chapter 8, paragraph 080304.A for Bona Fide Need recording requirements.

2.0 VIOLATIONS

2.1 General Violations

General ADA violations occur when:

2.1.1. Statutory limitation was exceeded for the amount authorized in an appropriation or fund, to include special and recurring statutory limitations or restrictions on the amounts for which an appropriation or fund may be used.

2.1.2. Statutory limitation on the purposes authorized in an appropriation or fund was violated and upon correction into the proper appropriation or fund, funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper appropriation or fund.

2.1.3. Funding authority was issued in excess of the amount available in an appropriation or fund and the excess amount was obligated or expended. The issuance of funds by means of a formal administrative subdivision of funds (apportionment, allotment, suballotment, allocation or other formal administrative subdivision of fund), in an amount that exceeds the amount currently available, would result in an ADA violation if those excess funds distributed are obligated or expended. The issuance of a reimbursable order in excess of available funds may also result in an ADA violation.

2.1.4. Obligations or expenditures are authorized or incurred in excess of the amount of funds available at the formal administrative subdivision of funds level. Apportionments, allotments, suballotments, allocations and other formal administrative subdivision of funds designated by a DoD Component are subject to the provisions of the ADA; therefore, obligations and disbursements of funds that exceed these limitations are violations of the ADA. Incurring an obligation or disbursement in excess of a target versus a formal administrative subdivision of funds does not in itself create an ADA violation; however, if exceeding a target causes the governing formal administrative fund subdivision level or limitation to be breached, then a potential ADA violation arises. Errors that require correction by obtaining additional funds at a formal administrative subdivision of fund level cannot eliminate the fact that a violation likely has occurred and must be investigated. An exception applies when funds are required at the formal administrative subdivision level but funds were returned to higher headquarters as the result of the customary practice of sweeping up funds near the end of a fiscal year.

2.1.5. Obligations were made or authorized in advance of funds being available.

2.1.6. Obligations or expenditures of funds did not provide for a bona fide need of the fund or account (time violation) and upon correction into the proper fund or account, proper funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper fund or account.

2.1.7. Obligations charged against a current account that would otherwise be properly chargeable (except as to amount) to an expired account, but sufficient funds did not exist in the applicable expired account to fund the obligation.

2.1.8. Obligations that otherwise would have been properly chargeable (both as to purpose and amount) to a canceled appropriation exceeds the limits specified in Volume 3, Chapter 10, subparagraph 100303.D.

2.1.9. Voluntary services were accepted, or personal services were employed, except as authorized by law.

2.1.10. Funds were retained without authority and were not deposited into the miscellaneous receipts of the U.S. Treasury but instead augmented an appropriation and, as a result, obligations or expenditures exceed the amount appropriated by Congress.

2.2 Recording Obligations/Expenditures

A violation may not be avoided by declining to record valid obligations or expenditures in the official accounting records. All obligations or expenditures must be recorded accurately and promptly, even if the recording results in a negative amount in the appropriation, fund, or at the formal administrative subdivision of funds level.

2.3 Recording Errors/Omissions

An ADA violation is not considered to have occurred when an over-obligation or over-expenditure results solely from recording a transaction in an erroneous account or recording an incorrect amount for a transaction. In each instance, the potential violation status is eliminated by correcting the erroneous transaction or by posting the omitted transaction. These actions must not include the deletion or adjustment of any valid transactions. If, after the proper recording of the transactions, an over-obligation or expenditure of the appropriation, fund or amount limited by a formal administrative subdivision of funds remains, then a potential ADA violation has occurred.

3.0 CAUSES OF VIOLATIONS

ADA violations occur for several reasons. The following is a list of the most frequent causes of DoD ADA violations:

- 3.0.1. Inadequate or obsolete internal controls and standard operating procedures;
- 3.0.2. Internal controls and standard operating procedures that are ignored;
- 3.0.3. Lack of appropriate training; and
- 3.0.4. Inadequate supervisory involvement or oversight.

4.0 PREVENTING VIOLATIONS

4.1 Requirements

Inadequate supervisory involvement and oversight combined with a lack of appropriate training are common throughout most DoD ADA violations. Therefore, supervisors of DoD personnel who have responsibility for control and use of DoD funds must ensure that their personnel receive proper oversight, support, and training to prevent violations. To assist in the prevention of ADA violations, DoD personnel must be knowledgeable of requirements in this chapter and Chapter 1. The following subparagraphs provide specific actions that must be taken to reduce or prevent violations.

4.1.1. Heads of DoD Components must:

4.1.1.1. Use the internal management control programs as required by [*DoD Instruction 5010.40*](#), “Managers’ Internal Control Program Procedures,” to periodically assess the reliability of internal controls to prevent ADA violations.

4.1.1.2. Develop a full spectrum of DoD formal education programs for all military officers, from staff officer courses to executive development courses, and incorporate relevant aspects of this volume to highlight the potential pitfalls and risks associated with the ADA. This volume must be used as source material to conduct seminars and workshops targeted to general and specific audiences including financial, program, and project managers; engineers; contracting, information system, and comptroller personnel; commanders; supervisors; and managers.

4.1.1.3. Develop formal education structures to educate personnel about the ADA. Formal courses can be used to alert personnel to common violations and high-risk business transactions and decisions that can result in a violation. Course materials will clearly state that taxpayer funds should not be spent when the requirement is no longer needed, i.e., the requirement is no longer a bona fide need at that time. The DoD financial management community sponsors professional development courses that include discussions on ADA violations. These courses include the Army Comptroller and Advanced Resource Management Programs at Syracuse (NY) University; the Naval Post Graduate School at Monterey, California; and the Defense Financial Management and Comptroller School at Maxwell Air Force Base, Alabama. In addition, the U.S. Army Judge Advocate General School at Charlottesville, Virginia, includes a fiscal law course in its curriculum; and both the Enhanced Defense Financial Management training course hosted by the American Society of Military Comptrollers and the Under Secretary of Defense (Comptroller) Defense Financial Management Certification Program include fiscal law in their accreditation programs.

4.1.2. DoD commanders, supervisors, and managers must:

4.1.2.1. Be aware of the ADA, related funding statutes, types of violations, and causes of violations as described in this chapter.

4.1.2.2. Provide appropriate ADA training to financial, program, and project managers; engineers; and contracting, information system, and comptroller personnel. Provide fiscal law training to educate DoD personnel with regard to their fiduciary and legal responsibilities to prevent wasteful spending of appropriated funds. The focus of this training must include the basics of fund control, the ADA statute, and related funding statutes; the types of violations that can occur; the most frequent types of violations that occur within the DoD and their causes; the necessary training, supervision, and oversight of personnel who perform financial management or programmatic functions; and methods for preventing violations. Require that all executive development and financial management course content be updated to ensure proper use and good stewardship of appropriated funds. The training must be maintained to ensure the information remains current. Videos, computer courses or handbooks may be used for such training.

4.1.2.3. Identify key fund control personnel, incorporate the provisions of this volume into key fund control personnel training programs, require that key fund control personnel receive appropriations law training at least every three years, maintain the documents that identify key fund control personnel, and maintain documents that confirm completion of the appropriations law training. Key fund control personnel are those responsible for the proper assignment of funding on a commitment or obligation document before the obligation is incurred. Examples are resource managers, fund holders, funds certifying officials, and authorizing officials. Key fund control personnel should inquire with their individual DoD Components as to the appropriate source of training that satisfies this requirement. Appropriations law training requirements for certification of fund availability are separate from training requirements for certification for payment. Personnel that certify vouchers for payment must adhere to additional requirements as prescribed in Volume 5, Chapter 5.

4.1.2.4. Ensure key fund control personnel coordinate with requiring officials, such as program managers, contracting officers, and engineers, to verify that requests comply with funding statutes applicable to the assignment of funding on a commitment or obligation document before the obligation is incurred. This coordination should include ensuring delivery of supplies and/or the period of performance for services aligns with the lifecycle of the associated funds such that the obligation meets the bona fide need rules laid out in Volume 3, Chapter 8, subparagraph 080304.A. Key fund personnel must review and verify on a continuous basis that the goods and/or services are still needed. Key fund control personnel must not spend taxpayer funds when goods and/or services are no longer needed.

4.1.2.5. Ensure that their employees receive the necessary training and experience in the control and use of funds at levels that correspond with their responsibilities. Furthermore, supervisors must perform oversight and validation checks to ensure that established internal controls and standard operating procedures are adequate and are being consistently followed by their subordinates. Inadequate supervisory involvement or oversight combined with lack of appropriate training is common in DoD ADA violations.

4.1.2.6. Ensure regular reviews of fund status type reports are performed. If the amount of commitments and obligations (undelivered orders and delivered orders unpaid or paid) exceed the total amount available in an appropriation or the total amount of funds available at the formal administrative subdivision level, a violation could occur if all or some of the commitments eventually become valid obligations.

4.1.2.7. Take proactive measures specifically tailored to address the causes and corrective actions required to prevent violations. See section 3.0 for causes of violations.

4.2 Common Violations

To prevent ADA violations, DoD personnel must be knowledgeable of the most common and frequent types of ADA violations to include the following:

4.2.1. Exceeding an Appropriation.

4.2.1.1. All DoD commanders, managers, and personnel whose duties include obligating and/or managing funds must be aware of this type of violation and causal factors. This violation often occurs when obligations from an obligation document are not timely or accurately recorded thus causing the official accounting records to reflect an inflated (and incorrect) availability of funds. Since personnel use those records to certify funds are available for other obligations, a violation can easily occur because the records do not reflect the correct amount of funds available for obligation. This violation also occurs when obligations are charged against a current account that would otherwise be properly chargeable (except as to the amount) to an expired account, but sufficient funds do not exist in the applicable expired account to fund the obligation.

4.2.1.2. This type of potential violation is commonly discovered when an unmatched disbursement is recorded in the accounting system when correcting inaccurately recorded obligations, or when a reprogramming action requests additional funds for an expired account. To help prevent this type of violation, DoD funds managers (for example, Comptrollers) must require that all organizations that incur obligations and record obligations maintain strict and absolute positive controls over-obligating documents (or their electronic equivalents) to ensure that none are lost or misplaced and all transactions are recorded accurately and in a timely manner. Such controls include batch totals of transactions and dollar amounts incurred, transmitted, received, processed, and recorded.

4.2.1.3. The establishment of a funds control system is also essential to ensure that all obligations are reconciled properly against available funds and authorized before they are incurred. This process must include reserving available funds for authorized obligations that are not immediately recorded as an obligation. The reservation must be made by means of a formal commitment or an informal reservation record that contains an estimated amount. The documented estimated reservation must closely approximate the obligation when incurred and recorded. Also, when recording estimated obligations, it is important to record the initial obligation based on the most current data available and adjust the estimated obligations as conditions change to avoid making an obligation or expenditure that exceeds the amount available in an appropriation or fund.

4.2.2. Exceeding Statutory Limitations on the Use of Operations and Maintenance Funds.

4.2.2.1. Military Construction. To prevent an ADA violation, engineering and contracting personnel must be advised of the provisions of [10 U.S.C. §§ 2801–2802](#), and [10 U.S.C. § 2805](#); and DoD rules and regulations that cover minor construction projects. Engineering personnel and those who authorized the construction are frequently identified responsible for violations involving construction projects exceeding statutory construction limitations and administrative construction limitations placed in engineering regulations. The following is a brief summary of some of the provisions of 10 U.S.C. §§ 2801, 2802, and 2805; and DoD rules and regulations on minor projects.

4.2.2.1.1. Congress establishes by statute, the amount of Operations and Maintenance (O&M) funds that may be used for a minor construction project. From time to time, that limit is increased by Congress. If the specified limit is exceeded, Military Construction funds must be used for the entire project including planning and design. A violation of [31 U.S.C. § 1341\(a\)\(1\)\(A\)](#) may occur when the limitation is exceeded. The limitation applies to the use of O&M funds for a minor construction project even though there is sufficient obligational authority available in the O&M account at the time that the project is authorized and approved.

4.2.2.1.2. A military construction project includes all work necessary to produce a complete and usable facility, or a complete and usable improvement to an existing facility under provisions of 10 U.S.C. § 2801(b). Incremental construction, which is the planned acquisition of, or improvement to, a real property facility through a series of minor construction projects is prohibited. See Volume 3, Chapter 17 for military construction project requirements.

4.2.2.1.3. Engineering and contracting personnel must be familiar with the statutory limitation, under the provisions of [10 U.S.C. § 2825](#), on the maintenance and repair funds that may be used for a family housing unit. That limit may not be exceeded without prior notification to Congress. When that limit is exceeded for any reason during the completion of a family housing maintenance and repair project, and the conditions specified in the law for a waiver of the statutory limitations have not been met, a violation of 31 U.S.C. § 1341(a)(1)(A) may occur.

4.2.2.1.4. The misclassification of construction costs as alterations by engineering personnel may result in an ADA violation. A potential violation may occur if the amount of the misclassification, when added to construction costs (if any), exceeds a statutory limitation. For example, an engineering project that has a minor construction cost close to the statutory limit, but which also has related maintenance and repair costs, could cause a violation of the statutory limit if the maintenance and repair work later is proven to be construction. Likewise, a maintenance and repair project exceeding the statutory construction limit could be a potential ADA violation if the maintenance and repair later is determined to be construction.

4.2.2.2. Equipment.

4.2.2.2.1. Congress designates an amount above which acquisitions of equipment must be funded from a procurement fund (expense versus investment threshold rule). Using O&M funds to acquire equipment items that exceed the designated threshold amount for the mandatory use of procurement funds could be a potential ADA violation. For instance, O&M funds are used to purchase a computer system when Other Procurement funds are required. Expense versus investment criteria is in Volume 2A, Chapter 1, paragraph 010212 and Volume 2B, Chapter 18.

4.2.2.2.2. Similar problems also frequently occur when acquiring low dollar value equipment items that are estimated to cost less than the congressionally designated amount for procurement funds, but actually cost more than that amount when acquired.

4.2.2.2.3. An ADA violation does not occur automatically in the situations outlined in subparagraphs 4.2.2.2.1 and 4.2.2.2.2 because the obligation can be moved from the O&M account to the applicable procurement account. If proper funds were available in the proper procurement account at the time of the erroneous obligation of O&M funds and funds are available when the obligation is recorded in the procurement account, including all other known valid obligations and deobligations, then a potential ADA violation has not occurred. However, if proper procurement funds were not available at the time of the erroneous obligation or were not available when the obligation is recorded in the procurement account to cover the obligation in the procurement account, a potential ADA violation may have occurred.

4.2.2.2.4. DoD decision makers, such as program managers, information systems managers, and contracting personnel, must be knowledgeable of the expense versus investment rules to prevent this type of violation. Program managers and information systems, contracting, and comptroller personnel must be trained on this issue. Such training should help reduce the incorrect application of the expense versus investment rule and the resulting ADA violations.

4.2.3. Exceeding a Formal Administrative Subdivision of Funds. If a formal administrative subdivision of funds level is exceeded, then a potential violation must be reported. The receipt of additional funds before the end of a reporting period does not mitigate a limitation violation or eliminate the potential violation reporting requirement as specified in Chapter 3. Also, failure to record a valid obligation or expenditure as of the date incurred does not avoid the incurrance of, and the requirement to report, a potential ADA violation if, upon recordation,

available funds in the appropriation fund or other formal administrative fund subdivision level are exceeded. For example, the Military Departments historically have experienced problems with over-obligated Reserve Component (RC) personnel accounts. Funds in these accounts are used to pay RC personnel for such items as weekend drills, travel, special tours, or other training. RC unit commanders who control a formal administrative subdivision of funds level are subject to the ADA and must, in advance of the incurrence and recording of these obligations, budget and reserve against available funds the amounts estimated for weekend drills and other scheduled training.

4.2.4. Obligating Funds in Advance of Availability.

4.2.4.1. A common scenario is the use of current year funds to procure goods or services that properly are funded only with a subsequent year appropriation. An ADA violation occurs when an individual obligates funds before those funds are authorized and appropriated by Congress. For example, signing a facility or equipment operating lease using one-year authority funds and agreeing to pay, or obligating the funds, for a two-year lease during the first year would constitute an obligation in advance of the availability of the funds for the amount associated to the second year of the lease. Similarly, agreeing to pay or obligating the funds for a two-year equipment maintenance agreement using one-year authority funds would constitute an ADA violation related to the amount associated with the second year of the agreement.

4.2.4.2. To help prevent this type of violation, training programs must include specific focus on the importance of ensuring funds are authorized and available before obligating the Government to contracts for future fiscal years' expenses.

4.2.4.3. For guidance on determining whether a violation may be properly corrected, see subparagraph 1.2.3.

4.2.5. Providing Funds to Servicing Agencies Before or Past the Period of Availability.

4.2.5.1. A common scenario occurs when funds cited on an Economy or non-Economy Act order do not meet the bona fide need arising or existing in the fiscal year (or years) for which the appropriation is available for obligation. When an erroneous obligation is moved to the applicable fiscal year and proper funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper fund or account, a potential ADA violation may have occurred.

4.2.5.2. To prevent this type of ADA violation, DoD personnel with the responsibility to control the use and type of funds used must be aware of the fiscal limitations of providing funds to servicing agencies before or past the period of availability. See specific policy for Economy Act orders in Volume 11A, Chapter 3, section 0304; and non-Economy Act orders in Volume 11A, Chapter 18, sections 1802 and 1803.

4.2.6. Retaining Funds Without Authority.

4.2.6.1. This violation often occurs when funds are retained without authority and are not deposited into the miscellaneous receipts of the U.S. Treasury but instead augments an appropriation and, as a result, obligations or expenditures exceed the amount appropriated by Congress.

4.2.6.2. This violation is often discovered when new personnel arrive and raise concerns over accepting and retaining unauthorized funds. Therefore, it is essential that DoD decision makers, such as DoD Commanders and Comptrollers, are knowledgeable of this type of violation and that financial managers be trained on this issue and understand the authority related to funds under their control to preclude augmenting an appropriation.

Figure 2-1. Potential Violations

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE SECTION
Any military member or DoD employee:	1. Makes or authorizes an obligation or expenditure that exceeds: a. The available amount of any appropriation or fund.	1341(a)(1)(A)
	b. Any statutory restriction imposed on the use of an appropriation or fund, such as limits on the use of O&M funds for unspecified minor construction or for purchase of investment items.	1341(a)(1)(A)
	c. The available amount of any apportionment or reapportionment.	1517(a)(1)
	d. The available amount of any formal administrative subdivision.	1517(a)(2)
	e. Any limitation imposed by an authorized official of the DoD or a DoD Component that is intended to restrict obligations of apportioned appropriations or funds.	1517(a)(2)
	2. Involves the Government in any contract or other obligation for the payment of money for any purpose before appropriations are made for such purposes, unless the law authorizes such contract or obligation.	1341(a)(1)(B)
	3. Makes or authorizes an obligation or expenditure against an appropriation account that was closed pursuant to 31 U.S.C. §§ 1552 or 1555 or the period prescribed in an appropriations act for making expenditures as authorized by 31 U.S.C. § 1557.	1341(a)(1)(A)
	4. Accepts voluntary service or employs personal service in excess of that authorized by law except in cases of emergency involving the safety of human life or the protection of property.	1342

Figure 2-1. Potential Violations (continued)

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE SECTION
Any military member or DoD employee:	5. Expends a working capital (revolving) fund established under 10 U.S.C. § 2208 in excess of amounts available in Fund Balance with Treasury whether apportioned or not. (Recurring provisions of annual DoD Appropriations Acts that establish cash balances (Fund Balance with Treasury) in working capital funds may be maintained only in such amounts as are necessary at any time for cash disbursements to be made from such funds. This provision allows working capital funds to incur liabilities in excess of available fund balances with Treasury.)	1341(a)(1)(A)
	6. Obligates a working capital (revolving) fund established under 10 U.S.C. § 2208 or a part of the fund, whether subject to or exempt from apportionment, in excess of the available amount.	1517(a)(1)
	7. Obligates a working capital (revolving) fund established under 10 U.S.C. § 2208 in excess of the available amount of budgetary resources.	1517(a)(2)
In Fund Distribution:	1. Total allotments, or operating budget authorities for O&M type funds exceed the amount available for each apportionment period.	1517(a)(1)
	2. Total suballotments, allocations, or operating budget authorities, and centrally managed accounts (CMAs) exceed the amount of the allotment or operating budget authority for each period.	1517(a)(2)
	3. Total allocations or operating budget authorities and CMAs exceed the amount of the available suballotment.	1517(a)(2)
	4. Total suballocations exceed the amount of the allocation.	1517(a)(2)

Figure 2-2. Violation Examples

A. GENERAL. Most of the examples described in items B – D are taken from actual violations that occurred within DoD. However, these violations are fact specific and in other circumstances a potential violation may or may not be incurred. These examples are supplied for information only and are not intended to imply that in all similar but not identical circumstances a violation would have been incurred.

B. TITLE 31, UNITED STATES CODE, SECTION 1341

1. 31 U.S.C. § 1341(a)(1)(A)

a. Obligated O&M funds for site preparation construction costs on a relocatable building project. The project was incorrectly scoped into multiple projects and the cumulative costs of the construction exceeded the minor construction threshold and should have been authorized by Congress and funded with military construction funds. This unauthorized obligation of O&M funds instead of military construction funds resulted in a violation.

b. Obligated O&M and Working Capital funds on a single military construction project. The project amount exceeded the minor construction statutory limitation and resulted in a violation. The Government Accountability Office takes the position that a violation of a funding restriction in an authorizing statute (such as 10 U.S.C. § 2805) results in a violation of the ADA (31 U.S.C. § 1341). The use of funds to finance the project is not consistent with the authorized purpose of the appropriation and resulted in an incurable violation of the “purpose statute” (31 U.S.C. § 1301).

Note: Although the circumstances described herein constitute a violation of 10 U.S.C. §§ 2802(a) and 2805(b), the Department of Justice (DOJ) Office of Legal Counsel (OLC) has concluded that “a violation of a statutory restriction on spending does not violate the ADA where the restriction is not ‘in an appropriation.’” See also: DOJ OLC opinion, “Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences,” April 5, 2007 (online at: <http://www.justice.gov/sites/default/files/olc/opinions/2007/04/31/epa-light-refreshments13.pdf>); and DOJ OLC letter, “Re: Whether the Federal Aviation Administration’s Finalizing and Implementing of Slot Auction Regulations Would Violate the Anti-Deficiency Act,” October 7, 2008.

c. Obligated O&M funds rather than Procurement funds for recapitalization of a system and Procurement funds were not available when the obligation was recorded which resulted in a violation.

Figure 2-2. Violation Examples (continued)

d. Failure to promptly record valid obligations in a reserve personnel appropriation resulted in valid obligations that exceeded the available amount in the appropriation and resulted in a violation

2. 31 U.S.C. § 1341(a)(1)(B)

a. Obligated O&M funds in advance of the appropriation when a 14 month severable services contract was awarded that exceeded the 12 month limit set forth in section 10 U.S.C. § 2410a, and resulted in a violation.

b. Obligated O&M funds for two and four year severable equipment leases in advance of an appropriation which resulted in a violation.

c. Obligated O&M funds for equipment with phased deliveries into subsequent fiscal years in advance of an appropriation which resulted in a violation.

C. TITLE 31, UNITED STATES CODE, SECTION 1342

Apparently, at the urging of the Chairman, a member of a Federal Commission agreed to waive his statutory entitlement to \$100 per day while involved in Commission business. The year after the Commission was disbanded, the former member changed his mind and filed a claim for a portion of the compensation he would have received had it not been for the waiver. Since the \$100 per day was a statutory entitlement, the purported waiver was invalid and the former commissioner was entitled to be paid. By accepting the waiver and allowing the commissioner to conduct Commission business without pay, the provision against acceptance of voluntary services was violated and a violation of the ADA occurred.

D. TITLE 31, UNITED STATES CODE, SECTION 1517

1. Obligated O&M funds in excess of the Continuing Resolution Authority allocation which resulted in a violation.

2. Obligated O&M funds for information technology equipment in excess of the investment threshold. When correction was made, Procurement funds were not available at the suballotment level which resulted in a violation.

Figure 2-2. Violation Examples (continued)

3. A DoD activity used O&M funds, rather than Other Procurement funds to purchase a data processing local area network (LAN). Even though the hardware components and LAN operating system software were purchased separately, the components and the software together constituted a system with an aggregate cost in excess of the expense/investment threshold specified by the Congress for the required use of procurement appropriation funds. A violation occurred because the DoD activity did not have the required amount of Other Procurement funds at the time of the purchases.
4. A funds holder at a formal administrative subdivision of fund level erroneously distributed more funds than available at the subdivision level. The activities receiving the funds incurred obligations and expenditures in excess of amounts available to the fund holder but below the amount distributed. The funds holder incurred an ADA violation because the obligations and expenditures exceeded the total amount in the formal administrative subdivision of funds.

Figure 2-3. Reference Hyperlinks

Office of Management and Budget [\(OMB\) Circular A-11](#), “Preparation, Submission, and Execution of the Budget”

U.S. Government Accountability Office [Principles of Federal Appropriations Law](#) (Red Book)

United States Code (U.S.C.) title and section:

U.S.C. Section	Title
2 U.S.C. § 681	Disclaimer
2 U.S.C. § 682	Definitions
2 U.S.C. § 683	Rescission of Budget Authority
2 U.S.C. § 684	Proposed Deferrals of Budget Authority
2 U.S.C. § 685	Transmission of Messages; Publication
2 U.S.C. § 686	Reports by Comptroller General
2 U.S.C. § 687	Suits by Comptroller General
2 U.S.C. § 688	Procedure in House of Representatives and Senate
5 U.S.C. § 1304	Loyalty Investigations; Reports; Revolving Fund
10 U.S.C. § 2201	Apportionment of Funds; Authority for Exemption; Excepted Expenses
10 U.S.C. § 2204	Obligation of Appropriations
10 U.S.C. § 2208	Working-Capital Funds
10 U.S.C. § 2410a	Severable Service Contracts for Periods Crossing Fiscal Years
10 U.S.C. § 2805	Unspecified Minor Construction
10 U.S.C. § 2825	Improvements to Family Housing Units
18 U.S.C. § 4124	Purchase of Prison-Made Products by Federal Departments

Figure 2-3. Reference Hyperlinks (continued)

U.S.C. Section	Title
<u>31 U.S.C. § 1104</u>	Budget and Appropriations Authority of the President
<u>31 U.S.C. § 1105</u>	Budget Contents and Submission to Congress
<u>31 U.S.C. § 1106</u>	Supplemental Budget Estimates and Changes
<u>31 U.S.C. § 1107</u>	Deficiency and Supplemental Appropriations
<u>31 U.S.C. § 1108</u>	Preparation and Submission of Appropriations Requests to the President
<u>31 U.S.C. § 1112</u>	Fiscal, Budget, and Program Information
<u>31 U.S.C. § 1301</u>	Application
<u>31 U.S.C. § 1321</u>	Trust Funds
<u>31 U.S.C. § 1341</u>	Limitations on Expending and Obligating Amounts
<u>31 U.S.C. § 1342</u>	Limitation on Voluntary Services
<u>31 U.S.C. § 1349</u>	Adverse Personnel Actions
<u>31 U.S.C. § 1350</u>	Criminal Penalty
<u>31 U.S.C. § 1351</u>	Reports on Violations
<u>31 U.S.C. § 1501</u>	Documentary Evidence Requirement for Government Obligations
<u>31 U.S.C. § 1502</u>	Balances Available
<u>31 U.S.C. § 1511</u>	Definition and Application
<u>31 U.S.C. § 1512</u>	Apportionment and Reserves
<u>31 U.S.C. § 1513</u>	Officials Controlling Apportionments
<u>31 U.S.C. § 1514</u>	Administrative Division of Apportionments
<u>31 U.S.C. § 1515</u>	Authorized Apportionments Necessitating Deficiency or Supplemental Appropriations
<u>31 U.S.C. § 1516</u>	Exemptions

Figure 2-3. Reference Hyperlinks (continued)

U.S.C. Section	Title
<u>31 U.S.C. § 1517</u>	Prohibited Obligations and Expenditures
<u>31 U.S.C. § 1518</u>	Adverse Personnel Actions
<u>31 U.S.C. § 1519</u>	Criminal Penalty
<u>31 U.S.C. § 1531</u>	Transfer of Functions and Activities
<u>31 U.S.C. § 1552</u>	Procedure for Appropriation Accounts Available for Definite Periods
<u>31 U.S.C. § 1553</u>	Availability for Appropriation Accounts to Pay Obligations
<u>31 U.S.C. § 1555</u>	Closing of Appropriation Accounts Available for Indefinite Periods
<u>31 U.S.C. § 1557</u>	Authority for Exemptions in Appropriation Laws
<u>31 U.S.C. § 3302</u>	Custodians of Money
<u>31 U.S.C. § 3324</u>	Advances
<u>31 U.S.C. § 3512</u>	Executive Agency Accounting and Other Financial Management Reports and Plans
<u>31 U.S.C. § 3524</u>	Auditing Expenditures Approved without Vouchers
<u>33 U.S.C. § 576</u>	Revolving Fund; Establishment; Availability; Reimbursement; Transfer of Funds; Limitation
<u>41 U.S.C. § 6301</u>	Authorization Requirement