



# FISCAL LAW

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Contracts SFA

# INTRODUCTION

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- ☞ Antideficiency Act
- ☞ Appropriation
- ☞ Authorization
- ☞ Bona Fide Need Rule
- ☞ Expiring/Canceling Funds
- ☞ Prevalidation

# ANTIDEFICIENCY ACT

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## Government Agents May Not

- Obligate
- Spend
- Authorize Obligations
- Authorize Expenditures

## Without Having Sufficient Funds

# ANTIDEFICIENCY ACT

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## Includes

- Obligating Funds in Excess of, or in Advance of, an Appropriation
- May Enter Into Contracts in Advance of an Appropriation, but Only if Subject to a Limitation of Funds Clause
  - May Not Accept Goods or Services Until Actually Receive Funds

# PENALTIES

## Adverse Personnel Actions

- Removal, Suspension, or Other Appropriate Disciplinary Action
- Good Faith Mistake is NOT a Defense



## Criminal Penalties

- Knowing and Willful Violation is a Class E Federal Felony with a Maximum Punishment of 2 Years in Jail and a \$5000 Fine
- Knowing and Willful Concealment of a Violation is also a Federal Felony

# KEY TERMS

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## **Commitment**

- An Administrative Reservation of Funds in Anticipation of Future Obligation
  - Issuing a Commitment Authorizing Obligations in Excess of an Appropriation or Formal Subdivision May Result in an ADA Violation

# KEY TERMS

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## **Obligation**

- Act Legally Binding the Government to Make Payment

## **Expenditure**

- Authorization for Expenditure of Funds from the Treasury Resulting from Presentation of a Voucher or Claim for Services or Products Delivered

## **Outlay**

- Cash Paid by the Treasury, Including EFT

# ADA ISSUES

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## Purpose Statute Violations

- If Proper Funds Not Available, at the Time Obligation is Made, at the Appropriation or Formal Subdivision Level
- Okay if Proper Fund was Available, Remained Continuously Available, and was Available at Time Corrected



# ADA ISSUES

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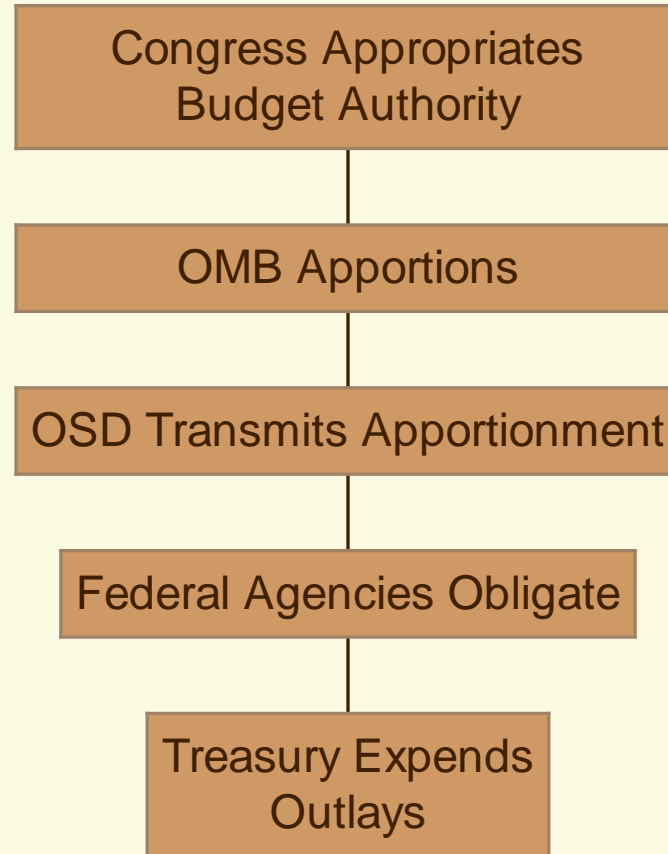
## Bona Fide Need Rule Violations

- Funds Only Available for Definite Time to Meet Real Needs of that Period
- If Funds Not Available in Proper Fiscal Year Account to Make an Adjustment

## Open Ended Indemnification Provisions

- Violates ADA by Obligating an Agency in Advance of an Appropriation
- Unfunded Contingent Liabilities

# FLOW OF FUNDS



# APPROPRIATION

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- 📄 Legal Basis for Withdrawing Funds From the Treasury
- 📄 May Contain Specific Provisions for Specific Expenditures

**PUTS MONEY IN THE CHECKBOOK**

# AUTHORIZATION

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- 📄 Congress Authorizes Purposes of Appropriations
- 📄 Generally, DoD Can Not Expend or Obligate Appropriations Without Authorization

**OPENS THE CHECKBOOK**

# BONA FIDE NEED RULE

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- 📄 Analysis Focuses on Timing of Obligating Funds and Whether Obligation is for a Current Government Need
- 📄 Government's Requirement and Nature of Goods or Services Determine when Bona Fide Need Arises
- 📄 Need Determinations are Fact-Specific

# BONA FIDE NEED RULE

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## Application for Supply Contracts

- Determined by Date Government will Actually be Able to USE the Supplies
- Supply Needs of Next Fiscal Year are Bona Fide Need of the Next Fiscal Year
- Exceptions
  - Long Lead Time
  - Stock Level

# BONA FIDE NEED RULE

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## Service Contracts

- Need is Determined by the Year the Contractor will Perform the Services
- Nonseverable vs. Severable
  - Services Produce Single or Unified Outcome, Product or Report they are Nonseverable
  - Government Must Fund Entire Effort with Funds Available for Obligation at Time Contract is Executed if Contract is for Nonseverable Services

# EXPIRING VS. CANCELING

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## Obligation

- Act Legally Binding the Government to Make Payment

## Expiring Funds

- No Longer Available for Obligation

## Canceling Funds

- No Longer Available for Payment



# OBLIGATION AVAILABILITY

OR DO YOU KNOW WHEN YOUR FUNDS EXPIRE?

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## O&M Funds

– 1 Year

## R&D Funds

– 2 Years

## Procurement Funds

– 3 Years


## Military Construction


– 5 Years

# EXPENDITURE AVAILABILITY

OR DO YOU KNOW WHEN YOUR FUNDS CANCEL?

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 All Funds Available for Expenditure for 5 Years After Obligation Period Ends

 After end of Expenditure Period...Funds Cancel and Are no Longer Available for Payment Purposes

# WHAT DOES THIS MEAN?

 Example: FY 1998

	O&M	R&D	Proc	Const
Expire for Obl	1998	1999	2000	2002
Cancel for Payment	2003	2004	2005	2007

# COLOR OF MONEY

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📄 How do YOU Know Which Funds Obligated?

📄 Long Line Accounting and Appropriation Incorporated into Contract

– Identified by Two Digit ACRN (ex: ACRN AA)

📄 Appropriation/Fund Codes Different for Each Service (See Handout)

# FUND CITATION

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## First 7 Digits Key in Identification

- First 2 Digits = Source of Funds
- Third Digit = Fiscal Year
- Next 4 Digits = Color of Money

## Example:

- Army Procurement
  - 21 8 2031
    - 21 = Source of Funds
    - 8 = FY 1998
    - 2031 = Procurement Funds
- Quiz - When Would These Funds Cancel?

# CANCELED FUNDS?

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- ☞ DCMC Gets Report of Contracts/ACRNs That Are Identified for Cancellation that FY
- ☞ Work With DFAS and Contractor to Resolve
  - Ship!
  - Get Invoices Submitted!
- ☞ If Funds Cancel
  - DFAS Responsibility to Get Current Year Funds from Buying Commands for Payment

# PREVALIDATION

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## Improve Integrity of Financial Management Process

- Match Disbursements to Specific Obligation
- Performed by DFAS in Conjunction with Specific Accounting Stations
- Improves Accuracy of Contract Payments

# THRESHOLDS FOR PREVAL

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## FY 1996 or Earlier Contracts

- Invoices Greater than \$1M Must be Prevalidated Prior to Payment

## FY 1997 Contracts On

- Invoices Greater than \$2500 Must be Prevalidated Prior to Payment
  - Eventually ALL Invoices Will be Require Prevalidation

## Consequence?

- May Take Longer for Contractor to Get Paid