Avoiding Anti-Deficiency Act Violations

How to Avoid Writing a Letter to the President

Avoiding ADA Violations

- What is the Anti-Deficiency Act?
- What is an Anti-Deficiency Act violation?
- How do I avoid an Anti-Deficiency Act violation?

What is the Anti-Deficiency Act?

- It’s not a single Act - it’s a body of law that has developed over many years
  - Originally enacted July 12, 1870
  - Amended: 1905, 1906, 1950, 1956, 1957, 1990
  - In 1982, Congress revised, codified, and enacted into positive law

What is the Anti-Deficiency Act?

- Now codified in title 31 U.S. Code (Money and Finance)
  - Chapter 13 - Appropriations
  - Chapter 15 – Appropriation Accounting

What is the Anti-Deficiency Act?

- Separation of Powers struggle
- Congress clawing back “power of purse”
  - Prevent “coercive deficiencies”
  - Limit the Executive branch expenditure of appropriated funds

The Constitution

"No money shall be drawn from the Treasury, but in consequence of appropriations made by law…"

The punishable no-nos

What is the Anti-Deficiency Act?

31 USC § 1341 - LIMITATIONS ON EXPENDING AND OBLIGATING AMOUNTS

(a) (1) An officer or employee of the United States Government or of the District of Columbia government may not—

(A) **make** or **authorize** an **expenditure** or **obligation** exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

What is the Anti-Deficiency Act?

31 USC § 1342 - LIMITATION ON VOLUNTARY SERVICES

An officer or employee of the United States Government or of the District of Columbia government may not **accept voluntary services** for either government or **employ personal services** exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.

What is the Anti-Deficiency Act?

31 USC § 1517 - PROHIBITED OBLIGATIONS AND EXPENDITURES

(a) An officer or employee of the United States Government or of the District of Columbia government may not **make** or **authorize** an **expenditure** or **obligation** exceeding—

(1) an apportionment; or

(2) the amount permitted by regulations prescribed under section 1514(a) of this title.

The rest of the ADA

What is the Anti-Deficiency Act?

- Codified in Title 31 of U.S.Code
  - §1341, §1342, §1517 (the punishable no-nos)
  - §1349-51, §1518-19 (penalties)
  - §1511-1516 (apportionment requirements)

What is the Anti-Deficiency Act?

- Chapter 13 (Appropriations)
  - §1341 Prohibition on exceeding appropriation; obligating before appropriation
  - §1342 Prohibition on voluntary & personal services
  - §1349 Adverse personnel action
  - §1350 Criminal penalties
  - §1351 Reports on violations

What is the Anti-Deficiency Act?

- Chapter 15 (Appropriation Accounting)
  - §1511 Definitions
  - §1512 Apportionment requirement
  - §1513 Dates
  - §1514 Systems/Regulations requirement
  - §1515 Deficiency

What is the Anti-Deficiency Act?

- §1516 Exemptions
- §1517 Apportionment/allotment violations & reports on violations
- §1518 Adverse personnel actions
- §1519 Criminal penalties

What is the Anti-Deficiency Act?

Penalties	Core	Apportionment
1349 1350 1351	1341 1342	1511 1512 1513 1514 1515 1516
1518 1519	1517	

The Penalties

Violating the Rules

- What penalties apply?
  - Civil - “appropriate administrative discipline”
    - Suspension from duty without pay
    - Removal from office

Violating the Rules Intentionally

- Criminal
  - Fined up to $5,000
  - Imprisoned up to 2 years
  - Or both

Violating the Rules

- A violation report has to be prepared by the offending agency and sent to:
  - The President (through OMB)
  - The Speaker of the House
  - The President of the Senate
  - The Comptroller General

Violating the Rules

- It must contain:
  - Date, amount, account involved in violation
  - The position of the person responsible
  - Discipline imposed

Violating the Rules

- Statement about adequacy of administrative control system
- Statement of actions taken to prevent it ever happening again

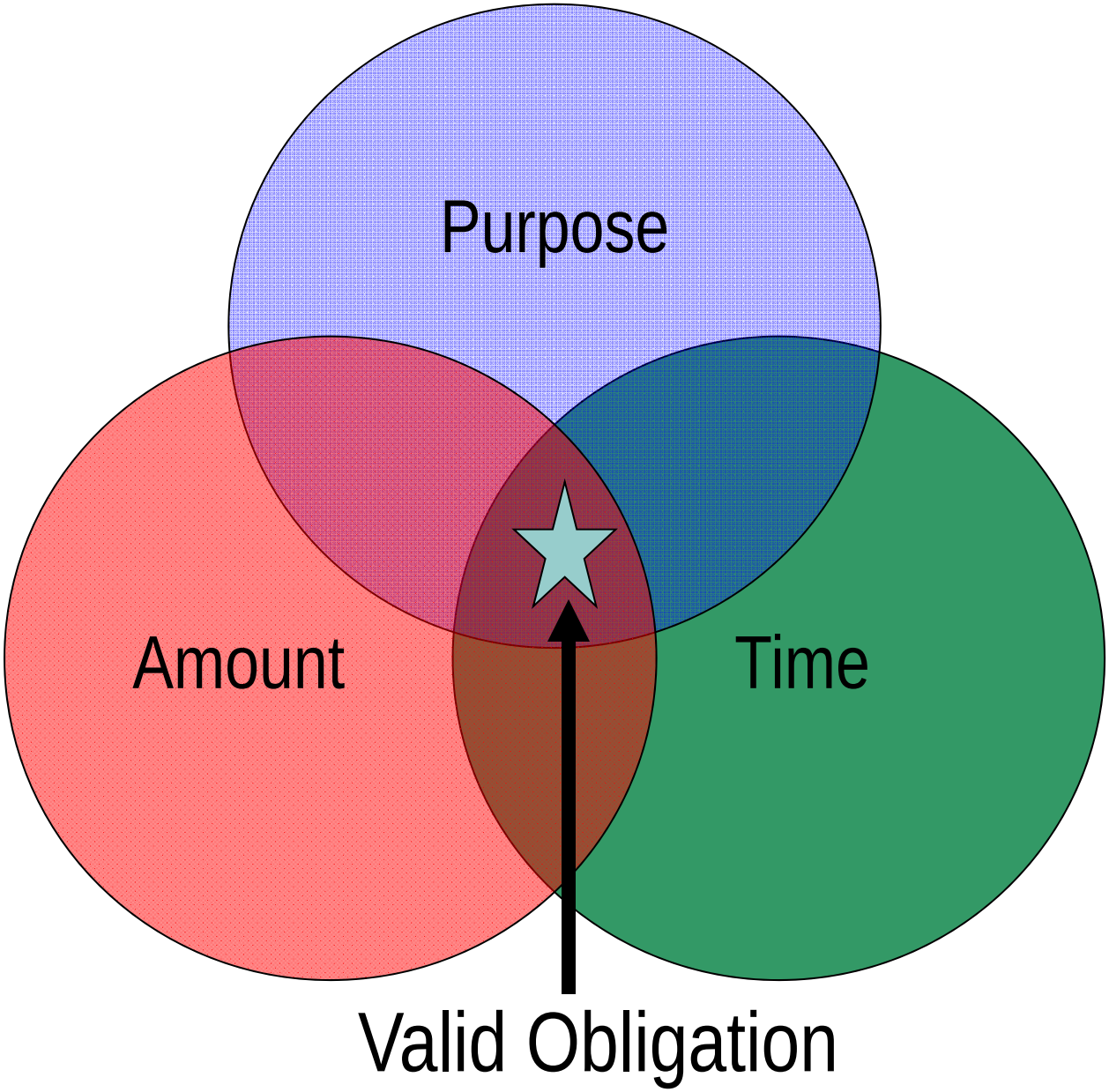
What is an Anti-Deficiency Act Violation?

Making or authorizing an obligation or expenditure:

- in excess of an appropriation
- before an appropriation is made
- in excess of an apportionment
- in excess of agency regulations (e.g., allotment)

Accepting voluntary services (except in an emergency); employing personal services

Related Statutes


Purpose
Amount
Time
Valid Obligation

The Purpose Statute (1809)

31 USC § 1301 – APPLICATION

(a) Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

Bona Fide Need Statute (1870)

31 USC § 1502 - BALANCES AVAILABLE

(a) The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title.

Accounting Requirement (1950)

31 USC § 3512(*b*) – EXECUTIVE AGENCY ACCOUNTING…

The head of each executive agency shall establish and maintain systems of accounting and internal controls that provide…

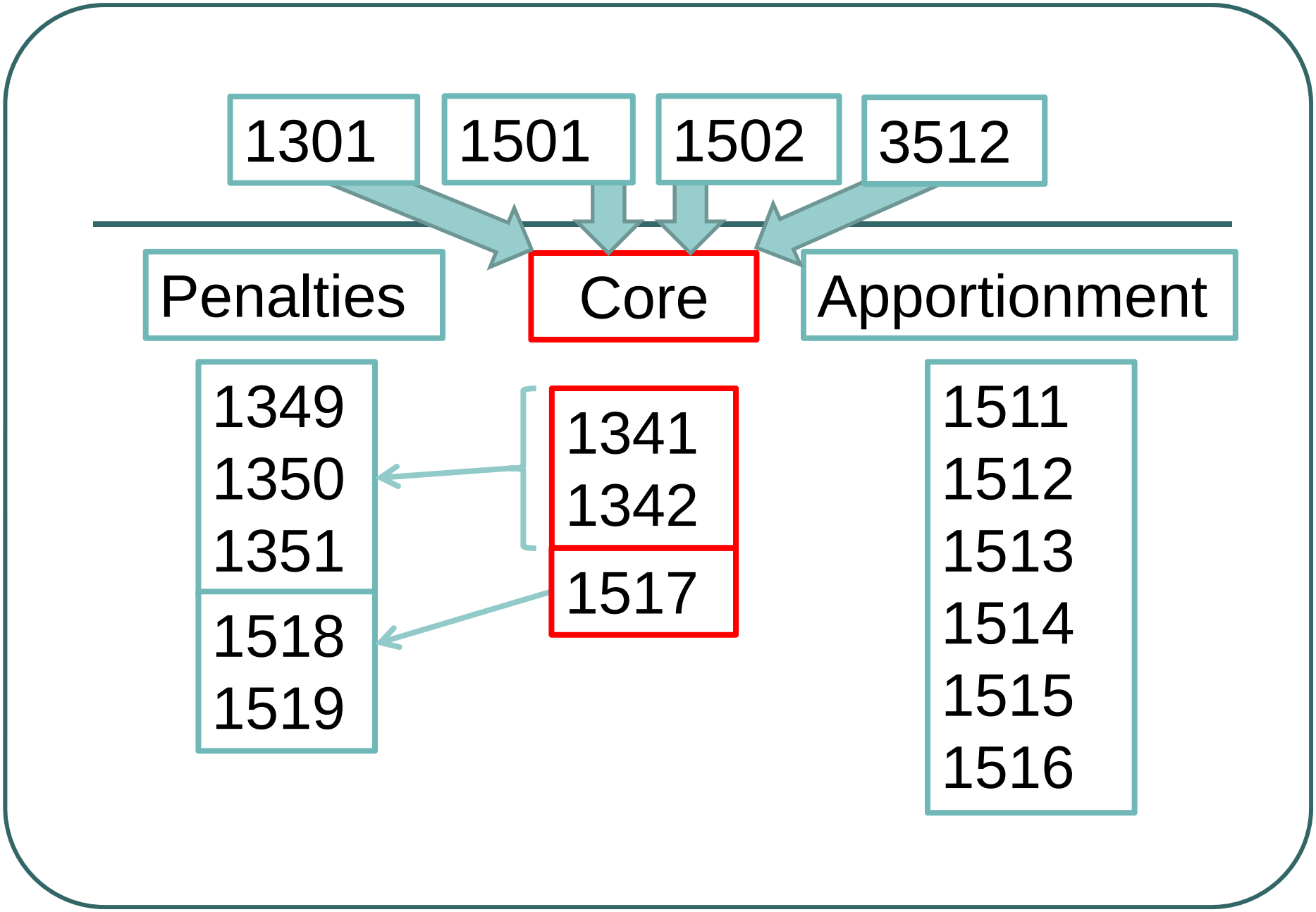
- *Reliable accounting results that will be basis for-*
  - *Preparing and supporting the budget requests…*
  - *Controlling the carrying out of the agency budget*

Recording Statute (1955)

31 USC § 1501 - DOCUMENTARY EVIDENCE REQUIREMENT FOR GOVERNMENT OBLIGATIONS

An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of-

- *A binding agreement*
- *A loan agreement*
- *Order required by law*
- *A grant or subsidy*
- *A liability from litigation*
- *Employment of persons*
- *Public utilities services*
- *Other*


1301
1501
1502
3512
Penalties
Core
Apportionment
1349
1350
1351
1518
1519
1341
1342
1517
1511
1512
1513
1514
1515
1516

How do I avoid an ADA Violation?

Know the Rules

- Principles of Appropriations Law
- Anti-Deficiency Act
- Apportionment requirements in OMB Circular A-11
- Federal Acquisition Regulations (FAR)
- Accounting requirements

Use Your Accounting System

- 31 USC §1514 (system/regs)
- Structure control system to implement apportionment
  - Category B lines
  - Footnotes
  - Other statutory limits
- Don’t distribute anticipated resources
- Document properly and keep track

Know Your Programs

- What purposes are covered by your appropriation?
  - Are administrative expenses authorized?
  - Are you using the appropriate obligating vehicle (e.g., grant vs contract)?
- Be sure you are charging expenses to the appropriate account
- Know reprogramming rules; notify promptly

Read Appropriation Language Carefully

- Has the appropriating language changed since last year?
- Are there any new general provisions or have any changed?
- Keep track of “hereafter” provisions
- Be aware of earmarks and ceilings

Be Aware of Typical Problem Areas

- Acquaint yourself with rules for purchasing:
  - Food
  - Clothing
  - Gifts
  - Promotional items
- Improper Augmentation

Be Vigilant in Contracting

- Assess Bona Fide Need - severability/non-severability
  - Do not forward-fund severable services contracts
  - Do not incrementally fund non-severable services contracts
- Know the statutory exceptions for multi-year contracting
- Beware of indemnification!

Ask Questions

- Appropriations Law is always evolving
- Red Book not dispositive – check DOJ Office of Legal Counsel opinions
- Consult your Office of General Counsel if there is any doubt

Some Lessons from History

In the 186 reported ADAs (2005-2014):

- 48% exceeded appropriation (1341(a)(1)(A))
- 10% obligated before appropriation (1341(a)(1)(B))
- 32% exceeded apportionment (1517(a)(1))
- 7% exceeded allotment (1517(a)(2))
- 3% accepted voluntary service (1342)

Some Lessons from History

In reported ADAs (2005-2014) caused by non-ADA statutes:

- 65% related to Purpose Statute (1301(a))
- 22% related to *BF*N Rule (1502(a))
- 10% related to recording statute (1501(a))
- 3% related to lack of proper system (3512(b))

Some Lessons from History

In reported ADAs (2005-2014):

- 6% involved exceeding a statutory limit
- 9% involved purchasing unauthorized items (gifts, food, water bottles, etc.)
- 5% involved open-ended indemnification
- 4% involved improper augmentation

Some Lessons from History

In reported ADAs (2005-2014):

- Apportionment violations included:
  - An organization that forgot to apportion year 2 of a multi-year appropriation for 8 years!
  - A footnote violation (failed to submit exhibit 300)
  - A Category C violation (due to incorrect recording of apportionment in accounting system)

Avoiding ADA Violations

Questions?