

Traditional Economy Act Transactions—A Hidden Opportunity for On-the-Job Training

Major John R. Longley*

I. Introduction

The U.S. military finds itself near the end of a decade-plus of war in Iraq and Afghanistan.¹ With the end of combat operations in sight, the nation's focus has shifted to domestic issues, to include the challenge of closing an over one trillion dollar annual budget deficit.² Given the United States's budgetary challenges, and the resulting "do more with less" environment likely to define the military's near future, military commanders must find and exploit innovative and cost-efficient ways to train American servicemembers.

One cost-efficient tool available for military commanders to provide continued training for special-skilled servicemembers is the Economy Act.³ Originally passed in 1932,⁴ the Economy Act enables a federal agency to receive supplies or services from another agency through the use of interagency support agreements.⁵ As this article will demonstrate, these interagency support agreements can provide special-skilled servicemembers with real world

opportunities to practice their trade, while saving money for the agency receiving the benefit of those skills.⁶

To help commanders use the Economy Act to generate potential on-the-job training opportunities, this article will offer a user's guide approach to executing a traditional Economy Act transaction, whereby the military uses its organic assets to satisfy another agency's support requirements.⁷ The guide begins by discussing the history and evolution of the Economy Act, from its origins during the Great Depression to its potential present-day applications. This article then outlines the statutory and regulatory requirements that must be satisfied prior to completing an Economy Act transaction, as well as discusses some common formation and execution pitfalls. Finally, the guide demonstrates that, when successfully executed, Economy Act transactions can provide a great opportunity for special-skilled servicemembers to practice their trade in a way that satisfies the demands of other federal agencies while saving taxpayer dollars.

II. History

Prior to the passage of the Economy Act, constitutional restrictions on redelegation and interagency fund transfers prohibited federal agencies from turning to brethren agencies for assistance, except in the rare circumstance where Congress specifically authorized interagency support.⁸ The first of these constitutional restrictions, the restriction on redelegation, arises from Congress's power to legislate the responsibilities and authorities assigned to each federal agency.⁹ Once Congress assigns certain authorities to an agency, that agency cannot violate this assignment by attempting to reassign these authorities to another agency.¹⁰

* Judge Advocate, U.S. Army. Presently assigned as Trial Attorney, Contract and Fiscal Law Division, U.S. Army Legal Services Agency, Fort Belvoir, Virginia. This article was submitted in partial completion of the Master of Laws requirements of the 61st Judge Advocate Officer Graduate Course.

¹ See Katelyn Sabochik, *President Obama on the Way Forward in Afghanistan*, WHITE HOUSE BLOG (June 22, 2011, 9:40 PM), <http://www.whitehouse.gov/blog/2011/06/22/president-obama-way-forward-afghanistan> (reporting that President Obama announced his plan to complete the transition of security to the Afghan people by 2014).

² CONG. BUDGET OFFICE, MONTHLY BUDGET REVIEW FISCAL YEAR 2012 (2012).

³ 31 U.S.C. §§ 1535–1536 (2011).

⁴ 3 U.S. GOV'T ACCOUNTABILITY OFFICE, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW ch. 12, at 22–23 (3d ed. 2008) [hereinafter GAO REDBOOK].

⁵ The Economy Act states that:

The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods and services if—(1) amounts are available; (2) the head of the ordering agency or unit decides the order is in the best interest of the United States government; (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and (4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

31 U.S.C. § 1535.

⁶ A list of the various specialty skills possessed by Soldiers can be found by visiting <http://www.goarmy.com>.

⁷ Throughout this article, the author will refer to this type of interagency agreement as a "traditional" Economy Act transaction, in order to distinguish it from Economy Act transactions involving third party commercial support contracts, whereby one agency contracts with a commercial enterprise in order to satisfy the requirements of another agency. See *infra* note 23 and accompanying text.

⁸ Jason Marisam, *The Interagency Marketplace*, 96 MINN. L. REV. 886, 902 (2012) (arguing that the "interagency marketplace" of the early twentieth century was "barren" as a result of there being "few statutes that authorized agencies to pay other agencies for their services").

⁹ See *United States v. Tower & Sons*, 14 Cust. App. 421, 426 (1927) (explaining the restriction on redelegation under the maxim *delegate potestas non potest delegari*—an authority delegated cannot be redelegated).

¹⁰ *Id.*

This does not mean that an agency cannot seek help, but that help is limited to areas that will invade neither a requesting agency's decision-making responsibilities nor its core purpose.¹¹

But even when interagency support does not create a redelegation violation, the U.S. Constitution's appropriation clause¹² prevents interagency support absent specific congressional authority for interagency fund transfers.¹³ Without congressional authority for interagency fund transfers, any support provided by one agency to another would create an unauthorized expense against the supporting agency's appropriation¹⁴ and an unauthorized augmentation to the receiving agency's appropriation.¹⁵

The Economy Act, originally passed in 1932 as part of a government initiative to reduce spending, was intended to encourage interagency support agreements by providing a general statutory authority for interagency fund transfers to pay for support provided by one agency to another.¹⁶ Proponents of the act argued that allowing agencies to enter into agreements to utilize each other's facilities and personnel would create government efficiencies by "mak[ing] it unnecessary for departments to set up duplicating and overlapping activities."¹⁷ Though the Economy Act does not provide a general authorization for redelegation, it does provide general statutory authority for interagency fund transfers, provided all the statute's enumerated requirements are met.¹⁸

¹¹ See GAO REDBOOK, *supra* note 4, ch. 12, at 72 ("[F]or purposes of applying the administrative function rule, the allocation of ultimate responsibility is more important than becoming immersed in a semantic morass over what does or does not constitute an administrative function. An agency can acquire services under the Economy Act, but cannot turn over the ultimate responsibility for administering its programs or activities.").

¹² The appropriation clause states, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. CONST. art. I, § 9.

¹³ Marisam, *supra* note 8, at 898; Air Force Office of Scientific Research, B-301561, 2004 WL 1853465, at *2 (Comp. Gen. June 14, 2004) (stating that "[u]nless otherwise authorized by law, transfers of funds between federal agencies and instrumentalities are prohibited by law").

¹⁴ An appropriation act is a statute that "provides legal authority for federal agencies to incur obligations and to make payments out of the Treasury for specified purposes." U.S. GOV'T ACCOUNTABILITY OFFICE, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS 13 (2005) [hereinafter GAO GLOSSARY].

¹⁵ *In re Wash. Nat'l Airport*, 57 Comp. Gen. 674, 678 (1978). Congress appropriates money to federal agencies via Appropriation Acts.

¹⁶ GAO REDBOOK, *supra* note 4, ch. 12, at 22–23.

¹⁷ *In re Wash. Nat'l Airport*, 57 Comp. Gen. at 680 (citing H.R. REP. NO. 71-2201, at 2–3 (1931)).

¹⁸ See Marisam, *supra* note 8, at 906 (stating that "it is impossible under this bill . . . for one department to delegate its functions to another") (quoting *Hearing on H.R. 10199 Before the H. Comm. on Expenditures in the Exec. Dep'ts*, 71st Cong. 6 (1930)).

When initially passed, the Economy Act required supporting agencies to use their organic assets when satisfying an interagency support request.¹⁹ Examples provided in the House Report included using Navy inspectors to inspect materials and supplies ordered by other federal agencies, or the interagency sharing of engineering staff.²⁰ Yet over time, the Economy Act evolved to allow supporting agencies to contract for the goods or services needed to satisfy an interagency support request.²¹

This evolution started with a 1942 amendment to the Economy Act that authorized the Departments of the Army, Navy, and Treasury, as well as Federal Aviation Administration and Maritime Administration, to provide interagency support via private contract in lieu of using the supporting agency's organic assets.²² This authority was expanded to all federal agencies with a 1982 amendment that "authorize[d] all agencies to obtain goods and services by contract when fulfilling Economy Act orders."²³ Proponents believed that the amendment would enable federal agencies to leverage subject-matter expertise contained within other departments when contracting with a private company.²⁴

Since the 1982 amendment, weak acquisition practices, including poor contract management resulting from ill-defined agency responsibilities, as well as the general lack of coordination in the creation of government-wide contracting vehicles, has led to the proliferation of policies and regulations governing the use of interagency acquisitions via third party commercial support contracts.²⁵ Concern over the waste in taxpayer dollars resulting from poorly implemented interagency acquisition tools led Congress, in the Fiscal Year 2009 National Defense Authorization Act (NDAA), to

¹⁹ See Sec'y of Commerce, 20 Comp. Gen. 264, 266 (1940) (advising that the "only services which may be requisitioned under [the Economy Act] are . . . services or works rendered or performed by the personnel of the requisitioned agency").

²⁰ H.R. REP. NO. 72-1126, at 15–16 (1932).

²¹ 31 U.S.C. § 1535 (2011).

²² The Economy Act, ch. 507, 56 Stat. 661 (1942).

²³ GAO REDBOOK, *supra* note 4, ch. 12, at 73 (citing Pub. L. No. 97-332, 96 Stat. 1622 (1982)). Specifically, the language of the Economy Act was amended to allow Economy Act transactions when either an agency could itself "provide or get by contract the ordered goods or services." 31 U.S.C. § 1535(a)(3).

²⁴ An example given in the House Report was if the then-Immigration and Naturalization Services required night vision sensors, the amended Economy Act would allow the Department of Defense (DoD), as a subject-matter expert, to assist with contracting for the sensors. H.R. REP. NO. 97-456, at 4 (1982).

²⁵ Memorandum from the Office of Mgmt. and Budget, to the Honorable Joseph I. Lieberman, Chairman, Committee on Homeland Security and Gov't Affairs, U.S. Senate encl., at 1–2 (Aug. 26, 2010) [hereinafter OMB Memorandum], available at http://www.whitehouse.gov/sites/default/files/omb/procurement/reports/IA_Report_2010-08-24.pdf.

direct the Office of the Management and Budget (OMB) to provide a report on how to improve interagency acquisition practices.²⁶ The 2009 NDAA directed the OMB to cover all “interagency acquisitions,” which it defined as any “procedure by which an executive agency needing supplies or services . . . obtains them from another executive agency”²⁷ Nonetheless, given the limited scope of the OMB’s response, it is clear that Congress did not intend the OMB to investigate traditional Economy Act transactions, but to only investigate interagency contracting with commercial enterprises, including those Economy Act transactions using third party commercial support contracts.²⁸ As a result of the OMB’s report, a series of requirements were adopted by the federal government involving interagency contracting that do not necessarily apply to traditional Economy Act transactions.

III. Rules Governing Traditional Economy Act Transactions

As explained in Part II, there are two methods by which an agency can satisfy an interagency support request under the Economy Act—the performing agency²⁹ can use its organic assets, which this article refers to as a traditional Economy Act transaction or it can contract with a commercial enterprise for the required goods or services.³⁰ Though interagency assistance using the performing agency’s organic assets is the traditional and older form of Economy Act transactions, they are less regulated than Economy Act transactions using third party commercial support contracts.³¹ Therefore, many of the commonly referenced policies and regulations for interagency transactions, including the Federal Acquisition Regulation (FAR)³² and the Department of Defense (DoD) Federal Acquisition Regulation Supplement (DFARS),³³ do not

generally apply when entering into a traditional Economy Act transaction.³⁴ Instead, commanders and their legal advisors should look to DoD guidance and published Government Accountability Office (GAO) decisions for guidance on how to enter into and perform a traditional Economy Act transaction.³⁵

From these sources, one can identify eight requirements that must be met for a successful traditional Economy Act transaction, with the first five coming directly from the statutory language of the Economy Act itself.³⁶ These requirements are: (1) the Economy Act transaction is between authorized parties; (2) the ordering agency has available funds to pay for the project; (3) the ordering agency determines that the order is in the best interest of the government; (4) the performing agency is able to support the project using its organic assets;³⁷ (5) the order cannot be satisfied “as conveniently or cheaply by a commercial enterprise”; (6) the requested work is not an unauthorized redelegation;³⁸ (7) there is no other statutory authority allowing the performing agency to perform the work;³⁹ and (8) a written agreement is signed by authorized officials from all party-agencies.⁴⁰

OF DEF., DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT pt. 217.5 (2011) [hereinafter DFARS].

³⁴ Some specific provisions of the FAR or DFARS will apply to traditional Economy Act transactions by virtue of their incorporation by DoD guidance for traditional economy act transactions. For example, both the FAR and the DoD Financial Management Regulation require the ordering agency to provide a written determinations and findings certifying that “funding is available to pay for the support, it is in the best interest of the U.S. Government, the supplying activity is able to provide the support, the support cannot be provided as conveniently or economically by a commercial enterprise, and it does not conflict with any other agency’s authority.” *Compare* FAR 17.502-2(c) (2005), *with* 11A U.S. DEP’T OF DEF., FIN. MGMT. REG. 7000.14R para. 030304 (2012) [hereinafter DoD FMR].

³⁵ Requirements for performing a traditional economy act transaction can be determined primarily by looking at the statutory language of the Economy Act itself, as well as guidance provided by the DoD within the DoD Financial Management Regulation, DoD FMR, *supra* note 34, and DoD Instruction 4000.19. U.S. DEP’T OF DEF., INSTR. 4000.19, INTERSERVICE AND INTERGOVERNMENTAL SUPPORT (9 Aug. 1995) [hereinafter DoDI 4000.19]. Additional guidance relating to the interpretation of the Economy Act’s statutory language can be found by looking at GAO opinions, which can be found online at <http://www.gao.gov/legal/index.html>. The GAO summarizes these opinions in its Redbook. GAO REDBOOK, *supra* note 4.

³⁶ 31 U.S.C. § 1535 (2011).

³⁷ Since this article is focused on traditional Economy Act transactions, it only addresses only those scenarios in which an agency can support an Economy Act transaction with its organic assets. Nonetheless, third party support contracts with commercial enterprises can also be performed under the Economy Act. *See supra* notes 23–24 and accompanying text.

³⁸ *See supra* note 18 and accompanying text.

³⁹ DoD FMR, *supra* note 34, para. 180102.

⁴⁰ DoDI 4000.19, *supra* note 35, para. 4.5.

²⁶ Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, § 865(a), 122 Stat. 4356 (2008).

²⁷ *Id.* § 865(d)(3).

²⁸ OMB Memorandum, *supra* note 25, at 1 (focusing on interagency contracting, which it defines as “an agency buy[ing] goods and services using a contract established by another agency or with its assistance”).

²⁹ When describing the two parties to an Economy Act transaction, the Government Accountability Office refers to the agency requesting support as the “ordering agency” and to the agency providing support as the “performing agency.” GAO REDBOOK, *supra* note 4, ch. 12, at 31; Marisam, *supra* note 8, at 900.

³⁰ *See supra* notes 23–24 and accompanying text.

³¹ *See infra* notes 32–33 and accompanying text.

³² Part 17.5 of the FAR states that it does not apply to “[i]nteragency reimbursable work performed by Federal employees (other than acquisition assistance), or interagency activities where contracting is incidental to the purpose of the transaction” FAR 17.500(c) (2005) (emphasis added).

³³ The Defense Federal Acquisition Regulation Supplement (DFARS) applies to “all purchases . . . made for DoD by another agency.” U.S. DEP’T

A. Authorized Parties—Who Can Enter into and Approve Economy Act Transactions

The first sentence of the Economy Act states that “[t]he head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another.”⁴¹ This statutory language has been uniformly interpreted to limit the use of the Economy Act to transactions between “agenc[ies] or instrumentalit[ies] of the United States government.”⁴² Therefore, a federal agency can only enter into Economy Act transactions with other federal agencies.⁴³

The statutory language of the Economy Act also requires that an Economy Act order be approved by either the “head of [the] agency” or the head of a “major organizational unit within an agency.”⁴⁴ Though this authority may be delegated, military commanders should verify with the ordering agency that their request has been approved by an individual authorized by the agency to place Economy Act orders.⁴⁵

B. Available Funds—Ensuring the Ordering Agency Can Pay for the Work Performed

Under 31 U.S.C. § 1535, known as the “Purpose Statute,” an agency can only use its appropriated funds for “objects for which the [appropriation was] made” unless “otherwise provided by law.”⁴⁶ The Economy Act is not an exception to the Purpose Statute. Therefore, for a valid Economy Act order, the ordering agency must have available funds that are authorized to use for the goods or

⁴¹ 31 U.S.C. § 1535.

⁴² GAO REDBOOK, *supra* note 4, ch. 12, at 32.

⁴³ *Id.* The Redbook also identifies some groups, like the Postal Service, whose exclusion from the Economy Act is less intuitive. *Id.* For some of these groups, there is a separate authority for providing assistance, such as the Innovative Readiness Training program, which allows the DoD to use military personnel to assist federal, regional, state, or local government entities under certain limited circumstances. 10 U.S.C. § 2012 (2012). Commercial contractors are not principals of an Economy Act Transaction, but can be contracted with by the performing agency to provide the specific service or good required by the ordering agency. *See supra* note 23 and accompanying text.

⁴⁴ 31 U.S.C. § 1535.

⁴⁵ Within the DoD, the authority to place an interagency Economy Act order with a non-DoD activity cannot be delegated lower than “Senior Executive Service, Flag, or General Officer level[.]” DoD FMR, *supra* note 34, para. 030304. But neither the Economy Act nor the DoD requires a military commander to seek approval from the General Officer or Senior Executive Service-level official to support an Economy Act order properly received from another agency. *See* DoDI 4000.19, *supra* note 35, para. E.2.1.1.1 (requiring General Officer or Senior Executive Service official approval for “[o]rders placed with non-DoD Federal activities”) (emphasis added).

⁴⁶ 31 U.S.C. § 1301(a).

services being ordered. Since the performing agency will usually have no way of knowing whether the ordering agency has funds available to pay for the requested project, the requesting official must provide the performing agency a “Certification of Availability for Purpose.” In the Certification of Availability for Purpose, the ordering agency certifies that “the funds cited on the Economy Act order are properly chargeable for the purposes cited in the order.”⁴⁷

C. Best Interest of the Government—The Ordering Agency Decides

In addition to determining that funds are available for the project, the ordering agency must also certify that the “order is in the best interest of the United States government.”⁴⁸ The view of the GAO is that the best interest determination is largely a matter of “internal debate” within the ordering agency itself.⁴⁹ Since this is an internal decision made by the ordering agency, military commanders may reasonably rely upon the ordering agency’s “best interest” determination.

D. Performing Agency in a Position to Perform Work—The Performing Agency Decides

Since the 1982 amendment to the Economy Act, any federal agency can support an Economy Act order with either organic or contracted goods or services.⁵⁰ If the performing agency determines that it will use commercially contracted goods or services, the performing agency must ensure that all additional requirements relating to commercially contracted procurements, including those found in the FAR, are satisfied.⁵¹

Yet, just because the performing agency is capable of supporting the ordering agency’s request does not mean that it is in a position to support the agency. An agency may not provide support under the Economy Act when there are “statutory prohibitions or restrictions which would obstruct performance.”⁵² In short, the Economy Act does not provide a performing agency authority to do something it is otherwise prohibited from doing. The Posse Comitatus Act,

⁴⁷ DoD FMR, *supra* note 34, para. 030402.

⁴⁸ 31 U.S.C. § 1535.

⁴⁹ GAO REDBOOK, *supra* note 4, ch. 12, at 27 n.7.

⁵⁰ *See supra* note 23 and accompanying text.

⁵¹ *See supra* notes 31–38 and accompanying text. These types of Economy Act transactions are beyond the scope of this article.

⁵² GAO REDBOOK, *supra* note 4, ch. 12, at 28 (citing Sec’y of Commerce, 23 Comp. Gen. 935, 937–38 (1944)).

which prohibits the military from performing domestic civilian law enforcement functions absent specific authorization, would be an example of a statutory prohibition that obstructs performance of certain Economy Act orders.⁵³ Provided no prohibition or restriction exists, whether an agency is in a position to support a request under the Economy Act is “primarily the agency’s own determination.”⁵⁴

Within the DoD, unit commanders determine whether their units are in a position to support an Economy Act request.⁵⁵ The unit commander must indicate this determination in block 8.c on a DD Form 1144 “Support Agreement.”⁵⁶

E. Lower Cost Rule—Making Sure a Commercial Provider Cannot Do It for Less

In order to meet the Economy Act’s dual purpose of increasing government efficiency and reducing costs, the ordering agency must determine that the “goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.”⁵⁷ A technique noted by the GAO for making a low cost determination is to “solicit bids and then reject all bids if they exceed the cost of dealing with another agency.”⁵⁸

The ordering agency’s low cost finding must be included in a Determinations and Findings (D&F) Memorandum generated by the ordering agency and signed by the “head of a major organizational unit” or their authorized designee.⁵⁹ The D&F must state that “funding is available to pay for the support, it is in the best interest of the U.S. Government, the supplying activity is able to provide the support, the support cannot be provided as conveniently or economically by a commercial enterprise, and it does not conflict with any other agency’s authority.”⁶⁰

⁵³ 18 U.S.C. § 1385 (2011).

⁵⁴ GAO REDBOOK, *supra* note 4, ch. 12, at 28 (citing Sec’y of Commerce, 23 Comp. Gen. 935, 937–38 (1944)).

⁵⁵ DODI 4000.19, *supra* note 35, para. E.2.1.1 (defining approval authority as “[t]he activity commander, director, or chief who has authority over the personnel and material utilized in providing the specific support”).

⁵⁶ *Id.* The DD Form 1144 Support Agreement is used to document a description of support to be provided, estimated costs, time frame, and other necessary terms relating to the interagency support transaction. *Id.* para. 6.2.

⁵⁷ 31 U.S.C. § 1535(a).

⁵⁸ GAO REDBOOK, *supra* note 4, ch. 12, at 29.

⁵⁹ DOD FMR, *supra* note 34, para. 030304. The DoD FMR incorporates the determinations and findings requirement of the FAR. Compare FAR 17.502-2(c), *supra* note 32, with DoD FMR, *supra* note 34, para. 030304.

⁶⁰ DoD FMR, *supra* note 34, para. 030304. Though an ordering agency may consider both convenience and cost in its Determinations and Findings,

Though it is the ordering agency’s responsibility to provide the D&F, the military unit or activity performing the work must provide the ordering agency a reasonable cost estimate to enable the ordering agency to make its lower cost determination. Part IV of this article will cover how the performing agency determines the “actual cost” of an Economy Act order.⁶¹

F. Redelegation Restriction—Ensuring the Ordering Agency Maintains Decision-Making Authority

As discussed in Part II of this article, the Constitution prohibits agencies from redelegating congressionally provided authorities that involve the exercise of discretion or the agency’s core purpose. The Economy Act is not an exception to the Constitution’s redelegation restriction.⁶² Therefore, military commanders and their legal advisors must ensure that Economy Act support agreements provide adequate safeguards to ensure their Soldiers are not placed in a situation where they are exercising the discretionary or decision-making authority of the ordering agency.⁶³

According to the GAO, the question of redelegation ultimately comes down to whether the ordering agency maintains “ultimate responsibility for administering its programs or activities.”⁶⁴ By following the DoD Financial Management Regulation (FMR) requirement that all Economy Act orders be “specific, definite, and certain as to the work encompassed by the order and the terms of the order itself,” military commanders can limit the discretion provided their Soldiers during an Economy Act transaction and ensure that the ordering agency maintains ultimate responsibility for the project.⁶⁵

GAO opinions regarding this requirement have largely focused on cost rather than convenience. See GAO REDBOOK, *supra* note 4, at 12–29 (discussing the “conveniently or cheaply” language of the Economy Act under a subsection entitled “[l]ower cost”). Therefore, agencies should use caution when entering into an Economy Act transaction when the supporting agency is not the lowest cost provider. *Id.* (stating that “[t]he Economy Act was never intended to foster an incestuous relationship in lieu of normal contracting with private business concerns”). This does not mean that the Economy Act cannot be used when the proposed supporting agency is not the lowest cost provider, but rather highlights the importance for the ordering agency to clearly identifying the cost-convenience tradeoff when a cheaper commercial enterprise can provide the required goods or services.

⁶¹ See *infra* Part IV.

⁶² See *supra* note 18 and accompanying text.

⁶³ See *supra* notes 8–11 and accompanying text.

⁶⁴ GAO REDBOOK, *supra* note 4, ch. 12, at 72.

⁶⁵ DOD FMR, *supra* note 34, para. 030401.

G. Act of Last Resort—Ensuring No Other Statute Authorizes the Interagency Work

The Economy Act is the only general authority for interagency fund transfers.⁶⁶ Since originally passing the Economy Act in 1932, Congress has subsequently passed numerous statutes providing specific authority for interagency fund transfers.⁶⁷ Each of these specific interagency fund transfer authorities is limited to the specific circumstances outlined within its respective implementing statute.⁶⁸ The Economy Act may not be used when a more specific statutory authority for interagency fund transfers covers the contemplated project or order.⁶⁹ In such situations, the ordering and performing agencies must comply with the requirements of the more specific statute. A non-exhaustive list of commonly used non-Economy Act authorities can be found both within the Contract Attorney Deskbook, published by The Judge Advocate General's School and within the DoD FMR.⁷⁰

H. Written Agreement—Putting Everything in Writing

Though not statutorily required, written agreements outlining and memorializing Economy Act transactions are recommended by the GAO⁷¹ and are mandated by the DoD.⁷² Economy Act orders should generally be recorded on

a DD Form 1144 Support Agreement,⁷³ though other ordering formats may be used so long as all documentation requirements outlined in the DoD FMR are satisfied.⁷⁴ For more complex orders, military commanders may also elect to supplement the DD Form 1144 with a memorandum of agreement that clearly outlines the project and responsibilities of both parties.⁷⁵ An example memorandum of agreement can be found in Volume 11A, Chapter 1 of the DoD FMR.⁷⁶

Should both parties elect to use a DD Form 1144 to memorialize the Economy Act order, military commanders should ensure that the form identifies all bases for reimbursement and provides a clear statement of work and performance standards.⁷⁷ The agreement should also incorporate the ordering agency's D&F,⁷⁸ as well as establish reporting and oversight requirements necessary to identify and resolve problems, including disputes over performance requirements, as they arise.⁷⁹

All responsibilities and requirements assigned to the ordering agency necessary to facilitate completion of the project should be included within the agreement.⁸⁰ The support agreement should also specify whether payment will be in advance or on a reimbursement basis.⁸¹ Finally, the

agencies involved based upon the documentation standards [outlined in Chapter 1 of the DoD FMR]).

⁶⁶ See *id.* para 180102 (identifying only one “default” authority for interagency fund transfers when specific authorization for the interagency fund transfer does not exist).

⁶⁷ *E.g.*, The Project Orders Statute, 41 U.S.C.A. § 6307 (West 2013) (Westlaw through Pub. L. No. 112-207, 127 Stat. 448 (2013)); Government Employees Training Act (GETA), 5 U.S.C. § 4104 (2012); The Clinger-Cohen Act, 40 U.S.C. § 11302 (2011).

⁶⁸ For example, Government Employees Training Act (GETA) allows for interagency reimbursement when an agency provides training attended by employees from other federal agencies. 5 U.S.C. § 4104.

⁶⁹ See DoD FMR, *supra* note 34, para. 180102 (stating that “[s]pecific statutory authority is required to place an order with a Non-DoD agency for goods or services If specific statutory authority does not exist, the default will be the Economy Act . . .”).

⁷⁰ CONT. & FISCAL L. DEP’T, THE JUDGE ADVOC. GEN.’S LEGAL CENTER & SCH., U.S. ARMY, 165TH CONTRACT ATTORNEY’S COURSE DESKBOOK 11–19 to –26 (July 2012); see also DoD FMR, *supra* note 34, ch. 18 (providing the DoD guidance for Non-Economy Act orders).

⁷¹ GAO REDBOOK, *supra* note 4, ch. 12, at 30 (stating that “[a] written agreement is important because, as in any contract situation, the terms to which the parties agree, as reflected in the writing, establish the scope of the undertaking and the rights and obligations of the parties. Also, the written agreement can establish a ceiling on the ordering agency’s financial obligation.”).

⁷² DoDI 4000.19, *supra* note 35, para. 4.5 (“[I]ntragovernmental support that requires reimbursement shall be documented on a DD Form 1144, ‘Support Agreement’ . . . or similar format that contains all the information required on DD Form 1144.”); see also DoD FMR, *supra* note 34, para. 030501 (stating that “[a]n Economy Act order may be placed on DD Form 1144 or any form that is acceptable to both requesting and servicing

⁷³ DoDI 4000.19, *supra* note 35, para. 4.5.

⁷⁴ DoD FMR, *supra* note 34, para. 010204 (listing the provisions that must be included in an interagency support agreement).

⁷⁵ *Id.* para. 010204(B)(1) (stating that memorandums of agreement are “normally used when a certain unquantifiable type of support is required over a period of time”).

⁷⁶ *Id.* ch. 1, add. 3.

⁷⁷ DoDI 4000.19, *supra* note 35, encl. 2.1.12 (Support agreements must “define the support to be provided . . . , specify the basis for calculating reimbursement charges (if any) for each service, establish the billing and reimbursement process, and specify other terms and conditions of the agreement.”).

⁷⁸ See *supra* note 59 and accompanying text.

⁷⁹ Unresolved disputes must be elevated through a DoD activity’s chain-of-command to the Office of the Assistant Secretary of Defense (Economic Security), who will mediate the dispute for the DoD. DoDI 4000.19, *supra* note 35, para. 4.8. If the Office of the Assistant Secretary of Defense (Economic Security) is unable to successfully mediate the dispute, the dispute will be sent to Department of the Treasury’s Financial Management Services-Government Wide Acquisitions for resolution. U.S. DEP’T OF THE TREASURY, TREASURY FINANCIAL MANUAL, BULL. NO. 2011-04, INTRAGOVERNMENTAL BUSINESS RULES 10 (1998).

⁸⁰ U.S. GOV’T ACCOUNTABILITY OFFICE, POLICY AND PROCEDURES MANUAL FOR GUIDANCE ON FEDERAL AGENCIES, FISCAL GUIDANCE 7.2–11 (1993) (requiring interagency agreements to include the “terms and conditions of performance”).

⁸¹ GAO REDBOOK, *supra* note 4, ch. 12, at 34. The DoD FMR generally prohibits DoD activities from making advanced payment to non-DoD entities for support received under an interagency agreement. DoD FMR,

support agreement should discuss how costs will be allocated if the agreement is terminated prior to completion of the project.⁸² Such a provision is particularly important for projects performed by military servicemembers, where military necessity may prevent servicemembers from completing a project.

I. Project Cost—Identifying Reimbursable Costs

To avoid an unauthorized expense against a unit's appropriated funds, and an impermissible augmentation of the ordering agency's appropriated funds, it is critical that military leaders ensure that all reimbursable costs associated with an interagency project are identified and properly charged to the ordering agency.⁸³ Though the Economy Act itself does not define actual cost, the GAO and DoD have provided detailed guidance on how to calculate the reimbursable actual costs associated with an Economy Act transaction.⁸⁴

i. The Government Accountability Office Approach

The GAO, recognizing that the purpose of the Economy Act was to facilitate, rather than impede, the use of interagency transactions,⁸⁵ has held that the determination of actual costs need not be an "exact science."⁸⁶ Rather, the reimbursement requirements of 31 U.S.C. § 1535(b) are satisfied so long as the actual costs charged to the ordering agency "reasonably approximate the actual costs" of the project.⁸⁷ In determining reimbursable costs, the GAO has

supra 34, para. 030502. Though this rule does not prohibit a non-DoD entity from making advance payments for support they receive from a DoD entity, other agencies may have a similar restriction that would prohibit the use of advance payments.

⁸² *Id.* at 42–43 (stating that agencies can structure interagency agreements to address the performing agency's incurred expenses in the event of a termination for convenience).

⁸³ See *supra* note 15 and accompanying text.

⁸⁴ Marisam, *supra* note 8, at 911–12 (stating that, though Congress never defined actual cost, the "precise contours have been outlined piecemeal by the Comptroller General"); DoD FMR, *supra* note 34 ch. 1, add. 1 (outlining types of costs DoD activities must include in "actual cost" calculation).

⁸⁵ The Comptroller General stated that one of Congress's goals when passing the Economy Act was to "diminish[] the reluctance of other Government agencies to accept [interagency] orders by removing . . . limitations upon reimbursements." *In re Wash. Nat'l Airport*, 57 Comp. Gen. 674, 681 (1978). Further, Congress did not intend to make the reimbursement requirement overly burdensome or a source of "interagency bickering," as demonstrated by the Economy Act's lack of any statutory requirements for audits, certifications in advance of payment, or detailed breakdowns of reimbursable costs. GAO REDBOOK, *supra* note 4, ch. 12, at 41.

⁸⁶ GAO REDBOOK, *supra* note 4, ch. 12, at 42.

⁸⁷ *Id.*

identified two categories of costs associated with an Economy Act transaction—required costs and situational costs.⁸⁸

Under the Economy Act, the ordering agency must reimburse a performing agency for its required costs.⁸⁹ Required costs consist largely of those direct costs incurred by the performing agency as a result of an Economy Act transaction.⁹⁰ Direct costs include the salaries, materials, and equipment furnished for the project, as well as any associated transportation costs.⁹¹ Indirect costs are also treated as a reimbursable required cost when they are "funded out of the performing agency's currently available appropriations and . . . bear a significant relationship to the performing of the service or work or the furnishing of materials."⁹² Reimbursement of small amounts may be waived when processing the payment would be uneconomical.⁹³

All remaining costs associated with an Economy Act transaction are classified as situational costs.⁹⁴ Though the Economy Act provides a performing agency significant discretion in determining whether it will require reimbursement for situational costs,⁹⁵ the use of this discretion is often limited by agency-wide reimbursement policies.⁹⁶

Though employee salaries are typically considered a reimbursable cost, the GAO has recognized two reimbursement exceptions.⁹⁷ The first exception involves

⁸⁸ *Id.* at 39.

⁸⁹ *Id.* at 39–40.

⁹⁰ *Id.* at 39.

⁹¹ *Id.*

⁹² *In re Wash. Nat'l Airport*, 57 Comp. Gen. 674, 682 (1978).

⁹³ Before using this exception, "a study [should be] made to determine what limiting figure should be set and whether any other criteria should be established." To Chairman, Incentive Award Committee, B-156022 (Comp. Gen. Apr. 28, 1966), available at <http://www.gao.gov/assets/400/400392823.pdf>, cited with approval in GAO REDBOOK, *supra* note 4, ch. 12, at 42.

⁹⁴ GAO REDBOOK, *supra* note 4, ch. 12, at 40.

⁹⁵ *Id.* ch. 4, at 41 (stating that "[w]hile particular circumstances might authorize some indirect costs beyond what the Economy Act requires, their inclusion in the performing agency's charges is not required, but is discretionary).

⁹⁶ Within the DoD FMR, the DoD has provided its subordinate activities with detailed guidance on all costs that must be reimbursed for services provided by the DoD to other DoD or non-DoD entities. DoD FMR, *supra* note 34, para. 030601.

⁹⁷ A nonreimbursable detail of servicemembers to perform work for another agency will typically "create an unauthorized augmentation of the receiving agency's appropriation [and] . . . violate[] the purpose limitations of 31 U.S.C. § 1301(a)." GAO REDBOOK, *supra* note 4, ch. 12, at 56.

situations where the performing agency's employee is performing interagency work "similar or related to those ordinarily handled by the loaning agency, and will aid the loaning agency in accomplishing a purpose for which its appropriations are provided."⁹⁸ This scenario could arise in situations where the work performed by an agency employee for another agency provides substantial training benefits directly related to the employees regular responsibilities.⁹⁹ The second exception to the salary reimbursement requirement applies to scenarios where an agency provides a small number of employees over a brief period of time, and therefore incurs a negligible impact to its appropriations as a result of the interagency work.¹⁰⁰

ii. The Department of Defense Approach

The DoD has provided its own guidance on calculating the reimbursable costs associated with an Economy Act transaction. The DoD FMR states that:

Reimbursement under the Economy Act is to be made on the basis of actual costs as determined by the [performing] agency Actual costs include all direct costs attributable to providing goods or services, regardless of whether the servicing agency's expenditures are increased. Actual costs also include indirect costs (overhead) to the extent they have a significant relationship to providing the goods or services and benefit the requesting agency. Indirect costs (overhead) shall be computed in accordance with Chapter 1 of this Volume.¹⁰¹

⁹⁸ Dep't of Health & Human Servs. Detail of Office of Cmty. Svcs. Emps., 64 Comp. Gen. 370, 380 (1985), cited with approval in GAO REDBOOK, *supra* note 4, ch. 12, at 56.

⁹⁹ Cf. Reimbursement for Detail of Judge Advocate General's Corps Pers., 13 Op. O.L.C. 188, 191 (1989) (finding that the Economy Act required salary reimbursement where experienced JAG Corps attorneys were detailed to work on specialized civilian narcotics prosecutions in civilian courts that "did not appear to be directly related to more than a small fraction of the work customarily done by JAGC attorneys for their military departments"), cited with approval in GAO REDBOOK, *supra* note 4, ch. 12, at 56.

¹⁰⁰ Dep't of Health and Human Servs. Detail of Office of Cmty. Svcs. Emps., 64 Comp. Gen. at 380. This exception to salary reimbursement is an application of the general "small amounts" rule applicable to all Economy Act costs. See *supra* note 93 and accompanying text.

¹⁰¹ DoD FMR, *supra* note 34, para. 030601. Though the DoD FMR uses the term "requesting agency" to identify the party seeking interagency support, the statutory language of the Economy Act, and this article, refers to this party as the "ordering agency." 31 U.S.C. § 1535 (2006).

Chapter 1 of the DoD FMR contains a table listing all costs that will be charged by DoD activities when providing support under the Economy Act.¹⁰² Many situational costs, including depreciation, are listed on the table as reimbursable costs.¹⁰³

With regard to agency employee salaries, the DoD FMR does not allow DoD activities to use either salary reimbursement exception identified by the GAO.¹⁰⁴ Therefore, should military commanders seek to use a salary reimbursement exception to facilitate training opportunities for their special-skilled servicemembers, they must first obtain a policy exception from the Office of the Under Secretary of Defense (Comptroller).¹⁰⁵

IV. Pitfalls to an Economy Act Transaction

Three overarching categories of mistakes that may arise during an Economy Act transaction include failures in oversight, funding, and rule application. As demonstrated below, all of these mistakes can be prevented by developing a clear and thorough interagency agreement that ensures communication by all parties throughout the Economy Act project.

A. Failure in Oversight

At the constitutional level, failures in oversight can lead to an improper redelegation of an agency's congressionally provided authority.¹⁰⁶ At a more basic level, failures in oversight can also lead to interagency disputes and unsatisfied requirements. Problems created by the ordering agency's failure to maintain project oversight can lead to protracted disputes involving high level agency leadership, and ultimately, the Department of the Treasury's Financial Management Services—Government-Wide Acquisition Assistant Commissioner.¹⁰⁷ Therefore, ensuring consistent communication by both agencies throughout a project is critical for a successful Economy Act transactions.

¹⁰² DoD FMR, *supra* note 34, ch. 1, add. 1.

¹⁰³ *Id.*

¹⁰⁴ See, e.g., *id.* para. 010203.B.2 (stating that "[m]ilitary labor shall be charged to non-DoD organizations on the basis of the actual hours worked or assigned (detailed)") (emphasis added).

¹⁰⁵ *Id.* at I-4. Requests for exceptions should be sent to:

Office of the Under Secretary of Defense (Comptroller)
Accounting and Finance Policy (A&FP)
1100 Defense Pentagon
Washington, D.C. 20301-1100

¹⁰⁶ See *supra* Part III.F (discussing improper redelegation).

¹⁰⁷ See *supra* note 73 and accompanying text (discussing dispute resolutions involving interagency acquisitions).

Failures in oversight can also result in wasteful spending arising from general mismanagement in the acquisition process.¹⁰⁸ The ordering agency is in the best position to understand their requirements. It is therefore critical that the ordering agency remains engaged throughout the interagency support process to ensure that the completed project satisfies their requirements. A best practice would include incorporating progress reports into the interagency agreement.¹⁰⁹

B. Failure in Funding

A failure to properly fund an interagency Economy Act transaction will usually arise under one of two scenarios: (1) actual projects costs exceed estimated costs; or (2) funds obligated by the ordering agency for the project must be deobligated by operation of 31 U.S.C. § 1535(b). Each scenario is discussed below.

As discussed in Subpart I of Part III, 31 U.S.C. § 1535(b) requires ordering agencies to pay all actual costs associated with an Economy Act transaction. Should the ordering agency have insufficient funds to cover project costs, the performing agency cannot absorb unpaid costs without violating the purpose requirements of 31 U.S.C. § 1301(a).¹¹⁰ Therefore, it is important that the performing agency provide a detailed cost estimate prior to beginning work on an Economy Act order¹¹¹ and that the ordering agency certifies that the necessary funds are available.¹¹² As soon as it becomes apparent to the performing agency that a project may exceed estimated costs, work on the project should stop and the ordering agency must be informed of the cost increase. Failing to notify the ordering agency of unanticipated costs could result in an anti-deficiency violation.¹¹³

¹⁰⁸ The OMB noted that a high risk of mismanagement within interagency acquisitions results in part from an “unclear line of responsibility between agencies with requirements and agencies providing acquisition support.” OMB Memorandum, *supra* note 25, at 1. Though the OMB was specifically addressing interagency assisted acquisitions, the same concern is relevant for traditional Economy Act transactions. Effective oversight mechanisms can ensure each agency understands and performs its areas of responsibility.

¹⁰⁹ Issues relating to project costs are one area that should be included in such reports. *See* GAO REDBOOK, *supra* note 4, ch. 12, at 31 (stating that “it is extremely useful for the [interagency] agreement to set forth a requirement and procedures for the performing agency to notify the ordering agency if it appears that performance will exceed estimated costs”).

¹¹⁰ “Appropriations shall be applied only to the objects for which the appropriations were made. . . .” 31 U.S.C. § 1301(a) (2011).

¹¹¹ *See supra* note 109 and accompanying text.

¹¹² *See supra* note 47 and accompanying text.

¹¹³ U.S. GOV'T ACCOUNTABILITY OFFICE, POLICY AND PROCEDURES MANUAL FOR GUIDANCE ON FEDERAL AGENCIES, FISCAL GUIDANCE 7.2–12 (1993). The Antideficiency Act prohibits a Federal Employee from making or incurring an expenditure or obligation in advance of or exceeding

Even when an ordering agency identifies sufficient funds to pay for all actual costs associated with an Economy Act order, a funding issue may still arise if those funds are not in turn obligated by the performing agency prior to expiring.¹¹⁴ Under 31 U.S.C. § 1502(a), appropriated funds can only be used for “expenses properly incurred during [their] period of availability.” For the typical commercial contract, an expense is considered to have been incurred at the time of contract.¹¹⁵ But under the Economy Act, a more nuanced examination of the performing agency’s expenses is required to determine if and when expenses are incurred under 31 U.S.C. § 1502(a).

Though the Economy Act considers funds obligated upon formation of an interagency support agreement, the Economy Act imposes an additional deobligation requirement whereby funds that the performing agency “has not incurred obligations [against], before the end of the period of availability of the appropriation, in—(1) providing goods or services; or (2) making an authorized contract with another person to provide the requested goods or services,” must be deobligated.¹¹⁶ In short, all funds obligated by the ordering agency for which the performing agency has neither incurred an actual expense nor a contractual obligation, prior to the end of the fund’s period of availability, become unavailable for purposes of reimbursing the performing agency.¹¹⁷ If additional funds are thereafter required to complete the project, “current appropriations available for the same purpose should be used to reimburse the performing agency.”¹¹⁸ Given the potential funding problems that may arise from the Economy Act’s deobligation rule, commanders and their legal advisors should generally avoid Economy Act transactions with support requirements that will likely extend into the next fiscal year. Large or complex projects, as well as projects beginning near the end of the fiscal year, are particularly susceptible to the funding issues created by the deobligation rule.

“an amount available in an appropriation or fund for the expenditure or obligation.” 31 U.S.C. § 1341(a).

¹¹⁴ *See* DOD FMR, *supra* note 34, para. 030404B (stating that “[t]he amount obligated by the ordering agency or unit must be deobligated to the extent that the servicing agency has not incurred obligations before the end of the period of availability of the ordering appropriation”).

¹¹⁵ *See* GAO GLOSSARY, *supra* note 14, at 70 (“An agency incurs an obligation, for example, when it places an order, signs a contract, awards a grant, purchases a service, or takes other actions that require the government to make payments to the public or from one government account to another”).

¹¹⁶ 31 U.S.C. § 1535(d).

¹¹⁷ *See supra* note 114 and accompanying text.

¹¹⁸ GAO REDBOOK, *supra* note 4, ch. 12, at 45–46.

C. Failure in Rule Application

When entering into an Economy Act transaction with another federal agency, it is important that commanders and their legal advisors remember that different federal agencies have different requirements for Economy Act transactions. Though all agencies must comply with the Economy Act's statutory requirements, DoD activities must also ensure their Economy Act support agreements comply with DoD-specific policies.¹¹⁹

Though this article has largely focused on interagency Economy Act transactions, Economy Act transactions may also occur interservice, meaning between two separate services within the DoD.¹²⁰ For example, the Department of the Army can enter into an Economy Act transaction with the Department of the Air Force for goods or services to be rendered.¹²¹ Department of Defense guidance on interservice and interagency support agreements differs in many ways.¹²² For example, the DoD FMR guidance for determining reimbursement costs differs depending on whether the transaction is for interagency or interservice support.¹²³ Military commanders and their advisors must be aware of these different agency rules when entering into an interservice Economy Act transaction.

V. Finding On-The-Job Training Opportunities Using the Economy Act

In the legislative history accompanying the original 1932 Economy Act, Congress noted that “[t]he War and Navy Departments are especially well equipped to furnish materials, work, and services for other departments.”¹²⁴ Since 1932, the types of skills possessed by American servicemembers have significantly expanded,¹²⁵ making

¹¹⁹ See, e.g., DODI 4000.19, *supra* note 35, para. 2.2 (stating that the interservice and intragovernmental support policies within the instruction apply to all Defense Support Activities).

¹²⁰ DoD FMR, *supra* note 34, para. 030101.

¹²¹ See *id.* para. 030103(D) (defining intra-agency or interservice support as “[t]ransactions for goods or services within and between DoD and other DoD Components”).

¹²² See, e.g., *id.* paras. 030303–030304 (providing DoD activities different guidance regarding when they will support Economy Act requests, based upon whether the request is for intra-agency or interagency support).

¹²³ *Id.* ch. 1. The DoD can require lower reimbursement requirements for interservice support due to a congressional created reimbursement exception that authorized military departments to provide supplies or services from “one armed force to another” without reimbursement. 10 U.S.C. § 2571 (2012).

¹²⁴ H.R. REP. NO. 72-1126, at 15–16 (1932).

¹²⁵ United States Army, *Careers & Jobs*, GOARMY.COM, <http://www.goarmy.com/careers-and-jobs.html> (last visited June 11, 2013).

Congress’s 1932 observation about the military’s unique ability to assist other federal agencies even more true today.

Today, American servicemembers possess specialized skills in numerous areas with direct civilian application, including engineering, construction, communications, maintenance, transportation, and health services.¹²⁶ These skills enable servicemembers to build roads, repair buildings, fix plumbing, perform surveys, create maps, install advance communication systems, service generators, manufacture parts, create multimedia illustrations, and inspect for health hazards.¹²⁷ These services, as well as others, can be used to meet any number of agency requirements arising from the federal government’s management of its vast land, building, and infrastructure assets.¹²⁸

In a February 2012 report from the Congressional Research Service (CRS), the CRS found that the National Park Service, Forest Service, Fish and Wildlife Service, and the Bureau of Land Management had over \$18 billion dollars in backlogged maintenance requirements as of Fiscal Year 2010.¹²⁹ Most of these costs related to maintenance requirements on roads, bridges, trails, buildings, and other structures.¹³⁰ Through use of the Economy Act, military engineers, communication specialists, and others can provide these agencies with an economical means to satisfy some of these backlogged maintenance requirements.

Once a military unit determines that it both has specialized capabilities that can be beneficially utilized by another agency, and that use of these capabilities by other agencies will provide Soldiers with valuable real world experience in their craft, the unit can notify other agencies of these capabilities by contacting local federal agency offices. When doing so, the goal will not be to turn the military into a permanent supplier of services for other agencies, but rather to help identify a limited number of projects that can be performed by special-skilled servicemembers, where performing the project will provided the servicemember with valuable real world experience, while simultaneously providing another federal agency with a cheaper service than can be obtained from a commercial enterprise.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ The federal government “owns and manages roughly 635–640 million acres of land.” CONG. RESEARCH SERV., FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 1 (2012). The agencies primarily responsible for managing federal lands include the National Park Service, the Bureau of Land Management, the Fish and Wildlife Service, and the United States Forest Service. *Id.*

¹²⁹ *Id.* at 19–20.

¹³⁰ *Id.*

Currently, the U.S. Army Corps of Engineers (USACE) maintains an active interagency support program. Through its Interagency and International Service (IIS) program, USACE provides “engineering and construction services, environmental restoration and management services, research and development assistance, management of water and land related natural resources, relief and recovery work, and other management and technical services” to non-DoD federal agencies.¹³¹ Though the USACE ISS program provide some services that are authorized by specific congressional statutes other than the Economy Act,¹³² military units interested in providing interagency support can nonetheless use the USACE IIS program as a starting point for developing their own interagency support program.

VI. Conclusion

The near term reality for the military is that budgets will get smaller. With smaller budgets and fewer deployments, maintaining a special-skilled servicemember’s expertise in his craft will become increasingly difficult. But by using the Economy Act, military commanders can provide these servicemembers an opportunity to maintain their expertise through work on real-world projects. Ultimately, these projects will not only benefit the servicemember and the military, but will satisfy other agency needs and save taxpayer dollars.

¹³¹ U.S. Army Corps of Engineers, *Interagency & International Support*, HEADQUARTERS: UNITED STATES ARMY CORPS OF ENGINEERS, <http://www.usace.army.mil/Missions/MilitaryMissons/InteragencyInternationalSupport.aspx> (last visited June 11, 2013).

¹³² Through its Interagency and International Service program, U.S. Corps of Engineers (USACE) also provides technical assistance to “state and local governments, tribal nations, private U.S. firms, international organizations, and foreign governments.” *Id.* Since the Economy Act can only be used for interagency support projects between federal agencies, USACE must rely on non-Economy Act authorities to obtain reimbursement for these services.