

CHAPTER 1. THE ANTIDEFICIENCY ACT

TABLE OF CONTENTS

1.1 OVERVIEW..... 1-1

1.2 POLICY..... 1-1

1.3 AUTHORITIES AND REFERENCES..... 1-1

1.4 ROLES AND RESPONSIBILITIES. 1-2

1.5 DEFINITIONS. 1-3

1.6 ADA REQUIREMENTS..... 1-4

1.7 ADMINISTRATIVE REQUIREMENTS. 1-4

1.8 OTHER LEGAL REQUIREMENTS..... 1-4

1.9 LEGAL QUESTIONS. 1-4

1.10 PENALTIES. 1-5

1.11 REPORTING REQUIREMENTS..... 1-5

CHAPTER 1. THE ANTIDEFICIENCY ACT

1.1 OVERVIEW.

1.1.1 All federal funding is subject to the Antideficiency Act (ADA), one of the major laws through which Congress exercises constitutional control over the public funds. Yet, the number of ADA violations reported in the federal government continues to increase. The purpose of this volume is to set forth NASA policy with regard to the requirements imposed by the ADA and similar laws and to emphasize the importance of complying with their provisions.

1.2 POLICY.

1.2.1 All NASA personnel, including contractors that support NASA obligation and expenditure activities, shall comply with the provisions of the ADA and other laws affecting the use of federal funds, regardless of the funding source.

1.3 AUTHORITIES AND REFERENCES.

1.3.1 Legislation and Regulations.

- A. The National Aeronautics and Space Act of 1958, Public Law 85-568 (Title 42, United States Code (U.S.C.), Chapter 26). This law, referred to as The Space Act, established NASA as a Federal agency, outlining the objectives of United States aeronautical and space activities and authorizing NASA to enter into activities which require financial support functions subject to ADA requirements, such as contracting, hiring employees, constructing facilities, and accepting gifts and donations.
- B. Title 31, United States Code (U.S.C.).
 1. Section 1301(a). This section requires that appropriations be used for their intended purposes.
 2. Sections 1341(a)(1)(A) and (B), 1342, and 1517(a) (part of the ADA, as amended). These sections prohibit obligations or expenditures in excess of available funds, involving the government in any contract or other obligation in advance of appropriations unless authorized by law, and accepting voluntary services or employing personnel in excess of that authorized by law except under certain specific conditions.
 3. Sections 1349(a), 1350, 1518, and 1519. These sections set forth adverse personnel actions and criminal penalties for violations of Sections 1341(a), 1342, and 1517(a).
 4. Sections 1351 and 1517(b). These sections require that any violation of Sections 1341(a), 1342, and 1517(a) be reported immediately to the President and Congress with all relevant facts and a statement of actions taken.

5. Section 1502(a) (the “*bona fide* needs” statute). This section requires that appropriations made for a definite period of time be used only for expenses properly incurred or to complete contracts properly made and obligated during that time. Certain limited legal exceptions may apply.
 6. Section 1514(a). This section requires that the agency prescribe by regulation a system of administrative control not inconsistent with legal accounting procedures to restrict obligations and expenditures to the amounts available and enable the head of the agency to establish responsibility for any overobligations and overexpenditures.
 7. Section 3302(b) – Custodians of Money. An official or agent of the U.S. Government receiving money on behalf of the Government shall deposit all funds received in the Treasury without deduction for charge or claim.
- C. Office of Management and Budget (OMB) Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, Part 4, “Instructions on Budget Execution.” Part 4 of this Circular provides guidance on budget execution, including fund control (e.g., appropriation, reappropriation, funds distribution, and ADA requirements) and reporting requirements in the event of an ADA violation.

1.3.2 NASA Policy and References.

- A. NASA Policy Directive (NPD) 9050.3F, “Administrative Control of Appropriations and Funds.” This NPD states NASA’s goal to ensure the responsible administration of all funds through the use of Fund control Regulations.
- B. Financial Management Requirements, Volume 5, *Budget Execution*. This volume provides Agency guidance for controlling and executing funds throughout the Agency.

1.4 ROLES AND RESPONSIBILITIES.

- 1.4.1 Any individual with knowledge of a potential ADA or administrative violation shall notify the Center Chief Financial Officer (CFO), if at the Center level; the Agency Deputy CFO (DCFO), if at the Headquarters level; or the Deputy Inspector General (DIG), if in that office, of any potential fund control violation, either statutory or administrative, immediately upon discovery.
- 1.4.2 The Center CFO, Agency DCFO, or Deputy IG shall then take action in accordance with the requirements set forth in this volume.
- 1.4.3 The roles and responsibilities for ensuring ADA and administrative fund control compliance during the budget execution process are defined in FMR Volume 5.

1.5 DEFINITIONS.

- 1.5.1 Agency Limitations. Any limitation placed upon delegated budget authority with NASA with regard to time, purpose, and amount.
- 1.5.2 Administrative Division or Subdivision of Funds. The formal administrative distribution/delegation of budget authority below the apportionment level.
- 1.5.3 Allotment and Suballotment. The formal administrative division, and subdivision when used, of budget authority delegated to incur obligations within a specific amount pursuant to OMB apportionment or reapportionment action or other statutory authority making funds available for obligation. Making or authorizing an overobligation or overexpenditure of an allotment or suballotment is a violation of the ADA, which must be reported.
- 1.5.4 Apportionment/Reapportionment. A distribution or change to distribution of amounts available for obligation in an appropriation or fund account into amounts available for specified time periods, program, activities, projects, objects, or any combinations of these. Amounts must be apportioned by OMB prior to obligation. The apportioned amount limits the obligations that may be incurred. An apportionment may be further subdivided by an agency into allotments, suballotments, and allocations. Overobligation or overexpenditure of an apportionment is a violation of the ADA, which must be reported.
- 1.5.5 Appropriation. A provision of law authorizing the expenditure of funds for a given purpose, usually, but not always, in an appropriations act.
- 1.5.6 Budget Authority. The authority provided by law to incur financial obligations that will result in outlays. Specific forms of budget authority include appropriations, borrowing authority, contract authority, and spending authority from offsetting collections.
- 1.5.7 Contract. A mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds. Contracts include (but are not limited to) awards; job orders or task letters issued under basic ordering agreements; letter contracts; purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.
- 1.5.8 Expenditure. Amounts paid by cash or cash equivalent (such as checks and electronic transfers) to liquidate government obligations.
- 1.5.9 Obligation. Any act that legally binds the Government to make an outlay or expenditure of funds immediately or in the future; a "bona fide" need must exist and funds must be available, apportioned, and distributed before creating an obligation for it to be legal.

1.6 ADA REQUIREMENTS.

- 1.6.1 The ADA primarily effects control by imposing constraints. Some of the prohibitions imposed by Congress in the ADA are:
- A. Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law.
 - B. Involving the government in any contract or other obligation for the payment of money for any purpose in advance of appropriations made for such purpose, unless the contract or obligation is authorized by law.
 - C. Accepting voluntary services for the United States, or employing personal services in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property.
 - D. Making obligations or expenditures in excess of an apportionment or reapportionment, or in excess of the amount permitted by agency regulations.

1.7 ADMINISTRATIVE REQUIREMENTS.

- 1.7.1 An administrative requirement on funds includes internal policy concerning the use of Federal funds and funding controls below the suballotment level. An administrative control violation does not violate the ADA unless it results in one or more of the situations identified in Section 1.6.1.

1.8 OTHER LEGAL REQUIREMENTS.

- 1.8.1 Several laws other than the ADA also affect the use of Government funds. Additional restrictions include:
- A. Appropriations may be used only for their intended purposes.
 - B. Appropriations made for a definite period of time may be used only for payment of expenses properly incurred or to complete contracts properly made and obligated during that time, i.e., there must be a “*bona fide* need” during the period of availability.
 - C. Unless authorized by law, money received from sources other than congressional appropriations must be deposited in the Treasury.

1.9 LEGAL QUESTIONS.

- 1.9.1 Any questions regarding the application of the ADA or related laws to a particular transaction should be referred to the Office of Chief Counsel at field Centers; the Office of General Counsel at Headquarters; or the Counsel to the Inspector General (IG), if in that office.

1.10 PENALTIES.

1.10.1 Administrative Penalties. The law provides that any officer or employee of the United States who violates the prohibitions of the ADA shall be subject to appropriate administrative discipline. However, administrative discipline may also be appropriate for administrative violations. If a violation is substantiated, one of the following actions must be taken:

- A. Admonishment (administrative violations that do not result in an ADA violation only).
- B. Letter of reprimand for the official personnel record of the officer or employee.
- C. Transfer to another position.
- D. Suspension from duty without pay.
- E. Removal from office.

1.10.2 Criminal Penalties. The law also provides that any officer or employee of the United States who knowingly and willfully violates the prohibitions of the ADA shall be fined not more than \$5,000, imprisoned not more than two years, or both. Criminal penalties will not apply to administrative violations.

1.11 REPORTING REQUIREMENTS.

1.11.1 All violations of the ADA shall be reported to the President, Congress, and the Comptroller General, and the names of those responsible for the violations must be included in that report. OMB Circular No. A-11 and FMR Volume 5, Appendix C, "NASA Fund Control Regulations" contain the reporting requirements.

1.11.2 Violations of other legal or administrative requirements or controls shall be reported to the Center CFO and Agency DCFO, and to the IG Office in cases of possible criminal violations of law, to determine what additional action must be taken