



DCMA Manual 4301-01, Volume 1

DCMA Fiscal Law, Appropriations, and Legal Statutes

**Office of Primary
Responsibility**

Stewardship Capability

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Purpose: This issuance, in accordance with the authority in DoD Directive 5105.64, Defense Contract Management Agency:

- Implements DCMA Instruction 4301.
- Implements policy, assigns responsibility, and prescribes general provisions associated with the Stewardship Capability.
- Ensures that all DCMA personnel possess general financial knowledge and are familiar with the laws and regulations governing the use of funds in accordance with fiscal law and regulations.

- As a general knowledge manual, the inherent internal controls, process flows and key controls are found in subsequent manuals which will detail Funds Control, Budget Formulation and Budget Execution.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to all DCMA activities unless higher-level regulations, policy, guidance, or agreements take precedence.

1.2. POLICY. It is DCMA policy to:

a. Use funds economically, efficiently, and properly, in accordance with (IAW) fiscal law and regulations.

b. Ensure that all DCMA personnel possess general financial knowledge and are familiar with the laws and regulations governing the use of funds. Specifically, those personnel directly involved in budget and accounting must be knowledgeable of the principles identified in the DoD 7000.14-R, “Department of Defense Financial Management Regulation (FMR),” and the provisions of the Antideficiency Act (ADA) statutes contained in Sections 1301, 1341-1342, 1502(a), 1517, and 3302(b) of Title 31, United States Code (U.S.C.).

c. Execute this manual in a efficient, effective, and ethical manner always exercising good stewardship of government appropriations and resources.

1.3. PROHIBITED ACTIONS, PERSONAL RESPONSIBILITY, AND PENALTIES.

Employees will not violate fiscal law principles and requirements, as set forth in applicable statutes or applicable regulations and DoD issuances. Discussed below are the prohibited actions, the persons to be held liable, and penalties for a violation of the ADA (legal limitations). DoD 7000.14-R, Volume 14, Chapter 5 “Administrative Control of Funds and Antideficiency Act Violations” provides information and examples of fiscal law violations.

a. Limitations on Expending and Obligating Amounts. New obligations and expenditures or adjustments to obligations and expenditures that exceed original appropriations include any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount available. Refer to Section 1341 of Title 31, U.S.C.

b. Contracts or Obligations in Advance of an Appropriation. An officer or employee shall not involve the Government in a contract or other obligation to pay money for any purpose in advance of appropriations made for such purpose unless the contract or obligation is authorized by law. If authorized by law, but not financed by an appropriation, the budget authority to cover such transactions is known as contract authority. If the contract authority is provided in anticipation of receipts, obligations incurred against the contract authority should not be liquidated until the receipts are collected and credited to the account or an appropriation to liquidate has been enacted. Refer to Section 1341 of Title 31, U.S.C.

c. Closed Accounts. New obligations or any expenditures in closed accounts include any case in which an officer or employee has made or authorized an expenditure from or created or authorized an obligation against an account that has been closed pursuant to Sections 1501-1558 of Title 31, U.S.C.

d. Acceptance of Voluntary Service. IAW Section 1342 of Title 31, U.S.C., an officer or employee shall not accept voluntary service for the United States or employ personal service exceeding that authorized by law, except for an emergency involving the preservation of human life or property.

e. One Percent Rule. IAW Section 1553(b) of Title 31, U.S.C., no more than 1 percent of unexpired funds be used to pay for valid obligational adjustments liquidating obligations for closed accounts. This authority also may not be used to exceed the original appropriation.

f. Over Obligation or Over Expenditure of Other Administrative Subdivisions of Funds. IAW Section 1517 of Title 31, U.S.C., an officer or employee shall not over obligate other administrative subdivisions of funds, such as Annual Funding Programs (AFP). The AFP is the basis for the annual execution of programs as approved by Congress. It is the document issued to DCMA setting forth the funds available for obligation (not to exceed the amount allotted) in each appropriation account and specifying the obligational control levels (established by Congress) applicable to each program, subprogram, or activity. The AFP process provides a means for distributing program funding authority at a level of detail designed to achieve the optimal efficiency of program management consistent with the budget as appropriated. When such an action causes an over obligation or over expenditure of an allotment, apportionment, or appropriation, a legal violation has occurred unless the apportionment or the DCMA fund control system specifies otherwise.

g. Misuse of Funds. An officer or employee shall not obligate or expend funds for a purpose other than that for which the funds were appropriated. Such an action is a violation of Section 1301-1354 of Title 31, U.S.C., and could potentially culminate in an ADA violation.

h. Failure or Delay in Recording an Obligation. An officer or employee shall not fail to or delay in recording an obligation in anticipation of additional funding when such action would cause an over obligation or over expenditure of an allotment, apportionment, or appropriation.

i. Penalties. Violators of the ADA are subject to severe penalties. If convicted of knowingly and willfully violating legal limitations, the officer or employee is subject to fines, imprisonment, or both. In addition to any penalty or liability under law, a DCMA officer or employee who authorizes or makes expenditures exceeding available funds is subject to administrative discipline, including suspension from duty without pay or dismissal.

SECTION 2: RESPONSIBILITIES

2.1. DCMA DIRECTOR OR DEPUTY DIRECTOR. Unless delegated, the DCMA Director retains the final authority for funds control by serving as DCMA's senior representative, receiving proper guidance and making fiscal and funding decisions as presented and as required.

2.2. EXECUTIVE DIRECTOR, FINANCIAL AND BUSINESS OPERATIONS DIRECTORATE (FB). The FB Executive Director must:

- a. Serve as the primary authority for funds control.
- b. Appoint Agency and component fund holders as Department Accountable Officials or Certifying Officers via Department of Defense (DD) Form 577, "Appointment/Termination Record" form.
- c. Maintain internal administrative funds control designed to ensure compliance with the ADA and IAW all requirements outlined in the DoD financial management regulations.
- d. Designate required training for applicable personnel in order to prevent ADAs.
- e. Manage the DCMA DoD Financial Management Certification program to support a trained and educated financial management workforce.

2.3. DIRECTOR, BUDGET DIVISION (FBB). The Director, Budget Division must:

- a. Establish activity controls within available appropriations and IAW Agency direction.
- b. Distribute funds within quarterly and annual allotments to protect against amount violations.
- c. Establish guidance on budgeting and execution with respect to purpose and amount.

2.4. DIRECTOR, CHIEF FINANCIAL OFFICER/COMPLIANCE DIVISION (FBL). The Director, FBL must:

- a. Take immediate action to mitigate the impact of the violation once notified by the fund holder.
- b. Review the circumstances surrounding the apparent violation of a legal limitation or an administrative control level limitation and apply facts to applicable laws and directives to conclude whether the apparent violation was the result of an accounting error.
- c. Assist the fund holder and FBB in preparing a memorandum explaining the circumstances, the violation, and the corrective actions taken or planned for any apparent violations that are the result of an accounting error.

d. Assist the fund holder and FBB with initiating obligational adjustments to expired accounts that will exceed an obligational control level to preclude initiating a formal reporting process.

e. Establish the standard procedures for processing funding documents for commitment and obligation through the fund holder, and in conjunction with the procurement, travel, and personnel offices and distributes to all affected fund holders.

2.5. DIRECTOR, FINANCIAL BUSINESS SYSTEMS ACCOUNTING OPERATIONS TEAM (FBLAO) The Director, FBLAO must establish the standard procedures for processing funding and obligation documents, through the fund holder, in conjunction with the procurement, travel, and personnel offices.

2.6. DCMA COMPONENT HEADS AND/OR REGIONAL COMMANDERS. DCMA ComponentHeads/Regional Commanders will:

a. Serve as office of primary responsibility to plan, program, budget and execute the resources required to accomplish the mission IAW applicable laws and regulations.

b. Provide oversight and direction to any fund control officers assigned to their components.

c. Confirm training completion of assigned fund control officers.

d. Monitor and report execution of resources from requirement development throughout the life of the obligation.

2.7. COMPONENT FUND HOLDERS/FUNDS CONTROL OFFICERS. DCMA fund holders (also known as funds control officers, resource managers, financial advisors) include any person designated as a responsible party for funds control, management, and execution of component funds. DCMA fund holders can perform a variety of financial functions including, but not limited to, certifying proper funds on financial documents, obligating documents, reviewing and approving invoices, certifying vouchers for payment, advising leadership of financial status, and administering and controlling funds for components. The roles and responsibilities for a certifying officer are more specific than that of a fund holder. IAW the DoD 7000.14-R, Volume 5, Chapter 5, "Certifying Officers, Departmental Accountable Officials, and Review Officials," DCMA fund holders performing commitment, obligation, and certifying functions are appointed via a DD Form 577. In order to perform this role, the fund holders must complete Certifying Officer Legislative and fiscal or appropriation law refresher training annually. Responsibilities of fund holders can include:

a. Ensuring funding documents are completed properly and comply with legal and regulatory guidance.

b. Assigning proper funding citations on documents and validating funds are available for commitment and obligation.

c. Reviewing monthly financial reports, performing reconciliations to verify that the reports are complete, and notifying FBB and FBL of any discrepancies within 30 days.

d. Tracking balances for expired appropriations for an additional 5 years only for valid upward and downward adjustments to liquidate obligations properly incurred during the period of obligational availability. Coordinating any obligation adjustments to expired accounts that will exceed an obligational control level with fund holders and FBB to preclude initiating a formal reporting process. This process is a critical piece of the Triannual Review.

e. Preparing formal reports in memorandum form for any violations within the component and distributing accordingly.

f. Advising component and Agency leadership on financial matters and status of funds.

g. Maintaining control of funds assigned to the component to prevent violations of fiscal law.

2.8. EXECUTIVE DIRECTOR, HUMAN CAPITAL. The Executive Director, Human Capital will:

a. Manage the DCMA Defense Acquisition Workforce Development Fund (DAWDF) program.

b. Ensure that that the proposed program and initiatives are aligned with the strategic goals and acquisition executive priorities.

c. Assign an Agency DAWDF Program Manager to manage execution, reporting, and operation of the DAWDF Program.

SECTION 3: DCMA FISCAL LAW

3.1. DCMA APPROPRIATIONS AND LEGAL STATUTES.

a. Appropriations. Appropriation categories are considered broad, generic groupings of federal government funds. While grouping appropriation funds into broad categories makes it convenient for general discussion purposes, a more definitive breakout of federal government funds is that of appropriation account. DCMA submits its budget requests to the Office of the Secretary of Defense (OSD) for inclusion in the OSD submission to Congress, and Congress appropriates funding in the annual appropriation acts. DCMA is a specific line-item within the OSD budget submission and funds are appropriated to DCMA separately from other Fourth Estate Defense Activities. Appropriations funds are directly appropriated to DCMA and is considered direct authority.

b. Appropriation Overview.

(1) The Appropriation Process.

(a) The U.S. Constitution, Article I, Section 8, grants Congress the “. . . power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States” U.S. Constitution, Article I, Section 9, provides that “[N]o Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.” The United States Supreme Court has held: “The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.” (*United States v. MacCollom*, 426 U.S. 317 (1976)).

(b) An appropriation is a statutory authorization “to incur obligations and make payments out of the Treasury for specified purposes.” Generally, an “obligation” is a legal liability that arises from a mutual exchange of promises, or consideration (usually a government promise to pay money in exchange for goods and/or services), between the U.S. Government and a contractor. Normally, Congress passes on an annual basis, thirteen appropriations acts. Some of these acts provide appropriations to a single agency, while others provide appropriations to multiple agencies. See generally, *Principles of Federal Appropriations Law*, 3rd edition, Volume I, Chapter 1, 1-26 – 1-27. In each of the two annual appropriations acts devoted to DoD, Congress grants multiple appropriations for different types of purchases that DoD needs to make to successfully execute its mission. For example, Public Law 114-113, Division C provides over 50 separate appropriations to DoD.

(2) DCMA’s budget consists of single and multi-year appropriations, all subject to specific statutes and regulations which govern purposes and usage. The three primary types of appropriated funding used at DCMA are Operations and Maintenance (O&M), Research, Development, Test and Evaluation (RDT&E) and Procurement, Defense Wide (PDW).

(3) Congress also provides DCMA other appropriations and authority designed for specific, unique purposes. A few of these are DAWDF and Overseas Contingency Operations

(OCO) funds. DCMA also receives Reimbursable and Official Representation funding authorities within the agency's annual appropriation.

(4) Properly using appropriated funds is extremely important. The DoD 7000.14-R provides information and examples on use of different appropriations in Volume 2A "Budget Formulation and Presentation" Chapter 1 "General Information." If there is any doubt as to which funding type should be used for a requirement, individuals must seek assistance from the Agency's Financial and Legal subject matter experts.

3.2. O&M, DEFENSE-WIDE.

a. O&M makes up the the greatest percentage of DCMA's budget and is appropriately used for items considered "expenses." Most DCMA Activities will only execute this type of funding throughout the year, so many would consider this as a general operating budget.

b. O&M is a one year appropriation, meaning these funds are only available to be obligated for expenses incurred during the fiscal year for which they were appropriated. Labor is the largest DCMA O&M expense consuming nearly 85 percent of this annual appropriation. Labor consists of basic salaries, awards, overtime, leave, thrift savings plan and other benefits and pay differentials.

c. Other O&M costs financed by O&M funds are travel, fuel, training, education, facility maintenance and leases, and sustainment of existing activities. There are also a few special cases where O&M can be used for investment-like purposes.

(1) O&M can be used for minor construction projects as long as the project cost is \$1M or less.

(2) O&M can be used to purchase assets with a system unit cost of less than the investment threshold. The current investment threshold is \$250,000.

3.3. PROCUREMENT, DEFENSE-WIDE (PDW).

a. PDW is an investment appropriation DCMA primarily uses to finance purchases of Information Technology (IT) systems, equipment, hardware, and software requirements. A small portion of this appropriation can be used to purchase non-tactical vehicles in Outside Continental United States (OCONUS) locations. The DoD 7000.14-R explains the expense/investment threshold in greater detail in Volume 2A, Chapter 1.

b. PDW is a three-year appropriation, meaning these funds can be obligated for items during the fiscal year from which they were appropriated, plus the two following years. Since DCMA receives Procurement funding annually, it is possible to use multiple Procurement appropriations for one investment project as long as the appropriation remains in an open obligation status.

3.4. RDT&E.

a. RDT&E is a DCMA investment appropriation primarily allocated to the IT Directorate. RDT&E funds provide for the development, testing and evaluation of new or redesigned IT systems and software needed to support DCMA activities.

b. RDT&E is a two-year appropriation, in which funds can be obligated for requirements during the fiscal year from which they were appropriated, plus the following year. Since DCMA receives RDT&E funding annually, it is possible to use multiple RDT&E appropriations for one investment project as long as the appropriation remains in an open obligation status.

c. DCMA will often use RDT&E prior to purchasing a system or major piece of software. Once DCMA has fully tested and evaluated the new item/system, and determined it is ready for purchase, DCMA will either use Procurement or O&M to fund the acquisition and/or sustainment of the product, depending on the cost and purpose. RDT&E is also frequently used for testing and/or modernizing of current applications and systems.

3.5. DEFENSE ACQUISITION WORKFORCE DEVELOPMENT FUND (DAWDF).

a. Section 1705 of Title 10, U.S.C., “The National Defense Authorization Act (NDAA) of 2008” established the Defense Acquisition Workforce Fund. In the fiscal year 2016 NDAA, the DAWDF became a permanent fund, further enabling critical support for the acquisition workforce developmental initiatives.

b. The Director, Human Capital Initiatives (HCI) is responsible for the management of the DAWDF for the DoD. HCI determines and approves the funding plan for components based upon the initiatives submitted during the proposal process in support of training, recruitment, and developmental positions.

c. The DAWDF is for the recruitment, training, and retention of acquisition personnel. The purpose of the fund is to ensure that the acquisition workforce has the ability and skills needed to execute the mission and provide appropriate oversight of contractor performance. DAWDF is multi-year funding depending on the type of appropriation.

d. The DAWDF Program Manager manages day-to-day execution, reporting, and operation of the DAWDF Program.

3.6. SUPPLEMENTAL APPROPRIATIONS.

a. Supplemental appropriations may be enacted by Congress to address special requirements above those included in the annual appropriations process. Supplemental appropriations are most frequently enacted for war and natural disasters. Most recently, Congress has appropriated OCO for the contingency operations occurring in the US Central Command area of responsibility. Supplemental appropriations can be annual or multiannual appropriations. Upon enactment, Congress will identify the limitations for any supplemental appropriations in the NDAA or the appropriations law. DoD may issue additional guidance for the use and reporting of supplemental appropriations. The DoD 7000.14-R provides information on contingency operations in Volume 2B, Chapter 17 “Contingency Operations.”

b. DCMA receives OCO O&M appropriations on an annual basis. This funding is restricted to activities or personnel performing support for designated, named operations. This funding cannot be used in the normal operations of DCMA activities, even though it is O&M.

3.7. OFFICIAL REPRESENTATION FUNDS (ORF).

a. As prescribed in DoD Instruction (DoDI) 7250.13, "Use of Appropriated Funds for Official Representation Purposes," O&M funds can be used to host official receptions, dinners, and similar events, and to otherwise extend official courtesies to guests for the purpose of maintaining the standing and prestige of the United States and DoD. These events are normally hosted and attended by members of the Senior Executive Service or flag officers and foreign government officials.

b. ORF is drawn from the Emergency and Extraordinary Expense (EEE) limitation contained in the O&M portion of the annual appropriation bills. The Office of the Under Secretary of Defense (Comptroller) grants agencies authority based on prior usage and budget requests. Granting this authority permits the use of existing O&M funding to support ORF requirements and does not provide additional obligation authority.

c. DCMA primarily uses ORF to support its annual Host Nation conferences by extending official courtesies to civilian, military, foreign dignitaries, and other distinguished guests while sharing national practices related to Contract Administration Services (CAS). The official courtesies extended include, but are not limited to, the cost of luncheons, dinners, receptions, mementos, and participation expenses.

d. When hosting events, DCMA considers the following minimum ratios or percentages of attending Agency personnel (including spouses) to authorized guests:

(1) In parties of less than 30 persons, a minimum of 20 percent should be honored or distinguished guests. That is, for each authorized member of the invited guest party expected to attend, the expenses for up to four DoD/DCMA personnel can be charged to ORF.

(2) In parties of 30 or more persons, a minimum of 50 percent should be honored or distinguished guests. That is, for each authorized member of the invited guest party expected to attend, the expenses for one DoD/DCMA person can be charged to ORF.

e. DCMA gifts and mementos to foreign dignitaries or distinguished guests have cost limitations. The aggregate cost of gifts presented to a foreign guest at a sponsored event is subject to periodic change IAW Section 2694 of Title 22, U.S.C.

f. To initiate or process an EEE/ORF requirement in DCMA, requests for ORF funds are submitted to the Executive Director of Corporate Support for approval by the Director and/or Deputy Director. General Counsel coordination of the request is required.

3.8. REIMBURSABLE FUND STREAM.

a. Reimbursable funding authority is legal authority and requirements for one U.S. Government entity to perform work for another. Legal authority is granted through either the Section 6301 of Title 41, U.S.C., “Project Order Law,” or Sections 1535-1536 of Title 31, U.S.C. “Economy Act.” The DoD 7000.14-R provides information regarding reimbursable operations in Volume 11A “Reimbursable Operations Policy.” The requesting activity uses its funds to pay DCMA to perform a service; DCMA is the servicing activity. Reimbursable authority is additive to DCMA’s O&M appropriated funding authority. The combined reimbursable and direct authority is called “Total Obligation Authority.”

b. DCMA receives authority through an annual budget request developed based on anticipated reimbursable orders. The Office of Management and Budget (OMB) apportions reimbursable authority to OSD, who allocates it to DCMA on the O&M funding authorization document (FAD).

c. DCMA distributes this authority to components performing the service for another entity based on the actual or anticipated receipt of customer orders. The majority of DCMA’s reimbursable funding is for direct civilian labor effort.

d. The largest source of DCMA reimbursable funds is the CAS funding billed to every Foreign Military Sale (FMS) customer. The funds are collected in the FMS Trust Fund and provided annually to DCMA based on DCMA’s anticipated FMS work count and the FMS CAS billable rate. FMS Continental United States and FMS OCONUS funds are distributed to activities performing FMS work. Additionally, overhead funds are distributed across the Agency to fully recoup the cost of providing FMS customers with DCMA services.

e. Under the authority of the Economy Act, DCMA can also accept reimbursable funding via a Fiscal Service Form 7600B “United States Government Interagency Agreement Order Requirements and Funding Information” or a DD Form 448 “Military Interdepartmental Purchase Request (MIPR).” Reimbursable funding cannot be accepted for work DCMA is funded with an appropriation to perform.

3.9. LIMITATIONS ON THE USE OF APPROPRIATED FUNDS.

a. Purpose Limitation. DCMA may obligate and expend appropriations only for a proper purpose.

(1) Section 1301 of Title 31, U.S.C., otherwise known as the “Purpose Statute,” requires DCMA to apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law. It prohibits charging authorized items to the wrong appropriation, and unauthorized items to any appropriation.

(2) The common meaning of the words in the appropriation act, and the program legislation it funds, governs the purposes to which the appropriation may be applied. If a proposed use of funds is inconsistent with the statutory language, the expenditure is improper, even if it would result in substantial savings or other benefits to the government.

(3) DCMA cannot do indirectly what it is not permitted to do directly. Thus, DCMA cannot use the device of a contract, grant, or agreement to accomplish a purpose it could not do by direct expenditure.

(4) The Purpose Statute applies to all uses of appropriations across the federal government, unless Congress enacts a more specific statute.

(5) The “Necessary Expense Doctrine.” The Purpose Statute does not require every expenditure to be specified in an appropriations act as that is not possible or feasible. The spending agency has reasonable discretion in determining how to carry out the objects of the appropriation. Where a particular expenditure is not specifically provided for in the appropriation act, it is permissible if it is necessary and incident to the proper execution of the general purpose of the appropriation. The Government Accounting Office (GAO) applies a three-part test to determine whether an expenditure is a “necessary expense” of a particular appropriation:

(a) The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to carry out either a specific appropriation or an authorized Agency function for which more general appropriations are available. The necessary expense rule does not require that the expenditure be “necessary” in the sense that the Agency cannot achieve the object of the appropriation without it. However, the expenditure must be more than merely desirable or even important.

(b) The expenditure must not be prohibited by law.

(c) The expenditure must not be otherwise provided for; that is, it must not be something that falls within the scope of some other appropriation or statutory funding scheme.

b. Time Limitation. DCMA may obligate only within the time limits applicable to the appropriation (*e.g.*, O&M funds are available for obligation for one fiscal year).

(1) Appropriations are available for limited periods of time. DCMA must incur a legal obligation to pay money within an appropriation’s period of availability. If DCMA fails to obligate funds before they expire, they are no longer available for new obligations.

(a) Expired funds retain their “fiscal year identity” for five years after the end of the period of availability. During this time, the funds are available to adjust existing obligations or to liquidate prior valid obligations, but are not available for new obligations.

(b) Five years after the funds have expired, they become “cancelled” and are not available for obligation or expenditure for any purpose.

(2) “Bona Fide Need Rule”: Appropriations are available only for the bona fide need of an appropriation’s period of availability IAW DoD 7000.14-R Volume 14, Chapter 2. Until that

requirement (need) accrues, no authorization exists to obligate appropriated funds. Once the need accrues, DCMA may only obligate appropriated funds that are current at that time.

(3) Generally speaking, DCMA has a need to acquire goods and services when it requires the use or benefit of those goods or services. However, based on legislation and GAO case law, the *bona fide* need does not always arise at this time. The *bona fide* need may be earlier or later than the date DCMA requires the use of goods or the benefit of services. Each main type of acquisition has specific rules to help agencies determine the *bona fide* need.

(a) Supplies. The *bona fide* need for a supply is determined by when the government actually requires (will be able to use or consume) the supplies being acquired. Accordingly, DCMA generally must obligate funds from the fiscal year in which the supplies will be used. Two GAO recognized exceptions to the *Bona Fide Needs Rule*, specific to supplies, are the lead-time exception (for both delivery and production) and the stock-level exception. See DoD 7000.14-R, Volume 3, Chapter 8.

(b) Services. The *bona fide* need for services does not arise until the services are rendered. Thus, services must be funded with funds current as of the date the service is performed. The *bona fide* need rule is applied differently depending on the nature of the service. There are two categories of service contracts:

1. Non-severable Services. A service is non-severable if the service produces a single or unified outcome, product, or report that cannot be subdivided for separate performance in different fiscal years. Whether the subdivision is feasible or not is a matter of judgment that includes, at a minimum, a determination of whether the government has received value from the service rendered. The government must fund non-severable services contracts with dollars available for obligation at the time the contract is executed. Contract performance may cross fiscal years.

2. Severable Services. A service is severable if it can be separated into components that independently meet a need of the government. The services are continuing and recurring in nature. Severable services thus follow the general service contract *bona fide* need rule, and are the *bona fide* need of the fiscal year in which they are performed. Funding of severable service contracts generally may not cross fiscal years, and agencies must fund severable service contracts with dollars available for obligation on the date the contractor performs the services.

3. Section 2410a of 10 U.S.C., “Statutory Exception.” DoD agencies may obligate funds at the time of contract award to finance a severable service contract with a period of performance that does not exceed one year. This statutory exception is meant to give flexibility to annual funds so that all contracts do not have to end on September 30th. The exception only applies to annual year funds. It does not prohibit agencies with access to multiple year funds from entering into severable service contracts that exceed one year. However, it cannot be used to extend the period of availability of an expiring multiple year appropriation.

c. Amount Limitation. DCMA must obligate funds within the amounts appropriated by Congress and formally distributed to or by the Agency.

(1) The basic amount restriction prohibits DCMA from mak[ing] or authoriz[ing] an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.

(2) DCMA triggers this statute when it depletes all the available funds in a given account, the amount in an earmark, or the amount that is otherwise available except for some restriction as written in the appropriations act.

(3) Congress and OMB control how much money is available to DCMA through a system of apportionments and allocations. The violation of one of these administrative divisions may, in turn, create a violation of yet other statutory restrictions and result in an amount violation. Failure to abide by amount restrictions may result in a reportable ADA violation.

3.10. THE ANTIDEFICIENCY ACT.

a. Sections 1341-42, 1511-19 of Title 31, U.S.C., “The Antideficiency Act,” prohibits any government officer or employee from:

(1) Obligating, expending, or authorizing an obligation or expenditure of funds in excess of the amount available in an appropriation, an apportionment, or a formal subdivision of funds. (See DoD 7000.14-R, Volume 14, Chapter 2).

(2) Incurring an obligation in advance of an appropriation, unless authorized by law. (See DoD 7000.14-R, Volume 14, Chapter 2).

(3) Accepting voluntary services, unless otherwise authorized by law. (See DoD 7000.14-R, Volume 14, Chapter 2).

b. Formal subdivisions of funds and appropriations by the executive branch departments and agencies are referred to as apportionments, allocations, and allotments. Informal subdivisions are subdivisions of appropriations by agencies at lower levels, without creating an absolute limitation on obligational authority. These informal subdivisions are considered funding targets, or “allowances” and incurring obligations in excess of an allowance is not necessarily an ADA violation. If a formal subdivision is breached, however, an ADA violation occurs and the person responsible for exceeding the target may be held liable for the violation. (See Defense Finance and Accounting Service-Indianapolis (DFAS-IN) Regulation 37-1, Chapter 3, “Program and Budget Authority”).

c. Section 1341 of Title 31, U.S.C. specifically applies to any officer or employee who makes or authorizes an expenditure or obligation. Additionally, DoD applies the ADA by regulation to “commanding officers, budget officers, or fiscal officers. . .” because of their overall responsibility or position.” (See DoD 7000.14-R, Volume 14, Chapter 5).

d. The responsibility for training, education, and prevention of ADA violations is placed on commanders, managers, and supervisors IAW DoD 7000.14-R, Volume 14, Chapter 2.

3.11. REPORTING OF VIOLATIONS WITHIN THE DEPARTMENT.

a. Reporting Requirements.

(1) Any person who identifies a possible violation is responsible for forwarding a report to the appropriate fund holder.

(2) The fund holder must prepare formal reports, in memorandum format, to the Executive Director/Comptroller (DCMA FB) and make the distribution IAW the DoD 7000.14-R, Volume 14. All formal reports and related materials must be marked, "FOUO – FOR OFFICIAL USE ONLY."

b. Actions Required After Violations Are Reported.

(1) Fund holders must ensure FBL and FBB are notified to take immediate action to lessen the impact of the violation. Such actions may include, but are not limited to, the following measures:

(a) Canceling sufficient noncritical obligations to eliminate the deficit.

(b) Initiating contract modifications to reduce or terminate sufficient items not representing critical requirements.

(c) Requesting additional funding through FBB.

(2) Subsequent actions taken to correct the cause of a violation do not eliminate the violation; it still must be reported.

c. Apparent Violations Caused by Accounting Errors. If (after reviewing the circumstances surrounding the apparent violation of a legal limitation or an administrative control level limitation and applying facts to applicable laws and directives) FBL concludes that the apparent violation was the result of an accounting error, the fund holder, in coordination with FBB and FBL, must prepare a memorandum explaining the circumstances, the violation, and the corrective actions taken or planned. The memorandum must:

(1) Include the specific contract, purchase order, travel order, or other type of procurement instrument that was obligated or paid incorrectly.

(2) Specify the account (fund type, annual funding program, standard general ledger code, program code, and construction project number or all equipment not related to construction, when applicable) to which the obligation or payment was charged by the correction entry.

(3) Provide the date and document references of both the erroneous and the correction entries; and the name and title of the approving official for the correction entry.

d. Apparent Violations Caused by Inappropriate Withdrawal of Funds. An excessive or invalid reduction in an allotment or AFP (that is, an erroneous withdrawal of funds in excess of the allotted or unobligated balance) is not a violation if either of the following conditions is met:

(1) Additional obligations have not been authorized or incurred against the funds.

(2) The withdrawn funds have been immediately restored or made available, through deobligation, to the account from which they were withdrawn in sufficient amount to cover obligations previously authorized or incurred. Headquarters program offices are responsible for obtaining certification of funding availability with fund holders prior to withdrawing funding through the allotment and/or AFP process.

GLOSSARY

G.1. ACRONYMS.

ADA	Antideficiency Act
AFP	Annual Funding Program
CAS	Contract Administration Services
DAWDF	Defense Acquisition Workforce Development Fund
DD Form 577	Appointment/Termination Record
EEE	Emergency and Extraordinary Expense
FB	DCMA, Financial and Business Operations Directorate
FBB	DCMA, Financial and Business Operations, Budget Division
FBL	DCMA, Financial and Business Operations, Compliance and Accounting Division
FBLAO	DCMA, Financial and Business Operations, Accounting Operations Team
FMS	Foreign Military Sales
GAO	U.S. Government Accountability Office
HCI	Human Capital Initiatives
IAW	in accordance with
IT	Information Technology
NDAAs	National Defense Authorization Act
OCO	Overseas Contingency Operations
OCONUS	Outside Continental United States
O&M	Operations and Maintenance
OMB	Office of Management and Budget
ORF	Official Representation Funds
OSD	Office of the Secretary of Defense
PDW	Procurement, Defense-Wide
RDT&E	Research, Development, Test and Evaluation
USC	United States Code

REFERENCES

- Defense Finance and Accounting Service-Indianapolis (DFAS-IN) Regulation 37-1, Chapter 3, “Program and Budget Authority,” March 2017
- DoD 7000.14-R, “Financial Management Regulations (FMRs),” Volumes 1-15, Date Varies
- DoD Directive 5105.64, “Defense Contract Management Agency (DCMA),” January 10, 2013
- DoD Instruction 7250.13, “Use of Appropriated Funds for Official Representation Purposes,” September 27, 2017
- Office of Management and Budget (OMB) Circular No. A-11, July 2016
- Public Law 114-113, “Consolidated Appropriations Act, 2016,” December 18, 2015
- The National Defense Authorization Act of 2008 (as amend)
- U.S. Constitution, Art. I, Section 8 and 9
- United States Code, Title 10
- United States Code, Title 22
- United States Code, Title 31
- United States Code, Title 41
- United States v. MacCollom*, 426 U.S. 317 (1976).