DoD 7000.14 - R

DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

VOLUME 14: "ADMINISTRATIVE CONTROL OF FUNDS AND ANTIDEFICIENCY ACT VIOLATIONS"

UNDER SECRETARY OF DEFENSE (COMPTROLLER)

VOLUME 14, CHAPTER 1: "ADMINISTRATIVE CONTROL OF FUNDS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue, and underlined font*.**

The previous version dated January 2009 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
0101	Added a "General" section that incorporated the previous "Purpose" section and new "Overview" and "Authoritative Guidance" paragraphs.	Addition
010206	Added definitions for apportionments, allotments, suballotments and allocations in accordance with OMB Circular A-11, Appendix H. Added specific documentation requirements for allotments. Moved Reimbursable Orders and Centrally-Managed Accounts information to a new paragraph 010207.	Revision
010207	Added an "Other Fund Management" paragraph that incorporates Centrally-Managed Accounts, Reimbursable Orders, and Revolving Funds information as subparagraphs A, B, and C. Subparagraph A clarified the definition of and requirements for a centrally-managed account. Added definitions for reimbursable orders and revolving funds.	Revision
010211.A.6 – 7	Added requirements from 31 U.S.C. § 3512.	Addition
010212	Revised the annual evaluation reporting requirements.	Revision
Policy Memo	The Deputy Chief Financial Officer's "Administrative Control of Funds" memorandum, dated August 7, 2013 was incorporated into this revision and cancelled.	Cancellation

Table of Contents

VOLUME 14, CHAPTER 1: "ADMINISTRATIVE CONTROL OF FUNDS" 1

*0101 GENERAL 3

010101. Overview 3
010102. Purpose 3
010103. Authoritative Guidance 3

0102 POLICY 4

010201. Defense-wide Appropriations 4
010202. Administrative Control Systems 4
010203. Reporting Requirements for Administrative Control Systems 4
010204. Delegations of Authority 4
010205. Statutory Limitations and Duties of DoD Officials 5
*010206. Apportionments, Allotments, Suballotments and Allocations 6
*010207. Other Fund Management 10
010208. Obligations and Expenditures 14
010209. Reconciliations 15
010210. Records 16
010211. Financial Management Systems 16
*010212. Annual Evaluation 17

CHAPTER 1

ADMINISTRATIVE CONTROL OF FUNDS

*0101 GENERAL

010101. Overview

The Volume 14 prescribes the requirements for the administrative control of funds and the Antideficiency Act (ADA) for Department of Defense (DoD) Components. Chapter 1 defines the statutory restrictions and limitations governing the administrative control of funds. Failure to comply with these restrictions and limitations is a violation of the ADA. Chapter 2 explains the ADA and related statutes, causes of violations, and preventive action including training requirements. The additional chapters prescribe the requirements for DoD Components when a potential ADA violation is discovered, conducting an ADA investigation, reporting ADA violations, and administering disciplinary action. The provisions of this volume take precedence over any conflicting guidance in other volumes or DoD regulations, manuals, instructions, or directives.

010102. Purpose

This chapter establishes policy for the administrative control of funds and includes specific instruction for controlling available funds. The DoD Components are required to establish and maintain effective controls over appropriations and other funds in accordance with this chapter. All DoD organizations, appropriations, and funds are subject to the provisions contained herein.

010103. Authoritative Guidance

Administrative division of apportionments and control of funds is prescribed by Title 31, United States Code, section 1514(a) ***(31 U.S.C. § 1514(a))***. The Office of Management and Budget ***(OMB) Circular No. A-11*** prescribes implementing requirements for the control of funds in Section 150 and Appendix H. Additional authorities:

A. ***31 U.S.C. §§ 1341***–1342, ***1349***-1351, and ***1511***-1519 (part of the Antideficiency Act, as amended).

B. ***31 U.S.C. §§ 1101***, ***1104***-1108, and ***3324*** (part of the Budget and Accounting Act, 1921, as amended).

C. ***31 U.S.C. §§ 1501***-1502 (part of section 1311 of the Supplemental Appropriations Act of 1950).

D. ***31 U.S.C. §§ 1112***, ***1531***, ***3511***, ***3512***, and ***3524*** (part of the Budget and Accounting Procedures Act of 1950).

E. Title X of Public Law 93-344, found at ***2 U.S.C. §§ 681***-688.

0102 POLICY

010201. Defense-wide Appropriations

Unless otherwise specified, for purposes of this volume, the Office of the Under Secretary of Defense, Deputy Comptroller (Program/Budget) is considered a "DoD Component" for matters involving Defense-wide (Treasury Symbol "97") appropriations.

010202. Administrative Control Systems

DoD Components must:

A. Design systems for the administrative control of funds so that formal administrative subdivisions of funds are placed at the highest practical organizational level consistent with effective and efficient management.

B. Restrict the use of limitations on available funds to those necessary to comply with statutory provisions, such as those imposed by the appropriate DoD Authorization or DoD Appropriations Act, or to address specific management requirements.

010203. Reporting Requirements for Administrative Control Systems

DoD Components must establish a reporting system for the administrative control of funds process to provide data for reviewing the efficiency (e.g., obligation rate) with which funds are used. Reporting requirements must be established separately from a formal administrative subdivision of funds limitation when a need exists for accumulating data below the allocation level.

010204. Delegations of Authority

All delegations or redelegations of authority or functions under this chapter must be made in writing. Delegation or redelegation of authority or function is prohibited if the delegation or redelegation limits the capabilities of the Secretaries of the Military Departments, the Directors of the Defense Agencies, or designated officials of the Office of the Secretary of Defense to exercise the control necessary to discharge properly their responsibilities in accordance with this volume.

010205. Statutory Limitations and Duties of DoD Officials

DoD officials are prohibited from authorizing or creating any obligation or making any expenditure beyond the amount permitted under any statutory limitation that modifies or restricts the availability of funds. Special or recurring statutory limitations on DoD funds are frequently imposed by the DoD Authorization or Appropriations Acts, or may be imposed by other legislation. Specifically, DoD officials to whom funds are entrusted or apportionments or formal administrative subdivisions of funds are issued at any level must:

A. Limit any further subdivision of funds to the amount provided and currently available.

B. Limit the obligation and expenditure of funds provided to the amount currently available at the time of the obligation or expenditure, enforce those limitations, and ensure that all personnel involved in administrative control and use of available funds are knowledgeable of such limitations.

C. Limit the obligation and expenditure of funds provided to the purposes authorized by type of fund or account.

D. Ensure that the obligation and expenditure of funds provide for a bona fide need of the period of availability of the fund or account.

E. Preclude acceptance and use of voluntary services, gifts, and donations except in accordance with specified provisions of law.

F. Ensure that all personnel, including the actual fund users, contracting personnel, and other personnel involved in administrative control and use of available funds, are fully aware of, and comply with, the requirements of the ADA as described in Chapter 2 and other applicable guidance. Potential ADA violation investigation and reporting requirements are also contained in this volume.

G. Ensure that decisions on the obligation of funds comply with the provisions of the ADA by careful review and examination of the facts involved in advance of the decision.

H. Enforce compliance with all the provisions of the ADA and other specific laws that limit the obligation and expenditure of funds.

I. Maintain internal control systems to ensure that:

1. All available funds are identified, controlled, and recorded in the official accounting records from the time received until subdivided to others or obligated and expended.

2. All available funds are identified with authorized purposes by account, period of availability for new obligations, and for the period of availability for expenditure.

3. All special and recurring provisions and limitations on the obligation and expenditure of funds are identified and documented for all available funds and accounts.

4. All proposed obligations of funds are reviewed to ensure that sufficient funds are available to cover the obligation, the purpose of the obligation is consistent with the authorized purposes of the fund or account, and the obligation does not violate any special or recurring provisions and limitations on the incurrence of obligations.

J. Issue and maintain appropriate delegations of authority.

K. Ensure that amounts reported to the Department of the Treasury are accurate, that is, recorded accurately and posted to the correct appropriation account.

L. Ensure that internal controls are in place and operating as required by ***DoD Instruction 5010.40***, "Managers' Internal Control Program Procedures."

M. Ensure that appropriate training programs are in place to provide all personnel involved in administrative control and use of available funds with the knowledge of funds control and the skills and abilities to perform the duties specified in paragraph 010205. See Chapter 2 for training requirements.

*010206. Apportionments, Allotments, Suballotments and Allocations

The administrative control of funds process restricts obligations and expenditures (disbursements) to the amount available at the apportionment, allotment, suballotment and allocation levels. Apportionments, allotments, suballotments, allocations and other formal administrative subdivision of funds designated by a DoD Component are subject to the provisions of the ADA; therefore, obligations and disbursements of funds that exceed these limitations are violations of the ADA.

A. Apportionments. An apportionment is a distribution made by the Office of Management and Budget of amounts available for obligation in an appropriation or fund account into amounts available for specified time periods, program, activities, projects, objects, or any combination of these. The apportioned amount limits the obligations that may be incurred. An apportionment may be further subdivided by an agency into allotments, suballotments, and allocations.

1. When DoD appropriations or other funds are required to be apportioned under law by OMB to a DoD Component, a request for the apportionment or reapportionment must be prepared and submitted through the Under Secretary of Defense (Comptroller) (USD(C)) to the Director of OMB. A request for an apportionment must be in such form and at such time as the USD(C) may prescribe to conform to the requirements of the

Director of OMB. See Volume 3, Chapter 2 for the preparation of apportionment or reapportionment schedules and Volume 3, Chapter 13, paragraph 130203 for the accounting of DoD apportionments and reapportionments.

2. Obligations during any apportionment period must not exceed the amount of the apportionment available for that period or of any administrative subdivisions of the apportionment. Apportionments may include estimates of anticipated budgetary resources; however, these approved anticipated resources may not be obligated until realized.

3. Apportionments that anticipate the need for a deficiency appropriation or a supplemental under 31 U.S.C. § 1515 will be specifically identified on the apportionment request. To qualify as a deficiency apportionment, the request must be required by:

a. Laws enacted subsequent to the transmittal of the annual budget for the year to Congress;

b. Emergencies involving human life, the protection of property, or the immediate welfare of individuals; or

c. Specific authorization by law.

B. Allotments. An allotment is a subdivision of an apportionment that is made by the head of an agency (e.g., Secretary of Defense), or designee (e.g., USD(C)), to incur obligations within a prescribed amount. Formal distribution, i.e., subdivision of an allotment must contain at least the same statutory and other limitations applicable to the original allotment (e.g. suballotments/allocations to operating agencies or installation-level accounting activities).

1. The USD(C) must make allotments of apportioned amounts, in writing, to the heads of DoD Components. The Secretary of a Military Department, or designee, must make further allotments of apportioned amounts, in writing, to the heads of operating agencies.

a. The original signed document or an authenticated copy bearing a signature or an electronic equivalent of a signature must be forwarded to the recipient of the allotment. This does not preclude the use of an automated system to communicate and record fund subdivisions as long as a confirmation copy bearing an authenticated signature or an electronic equivalent of a signature is available to the recipient via the automated system.

b. At a minimum, this document must contain the following basic information:

1. Amount available;

2. Funding source;

3. Time period of availability;

4. Position and title of the responsible official and other agency limitations; and

5. Justification for changes in allotments.

c. A suballotment is a subdivision of an allotment. It is a formal distribution that must contain at least the same statutory and other limitations and requirements applicable to the original allotment. Amounts allotted may be suballotted to major subordinate operating commands.

2. Allotments/suballotments must not exceed the amount available for use for each apportionment period.

3. The use of an electronically reproduced equivalent of an original signature is considered an acceptable implementation of the requirement for a document containing an authenticated signature. However, in accomplishing electronic transmission of fund authorizations through linked computer systems, internal controls for electronically transmitted allocations and suballocations must have the following minimum characteristics:

a. Fund control systems must provide validation of fund authorities by use of access codes and lockout techniques.

b. One set of access codes must be used to issue fund authorizations.

c. Other controlled access codes must be used to process a signature section of fund control documents for transmission to funded activities.

d. The authentication, signature element, and symbol must be included as part of electronically produced funding documents.

4. Anticipated transfers or other items of anticipated receipts may be allotted/suballotted/allocated only when realized.

5. Allocations are subdivisions of suballotments, or subdivisions of allotments that are not required to be suballotted (reference subparagraph 010206.C).

6. DoD Components must not authorize or incur an obligation, or make a disbursement against anticipated transfer authorizations until the transferred resources are realized. Such actions must be delayed until the completed ***Standard Form (SF) 1151***, "Nonexpenditure Transfer Authorization" is received and the resources realized. An SF 1151 is prepared using a Nonexpenditure Transfer (NET) request through the Governmentwide Accounting (GWA) System Agency Transaction Module (ATM) NET application. See the ***Treasury Financial Manual Volume 1, Part 2, Chapter 2000*** for information and guidance on using the GWA System ATM NET application.

7. DoD Components must not authorize or incur an obligation or make a disbursement against anticipated reimbursements. Such actions must be delayed until the applicable customer order is received from Federal Government activities and funds are collected from public activities. See Volume 11A for reimbursable policy.

C. Allocations. Allocations are subdivisions of suballotments or subdivisions of allotments that are not required to be suballotted.

1. The recipients of allotments or suballotments, or their designees, must make allocations in specific amounts to the heads of installations or organizational units of DoD Components, as required. The total of the amounts allocated must not exceed the amount of the allotment/suballotment available for each period.

2. A suballocation is a subdivision of an allocation. The recipients of allocations may make suballocations to the heads of other organizational units, including those of other DoD Components, as required. The total of the amounts suballocated must not exceed the amount of the allocation available for use for each period.

3. Allocations and suballocations must be made in writing and the recipient's copy must either be signed by the fund-issuing authority or be an authenticated copy bearing an authorized authenticated signature or an electronic equivalent of a signature. At a minimum, the document must contain the following basic information:

a. Name or title of the allocation/suballocation recipient.

b. Amount of the allocation/suballocation and the period of availability.

c. Legal restrictions or limitations on the obligation and disbursement of the allocated/suballocated funds.

d. The amount of anticipated reimbursements, specified to the organizational level responsible for receiving the reimbursable orders.

4. In emergency circumstances, it may not be possible to provide a formal allocation or suballocation document before incurring obligations. Under such emergency conditions, it may be necessary to use expedited means of communication pending formal confirmation.

a. A telephone or other electronic means may be used to make arrangements to indicate that funds will be provided. However, the official allocation or suballocation of funds does not occur until the substantiating documentation of the issuance of funds has been transmitted by the issuer and received by the recipient.

b. In such cases, both the issuer and recipient must document the funding transaction showing action taken, the date, amount involved, authorizing official, and method of communication. The issuer must immediately provide a copy of the documentation to the recipient and request acknowledgment of receipt. The recipient must provide confirmation of receipt and acceptance to the issuer. The issuer must sign the same documentation and return the document containing both signatures. The official funds issuance does not occur until this final double-signed (issuer and recipient) document has been received by the recipient of the funds.

c. The recipient is not authorized to issue funds to others or authorized to incur obligations with the funds received until after receipt of the double-signed document.

*010207. Other Fund Management

A. Centrally-Managed Account (CMA). The head of an operating agency that has specific written approval of the head of a DoD Component may establish CMAs. A CMA is a formal administrative subdivision of funds (allotment, suballotment, or allocation) that is managed at the highest practical level and allows officials at a lower echelon to incur obligations or charge expenditures to the CMA for authorized purposes without further determination or certification of fund availability for the individual transactions. Fund balances at the allotment/suballotment/allocation level are subject to the provisions of ***31 U.S.C. § 1517(a)(1)***. Fund authorization documents forwarding budget authority to the CMA must include the following statement: "Authorizing or incurring obligations in excess of the cumulative allotment/suballotment/allocation amount, contained herein, is a reportable violation of 31 U.S.C. § 1517."

1. These accounts must be established only when it is impractical to administer decentralized allotments/suballotments/allocations under normal operating procedures. The head of an operating agency, usually general officer or Senior Executive Service level, is responsible for establishing adequate controls to ensure CMA managers are expeditiously informed of obligations and expenditures at the lower echelon levels to prevent the CMA from becoming over-obligated/expended. Before approval, a specific written determination must be made that adequate controls have been established to avoid over-obligating/expending the CMA.

a. The amount of the CMA must be within the amount and terms of the allotment/suballotment/allocation.

b. Requests for the establishment of a CMA must fully justify the need, delineate possible alternatives, and clearly demonstrate why the CMA method is the only practical administrative procedure.

c. The official who establishes or continues the use of a CMA must be held responsible, to the extent prescribed by law, directive, and regulation, for ensuring that obligations are not incurred, or expenditures made, beyond the amount available under each CMA.

d. The establishing or continuing official is responsible for the administration of each CMA and must prescribe an adequate system of financial and nonfinancial control. The system must:

(1) Designate the name or position of specific individuals authorized to incur obligations or make expenditures against each CMA.

(2) Establish suitable limitations on the numbers, quantities or volume for which obligations may be incurred or expenditures made.

(3) Provide for accounting and reporting at least monthly.

(4) Ensure timely notice to prevent the CMA from being over-obligated/expended by taking necessary management action. This may include (a) increasing the amount of the CMA; (b) terminating the CMA; (c) terminating new obligations or disbursements; and/or (d) taking other necessary management actions to prevent an over-obligation/expenditure.

e. Each CMA must be reviewed annually to determine whether its operation should be continued. This determination must be made by the head of the DoD Component concerned, or designee. The annual review must include an evaluation, by an internal audit group, of the adequacy of control procedures established to prevent violations of 31 U.S.C. § 1341(a)(1), 31 U.S.C. § 1517(a), or both, and a recommendation to the head of the DoD Component concerned, or designee, whether continuation of the CMA is justified. DoD Components must provide certification as to the adequacy of controls of the CMA. This certification must be submitted with the annual evaluation required by paragraph 010212.

2. Components are required to maintain documentation supporting their assessment and produce it on request. At a minimum, Components must maintain records on the following:

a. Appropriation and dollar value of the CMA.

b. Rationale for establishing a CMA and why it is preferable to other methods of managing the appropriation.

c. Individuals primarily responsible for managing the CMA and ensuring fund controls are properly implemented.

d. Organizations authorized to make obligations against the CMA.

e. Fund controls in place to establish limits on the amount and type of obligations that may be charged to the CMA.

f. Monthly execution monitoring and procedures.

g. Date and method of testing of internal controls.

B. Reimbursable Orders. A reimbursable order is an order for services, supplies, material, or equipment placed by a requiring DoD Component (or Federal Agency) and furnished by another DoD Component (or Federal Agency) without separate identification of the items, or separate citation of the funds of the requiring DoD Component; and with subsequent delivery to and reimbursement by the requiring DoD Component. The requiring DoD Component records the reimbursable order as an obligation when the procuring DoD Component accepts the reimbursable order in writing. See Volume 3, Chapter 8 for recording standards.

1. DoD organizations may be authorized by law to accept reimbursable orders for services provided or goods sold to other Federal Government-funded customers and authorized private parties.

2. Apportioned reimbursements must not be allotted/suballotted/allocated unless there is reasonable assurance that orders will be received. Even though apportioned and allotted/suballotted/allocated, these estimates must not be considered budgetary resources available for obligation unless the following two conditions are met:

a. Valid orders, including written agreements, have been received from and obligated by Federal Government-funded customers.

b. Advance payment has been collected, in the case of orders from the public.

3. Officials responsible for incurring obligations and making expenditures must be particularly cognizant of reimbursable authority received. Controls must be established and carefully followed to avoid obligating or expending in excess of the amount of appropriated funds available, plus the amount of reimbursements that ultimately will be earned and collected.

4. Under certain circumstances, and only with the prior written approval of the OMB, immediate and automatic apportionment of the amounts of reimbursable orders received and accepted may be authorized.

5. Reimbursable orders received from state or local governments, recognized international bodies such as the United Nations and North Atlantic Treaty Organization, foreign governments, corporations, or individuals are subject to special controls.

a. These orders are to be recognized as reimbursable orders received only to the extent that cash has been received and deposited with the Treasury. The exception is Foreign Military Sales (FMS) orders. Contract authority may be recognized for FMS orders based upon a dependable undertaking when cash advances are not provided for the full amount of the order from a foreign government or international body. Bills are then presented for payment from the account established in the FMS Trust Fund for the applicable country.

b. FMS disbursement controls must be established to ensure that disbursements are not made until the cash is actually received from the foreign country and deposited in the Treasury FMS Trust Fund. Expenditure authorizations are used to ensure that funds are available in the account for the country involved before disbursements are made.

6. Reimbursable orders that are financed by appropriated or revolving funds of Federal agencies provide expenditure as well as obligational authority.

C. Revolving Funds. A revolving fund is an account authorized by specific provisions of law to finance a continuing cycle of business-type operations and to incur obligations and expenditures that generate receipts.

1. General. Obligations and expenditures of a revolving fund, whether subject to, or exempt from, apportionment, must be controlled under applicable provisions of this chapter.

2. Cash Balances. The disbursement of amounts in excess of the Department of the Treasury cash balance of a revolving fund is a potential ADA violation. Additionally, the disbursement of amounts in excess of the balance of sub-numbered cash accounts or other subdivisions of cash within a revolving fund is a potential ADA violation when such sub-numbered accounts or subdivisions have been specifically designated as being subject to the provisions of the ADA.

3. Apportionment. A revolving fund may be subject to apportionment or it may be exempt from apportionment, depending upon the type of fund.

a. Revolving Funds Subject to Apportionment. An apportionment limits the obligations that may be incurred to the apportioned amount. The incurring of obligations in excess of apportioned budgetary resources is a potential ADA violation without regard to whether a revolving fund has additional unapportioned budgetary resources or other assets equal to or greater than the amount of the deficiency.

b. Revolving Funds Exempt from Apportionment. A revolving fund that is exempt from apportionment may not incur obligations in excess of available budgetary resources. The incurring of obligations in excess of available budgetary resources is a potential ADA violation.

4. Budgetary Resources. The incurring of obligations in excess of budgetary resources is a potential ADA violation. The concept of "budgetary resources" is defined and explained in OMB Circular A-11, "Preparation, Submission, and Execution of the Budget." Budgetary resources available to revolving funds are composed of the same elements as budgetary resources available to appropriated funds. Further, while budgetary resources available for obligation for reimbursable work differ depending upon whether a reimbursable order is accepted from a Federal Government account or from the public, such budgetary resources are determined in the same manner for a revolving fund as they are for an appropriated fund.

a. Orders from other Federal Government Agencies. Funded orders from other Federal Government agencies, that represent valid obligations of the ordering account, provide a budgetary resource without regard to whether they are accompanied by an advance payment.

b. Orders from the Public. Orders from the public (except FMS orders) including local and state governments and international organizations (e.g., United Nations), provide a budgetary resource only to the extent that the order is accompanied by an advance payment of cash received and credited to the account.

5. Organizational Level for Revolving Fund Potential Violations. Systems for the administrative control of revolving funds should be placed at each organizational level at which budgetary resources may be received, held, transferred, obligated, or expended. The lowest organizational level for administrative control purposes generally should be the level, frequently a single site, at which an obligation may be incurred or expenditure approved. In the case of a revolving fund account that encompasses operations at multiple sites, responsibility for potential ADA violations generally should not be assigned to an organizational level lower than the level at which the administrative control system is adequate to prevent and detect a potential violation of the ADA.

010208. Obligations and Expenditures

Available funds are used by the incurrence of obligations and expenditures. An amount must be recorded as an obligation or expenditure when incurred as supported by documentary evidence of the occurrence of the event. An oral order or agreement must be formalized in writing or conform to prescribed electronic standards in order to provide proper support and an audit trail for an obligation. Oral orders executed in this manner without a formal commitment of funds run a high risk of violating the ADA and should be avoided if possible. See Volume 3, Chapter 8 to determine the amount and accounting period in which commitments and obligations must be recorded.

A. Once incurred, all obligations and expenditures must be recorded, accurately and promptly, as of the date incurred even if recordation results in a negative amount in the accounting records for an appropriation or fund, or a formal administrative subdivision of an appropriation. (For this purpose, negative amount means that obligations or disbursements exceed the amount of funds that are appropriated or otherwise available.) A violation resulting from a negative amount is caused by the actions of the individual(s) who caused or created the obligation. The recording of the obligation in the accounting system merely records an obligation that already exists.

B. Adjustments in obligations may consist of recording changes to obligation amounts that existed in a prior period that may or may not have been identified and recorded during that period. If an adjustment causes total obligations for a prior period to exceed the amount that was available for obligation for that prior period after consideration of all known valid obligations and deobligations, violations of 31 U.S.C. § 1341(a)(1), 31 U.S.C. § 1517(a), or both, may have occurred.

C. A within-scope contract adjustment is properly chargeable to the funds that funded the original contract. Such adjustment must be charged to those funds even if sufficient funds are not available. If sufficient funds are not available, a potential violation may have occurred.

D. An increase-in-scope adjustment to a contract is properly chargeable to funds currently available at the time the change was made.

010209. Reconciliations

DoD managers at all levels must ensure that accounting records for receipt and use of budgetary resources are reconciled. Obvious accounting errors must be corrected immediately and negative account balances must be researched and reconciled promptly with appropriate source documents.

A. Transactions or adjustments must be recorded in accounting records only when supported by appropriate source documents or electronic equivalents. Managers must not permit identified errors to go uncorrected for extended periods of time, inaccurate transactions to be recorded or failures to record transactions in a timely manner. Due diligence is necessary in order to avoid the appearance of a potential ADA violation that occurred because of careless record keeping.

B. An ADA investigation must be initiated by the applicable DoD Component and reported to the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) as required by this volume if a manager suspects that a potential ADA violation may have occurred. However, investigations of potential ADA violations are not required merely to force correction of erroneous records.

010210. Records

A. The Defense Finance and Accounting Service (DFAS), working with other DoD Components, must ensure that accounting records are maintained that provide full disclosure and support of the financial operations and resource utilization applicable at each successive organizational level. The accounting records must show the amounts of funds received at each organizational level, funds issued to others, current available balances, and funds committed, obligated, and expended.

B. These fund control records must constitute an integral part of the official accounting records maintained for each successive organization level for the DoD Component. Financial reports reflecting funds received, issued, available, and utilized must be prepared from the official accounting records.

C. DoD Components must maintain key records and documents on appropriations, allotments/suballotments, allocations/suballocations, and budgetary data for the funds for which they are responsible.

D. DoD Components must retain, for 6 years, 3 months, work papers and documentary evidence developed and/or obtained during an investigation of an actual or potential ADA violation.

010211. Financial Management Systems

In addition to effective and efficient administrative funds control systems established by the DoD Components, the DFAS and/or DoD Component must be responsible for establishing accounting and finance systems. The accounting and finance systems must be established for reporting commitments and obligations by the DFAS and/or DoD Component. Such systems of accounting and internal controls must comply with the requirements of 31 U.S.C. § 3512(b) and (c).

A. Federal agencies must maintain systems of accounting and internal controls that ensure:

1. Complete disclosure;

2. Adequate financial information;

3. Effective internal control over and accountability for assets;

4. Obligations and costs comply with applicable laws;

5. Revenues and expenditures or expenses applicable to DoD operations are accounted for properly so that accounts and reliable financial and statistical reports are prepared and accountability of assets is maintained;

* 6. Suitable integration of DoD accounting with the central accounting and reporting responsibilities of the Secretary of the Treasury under ***31 U.S.C. § 3513***; and

* 7. All assets are safeguarded against waste, loss, unauthorized use, and misappropriation.

B. Specifically, financial management systems must be:

1. Designed to assist responsible officials in restricting authorization or incurrence of obligations to the proper amount and authorized purpose for which obligational authority is available.

2. Capable of providing timely disclosure of the authorization or creation of an obligation and the disbursement of funds in excess of amounts available in both expired and unexpired accounts.

*010212. Annual Evaluation

The OUSD(C) requires DoD Components to conduct an annual evaluation of its overall administrative funds control processes as well as the processing of ADA violations. The Federal Managers' Financial Integrity Act of 1982 (FMFIA) requires each Component head to provide an Annual Statement of Assurance (SOA) that states whether internal controls are designed adequately and operating effectively within the organization. To streamline efforts between these two requirements, the applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller or the Senior Financial Manager for other DoD Components will provide a memorandum addressed to the OUSD(C). The memorandum must address the following information in subparagraphs 010212.A and B and be submitted by October 31:

A. Memorandum Certification Statements.

1. "For Fiscal Year 20xx, the internal controls over centrally-managed accounts were in place and effective. Monthly accounting and reporting processes are adequate to reduce the risk of over obligations."

2. "Corrective actions are being implemented and/or sustained and adequate evidentiary documentation is available to support this certification."

3. A statement that provides the number of key fund control personnel identified and trained as prescribed in Chapter 2, paragraph 020401.

B. Annual SOA. A copy of the annual SOA must be included as an attachment to the memorandum. DoD Component's annual SOA must be prepared in accordance with the FMFIA, DoDI 5010.40, and the DoD FMFIA SOA annual guidance.

VOLUME 14, CHAPTER 2: "ANTIDEFICIENCY ACT VIOLATIONS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue and underlined font*.**

The previous version dated May 2015 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
020401.A.3	Added a new sentence to ensure course materials clearly state that taxpayer funds should not be spent when the requirement is no longer needed.	Addition
020401.B.2	Added a new requirement to provide fiscal law training to educate DoD personnel with regard to their fiduciary and legal responsibilities to prevent wasteful spending of appropriated funds.	Addition
020401.B.4	Added information to require key fund control personnel to review and verify on a continuous basis the need of goods and/or services and not spend taxpayer funds when goods and/or services are no longer needed.	Addition

Table of Contents

VOLUME 14, CHAPTER 2: "ANTIDEFICIENCY ACT VIOLATIONS" 1

0201 GENERAL 3

020101. Purpose 3
020102. Authoritative Guidance 3

0202 VIOLATIONS 4

020201. General Violations 4
020202. Recording Obligations/Expenditures 6
020203. Recording Errors/Omissions 6

0203 CAUSES OF VIOLATIONS 6

0204 PREVENTING VIOLATIONS 6

020401. Requirements 6
020402. Common Violations 8

Figure 2-1. Potential Violations 13

Figure 2-2. Violation Examples 15

Figure 2-3. Reference Hyperlinks 18

CHAPTER 2

ANTIDEFICIENCY ACT VIOLATIONS

0201 GENERAL

020101. Purpose

This chapter explains the Antideficiency Act (ADA) and related funding statutes that consist of certain provisions of law prescribed in sections (§) of Title 31, United States Code (U.S.C.). It also provides examples of circumstances in which ADA violations may occur and establishes requirements to prevent ADA violations. Additional requirements are contained in Volume 3, Chapter 11. Any military member or Department of Defense (DoD) employee who violates any provision or limitation imposed by any law may violate the ADA and be subject to discipline and/or criminal penalties.

020102. Authoritative Guidance

A. The ADA, prescribed in ***31 U.S.C. §§ 1341***, ***1342***, and ***1517***, prohibits obligations and expenditures in excess of an appropriation or before an appropriation is available. 31 U.S.C. § 1517 is the primary foundation for the administrative control of funds set forth in Chapter 1. See Figure 2-3 for additional references.

1. Amount Limitation. 31 U.S.C. § 1341 stipulates that any officer or employee of the United States Government or of the District of Columbia government may not:

a. Make an obligation, expenditure, or authorize an obligation or expenditure of funds that exceeds the amount available in an appropriation or fund.

b. Involve the Government in any contract or obligation for the payment of money before an appropriation is made available, unless the law authorizes such contract or obligation.

2. Voluntary Services Limitation. 31 U.S.C. § 1342 stipulates that an officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services on behalf of the Government or employ personal services in excess of that authorized by law, except as it may be necessary in emergencies involving the safety of human life or the protection of property.

3. Administrative Control of Funds, Amount Limitation. 31 U.S.C. § 1517 stipulates that an officer or employee of the United States Government or of the District of Columbia government may not make an obligation or expenditure or authorize an obligation or expenditure that exceeds an apportionment or amount permitted by a regulation prescribed for the administrative control of an appropriation, including any other formal administrative subdivision of funds designated by a DoD Component. See Chapter 1 for DoD administrative control of funds policy.

B. ***31 U.S.C. §§ 1301***, ***1502(a)***, and ***3302(b)*** are additional funding statutes. Noncompliance with these statutes may result in an ADA violation.

1. Purpose Statute. 31 U.S.C. § 1301 stipulates that appropriations must be applied only to the objects for which the appropriations were made, except as otherwise provided by law.

2. Time Limitation. 31 U.S.C. § 1502(a) stipulates that the balance of a fixed-term appropriation is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made and obligated within that period. See Volume 3, Chapter 8 for obligation policy and Volume 3, Chapter 10 for expired and closed account policy.

3. Miscellaneous Receipts Statute. 31 U.S.C. § 3302(b) requires an official or agent of the Government to deposit money received for the Government from any source into the miscellaneous receipts account of the U.S. Treasury without deduction for any charge or claim if the retention of the money is not authorized or exceeds authorized levels.

C. The use of the wrong appropriation (purpose), or the use of the wrong fiscal year funds (time limitation), generally will not result in an ADA violation if the error can be properly corrected. The accounts can be adjusted to replace the erroneously obligated funds with the proper funds without having an ADA violation.

1. The use of wrong appropriation (purpose) can be corrected if the proper funds (appropriation, year, and amount) were available at the time of the erroneous obligation; and the proper funds (appropriation, year, and amount) are available at the time of correction. Funds must be available at the lowest level of the administrative subdivision of funds, i.e., the lowest of the appropriation, apportionment, allotment, suballotment, or allocation level at which the ADA violation occurred.

2. The use of the wrong fiscal year funds (time limitation) can be adjusted if the proper funds (appropriation, year, and amount) are available at the time of obligation and at the time of correction. Funds must be available at the lowest level of the administrative subdivision of funds, i.e., the lowest of the appropriation, apportionment, allotment, suballotment, or allocation level at which the ADA violation occurred.

3. See Volume 3, Chapter 8, paragraph 080303 for Bona Fide Need recording requirements.

0202 VIOLATIONS

020201. General Violations

General ADA violations occur when:

A. Statutory limitation was exceeded for the amount authorized in an appropriation or fund, to include special and recurring statutory limitations or restrictions on the amounts for which an appropriation or fund may be used.

B. Statutory limitation on the purposes authorized in an appropriation or fund was violated and upon correction into the proper appropriation or fund, funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper appropriation or fund.

C. Funding authority was issued in excess of the amount available in an appropriation or fund and the excess amount was obligated or expended. The issuance of funds by means of a formal administrative subdivision of funds (apportionment, allotment, suballotment, allocation or other formal administrative subdivision of fund), in an amount that exceeds the amount currently available, would result in an ADA violation if those excess funds distributed are obligated or expended. The issuance of a reimbursable order in excess of available funds may also result in an ADA violation.

D. Obligations or expenditures are authorized or incurred in excess of the amount of funds available at the formal administrative subdivision of funds level. Apportionments, allotments, suballotments, allocations and other formal administrative subdivision of funds designated by a DoD Component are subject to the provisions of the ADA; therefore, obligations and disbursements of funds that exceed these limitations are violations of the ADA. Incurring an obligation or disbursement in excess of a target versus a formal administrative subdivision of funds does not in itself create an ADA violation; however, if exceeding a target causes the governing formal administrative fund subdivision level or limitation to be breached, then a potential ADA violation arises. Errors that require correction by obtaining additional funds at a formal administrative subdivision of fund level cannot eliminate the fact that a violation likely has occurred and must be investigated. An exception applies when funds are required at the formal administrative subdivision level but funds were returned to higher headquarters as the result of the customary practice of sweeping up funds near the end of a fiscal year.

E. Obligations were made or authorized in advance of funds being available.

F. Obligations or expenditures of funds did not provide for a bona fide need of the fund or account (time violation) and upon correction into the proper fund or account, proper funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper fund or account.

G. Obligations charged against a current account that would otherwise be properly chargeable (except as to amount) to an expired account, but sufficient funds did not exist in the applicable expired account to fund the obligation.

H. Obligations that otherwise would have been properly chargeable (both as to purpose and amount) to a canceled appropriation exceeds the limits specified in Volume 3, Chapter 10, subparagraph 100201.F.

I. Voluntary services were accepted, or personal services were employed, except as authorized by law.

J. Funds were retained without authority and were not deposited into the miscellaneous receipts of the U.S. Treasury but instead augmented an appropriation and, as a result, obligations or expenditures exceed the amount appropriated by Congress.

020202. Recording Obligations/Expenditures

A violation may not be avoided by declining to record valid obligations or expenditures in the official accounting records. All obligations or expenditures must be recorded accurately and promptly, even if the recording results in a negative amount in the appropriation, fund, or at the formal administrative subdivision of funds level.

020203. Recording Errors/Omissions

An ADA violation is not considered to have occurred when an over-obligation or over-expenditure results solely from recording a transaction in an erroneous account or recording an incorrect amount for a transaction. In each instance, the potential violation status is eliminated by correcting the erroneous transaction or by posting the omitted transaction. These actions must not include the deletion or adjustment of any valid transactions. If, after the proper recording of the transactions, an over-obligation or expenditure of the appropriation, fund or amount limited by a formal administrative subdivision of funds remains, then a potential ADA violation has occurred.

0203 CAUSES OF VIOLATIONS

ADA violations occur for several reasons. The following is a list of the most frequent causes of DoD ADA violations:

A. Inadequate or obsolete internal controls and standard operating procedures;

B. Internal controls and standard operating procedures that are ignored;

C. Lack of appropriate training; and

D. Inadequate supervisory involvement or oversight.

0204 PREVENTING VIOLATIONS

020401. Requirements

Inadequate supervisory involvement and oversight combined with a lack of appropriate training are common throughout most DoD ADA violations. Therefore, supervisors of DoD personnel who have responsibility for control and use of DoD funds must ensure that their

personnel receive proper oversight, support, and training to prevent violations. To assist in the prevention of ADA violations, DoD personnel must be knowledgeable of requirements in this chapter and Chapter 1. The following subparagraphs provide specific actions that must be taken to reduce or prevent violations.

A. Heads of DoD Components must:

1. Use the internal management control programs as required by ***DoD Instruction 5010.40***, "Managers' Internal Control Program Procedures," to periodically assess the reliability of internal controls to prevent ADA violations.

2. Develop a full spectrum of DoD formal education programs for all military officers, from staff officer courses to executive development courses, and incorporate relevant aspects of this volume to highlight the potential pitfalls and risks associated with the ADA. This volume must be used as source material to conduct seminars and workshops targeted to general and specific audiences including financial, program, and project managers; engineers; contracting, information system, and comptroller personnel; commanders; supervisors; and managers.

* 3. Develop formal education structures to educate personnel about the ADA. Formal courses can be used to alert personnel to common violations and high-risk business transactions and decisions that can result in a violation. Course materials will clearly state that taxpayer funds should not be spent when the requirement is no longer needed, i.e., the requirement is no longer a bona fide need at that time. The DoD financial management community sponsors professional development courses that include discussions on ADA violations. These courses include the Army Comptroller and Advanced Resource Management Programs at Syracuse (NY) University; the Naval Post Graduate School at Monterey, California; and the Defense Financial Management and Comptroller School at Maxwell Air Force Base, Alabama. In addition, the U.S. Army Judge Advocate General School at Charlottesville, Virginia, includes a fiscal law course in its curriculum; and both the Enhanced Defense Financial Management training course hosted by the American Society of Military Comptrollers and the Under Secretary of Defense (Comptroller) Defense Financial Management Certification Program include fiscal law in their accreditation programs.

B. DoD commanders, supervisors, and managers must:

1. Be aware of the ADA, related funding statutes, types of violations, and causes of violations as described in this chapter.

* 2. Provide appropriate ADA training to financial, program, and project managers; engineers; and contracting, information system, and comptroller personnel. Provide fiscal law training to educate DoD personnel with regard to their fiduciary and legal responsibilities to prevent wasteful spending of appropriated funds. The focus of this training must include the basics of fund control, the ADA statute, and related funding statutes; the types of violations that can occur; the most frequent types of violations that occur within the DoD and their causes; the necessary training, supervision, and oversight of personnel who perform

financial management or programmatic functions; and methods for preventing violations. Require that all executive development and FM course content be updated to ensure proper use and good stewardship of appropriated funds. The training must be maintained to ensure the information remains current. Videos, computer courses or handbooks may be used for such training.

3. Identify key fund control personnel, incorporate the provisions of this volume into key fund control personnel training programs, require that key fund control personnel receive appropriations law training at least every three years, maintain the documents that identify key fund control personnel, and maintain documents that confirm completion of the appropriations law training. Key fund control personnel are those responsible for the proper assignment of funding on a commitment or obligation document before the obligation is incurred. Examples are resource managers, fund holders, funds certifying officials, and authorizing officials. Key fund control personnel should inquire with their individual DoD Components as to the appropriate source of training that satisfies this requirement. Appropriations law training requirements for certification of fund availability are separate from training requirements for certification for payment. Personnel that certify vouchers for payment must adhere to additional requirements as prescribed in Volume 5, Chapter 33.

* 4. Ensure key fund control personnel coordinate with requiring officials, such as program managers, contracting officers, and engineers, to verify that requests comply with funding statutes applicable to the assignment of funding on a commitment or obligation document before the obligation is incurred. Key fund personnel must review and verify on a continuous basis that the goods and/or services are still needed. Key fund control personnel must not spend taxpayer funds when goods and/or services are no longer needed.

5. Ensure that their employees receive the necessary training and experience in the control and use of funds at levels that correspond with their responsibilities. Furthermore, supervisors must perform oversight and validation checks to ensure that established internal controls and standard operating procedures are adequate and are being consistently followed by their subordinates. Inadequate supervisory involvement or oversight combined with lack of appropriate training is common in DoD ADA violations.

6. Ensure regular reviews of fund status type reports are performed. If the amount of commitments and obligations (undelivered orders and delivered orders unpaid or paid) exceed the total amount available in an appropriation or the total amount of funds available at the formal administrative subdivision level, a violation could occur if all or some of the commitments eventually become valid obligations.

7. Take proactive measures specifically tailored to address the causes and corrective actions required to prevent violations. See section 0203 for causes of violations.

020402. Common Violations

To prevent ADA violations, DoD personnel must be knowledgeable of the most common and frequent types of ADA violations to include the following:

A. Exceeding an Appropriation

1. All DoD commanders, managers, and personnel whose duties include obligating and/or managing funds must be aware of this type of violation and causal factors. This violation often occurs when obligations from an obligation document are not timely or accurately recorded thus causing the official accounting records to reflect an inflated (and incorrect) availability of funds. Since personnel use those records to certify funds are available for other obligations, a violation can easily occur because the records do not reflect the correct amount of funds available for obligation. This violation also occurs when obligations are charged against a current account that would otherwise be properly chargeable (except as to the amount) to an expired account, but sufficient funds do not exist in the applicable expired account to fund the obligation.

2. This type of potential violation is commonly discovered when an unmatched disbursement is recorded in the accounting system when correcting inaccurately recorded obligations, or when a reprogramming action requests additional funds for an expired account. To help prevent this type of violation, DoD funds managers (for example, Comptrollers) must require that all organizations that incur obligations and record obligations maintain strict and absolute positive controls over obligating documents (or their electronic equivalents) to ensure that none are lost or misplaced and all transactions are recorded accurately and in a timely manner. Such controls include batch totals of transactions and dollar amounts incurred, transmitted, received, processed, and recorded.

3. The establishment of a funds control system is also essential to ensure that all obligations are reconciled properly against available funds and authorized before they are incurred. This process must include reserving available funds for authorized obligations that are not immediately recorded as an obligation. The reservation must be made by means of a formal commitment or an informal reservation record that contains an estimated amount. The documented estimated reservation must closely approximate the obligation when incurred and recorded. Also, when recording estimated obligations, it is important to record the initial obligation based on the most current data available and adjust the estimated obligations as conditions change to avoid making an obligation or expenditure that exceeds the amount available in an appropriation or fund.

B. Exceeding Statutory Limitations on the Use of Operations and Maintenance Funds

1. Military Construction. To prevent an ADA violation, engineering and contracting personnel must be advised of the provisions of ***10 U.S.C. §§ 2801***, ***2802***, and ***2805***; and DoD rules and regulations that cover minor construction projects. Engineering personnel and those who authorized the construction are frequently identified responsible for violations involving construction projects exceeding statutory construction limitations and administrative construction limitations placed in engineering regulations. The following is a brief summary of some of the provisions of 10 U.S.C. §§ 2801, 2802, and 2805; and DoD rules and regulations on minor projects.

a. Congress establishes by statute, the amount of Operations and Maintenance (O&M) funds that may be used for a minor construction project. From time to time, that limit is increased by Congress. If the specified limit is exceeded, Military Construction funds must be used for the entire project including planning and design. A violation of ***31 U.S.C § 1341(a)(1)(A)*** may occur when the limitation is exceeded. The limitation applies to the use of O&M funds for a minor construction project even though there is sufficient obligational authority available in the O&M account at the time that the project is authorized and approved.

b. A military construction project includes all work necessary to produce a complete and usable facility, or a complete and usable improvement to an existing facility under provisions of 10 U.S.C. § 2801(b). Incremental construction, which is the planned acquisition of, or improvement to, a real property facility through a series of minor construction projects is prohibited. See Volume 3, Chapter 17 for military construction project requirements.

c. Engineering and contracting personnel must be familiar with the statutory limitation, under the provisions of ***10 U.S.C. § 2825***, on the maintenance and repair funds that may be used for a family housing unit. That limit may not be exceeded without prior notification to Congress. When that limit is exceeded for any reason during the completion of a family housing maintenance and repair project, and the conditions specified in the law for a waiver of the statutory limitations have not been met, a violation of 31 U.S.C. § 1341(a)(1)(A) may occur.

d. The misclassification of construction costs as alterations by engineering personnel may result in an ADA violation. A potential violation may occur if the amount of the misclassification, when added to construction costs (if any), exceeds a statutory limitation. For example, an engineering project that has a minor construction cost close to the statutory limit, but which also has related maintenance and repair costs, could cause a violation of the statutory limit if the maintenance and repair work later is proven to be construction. Likewise, a maintenance and repair project exceeding the statutory construction limit could be a potential ADA violation if the maintenance and repair later is determined to be construction.

2. Equipment

a. Congress designates an amount above which acquisitions of equipment must be funded from a procurement fund (expense versus investment threshold rule). Using O&M funds to acquire equipment items that exceed the designated threshold amount for the mandatory use of procurement funds could be a potential ADA violation. For instance, O&M funds are used to purchase a computer system when Other Procurement funds are required. Expense versus investment criteria is in Volume 2A, Chapter 1, paragraph 010212 and Volume 2B, Chapter 18.

b. Similar problems also frequently occur when acquiring low dollar value equipment items that are estimated to cost less than the congressionally designated amount for procurement funds, but actually cost more than that amount when acquired.

c. An ADA violation does not occur automatically in the situations outlined in subparagraphs 020402.B.2.a and b because the obligation can be moved from the O&M account to the applicable procurement account. If proper funds were available in the proper procurement account at the time of the erroneous obligation of O&M funds and funds are available when the obligation is recorded in the procurement account, including all other known valid obligations and deobligations, then a potential ADA violation has not occurred. However, if proper procurement funds were not available at the time of the erroneous obligation or were not available when the obligation is recorded in the procurement account to cover the obligation in the procurement account, a potential ADA violation may have occurred.

d. DoD decision makers, such as program managers, information systems managers, and contracting personnel, must be knowledgeable of the expense versus investment rules to prevent this type of violation. Program managers and information systems, contracting, and comptroller personnel must be trained on this issue. Such training should help reduce the incorrect application of the expense versus investment rule and the resulting ADA violations.

C. Exceeding a Formal Administrative Subdivision of Funds. If a formal administrative subdivision of funds level is exceeded, then a potential violation must be reported. The receipt of additional funds before the end of a reporting period does not mitigate a limitation violation or eliminate the potential violation reporting requirement as specified in Chapter 3. Also, failure to record a valid obligation or expenditure as of the date incurred does not avoid the incurrence of, and the requirement to report, a potential ADA violation if, upon recordation, available funds in the appropriation fund or other formal administrative fund subdivision level are exceeded. For example, the Military Departments historically have experienced problems with over-obligated Reserve Component (RC) personnel accounts. Funds in these accounts are used to pay RC personnel for such items as weekend drills, travel, special tours, or other training. Reserve Component unit commanders who control a formal administrative subdivision of funds level are subject to the ADA and must, in advance of the incurrence and recording of these obligations, budget and reserve against available funds the amounts estimated for weekend drills and other scheduled training.

D. Obligating Funds in Advance of Availability

1. A common scenario is the use of current year funds to procure goods or services that properly are funded only with a subsequent year appropriation. An ADA violation occurs when an individual obligates funds before those funds are authorized and appropriated by Congress. For example, signing a facility or equipment operating lease using one-year authority funds and agreeing to pay, or obligating the funds, for a two-year lease during the first year would constitute an obligation in advance of the availability of the funds for the amount associated to the second year of the lease. Similarly, agreeing to pay or obligating the funds for a two-year equipment maintenance agreement using one-year authority funds would constitute an ADA violation related to the amount associated with the second year of the agreement.

2. To help prevent this type of violation, training programs must include specific focus on the importance of ensuring funds are authorized and available before obligating the Government to contracts for future fiscal years' expenses.

E. Providing Funds to Servicing Agencies Before or Past the Period of Availability

1. A common scenario occurs when funds cited on an Economy or non-Economy Act order do not meet the bona fide need arising or existing in the fiscal year (or years) for which the appropriation is available for obligation. When an erroneous obligation is moved to the applicable fiscal year and proper funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper fund or account, a potential ADA violation may have occurred.

2. To prevent this type of ADA violation, DoD personnel with the responsibility to control the use and type of funds used must be aware of the fiscal limitations of providing funds to servicing agencies before or past the period of availability. See specific policy for Economy Act orders in Volume 11A, Chapter 3, section 0304; and non-Economy Act orders in Volume 11A, Chapter 18, sections 1802 and 1803.

F. Retaining Funds Without Authority

1. This violation often occurs when funds are retained without authority and are not deposited into the miscellaneous receipts of the U.S. Treasury but instead augments an appropriation and, as a result, obligations or expenditures exceed the amount appropriated by Congress.

2. This violation is often discovered when new personnel arrive and raise concerns over accepting and retaining unauthorized funds. Therefore, it is essential that DoD decision makers, such as DoD Commanders and Comptrollers, are knowledgeable of this type of violation and that financial managers be trained on this issue and understand the authority related to funds under their control to preclude augmenting an appropriation.

Figure 2-1. Potential Violations

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE SECTION
Any military member or DoD employee:	1. Makes or authorizes an obligation or expenditure that exceeds: a. The available amount of any appropriation or fund.	1341(a)(1)(A)
	b. Any statutory restriction imposed on the use of an appropriation or fund, such as limits on the use of O&M funds for unspecified minor construction or for purchase of investment items.	1341(a)(1)(A)
	c. The available amount of any apportionment or reapportionment.	1517(a)(1)
	d. The available amount of any formal administrative subdivision.	1517(a)(2)
	e. Any limitation imposed by an authorized official of the DoD or a DoD Component that is intended to restrict obligations of apportioned appropriations or funds.	1517(a)(2)
	2. Involves the Government in any contract or other obligation for the payment of money for any purpose before appropriations are made for such purposes, unless the law authorizes such contract or obligation.	1341(a)(1)(B)
	3. Makes or authorizes an obligation or expenditure against an appropriation account that was closed pursuant to 31 U.S.C. §§ 1552 or 1555 or the period prescribed in an appropriations act for making expenditures as authorized by 31 U.S.C. § 1557.	1341(a)(1)(A)
	4. Accepts voluntary service or employs personal service in excess of that authorized by law except in cases of emergency involving the safety of human life or the protection of property.	1342

Figure 2-1. Potential Violations (continued)

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE SECTION
Any military member or DoD employee:	5. Expends a working capital (revolving) fund established under 10 U.S.C. § 2208 in excess of amounts available in Fund Balance with Treasury whether apportioned or not. (Recurring provisions of annual DoD Appropriations Acts that establish cash balances (Fund Balance with Treasury) in working capital funds may be maintained only in such amounts as are necessary at any time for cash disbursements to be made from such funds. This provision allows working capital funds to incur liabilities in excess of available fund balances with Treasury.)	1341(a)(1)(A)
	6. Obligates a working capital (revolving) fund established under 10 U.S.C. § 2208 or a part of the fund, whether subject to or exempt from apportionment, in excess of the available amount.	1517(a)(1)
	7. Obligates a working capital (revolving) fund established under 10 U.S.C. § 2208 in excess of the available amount of budgetary resources.	1517(a)(2)
In Fund Distribution:	1. Total allotments, or operating budget authorities for O&M type funds exceed the amount available for each apportionment period.	1517(a)(1)
	2. Total suballotments, allocations, or operating budget authorities, and centrally managed accounts (CMAs) exceed the amount of the allotment or operating budget authority for each period.	1517(a)(2)
	3. Total allocations or operating budget authorities and CMAs exceed the amount of the available suballotment.	1517(a)(2)
	4. Total suballocations exceed the amount of the allocation.	1517(a)(2)

Figure 2-2. Violation Examples

A. GENERAL. Most of the examples described in items B – D are taken from actual violations that occurred within DoD. However, these violations are fact specific and in other circumstances a potential violation may or may not be incurred. These examples are supplied for information only and are not intended to imply that in all similar but not identical circumstances a violation would have been incurred.

B. TITLE 31, UNITED STATES CODE, SECTION 1341

1. 31 U.S.C. § 1341(a)(1)(A)

a. Obligated O&M funds for site preparation construction costs on a relocatable building project. The project was incorrectly scoped into multiple projects and the cumulative costs of the construction exceeded the minor construction threshold and should have been authorized by Congress and funded with military construction funds. This unauthorized obligation of O&M funds instead of military construction funds resulted in a violation.

b. Obligated O&M and Working Capital funds on a single military construction project. The project amount exceeded the minor construction statutory limitation and resulted in a violation. The Government Accountability Office takes the position that a violation of a funding restriction in an authorizing statute (such as 10 U.S.C. § 2805) results in a violation of the ADA (31 U.S.C. § 1341). The use of funds to finance the project is not consistent with the authorized purpose of the appropriation and resulted in an incurable violation of the "purpose statute" (31 U.S.C. § 1301).

Note: Although the circumstances described herein constitute a violation of 10 U.S.C. §§ 2802(a) and 2805(b), the Department of Justice (DOJ) Office of Legal Counsel (OLC) has concluded that "a violation of a statutory restriction on spending does not violate the ADA where the restriction is not 'in an appropriation.' " See also: DOJ OLC opinion, "Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences," April 5, 2007 (online at: ***http://www.justice.gov/sites/default/files/olc/opinions/2007/04/31/epa-light-refreshments13.pdf***); and DOJ OLC letter, "Re: Whether the Federal Aviation Administration's Finalizing and Implementing of Slot Auction Regulations Would Violate the Anti-Deficiency Act," October 7, 2008.

c. Obligated O&M funds rather than Procurement funds for recapitalization of a system and Procurement funds were not available when the obligation was recorded which resulted in a violation.

Figure 2-2. Violation Examples (continued)

d. Failure to promptly record valid obligations in a reserve personnel appropriation resulted in valid obligations that exceeded the available amount in the appropriation and resulted in a violation.

e. Obligated O&M funds to purchase unauthorized food and gifts for attendees at an annual conference and no other funds were available for this purpose which resulted in an uncorrectable violation.

2. 31 U.S.C. § 1341(a)(1)(B)

a. Obligated O&M funds in advance of the appropriation when a 14 month severable services contract was awarded that exceeded the 12 month limit set forth in section ***10 U.S.C. § 2410a***, and resulted in a violation.

b. Obligated O&M funds for two and four year severable equipment leases in advance of an appropriation which resulted in a violation.

c. Obligated O&M funds for equipment with phased deliveries into subsequent fiscal years in advance of an appropriation which resulted in a violation.

C. TITLE 31, UNITED STATES CODE, SECTION 1342

Apparently, at the urging of the Chairman, a member of a Federal Commission agreed to waive his statutory entitlement to $100 per day while involved in Commission business. The year after the Commission was disbanded, the former member changed his mind and filed a claim for a portion of the compensation he would have received had it not been for the waiver. Since the $100 per day was a statutory entitlement, the purported waiver was invalid and the former commissioner was entitled to be paid. By accepting the waiver and allowing the commissioner to conduct Commission business without pay, the provision against acceptance of voluntary services was violated and a violation of the ADA occurred.

D. TITLE 31, UNITED STATES CODE, SECTION 1517

1. Obligated O&M funds in excess of the Continuing Resolution Authority allocation which resulted in a violation.

2. Obligated O&M funds for information technology equipment in excess of the investment threshold. When correction was made, Procurement funds were not available at the suballotment level which resulted in a violation.

Figure 2-2. Violation Examples (continued)

3. Obligated Research, Development, Test and Evaluation funds instead of O&M funds to repair and upgrade a building. When correction was made, O&M funds were not available at the suballotment level which resulted in a violation.

4. A DoD activity used O&M funds, rather than Other Procurement funds to purchase a data processing local area network (LAN). Even though the hardware components and LAN operating system software were purchased separately, the components and the software together constituted a system with an aggregate cost in excess of the expense/investment threshold specified by the Congress for the required use of procurement appropriation funds. A violation occurred because the DoD activity did not have the required amount of Other Procurement funds at the time of the purchases.

5. A funds holder at a formal administrative subdivision of fund level erroneously distributed more funds than available at the subdivision level. The activities receiving the funds incurred obligations and expenditures in excess of amounts available to the fund holder but below the amount distributed. The funds holder incurred an ADA violation because the obligations and expenditures exceeded the total amount in the formal administrative subdivision of funds.

Figure 2-3. Reference Hyperlinks

Office of Management and Budget ***(OMB) Circular A-11***, "Preparation, Submission, and Execution of the Budget"

U.S. Government Accountability Office ***Principles of Federal Appropriations Law*** (Red Book)

United States Code (U.S.C.) title and section:

2 U.S.C. § 681	Disclaimer
2 U.S.C. § 682	Definitions
2 U.S.C. § 683	Rescission of Budget Authority
2 U.S.C. § 684	Proposed Deferrals of Budget Authority
2 U.S.C. § 685	Transmission of Messages; Publication
2 U.S.C. § 686	Reports by Comptroller General
2 U.S.C. § 687	Suits by Comptroller General
2 U.S.C. § 688	Procedure in House of Representatives and Senate
5 U.S.C. § 1304	Loyalty Investigations; Reports; Revolving Fund
10 U.S.C. § 2201	Apportionment of Funds; Authority for Exemption; Excepted Expenses
10 U.S.C. § 2204	Obligation of Appropriations
10 U.S.C. § 2208	Working-Capital Funds
10 U.S.C. § 2410a	Severable Service Contracts for Periods Crossing Fiscal Years
10 U.S.C. § 2805	Unspecified Minor Construction
10 U.S.C. § 2825	Improvements to Family Housing Units
18 U.S.C. § 4124	Purchase of Prison-Made Products by Federal Departments

Figure 2-3. Reference Hyperlinks (continued)

31 U.S.C. § 1104	Budget and Appropriations Authority of the President
31 U.S.C. § 1105	Budget Contents and Submission to Congress
31 U.S.C. § 1106	Supplemental Budget Estimates and Changes
31 U.S.C. § 1107	Deficiency and Supplemental Appropriations
31 U.S.C. § 1108	Preparation and Submission of Appropriations Requests to the President
31 U.S.C. § 1112	Fiscal, Budget, and Program Information
31 U.S.C. § 1301	Application
31 U.S.C. § 1321	Trust Funds
31 U.S.C. § 1341	Limitations on Expending and Obligating Amounts
31 U.S.C. § 1342	Limitation on Voluntary Services
31 U.S.C. § 1349	Adverse Personnel Actions
31 U.S.C. § 1350	Criminal Penalty
31 U.S.C. § 1351	Reports on Violations
31 U.S.C. § 1501	Documentary Evidence Requirement for Government Obligations
31 U.S.C. § 1502	Balances Available
31 U.S.C. § 1511	Definition and Application
31 U.S.C. § 1512	Apportionment and Reserves
31 U.S.C. § 1513	Officials Controlling Apportionments
31 U.S.C. § 1514	Administrative Division of Apportionments
31 U.S.C. § 1515	Authorized Apportionments Necessitating Deficiency or Supplemental Appropriations
31 U.S.C. § 1516	Exemptions

Figure 2-3. Reference Hyperlinks (continued)

31 U.S.C. § 1517	Prohibited Obligations and Expenditures
31 U.S.C. § 1518	Adverse Personnel Actions
31 U.S.C. § 1519	Criminal Penalty
31 U.S.C. § 1531	Transfer of Functions and Activities
31 U.S.C. § 1552	Procedure for Appropriation Accounts Available for Definite Periods
31 U.S.C. § 1553	Availability for Appropriation Accounts to Pay Obligations
31 U.S.C. § 1555	Closing of Appropriation Accounts Available for Indefinite Periods
31 U.S.C. § 1557	Authority for Exemptions in Appropriation Laws
31 U.S.C. § 3302	Custodians of Money
31 U.S.C. § 3324	Advances
31 U.S.C. § 3512	Executive Agency Accounting and Other Financial Management Reports and Plans
31 U.S.C. § 3524	Auditing Expenditures Approved without Vouchers
33 U.S.C. § 576	Revolving Fund; Establishment; Availability; Reimbursement; Transfer of Funds; Limitation
41 U.S.C. § 6301	Authorization Requirement

VOLUME 14, CHAPTER 3: "PRELIMINARY REVIEWS OF POTENTIAL VIOLATIONS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue and underlined font*.**

The previous version dated November 2006 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
0301	Clarified how a potential violation is reported and reviewed.	Update
0301	Deleted requirement to report preliminary cases to the Office of the Under Secretary (Comptroller) Deputy Chief Financial Officer (OUSD(C) DCFO).	Delete
030102	Clarified when a case number is assigned.	Update
030103	Added OUSD(C) DCFO option to examine preliminary review cases.	Add
030201	Clarified the purpose of a preliminary review and revised the timeframe to complete a preliminary review.	Update
030204	Deleted requirement to advise OUSD(C) DCFO of preliminary review results.	Delete
030302	Clarified DoD Component and investigator responsibilities and removed compressed timeframe for interagency related reviews.	Update
030202.A	This was subparagraph 030201.B in the previous version. Clarified the focus of a preliminary review and referenced the corrective actions section in Chapter 5.	Update
030202.B	This was subparagraph 030201.A in the previous version. Clarified the checks performed by the investigator. Added investigator independence criteria from Chapter 4.	Update
030202.C	Added procedures if an investigator identifies an accounting error.	Add

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
030202.D	Added fund control personnel definition from Chapter 2. Added procedures when fund control personnel properly certifies fund substitution and modified related correctability test.	Add
030202.E	Added procedures when fund control personnel do not certify fund substitution met the correctability test and refined the correctability test.	Add
030204	Changed timeframe to start a formal investigation.	Update
0303	Deleted paragraphs 030302 and 030303 of the previous version and referenced related chapter sections.	Delete
030402 030403	Revised procedures when an external organization reports a potential violation.	Update

Table of Contents

VOLUME 14, CHAPTER 3: "PRELIMINARY REVIEWS OF POTENTIAL VIOLATIONS" 1

0301 REPORTING SUSPECTED VIOLATIONS 4

*030101. Initial Discovery 4
*030102. Evaluation 4
*030103. Deputy Chief Financial Officer Review 5

0302 PRELIMINARY REVIEWS 5

*030201. Purpose 5
*030202. Investigation 5
030203. Interpretation and Legal Issues 6
030204. Review Results 6
*030205. Formal Investigations 6

0303 PRELIMINARY REVIEWS INITIATED BY THE UNDER SECRETARY OF DEFENSE (COMPTROLLER) 7

0304 PRELIMINARY REVIEWS INITIATED AS A RESULT OF EXTERNAL REPORTS 7

030401. Oversight Entities 7
*030402. Date of Discovery 7
*030403. Disagreement Resolution 7
030404. Reporting 8

0305 ROLES OF THE DOD INSPECTOR GENERAL 8

CHAPTER 3

PRELIMINARY REVIEWS OF POTENTIAL VIOLATIONS

0301 REPORTING SUSPECTED VIOLATIONS

*030101. Initial Discovery

Within two weeks of discovering a potential violation of the Antideficiency Act (ADA), the activity concerned shall report the potential violation, with the related information in paragraphs 030101.A-J, through command channels to the applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller or the Senior Financial Manager for other Department of Defense (DoD) Components (referred herein as DoD Component).

A. Accounting classification of funds involved,

B. Name and location of the activity where the alleged violation occurred,

C. Name and location of the activity issuing the fund authorization, if different than subparagraph 030101.B,

D. Amount of the alleged violation,

E. Nature of the alleged violation,

F. Date the alleged violation occurred and date discovered,

G. Means of discovery,

H. Description of the facts and circumstances of the case,

I. Anticipated dates of completion of the preliminary review and submission of the report, and

J. The name(s) and work phone number(s) of the preliminary investigator or the members of the preliminary review team.

*030102. Evaluation

The DoD Component shall evaluate the potential violation for validity and completeness and if it determines a potential violation has occurred, assign a case number for tracking purposes.

*030103. Deputy Chief Financial Officer Review

The Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) Deputy Chief Financial Officer (DCFO) may routinely examine open or closed preliminary review cases.

0302 PRELIMINARY REVIEWS

*030201. Purpose

The purpose of a preliminary review is to gather facts and ultimately factually establish whether a reportable violation of ***section 1341 of title 31, United States Code (U.S.C.)***, ***section 1342 of title 31, U.S.C.***, or ***section 1517 of title 31, U.S.C.*** has occurred.

*030202. Investigation

When the DoD Component has evidence of a potential violation, as a result of the evaluation in section 0301, the DoD Component shall assign a preliminary review investigator and/or a review team to research the applicable business transactions and accounting records to determine the amount and cause of the potential statutory violation. The preliminary review should be completed within 14 weeks from the date of initial discovery.

* A. A preliminary review shall focus on the potential violation not the corrective actions. Applicable corrective actions will be developed during the formal investigation, if a formal investigation is warranted. See Chapter 5 for formal investigation requirements.

B. The preliminary review shall be performed by either an individual (the preliminary investigator) and/or a review team. The preliminary investigator or the review team lead shall be an individual with no vested interest in the outcome of the review. The preliminary investigator or the review team lead shall also be capable of conducting a complete, impartial, and unbiased review. A commander of a major command, a superior to a commander of a major command who is in the chain-of-command, or equivalent in an organization other than a Military Department, shall appoint a trained and qualified individual to serve as an investigator or a review team lead. To help assure independence and impartiality during the review, an investigator or review team lead shall be selected from an organization external to the installation-level organization being reviewed. DoD Components are required to document that investigators and/or review team leads are free of personal, external, and organizational impairments and retain the document(s) in the ADA case file.

* C. At the onset of the preliminary review, the investigator and/or review team shall check for accounting errors such as:

1. Duplications or other errors in recording the applicable obligation and/or expenditure;

2. Obligations and/or expenditures charged to invalid and/or improper fund accounts; and

3. Inaccurate fund status at the time the applicable transaction occurred.

* D. If the preliminary review determines that an accounting error occurred, the investigator or review team lead shall report this error to the DoD Component to make the appropriate accounting correction(s). An accounting error occurs when an obligation and/or expenditure was posted to a fund other than the fund approved by fund control personnel. Fund control personnel are those responsible for the proper assignment of funding on a commitment or obligation document before the obligation is incurred. Examples are resource managers, fund holders, funds certifying officials, and authorizing officials. Once the accounting correction(s) has been made, the investigator or review team lead shall determine whether a reportable violation occurred. See paragraphs 030202.E and 030202.F for fund correctability tests.

* E. If fund control personnel properly certify that the proper funds were available at the time of the initial obligation and proper funds are available at the time of the correction or fund substitution, the potential violation may be corrected when the proper accounting corrections are complete (see paragraphs 030203, 030204 and 030205 for further requirements).

* F. If fund control personnel do not provide the certification, then the preliminary review report shall include evidence to support a determination that there is a violation of section 1341 of title 31, U.S.C. or section 1517 of title 31, U.S.C. (see paragraphs 030203, 030204 and 030205 for further requirements).

030203. Interpretation and Legal Issues

The existence of a violation may depend upon an interpretation of statutory or regulatory constraints imposed on the use of a particular appropriation or account, the proper fiscal year to be charged, or similar issues. In all cases, the reviewer shall request and obtain the advice of legal counsel on legal issues raised during the preliminary review.

030204. Review Results

The results of the preliminary review shall be documented in a preliminary review report, forwarded for approval to the applicable DoD Component, and coordinated with the applicable DoD Component office of legal counsel. If the DoD Component involved determines that there is not a violation and the DoD Component office of legal counsel concurs, then the preliminary report completes the actions regarding the potential violation.

*030205. Formal Investigations

If the DoD Component involved determines there is a potential violation, then a formal investigation shall be initiated by the applicable DoD Component within two weeks from the

approval of the preliminary review report. The provisions in Chapter 4 and Chapter 5 shall be followed when conducting a formal investigation. Status and violation report procedures are contained in Chapter 6 and Chapter 7, respectively.

0303 PRELIMINARY REVIEWS INITIATED BY THE UNDER SECRETARY OF DEFENSE (COMPTROLLER)

* When the OUSD(C) is informed of a potential violation by an audit report or otherwise learns of a potential violation, the applicable DoD Component may be directed to initiate a preliminary review of the circumstances surrounding the potential violation. The date the DoD Component receives the direction is considered the date of discovery for reporting purposes and the DoD Component shall follow procedures in sections 0301, 0302 and 0304.

0304 PRELIMINARY REVIEWS INITIATED AS A RESULT OF EXTERNAL REPORTS

030401. Oversight Entities

In some cases, the Government Accountability Office, DoD Office of Inspector General, a military department audit agency or other organizations external to a DoD Component may advise in a report that a potential violation may have occurred. Generally, in the case of audit reports, a recommendation to investigate the potential violation is included in the report.

*030402. Date of Discovery

When a draft report is issued by an organization that finds a potential violation may have occurred and recommends a preliminary review be conducted, the DoD Component involved shall review the finding(s) and recommendation(s) provided in the draft report. If the DoD Component agrees with the recommendation to perform a preliminary review then the date of the final report is considered the date of discovery for reporting purposes and the DoD Component shall follow procedures in sections 0301 and 0302.

*030403. Disagreement Resolution

When the DoD Component disagrees that a potential violation has occurred and believes a preliminary review is not warranted, the DoD Component shall provide applicable written comments to the draft report outlining the disagreement consistent with policy prescribed in ***DoD Directive 7650.3, Follow-up on General Accounting Office (GAO), DoD Inspector General (DoD IG), and Internal Audit Reports***. If disagreements between the DoD Component and the organization arise as to whether a preliminary review is warranted, the DoD Component may request assistance from the OUSD(C) DCFO. Upon resolution of the disagreement, if a preliminary review is not recommended, then no further action is required by the DoD Component. However, if the DoD Component and the organization agree that a potential violation may have occurred and a preliminary review is warranted, then the date of the agreement is considered the date of discovery for reporting purposes and the DoD Component shall follow procedures in sections 0301 and 0302.

030404. Reporting

If a preliminary review was deemed appropriate, the DoD Component shall supply the status of the preliminary review as requested by the applicable external organization.

0305 ROLES OF THE DOD INSPECTOR GENERAL

The ***Inspector General Act of 1978*** gives the DoD Inspector General the authority to conduct investigations of violations of the Antideficiency Act.

A. The DoD Inspector General reserves the right to initiate investigations of potential violations of the Antideficiency Act, depending upon the type, amount, or significance of the violation.

B. The DoD Inspector General may elect to conduct investigations not requested by the Under Secretary of Defense (Comptroller) or other DoD official.

C. When the DoD Inspector General conducts such investigations, the resultant report shall constitute the official DoD report on the matter; no other DoD Component shall conduct parallel or supplemental investigations unless directed to do so by the Secretary of Defense, Deputy Secretary of Defense, or Under Secretary of Defense (Comptroller).

VOLUME 14, CHAPTER 4: "FORMAL INVESTIGATOR"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

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Hyperlinks are denoted by ***bold, italic, blue and underlined font*.**

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Title	Changed chapter title.	Update
0401	Referenced preliminary review and formal investigation policy within Chapters 3 and 5.	Update
0401	Deleted paragraph 040101 of previous chapter. The purpose of a formal investigation is in Chapter 5.	Update
0402	Rearranged section contents and renumbered paragraphs as applicable.	Update
0402	Changed "investigating officer" to "formal investigator" throughout section.	Update
040202	Updated Chapter 8 paragraph references.	Update
040203	Referenced Chapter 6 on information requirements.	Update
040203 040204	Referenced Office of the Under Secretary of Defense (Comptroller) Deputy Chief Financial Officer for consistency in this volume.	Update
040204.A 040204.B 040204.C	Referenced respective paragraphs that contain investigator selection, investigator qualifications, and appointing officer requirements.	Update

Table of Contents

VOLUME 14, CHAPTER 4: "FORMAL INVESTIGATOR" 1

*0401 OVERVIEW 3

*0402 APPOINTMENT 3

040201. Investigator Selection 3
*040202. Investigator Qualifications 4
*040203. Appointing Officer Requirements 4
*040204. Other 5

CHAPTER 4

FORMAL INVESTIGATOR

*0401 OVERVIEW

Whenever a preliminary review determines a potential Antideficiency Act (ADA) violation has occurred, a formal investigation is required under the provisions of this volume. Generally, the existence of a potential violation shall be established during the preliminary review and before a formal investigation begins. See Chapter 3 for preliminary review policy and Chapter 5 for formal investigation policy.

*0402 APPOINTMENT

040201. Investigator Selection

A. A commander of a major command, a superior to a commander of a major command who is in the chain-of-command, or the equivalent in an organization will act as the appointing officer and shall appoint an adequately trained and qualified individual to serve as a formal investigator.

B. Individuals with no vested interest in the outcome of an investigation, and who are capable of conducting a complete, impartial, and unbiased investigation, shall conduct formal investigations.

C. To help assure independence and impartiality during an investigation, a formal investigator shall be selected from an organization external to an installation-level organization being investigated.

D. DoD Components shall document that investigators are free of personal, external, and organizational impairments and retain the document(s) in the ADA case file.

E. If an individual involved in the investigation or in the process of selecting and appointing the formal investigator has a conflict of interest or any personal stake in the outcome of the investigation, that individual shall remove himself or herself from the process. Those matters that may not lend themselves to impartial investigation, for instance the investigator is assigned to the level where the violation occurred shall be referred through command channels to the next higher level for the appointment of an investigator.

F. A formal investigator does not need to be senior in grade to the person(s) being investigated.

G. If a potential violation appears to involve a complex situation or a multitude of functional areas, then a team approach may be necessary. The appointing official shall ensure the formal investigator receives adequate support, including access to additional personnel with the requisite knowledge in all of the functional areas involved. The appointment

of a legal advisor for the investigating team also shall be considered. A formal investigator may face a number of legal issues during the course of an investigation and may be expected to take statements. A formal investigator shall consult with appropriate legal counsel on any legal issues associated with the investigation.

H. An appointment of a formal investigator may be made or reviewed by the Office Under Secretary of Defense (Comptroller) Deputy Chief Financial Officer (OUSD(C) DCFO), an Assistant Secretary of a Military Department for Financial Management and Comptroller, or Senior Financial Manager for other DoD Components whenever a potential violation is of special interest to that official, demands specific attention, may involve a high-level official, or whenever other circumstances warrant such involvement.

*040202. Investigator Qualifications

In addition to the requirements in paragraph 040201, a formal investigator shall:

A. Be chosen from a roster of qualified personnel as required by Chapter 8, paragraph 080204.

B. Be adequately trained to conduct an investigation of this type, including having successfully completed training requirements as specified in Chapter 8, paragraph 080202.

C. Have adequate experience in the functional area that is involved in the apparent violation.

D. Have knowledge of financial management policies and procedures and the Antideficiency Act.

E. Have skill in investigating potential violations.

F. Otherwise, be fully qualified to serve as a formal investigator.

*040203. Appointing Officer Requirements

The appointing officer shall appoint a formal investigator and advise the investigator of his or her appointment in a formal memorandum. The memorandum shall include the case number and the case number shall be used on all applicable correspondence and reports related to the formal investigation. The memorandum shall also include specific investigation timeframes and milestones in order to meet reporting timeframes specified in Chapter 7, paragraph 070102. The information regarding the investigation shall be provided to the OUSD(C) DCFO according to Chapter 6, paragraph 060202.

*040204. Other

A. In some cases, a DoD Component whose funds are involved, rather than the DoD Component where the potential violation occurred, may request a formal investigation by the DoD Component where the potential violation occurred. The DoD Component whose funds are involved shall assign a case number and the DoD Component where the potential violation occurred shall assign a formal investigator in accordance with paragraphs 040201 – 040203. If the DoD Component whose funds are involved is not successful in obtaining cooperation from other DoD Components implicated, the matter shall be referred to the OUSD(C) DCFO for resolution.

B. When the OUSD(C) DCFO requires that a formal investigation be conducted, the applicable major command, higher command, or the equivalent shall assign a formal investigator in accordance with paragraphs 040201 – 040203.

C. If the OUSD(C) DCFO notifies the DoD Inspector General (IG) (or other audit organization) that a potential violation requiring DoD IG investigation has been reported, then DoD IG shall assign a formal investigator in accordance with paragraphs 040201 – 040203 and 040204.D. However, a case number shall be assigned by the organization being investigated.

D. An auditor from the DoD Office of the Inspector General (OIG), Army Audit Agency, Naval Audit Service, or Air Force Audit Agency can be considered to be fully qualified to serve as a formal investigator if he or she has an appropriate background in fiscal matters. Likewise, an investigator from the DoD OIG or from the Inspector General organizations of the Military Departments (The Inspector General of the Army, The Naval Inspector General, and The Inspector General of the Air Force) can be considered fully qualified to serve as a formal investigator, if he or she has an appropriate background in fiscal matters.

VOLUME 14, CHAPTER 5: "CONDUCTING INVESTIGATIONS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

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PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
050201 050202 050203	Referenced timeframes within Chapter 7.	Update
050302.C	Reiterated from Chapter 4, paragraph 040201.G.	Update
050302.F	In accordance with Office of Management and Budget Circular No. A-11 (2010), Preparing, Submitting, and Executing the Budget, added the requirement to send case information to the Department of Justice if it is suspected that the violation was knowing and willful.	Update

Table of Contents

VOLUME 14, CHAPTER 5: "CONDUCTING INVESTIGATIONS" 1

0501 PURPOSE OF AN INVESTIGATION 3

050101. Checklists 3
050102. Research Effort 3

0502 TIMEFRAMES 3

*050201. Timeframes for Investigation 3
*050202. Approving Exceptions to Timeframes 4
*050203. Special Interest Investigations 4
050204. Involvement of the Under Secretary of Defense (Comptroller) 4

0503 DEVELOPING CONCLUSIONS 4

050301. Documenting Facts 4
050302. Identifying Circumstances and Fixing Responsibility 4

0504 CORRECTIVE ACTIONS 6

050401. Developing Corrective Actions 6
050402. Procedural Corrections 6
050403. Funding Corrections 7
050404. Request for Advance Violation Decision 8
050405. Disciplinary Action 8

0505 ACCUMULATING COSTS 8

Figure 5-1. INVESTIGATING OFFICERS FORMAL INVESTIGATION CHECKLIST 9

Figure 5-2. APPOINTING OFFICERS FORMAL INVESTIGATION CHECKLIST 16

CHAPTER 5

CONDUCTING INVESTIGATIONS

0501 PURPOSE OF AN INVESTIGATION

The purpose of a potential Antideficiency Act (ADA) violation investigation is to determine the event that caused the potential violation, the responsible individual(s), action(s) required to correct the violation, and action(s) taken to ensure that a similar violation does not occur in the future. When an investigating officer is appointed, a formal investigation shall begin.

050101. Checklists

Figure 5-1, Checklist for Investigating Officers, may be used during an investigation to document the results. Figure 5-2, Checklist for Appointing Officers, may be used by the appointing officer in the review of the investigating officer's report. The checklist in Chapter 7, Figure 7-1 also may be used during the investigation and preparation of the ADA Report.

050102. Research Effort

During the investigation, an investigating officer may be required to perform extensive research. The research effort may include researching accounting directives and regulations, directives and regulations related to the functional area involved, legal directives, public law, and legal opinions. An investigating officer will review all specific documentation in the functional area involved that relates to the violation such as purchase requests, contracts, work orders, vouchers, and supporting materials, etc.

0502 TIMEFRAMES

*050201. Timeframes for Investigation

ADA investigations including the submission of the ADA Report to the Office of the Under Secretary of Defense (Comptroller) OUSD(C) Deputy Chief Financial Officer (DCFO), shall be completed within the timeframes stipulated in Chapter 7, paragraph 070102. See other reporting requirements in Chapter 6.

A. All appointing officials shall stipulate in the investigating officer appointment memorandum (see Chapter 4, paragraph 040103) a due date for the ADA Report. Such due date shall conform to the timeframes stipulated in Chapter 7, paragraph 070102 regardless of the scope of the event or amount of the potential violation. The date established by the appointing official also shall consider the requirement for the applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller or Senior Financial Manager for other Department of Defense (DoD) Components, to submit the ADA Report to the OUSD(C) DCFO.

B. The total process for investigating and reporting potential ADA violations shall conform to the timeframes stipulated in Chapter 7, paragraph 070102.

*050202. Approving Exceptions to Timeframes

The Heads of the DoD Components may approve an exception to the timeframes on a case-by-case basis. This responsibility may be delegated to the Assistant Secretary of the Military Department for Financial Management and Comptroller or Senior Financial Manager for other DoD Components. This responsibility shall not be redelegated. The OUSD(C) DCFO shall be notified of any extension that is approved and furnished a justification for that extension; however, any extension granted shall conform to the timeframes stipulated in Chapter 7, paragraph 070102.

*050203. Special Interest Investigations

When necessary, investigations of special interest may deviate from the timeframes stipulated in Chapter 7, paragraph 070102; however, the applicable appointing officer or investigating officer shall notify the OUSD(C) DCFO when such deviations are necessary. If the OUSD(C) DCFO agrees, the timeframe may be extended. Special interest investigations include potential violations that may have been the subject of a news release; requested by the Secretary, Deputy Secretary, or the Under Secretary of Defense (Comptroller) (USD(C)); or involve a high-level DoD official.

050204. Involvement of the Under Secretary of Defense (Comptroller)

The USD(C) may supervise the progress of an investigation when the nature of the violation or the implication of individuals in the violation warrants such involvement. Such supervision may include requirements for oral and written progress reports and may require a team of investigating officers and compressed timeframes.

0503 DEVELOPING CONCLUSIONS

050301. Documenting Facts

During the investigation process, the investigating officer shall use extreme care in obtaining and documenting all the relevant and specific facts of the case. The conclusions in the ADA Report, including the identification of the individual(s) responsible for the violation, shall be supported by the facts presented in the report.

050302. Identifying Circumstances and Fixing Responsibility

The investigating officer shall carefully consider the facts and circumstances surrounding the violation before affixing responsibility for the violation. Commanding officers, budget officers, or fiscal officers may be named because of their overall responsibility or position, or the fact that they are designated as the holder of a subdivision of funds, if they failed to properly exercise their responsibilities. The investigating officer, however; shall attempt to discover the

specific act, or the failure to take action, that resulted in the violation, and the responsible individual(s) for the act or the failure to take action. An ADA Violation Report is considered incomplete until an individual(s) has been named as responsible for the violation. A conclusion that no one could be determined responsible for the violation is not acceptable. Chapter 9 contains additional guidance regarding recommended disciplinary actions.

A. An ADA Violation Report shall include assignment of responsibility to one or more individuals for the violation so appropriate administrative or disciplinary action, if any, may be imposed as required by sections ***1349***, ***1350***, ***1518***, and ***1519*** of title 31, United States Code (U.S.C.).

B. All relevant aspects of the case, including all individual(s) and records connected with the event, shall be investigated to the fullest extent. Key personnel involved in a violation shall be interviewed. If an employee to be interviewed is a member of a bargaining unit, then the investigating officer shall comply with appropriate statutory and collective bargaining agreement protections for such employee. Key facts associated with the events leading to the potential violation shall be examined and documented in the report and the investigating officer shall address any conflicts. If a series of events at several levels led to the violation, then the report clearly shall identify what happened at each level and how the events contributed to the violation.

* C. In cases where the subject matter of the potential violation is beyond the expertise of the investigating officer, the investigating officer shall request a subject matter expert evaluate the evidence along with statements from personnel interviewed and provide an opinion whether the key facts are correct and reasonable.

D. The investigating officer logically shall support a determination from the documented facts that one or more of the individuals involved are responsible for causing the violation.

E. The investigating officer shall clearly identify the involvement of each individual(s) and what each individual(s) did or failed to do that caused the violation. The following questions shall be considered:

1. Did the violation occur because an individual carelessly disregarded instructions?

2. Did the violation occur because an individual was inadequately trained or lacked knowledge to properly perform their job? If so, then was the individual or a supervisor at fault?

3. Did the violation occur because of an error or mistake in judgment by an individual or a supervisor?

4. Did the violation occur because of lack of adequate procedures and controls? If so, then who was at fault?

5. Did the violation occur because of other reasons? If so, then who was at fault?

* F. If, at any time during an investigation, the investigating officer believes there may be a criminal issue(s) involved, then the investigation shall be stopped immediately. The investigating officer shall consult with legal counsel to determine if the issue should be referred to appropriate criminal investigators for resolution. Following completion of the investigation, if it is suspected that the violation was knowing and willful, then the case information shall be submitted to the Department of Justice.

0504 CORRECTIVE ACTIONS

050401. Developing Corrective Actions

Part of an investigating officer's responsibilities includes recommending actions to prevent future violations of a similar type (procedural corrections) and correct the specific adverse funding condition (funding corrections) that resulted from the violation. When the causes and the individual(s) responsible for the violation have been determined, officials of the DoD Component under investigation, working with the investigating officer, shall determine the corrective actions necessary to ensure a violation of a similar nature will not recur. Those actions shall be included in the ADA Violation Report. In addition, officials of the DoD Component under investigation, working with the investigating officer, shall develop a summary of lessons learned from the specific circumstances of the case that can be applied to the installation involved, the major command, the DoD Component, or all DoD Components. The ADA Violation Report does not serve to condone, retroactively approve, or financially justify, a violation. All violations shall be corrected with the proper funding, together with the necessary approval from the proper approving authority.

050402. Procedural Corrections

A. These corrective actions usually are directed at DoD Component level, coordinated and approved at management levels, and implemented at the field level activity that causes the violation and may include training or changes in procedures to preclude similar violations. Other organizations also may be involved. For instance, it is possible that, as a part of an installation's overall corrective action, a change in local procedures is required at an organization (such as contracting, engineering, or information systems office) that supports the installation. Additionally, changes in practices or procedures by the finance office could benefit the activity that caused the violation. Unless individuals in a finance office caused the violation, corrective actions taken by that office would be secondary to the corrective actions taken by the responsible organization.

B. Recommendations for future consideration of field-level corrective actions are not acceptable in the report. The report shall state clearly the corrective actions actually taken, or being taken, to preclude similar violations in the future.

C. Recommendations that apply at other activities or organizations shall be included in the report. Such recommendations shall be specific in nature. The major command, or equivalent, shall address such recommendations and include a statement whether those recommendations are considered appropriate for adoption by the major command. The Head of the DoD Component, or designee, shall evaluate such recommendations and include a statement whether they are considered appropriate for adoption by the DoD Component.

D. The investigating officer also may make recommendations for improvements in the contents of the checklist in Figure 5-1 or other portions in this volume.

E. If recommendations are directed toward changing DoD Component regulations, then each such recommendation shall include the number and name of the regulation, the paragraph in which the change is recommended, the suggested wording of the change, and the rationale for the recommended change. For a situation in which an investigation determines that a particular regulation caused or contributed to the cause of a violation, the report of violation shall contain a recommendation to change that portion of the regulation.

050403. Funding Corrections

A. The ADA Report shall state what actions were taken to request the proper funding. A statement in the report to the effect that funds will be requested is not sufficient. The report shall state the year, type of funds, and the amount used to make the correction. As an example, if Operation and Maintenance (O&M) funds were improperly used for a minor construction project costing in excess of the limitation for minor construction, funds shall be obligated from the Military Construction appropriation and the O&M appropriation restored to the proper balance.

B. Care shall be taken when correcting financial transactions that involve foreign currency fluctuation budget rates. The appropriate budget rate for the appropriate year shall be used.

1. The appropriation from which the incorrect transaction took place shall be corrected, as well as the applicable foreign currency fluctuations centrally-managed allotment from which any gain or loss (difference between the current rate actually paid and the budget rate actually obligated) was incorrectly credited or charged. If the appropriation to which the charge must be made is subject to foreign currency fluctuations budget rates (i.e., when an O&M account was charged when a military construction account instead should have been charged), then a charge to the appropriation at the applicable budget rate and a charge or credit to the applicable centrally-managed allotment will be required.

2. Corrections applying to foreign currency fluctuation centrally managed allotments shall be coordinated with the funds manager of the applicable foreign currency fluctuation, centrally-managed allotment at the DoD Component.

C. In some cases, the appropriation source for proper funding to correct a violation may be expired or canceled (also known as closed). Guidance on the treatment of transactions that should have been charged to accounts that now are expired or canceled (closed) is addressed in Volume 3, Chapter 10.

D. In some cases involving violations of departmental or DoD Component administrative limitations, additional funding may not be needed. Administrative after-the-fact approval from the proper approving authority shall be obtained in order to properly document the records associated with the violation.

E. The correction of a violation by means of receiving the proper funding or after-the-fact approval does not negate the occurrence of the violation. Violations, even though corrected subsequently with proper funding, still shall be properly investigated and reported.

050404. Request for Advance Violation Decision

The applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller or Senior Financial Manager for other DoD Components, may submit the ADA Report, to include the individual(s) responsible for the potential violation, to the OUSD(C) DCFO with a copy to the DoD Office of the Deputy General Counsel (Fiscal) (OGC (Fiscal)) that requests a determination of whether or not the case is or is not an ADA violation prior to completing the ADA Report and administering the discipline. If the DoD OGC (Fiscal) agrees that the case is a violation then discipline shall be administered according to Chapter 9.

050405. Disciplinary Action

At the conclusion of an investigation, appropriate disciplinary action shall be determined. Chapter 9 contains guidance on disciplinary actions. If the individual responsible is from another DoD Component, the appointing official shall follow the procedures in Chapter 7, paragraph 070207. The type of disciplinary action taken shall be included the ADA Violation Report.

0505 ACCUMULATING COSTS

When conducting an investigation outside the major command to which the investigating officer is assigned, incidental costs (TDY, local travel, etc.) incurred shall be identified and accumulated. In accordance with Volume 11A and Volume 11B, reimbursement shall be requested from the command that was under investigation.

Figure 5-1. INVESTIGATING OFFICERS FORMAL INVESTIGATION CHECKLIST

The investigating officer shall ensure the following items have been considered during the course of an investigation and the preparation of the ADA Report:

1. Review the preliminary review report (see Chapter 3, paragraph 030203) and develop questions, as needed, to:

   a. Ensure a full understanding of the facts and circumstances of the potential violation.

   b. Validate the existence of the potential violation.

2. Examine the physical evidence associated with the potential violation and document each piece of evidence.

   a. Make copies of the transaction(s) that caused the potential violation. The transactions may consist of working group documents, planning documents, commitment documents, obligating documents, payment documents, or others. Copies of the transactions related to the violation may be located in the functional area originating the obligation, the contracting office, engineering office, or Defense Finance and Accounting Service offices.

   b. Trace and document who authorized or approved the transaction(s).

   c. Trace and document all of the relevant decisions that led up to, and the contributing circumstances that set the stage for, the transaction(s) that caused the potential violation. These decisions might be traced to minutes of installation financial board meetings, installation financial working group meetings, or any other installation group meeting in which decisions concerning an installation's financial decisions are conducted.

   d. If a regulation, funding document, or other administrative document was violated, then review the pertinent document. Determine specifically what administrative limitation was exceeded. Review sections ***1511*** through ***1519*** of title 31, U.S.C. related to administrative violations. Determine specifically which section of Title 31 was violated.

   e. If a statutory limitation was exceeded, then review the pertinent statute. Sections ***1341*** through ***1348*** of title 31, U.S.C. contain general government-wide provisions dealing with statutory limitations. Voluntary services are covered by ***section 1342*** of title 31, U.S.C. Other statutory limitations in ***title 10, United States Code*** or DoD Appropriations or Authorization Acts may be involved. Determine specifically which statute was violated.

Figure 5-1. INVESTIGATING OFFICERS FORMAL INVESTIGATION CHECKLIST (continued)

3. Interview the key players and document the results of the interviews. When interviewing DoD civilian employees, who also are bargaining unit members, ensure that the relevant questions of the U.S.C. and the collective bargaining agreement are adhered to.

   a. Question each key person to determine the role each played in the violation.

   b. Question facts and circumstances that do not appear logical or supportable.

   c. For those individuals who may be potentially responsible in any way, question why they did what they did and when they did it.

   d. If they indicate that their supervisor instructed them to perform certain acts that contributed to the potential violation, interview their supervisors.

   e. Re-interview to address conflicts in documented evidence.

4. Examine relevant circumstantial evidence associated with the potential violation and describe how each piece of circumstantial evidence relates to the case. Label all circumstantial evidence as such in the report. Inclusion of photographs, drawings, etc., particularly of construction projects, is not mandatory, but could be helpful in explaining the violation.

5. Assemble and analyze the documented evidence.

   a. Develop and document a list of findings based upon the evidence. Identify the evidence that supports each finding.

   b. Develop and document a list of conclusions, including which specific act, or failure to act, caused the potential violation. Identify the evidence and findings that supports each conclusion.

   c. Determine if an ADA violation has, in fact, occurred and if so, which provision of the Act was violated. Include in the documentation the rationale and evidence that support this conclusion and state the type of violation and the related section of the U.S.C. that was violated.

   d. Identify the amount and date of the potential violation.

Figure 5-1. INVESTIGATING OFFICERS FORMAL INVESTIGATION CHECKLIST (continued)

6. Determine if the acts that caused the violation complied with established internal controls or local operating procedures.

   a. If the acts were in compliance with either the controls or procedures, determine what control and procedural improvements are required to prevent future violations of this type.

   b. If the controls or procedures were deficient or in need of improvement, then interview the supervisors of the operating personnel to determine why the controls and procedures were deficient.

   c. In consultation with the field commander, key fund control personnel, operating personnel, and supervisor(s), recommend or review revised controls and procedures to prevent future violations of the same type. Include in the report any recommended control or procedural improvements and the actions taken on those recommendations by the local command. Describe actions in detail so they may be evaluated for application at other locations.

   d. Obtain from management officials of the DoD Component involved any lessons learned from this event for use by others in addressing similar circumstances. Include any recommended lessons learned in the report.

7. Determine to what degree each key player was responsible for the violation.

   a. If operating personnel failed to follow established controls or procedures, then assign that individual(s) as bearing a significant responsibility for the violation.

   b. If a supervisor requested an employee(s) to disregard established controls or procedures, then assign the supervisor (in lieu of the employee) as bearing a significant responsibility for the violation.

   c. If standard operating procedures or internal controls are deficient and the deficiencies were a major contributing cause of the violation, then assign the supervisor responsible for the procedures or controls as bearing significant responsibility for the violation.

   d. In most cases, the individual(s) that is determined to be significantly responsible for the violation shall be named as the responsible individual in the ADA Violation Report.

Figure 5-1. INVESTIGATING OFFICERS FORMAL INVESTIGATION CHECKLIST (continued)

e. If the violation involves a centrally managed allotment, then the head of the operating agency at the time the violation was incurred shall be named responsible for the violation; however, other individuals also may be named responsible for the violation.

f. Identify in the report the individual(s) named responsible by name, rank/grade, position title, job series, and organization.

g. Include in the report a brief, clear description of the causes and circumstances surrounding the violation.

(1) The description shall state clearly what the individual(s) responsible for the violation did, or failed to do, that caused the violation.

(2) State whether the violation was due to careless disregard of instructions; an error; a lack of adequate training, procedures, or controls; or due to other reasons.

(3) The report shall not be so brief that it does not convey clearly the essential facts and circumstances of what happened. Clearly state in sufficient detail what happened.

(4) Identify the name and position of the holder of the funds subdivision (e.g., installation commander) and an evaluation of the performance of their fund control responsibilities. The level of command immediately above the holder normally will furnish this evaluation. This evaluation may be omitted if the holder of funds is named the responsible individual for the violation.

8. The individual(s) named responsible in the report shall be:

a. Advised that they may consult with legal counsel or, when applicable, union representative.

b. Advised that a violation has been determined to have occurred and that they are named a responsible individual for the violation and they will be allowed to review the report prior to finalization and examine evidence on which the determination was based.

Figure 5-1. INVESTIGATING OFFICERS FORMAL INVESTIGATION CHECKLIST (continued)

c. Allowed to submit a sworn or unsworn statement regarding the alleged violation after reviewing the report and evidence that will be included in the report. If the individual declines to make a statement, then the report shall so indicate.

d. Allowed to designate witnesses to provide statements on their behalf.

e. Designated witnesses shall be interviewed for the record.

f. After review of responsible individual(s) statement(s) and designated witnesses interviews, the investigator shall provide an analysis of this information in the report and address whether and how the report is affected.

g. If a designated witness declines to make a statement, then the report will so indicate.

9. The investigator shall assess whether the individual(s) named responsible knowingly and willfully committed the violation. The assessment shall fully support the determination and explore the reasons and what evidence in the report was relied upon to make that determination.

10. In consultation with the investigating officer and legal officials, the disciplinary officer and/or the individual's supervisor or commander shall determine appropriate disciplinary action against the individual(s) named responsible.

a. The recommended disciplinary action, if any, shall be commensurate with the severity of the violation and the degree of responsibility of the individual.

b. Include in the report the recommended disciplinary actions and a statement by the local commander describing any administrative discipline imposed and any further action taken with respect to the individual(s) named responsible for the violation. The individual responsible for determining disciplinary action shall attach a written statement to the report acknowledging that:

(1) A violation is a serious matter.

(2) Disciplinary action taken shall be appropriate to the causes and circumstances determined during the investigation.

Figure 5-1. INVESTIGATING OFFICERS FORMAL INVESTIGATION CHECKLIST (continued)

(3) The DoD shall report the violation to the Congress and the President.

(4) The disciplinary action taken is commensurate with the severity of the violation as identified in the report, with full justification of extenuating circumstances. Chapter 9 contains further guidance on these statements. If no disciplinary action is deemed appropriate, then full justification is required.

11. The investigator shall review the report before transmittal to the appointing official to determine that:

a. The report includes copies of the investigating officer appointment memorandum and the preliminary review report.

b. The case control number, title of the appropriation or fund involved, Treasury symbol, amount, date of occurrence, date discovered, and a description of how the potential violation was identified are included in the report. In addition, the name and title of the investigator, the dates, place, and scope of the investigation shall be included in the report.

c. There are no obvious questions or issues that have not been addressed.

d. The documented evidence supports the findings, conclusions, and recommendations in the report.

e. All key players and designated witnesses have been interviewed.

f. All relevant evidence has been included in the report.

g. All circumstantial evidence has been labeled properly to distinguish it from the evidence in item 12f.

h. The documentation indicates that all witnesses and individuals suspected of committing a criminal offense and supplied testimony were informed properly of their rights; e.g., with respect to military personnel, under ***Article 31, Uniform Code of Military Justice***.

i. The investigator has indicated that the individual(s) named responsible did not commit the violation willfully and knowingly. If there were indications that an individual(s) may have willfully and knowingly committed a violation, then the case shall have been referred to criminal investigators (see paragraph 050302.F).

Figure 5-1. INVESTIGATING OFFICERS FORMAL INVESTIGATION CHECKLIST (continued)

j. An individual(s) has been named responsible, disciplinary action has been recommended, and the required statement by the commander on the appropriateness of the disciplinary action, whether imposed or not, is included in the report. The individual(s) is identified by name, rank, position title, and organization.

k. Corrective actions, to include applicable funding corrections, have been taken or recommended and the report identifies any lessons learned.

l. Any findings, conclusions, and recommendations that are based upon testimony are cross-referenced to the record of the testimony.

m. The documentation includes records of applicable legal advice when required.

n. The report includes the name and position of the fund holder and an evaluation of their performance.

o. The investigator has signed the report.

Figure 5-2. APPOINTING OFFICERS FORMAL INVESTIGATION CHECKLIST

The appointing officer shall ensure the following items are addressed in the ADA Report:

1. Is a copy of the investigating officer's appointment memorandum and the preliminary review report included in the report?

2. Does the report include the case control number, title of the appropriation/fund involved, Treasury symbol, amount, date of occurrence, date discovered, and a description of how the potential violation was identified, the name and title of the investigating officer, the dates, place and scope of the investigation?

3. Is the evidence clearly documented in the report and is the evidence relevant to the case?

4. Does the evidence appear to be complete or are significant factors missing that should be considered? Do there appear to be relevant unanswered questions?

5. Are the findings clearly stated, logical, supported by the evidence, and relevant to the case?

6. Is each finding that is based upon testimony properly cross-referenced to the testimony?

7. Are the findings and conclusions fully substantiated by the evidence and testimony?

8. Were all conflicts in testimony addressed in the report?

9. Is there an explicit statement that a violation, in fact, occurred or that no violation occurred? If a violation occurred, does the report include a citation of the U.S.C. section that was violated?

10. Does the report name at least one individual as being responsible for the violation? Does the evidence support the determination of responsibility made by the investigating officer? Is the individual(s) named responsible identified by name, rank/grade, position title, job series, and organization? Does the report identify the date of the potential violation and the amount?

11. Does the report include a clear description of the causes and circumstances surrounding the violation?

    a. The description shall state clearly what the individual(s) responsible for the violation did, or failed to do, that caused the violation.

Figure 5-2. APPOINTING OFFICERS FORMAL INVESTIGATION CHECKLIST (continued)

b. State whether the violation was due to careless disregard of instructions; an error; a lack of adequate training, procedures, or controls; or due to other reasons.

c. The report shall not be so brief that it does not convey clearly the essential facts and circumstances of what happened. Clearly state in sufficient detail what happened.

d. Identify the name and position of the holder of the funds subdivision (e.g., installation commander) and an evaluation of the performance of the fund control responsibilities. The level of command immediately above the holder normally will furnish this evaluation. This evaluation may be omitted if the holder of funds is named the responsible individual for the violation.

12. Does the report indicate that each individual named responsible was:

a. Advised that they may consult with legal counsel?

b. Advised that a violation has been determined to have occurred, that they are named as a responsible individual for the violation, and they will be allowed to review the report and examine evidence on which the determination was based?

c. Allowed to submit a sworn or unsworn statement regarding the alleged violation after reviewing the report and evidence? If the individual declines to make a statement, then the report shall so indicate.

d. Allowed to designate witnesses to testify in their behalf?

13. Were the rights of the individual(s) named responsible protected? Are there indications in the report that suggest that their rights were not fully protected? If so, the case may have to be reinvestigated.

14. Were all witnesses--designated by the individual(s) named responsible--interviewed or does the report include valid reasons why they were not interviewed?

15. Was there any relevant new information furnished by the oral or written statements by the individual(s) named responsible, or their designated witnesses? If so, does the report address this new evidence and its bearing on the responsibility of the named individual(s)?

Figure 5-2. APPOINTING OFFICERS FORMAL INVESTIGATION CHECKLIST (continued)

16. Does the report explicitly state whether the violation was willfully and knowingly committed? If there are indications the violation willfully and knowingly was committed, the investigation shall have been referred to criminal investigators (see paragraph 050302.E).

17. Has the investigating officer included a discussion of the following items in the report and have appropriate actions been taken by the local command to:

    a. Discipline the named individual(s), if appropriate, and furnish a statement by the local commander justifying the action taken.

    b. Identify and complete applicable funding corrections.

    c. Identify and implement corrective actions to prevent similar violations in the future.

    d. Improve procedures and controls, if appropriate.

18. Has the report been signed by the investigator?

VOLUME 14, CHAPTER 6: "STATUS REPORTS ON INVESTIGATIONS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue and underlined font*.**

The previous version dated February 2008 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
0602	Rearranged section content, referenced corrective actions in Chapter 5 and referenced reporting timeframes in Chapter 7.	Update

Table of Contents

VOLUME 14, CHAPTER 6: "STATUS REPORTS ON INVESTIGATIONS" 1

0601 OVERVIEW 3

0602 INFORMATION REQUIREMENTS 3

*060201. Administration 3
060202. Oversight Office 3
060203. Submission 3

0603 STATUS 3

Figure 6-1. POTENTIAL ANTIDEFICIENCY ACT VIOLATION CASE 4

CHAPTER 6

STATUS REPORTS ON INVESTIGATIONS

0601 OVERVIEW

During the course of a formal investigation, status reports to the applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller, Senior Financial Manager for other Department of Defense (DoD) Components (referred herein as DoD Component), or the Office of the Under Secretary of Defense (Comptroller) are required.

0602 INFORMATION REQUIREMENTS

*060201. Administration

When a formal investigation is initiated, the applicable DoD Component shall assign a case number and establish a completion date for the formal investigation. The completion date shall allow sufficient time for the DoD Component to perform corrective actions, seek advance DoD Office of the Deputy General Counsel (Fiscal) decision, and administer discipline in accordance with Chapter 5, section 0504.

060202. Oversight Office

When an investigating officer is appointed and a formal investigation begins, the applicable DoD Component shall report the information in Figure 6-1 to the Office of the Under Secretary of Defense (Comptroller) Deputy Chief Financial Officer (OUSD(C) DCFO).

060203. Submission

The DoD Component shall submit the Antideficiency Act Report to the OUSD(C) DCFO within the provisions and timeframes provided in Chapter 7.

0603 STATUS

Status on formal investigations shall be reported to the OUSD(C) DCFO upon request. Requests can be made starting from the beginning of the formal investigation through the date the final Antideficiency Act Report is provided to the OUSD(C) DCFO.

Figure 6-1. POTENTIAL ANTIDEFICIENCY ACT VIOLATION CASE

SAMPLE FORMAT
(Insert DoD Component Name and Case Number)
(Insert Date)

(1) CASE NUMBER	(2) ESTIMATED COMPLETION DATE	(3) AMOUNT	(4) APPN & TREASURY ACCT SYMBOL	(5) USC REF	(6) ORGAN-IZATION	(7) LOCATION
Two-digit Fiscal Year and sequence number assigned by the Component. For example: 10-01	mm/dd/yyyy	Insert the amount of violation in dollars and cents.	Insert the Appropriation name, Treasury Index number, Fiscal Year, basic symbol, and limit. For example: Operation and Maintenance, Air Force, 57 3400 20102010 3400	Insert the USC reference suspected of being violated. For example: 1341(a)(1)(A) 1341(a)(1)(B) 1517(a)(1) 1517(a)(2)	Insert the name or designation of the organization where the suspected or potential violation occurred.	Insert the location of the organization where the suspected or potential violation occurred.

(8) NATURE OF VIOLATION	(9) DATE POTENTIAL VIOLATION OCCURRED	(10) DATE POTENTIAL VIOLATION DISCOVERED	(11) DATE FORMAL INVESTIGATION BEGAN
Insert the nature of the violation. Accepted Voluntary Services, Charged Incorrect Appropriation, Disbursement(s) Exceeded Recorded Obligation(s), Exceeded Appropriation/Fund Availability, Exceeded Available Obligation Authority, Exceeded Expense Versus Procurement Limitation, Exceeded Minor Construction Limitation, Charged Incorrect Fiscal Year, Exceeded Repair and Maintenance Family Housing Limitation, Obligation Not Recorded, or Other (Explain).	mm/dd/yyyy	mm/dd/yyyy	mm/dd/yyyy

(12) SOURCE OF POTENTIAL VIOLATION	(13) BRIEF DESCRIPTION OF POTENTIAL VIOLATION	(14) PROGRESS OF VIOLATION/OTHER COMMENTS
Insert the source of the potential violation (audit report including the report number and title).	Briefly describe in a narrative what appears to have caused the potential violation – e.g., use of incorrect appropriation, over-obligation, inappropriate use of funds.	Provide significant milestones regarding progress of the case - e.g., date investigating officer was appointed, date report was submitted to the appointing official, the FM, the Legal Office. Also provide other comments as appropriate.

VOLUME 14, CHAPTER 7: "ANTIDEFICIENCY ACT REPORT"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue and underlined font*.**

The previous version dated February 2008 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Title	Changed title of chapter.	Update
070101	Clarified report submission requirements and clarified the two different types of reports.	Update
070102	Revised the timeframe to submit a report, removed compressed timeframe for interagency related investigations, and moved overall report submission requirements from section 0703 of previous version.	Update
070201	Moved related timeframes to paragraph 070102. Deleted information from this section already included in Figure 7-1.	Update/Delete
070204	Added a timeframe for those named responsible along with related extension requests. Clarified explanations of responsible individual(s) statement(s) in the ADA Violation Report.	Add/Update
070501	Clarified the Congressional recipients of a violation report and letter requirements. Added reporting requirements in accordance with Office of Management and Budget Circular No. A-11 (2010), *Preparing, Submitting, and Executing the Budget*. Added requirement for Office of the Deputy Comptroller (Program/Budget) coordination.	Update/Add
070502	Clarified the violation notification process to external authorities.	Update
070602 070603	Added timeframe to resubmit report.	Add

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Figure 7-1 Figure 7-2	Merged information in Figure 7-1 and Figure 7-2 of the previous version into Figure 7-1. Added Office of Management and Budget Circular No. A-11 (2010), *Preparing, Submitting, and Executing the Budget*, requirement to send case information to the Department of Justice if it is suspected that the violation was knowing and willful.	Update/Add

Table of Contents

VOLUME 14, CHAPTER 7: "ANTIDEFICIENCY ACT REPORT" 1

0701 OVERVIEW 4

*070101. Preparation and Submission 4
*070102. Timeline 4

0702 ANTIDEFICIENCY ACT VIOLATION REPORT 4

*070201. Investigation Results 4
070202. Report Content 5
070203. Multiple Violations 5
*070204. Individual(s) Named Responsible 5
070205. Legal Review 6

0703 ANTIDEFICIENCY ACT VIOLATION REPORT VERIFICATION 6

0704 ANTIDEFICIENCY ACT VIOLATION REPORT REVIEW 6

0705 NOTIFICATION TO EXTERNAL AUTHORITIES 6

*070501. Letter Preparation 6
*070502. Letter Content/Submission 7

0706 ANTIDEFICIENCY ACT REPORT WITHOUT A VIOLATION 7

070601. Report Conclusion 7
*070602. Legal Concurrence/Non-concurrence 7
*070603. Reinvestigation 7

*Figure 7-1. ANTIDEFICIENCY ACT REPORT FORMAT 8

CHAPTER 7

ANTIDEFICIENCY ACT REPORT

0701 OVERVIEW

One of the most important outcomes of an Antideficiency Act (ADA) investigation is preparing the necessary ADA report.

*070101. Preparation and Submission

The applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller or Senior Financial Manager for other Department of Defense (DoD) Components (referred herein as DoD Component) shall ensure that an ADA Report, either a report with a violation or a report that does not contain a violation, is prepared and submitted to the Office of the Under Secretary of Defense (Comptroller) Deputy Chief Financial Officer (OUSD(C) DCFO).

*070102. Timeline

The report is due to OUSD(C) DCFO within twelve months and two weeks from the date the preliminary review ended. If there was no related preliminary review, then the report is prepared and submitted twelve months from the date the formal investigation began. Upon receipt of the report, the OUSD(C) DCFO has three months to develop, coordinate, and process the letters addressed in section 0705. Therefore, the formal investigative process, to include the DoD Component investigating and reporting of the violation, should take no more than fifteen months.

A. The ADA Report format and content requirements are in Figure 7-1.

B. The original or an electronic copy of the report shall be submitted to the OUSD(C) DCFO and the report shall contain a copy of all pertinent documents referenced in the body of the report. The investigative report, as prescribed in Chapter 5, may be used as the ADA Report as long as the report includes the contents in Figure 7-1 and only pertinent data is referenced and enclosed.

0702 ANTIDEFICIENCY ACT VIOLATION REPORT

*070201. Investigation Results

When an investigation determines a violation has occurred, the applicable DoD Component shall prepare an ADA Violation Report that documents the results of the investigation and submit the report based on the provisions in paragraphs 070101 and 070102. If the investigation resulted in no violation, then refer to section 0706.

070202. Report Content

The ADA Violation Report shall contain the applicable items in Figure 7-1. The DoD Component and its legal counsel shall also ensure that the ADA Violation Report includes all pertinent items.

070203. Multiple Violations

If the same individual(s) is responsible for more than one violation under the same circumstances, then one ADA Violation Report may encompass multiple violations. As an example, if on several different occasions an individual(s) authorized obligations against an appropriation that should not have been used for that particular purpose, and funds in the correct appropriation were not available, then those violations may be combined into a single ADA Violation Report.

*070204. Individual(s) Named Responsible

Upon completion of the ADA Violation Report, the individual(s) named responsible for a violation shall be given two weeks to read the ADA Violation Report, including the facts and circumstances leading to the determination of responsibility, and may provide a statement of any circumstances they believe to be extenuating. Extension requests to the two weeks shall be granted by the applicable DoD Component; however, the DoD Component shall adhere to the timeframes in paragraph 070102.

A. The individual(s) named responsible shall be granted this opportunity even if they no longer work where the violation occurred or have retired or separated from the DoD.

1. The statement(s) shall first acknowledge that the individual(s) has read the ADA Violation Report and understands that he or she is being held responsible for the violation.

2. The individual(s) may provide additional information pertinent to the particular violation case, which was not addressed in the investigation or the ADA Violation Report and has a bearing on responsibility for the violation.

3. The individual(s) also may refute statements made in the ADA Violation Report or by others and make other comments. The individual's final written statement, including any extenuating circumstances, shall be included in the ADA Violation Report submitted to the OUSD(C) DCFO.

B. When the statement(s) of the responsible individual(s) refute content in the ADA Violation Report, the DoD Component shall include an evaluation of the statement in the ADA Violation Report. The evaluation shall either support the individual(s) statement and state the modifications made to the ADA Violation Report as a result. Or the evaluation should explain why the individual(s) statement did not lead to modifications to the ADA Violation Report.

C. If the ADA Violation Report is modified based on the statement(s) of the responsible individual(s), the responsible individual(s) shall have the opportunity to review the final ADA Violation Report and provide a second and final statement. The individual's statement(s) shall not be based on an incomplete ADA Violation Report.

D. If the individual(s) named responsible refuses to give a statement(s), then the DoD Component shall request the individual(s) submit a signed statement of declination. If they refuse to sign a declination, include in the ADA Violation Report a statement to that effect, signed by an appropriate official. If the individual(s) named responsible for the violation cannot be located despite due diligence, then include a statement to that effect, signed by an appropriate official and include in the ADA Violation Report.

070205. Legal Review

The DoD Component shall obtain a legal review of the ADA Violation Report from its legal counsel and coordinate the ADA Violation Report with responsible officials in other functional areas involved in the violation (such as contracting, logistics and other financial management organizations) before forwarding the ADA Violation Report to the OUSD(C) DCFO.

0703 ANTIDEFICIENCY ACT VIOLATION REPORT VERIFICATION

If funds of another DoD Component are involved, then a copy of the ADA Violation Report shall be furnished to that DoD Component. When the violation affects the funds of another DoD Component, or when the responsible individual(s) is from another DoD Component, the DoD Component shall notify the OUSD(C) DCFO and obtain coordination on the report from the other DoD Component involved before submission of the ADA Violation Report to the OUSD(C) DCFO.

0704 ANTIDEFICIENCY ACT VIOLATION REPORT REVIEW

The OUSD(C) DCFO shall review each ADA Violation Report for completeness, clarity, compliance with reporting requirements and shall review the adequacy of corrective and disciplinary action taken. If the OUSD(C) DCFO determines that the ADA Violation Report does not meet the requirements of this volume, then the report shall be returned to the applicable DoD Component. The DoD Component will be asked to resubmit the report with the requested information within the period of time specified by the OUSD(C) DCFO.

0705 NOTIFICATION TO EXTERNAL AUTHORITIES

*070501. Letter Preparation

Following receipt of an acceptable ADA Violation Report from the applicable DoD Component, the OUSD(C) DCFO will prepare the required letters, in accordance with the ***Office of Management and Budget Circular No. A-11, Exhibit 145A***, that report an ADA violation to the President through the Director of the Office of Management and Budget, President of the Senate, Speaker of the House of Representatives, and Comptroller General of the United States.

The notification letters shall be coordinated with the Office of the Deputy General Counsel (Fiscal) (OGC(Fiscal)), Office of the Assistant Secretary of Defense Legislative Affairs, and Office of the Deputy Comptroller (Program/Budget).

*070502. Letter Content/Submission

These letters are submitted to the Under Secretary of Defense (Comptroller) for signature and forwarded to the external authorities identified in paragraph 070501. The letters and the attached ADA Violation Report, notify the external authorities of the violation, its cause(s) and circumstances, the names of the individual(s) responsible for the violation, and the disciplinary action taken.

0706 ANTIDEFICIENCY ACT REPORT WITHOUT A VIOLATION

070601. Report Conclusion

If the results of a formal investigation determine there was no violation, then a report that concludes no violation occurred shall be prepared by the DoD Component. The report shall contain applicable items in Figure 7-1 and appropriate justification that support the no violation conclusion. The OUSD(C) DCFO shall evaluate the report that does not contain an ADA violation and submit a copy to the OGC(Fiscal) for a review and concurrence.

*070602. Legal Concurrence/Non-concurrence

If the OUSD(C) DCFO and OGC(Fiscal) agree with the no violation conclusion, then no further action is required by the DoD Component involved. If, however, the OUSD(C) DCFO and/or OGC(Fiscal) do not agree that there was not a violation, the OUSD(C) DCFO shall return the report to the applicable DoD Component. The DoD Component shall be requested to reinvestigate the violation, provide additional documentation, modify the report, or accomplish other actions as requested within the period of time specified by the OUSD(C) DCFO.

*070603. Reinvestigation

If a reinvestigation is requested by the OUSD(C) DCFO, then after the reinvestigation is completed or other requested action has been taken, the applicable DoD Component shall submit the revised report to the OUSD(C) DCFO according to applicable procedures in sections 0702 through 0706. The related ADA Report shall be submitted to the OUSD(C) DCFO within two weeks following completion of the reinvestigation or other requested action.

*Figure 7-1. ANTIDEFICIENCY ACT REPORT FORMAT

DEPARTMENT OF THE (add DoD Component or Agency)
ANTIDEFICIENCY ACT REPORT

Name of Component/Agency and Case Number

1. Appropriation(s) Involved/Title, Treasury Symbol or Fund Account, and Apportionment Status. Example: Fiscal Year (FY) Operation and Maintenance, Defense-wide (97 20102010 0100)

2. Where Violation(s) Occurred.

3. Name and Location of Activity Issuing the Fund Authorization.

4. Amount of Violation. This amount shall correspond to the amount of funds to correct the violation. Provide total and breakdown, if applicable.

5. Date Violation(s) Occurred.

6. Type of Violation(s). Provide the section(s) of title 31, United States Code (U.S.C.) that was violated. For example, sections ***1341(a)(1)(A)***, ***1342*** or ***1517(a)(2)*** of title 31, U.S.C.

    a. If a legal limitation is exceeded whereby section 1341(a)(1)(A) of title 31, U.S.C. was violated, then refer to Chapter 2 and subsection 1341(a)(1)(A) of title 31, U.S.C. for more specific details.

    b. If the DoD or DoD Component administrative limitation was exceeded whereby section 1517(a)(2) of title 31, U.S.C. was violated, then refer to Chapter 2 or section 1517(a) of title 31, U.S.C. for more specific details.

    c. Section 1342 of title 31, U.S.C. (acceptance of voluntary services) is very seldom violated; however, see Chapter 2 for an example. Also state whether the violation(s) was an over-obligation of an appropriation, an apportionment, or an allotment. If an administrative subdivision of funds is involved with the violation(s), then state whether the administrative subdivision of funds was over-obligated. An administrative subdivision of funds may be an allotment, a centrally managed allotment, an operating budget authority, an allocation, a suballotment, or a suballocation.

7. Effect of Violation(s) on the Next Higher Level of Funding. State whether the violation(s) had an effect on the next higher level of funding.

Figure 7-1. ANTIDEFICIENCY ACT REPORT FORMAT (continued)

a. Exceeding an administrative subdivision at the local level can lead to the next higher level exceeding its subdivision of funds and to the DoD Component's apportionment and appropriation being exceeded.

b. For instance, if an installation exceeded an amount in an operating budget authority or an allotment, did this cause the higher command operating budget authority or allocation to also be exceeded? If the higher command operating budget authority or allocation is exceeded, also state why the DoD/Component apportionment or appropriation was also exceeded.

8. Name and Rank of Service Members or the Name, Grade, and Civilian Job Series Number of Civilians, Position Title (Spell Out Formal Name), and Organization of Responsible Individual(s) (Spell Out Full Name).

a. If a violation(s) involves a centrally managed allotment, then the head of the operating agency at the time the violation was incurred shall be named responsible. See Chapter 1, subparagraph 010206.C.5 for centrally-managed allotments.

b. Others, in addition to the head of the operating agency, also may be determined to be responsible for the violation.

c. See Chapter 5, section 0503 when determining the responsible individual(s).

9. Signed Statement(s) of Responsible Individual(s). State whether a statement(s) was received from the individual(s) and reference enclosure. The ADA Violation Report shall include the required acknowledgements and a written statement(s), from the official responsible for determining the appropriate discipline for the individual(s) responsible for a violation(s). Chapter 9 contains specific requirements. Each individual named responsible for the violation(s) shall be given the opportunity to state any circumstances believed to be extenuating. The statement(s) shall not be based on a preliminary investigation, but should be provided after a determination of responsibility is made. If possible, the responsible individual(s) shall be encouraged not to refer to documents that are not part of the report submission. The individual(s) found responsible for the alleged violation shall be:

a. Allowed to consult with legal counsel.

b. Advised that a violation(s) has been determined to have occurred, and that he or she is named a responsible individual for the violation(s) and shall be allowed to review the report and examine evidence on which the determination was based.

c. Allowed to submit a sworn or unsworn statement regarding the alleged violation(s) after reviewing the report and evidence.

Figure 7-1. ANTIDEFICIENCY ACT REPORT FORMAT (continued)

d. The report shall include an evaluation of any facts or circumstances and the effects on the report when the statement of the responsible officer(s) or individual(s) differs from the report itself. If the statement has no effect on the report state the reason(s) why.

10. Date(s) and Description of How Violation(s) Was Discovered. Provide date(s) and who/how violation(s) was discovered.

11. Causes and Circumstances Surrounding the Violation(s). Provide a detailed description of the violation(s). Include the following:

a. A brief, clear description of the causes and circumstances surrounding the violation(s); what actually caused the violation(s) and the associated circumstances; what actions should have been, but were not, taken by specific individual(s); what actions were taken that should not have been taken, but were; and why the violation(s) happened. The description shall state clearly what the individual(s) responsible for the violation(s) did, or failed to do, that caused the violation(s). State whether the violation(s) was due to careless disregard of instructions; an error; a lack of adequate training, procedures, or controls; or due to other reasons. The report should not be so brief that it does not convey clearly the essential facts and circumstances of what happened. Clearly state in sufficient detail what happened. If the violation(s) involved an appropriation with a negative balance, then state whether the cause of the negative balance was systemic or a unique situation.

b. The scope of the investigation and the methods used to accomplish the investigation, for example, face-to-face interviews; research of legal, financial, and management issues; written explanation of the facts of the potential violation, etc. Discuss the evolution of the issues investigated, number of people interviewed, mitigating circumstances surrounding the violation(s), issues that could or could not be proven during the investigation and the supporting rationale, any issues that cannot be agreed upon by those individuals involved, and any other comments that are pertinent to the investigation.

c. Results of interviews of individuals involved in the violation(s) and a summary of how the area(s) procedures and processes operated that were involved in the investigation. Discuss the issues and the areas or functions that were reviewed, evaluated, and investigated; the names, ranks, and titles of the individuals that were interviewed; and a discussion on any related areas and matters that were not investigated and the rationale for omitting them from the investigation.

Figure 7-1. ANTIDEFICIENCY ACT REPORT FORMAT (continued)

d. If the investigation has been undertaken because of an audit report, then identify that report by title, number, date, and issuing audit organization. If the investigation was conducted as a result of a memorandum or letter directing an investigation, then reference that document and attach a copy to the report. To ensure all essential items are discussed, use the results of the checklist in Chapter 5, Figure 5-1.

12. Evidence of Willful Intent to Violate. State whether the ADA was knowingly and willfully violated. If the violation was willfully committed, follow the procedures in Chapter 5, paragraph 050302.E; state why the case was referred to appropriate criminal investigators, and state that the investigation case was provided to the Department of Justice and whether the Department of Justice prosecuted or declined to prosecute.

13. Disciplinary Action Taken. State what type of disciplinary action was taken and reference enclosure. If no action was taken, then explain why. Chapter 9 contains specific disciplinary requirements. The statement shall include the administrative discipline imposed and any further action taken with respect to the individual(s) named responsible for the violation(s). The individual responsible for determining disciplinary action shall acknowledge, in writing, that they understand that:

a. A violation of the ADA is a violation of Federal statute;

b. ADA violations constitute a misuse of DoD funds even though the misuse may not have been knowing or willful, and despite whether the disciplinary officer considers the misuse harmful to DoD, the Military Department or Service, or to the Defense Agency;

c. The Department is required to report the violation to the President through the Director of the Office of Management and Budget, the President of the Senate, the Speaker of the House of Representatives, and the Comptroller General of the United States;

d. An unwillful or unintentional violation does not justify a decision to not administer disciplinary action; and

e. Disciplinary action shall be commensurate with the severity of the violation, and factors leading to the violation or its resolution may be considered. If no disciplinary action is deemed appropriate, then a full justification is required. Chapter 9 contains further guidance on these disciplinary actions and statements.

14. Corrective Action Taken. State what funds were used to make necessary accounting corrections, such as appropriation, title, and fiscal year. In addition, state what procedural actions were taken and completed to preclude violations from happening in the future. This shall include a description of specific action(s) taken to correct the violation. Include any procedural changes or new safeguards established to prevent recurrence of the same type of

Figure 7-1. ANTIDEFICIENCY ACT FORMAT (continued)

violation. Describe actions in detail so that adequacy of the corrective action(s) may be evaluated. This includes improvement of overall and specific policies, procedures, and processes used by the functional areas involved in the violation; revised statutes or regulatory guidance that may have been involved; established or improved internal procedures; and assurance that a similar violation will not occur in the future. Reference documentation of corrective actions in an enclosure.

15. Administrative Control of Funds. State whether the administrative control of funds prescribed in Chapter 1 is adequate. If the official signing the report recommends changes to this chapter, then submit the proposed changes to the OUSD(C) DCFO.

16. Component or Agency Coordination. State steps taken to coordinate the report with the other components or agencies involved, when applicable. Specifically, if another DoD Component or another federal agency is involved, make a statement concerning the steps taken to coordinate the report with the other component or agency. The applicable DoD Component should coordinate the report with the applicable DoD Component senior financial manager or the appropriate official in other federal agencies.

17. Name and Title of Holder of the Funds Subdivision. State who the holder of the funds was and a brief statement of the fund holder's responsibility in the violation(s). Name and position of the holder of the funds subdivision (e.g., an installation commander) and an evaluation of the performance of his or her fund control responsibilities. The level of command immediately above the holder normally will furnish this evaluation. This evaluation may be omitted if the holder of funds is named the responsible individual for the violation(s).

18. Additional Information. Provide details not covered above. A statement of any additional action taken by, or at the direction of the DoD Component with respect to the overallocation, overallotment, authority, or directive to overobligate, or overexpend, and any procedural changes or new safeguards established to prevent recurrence of such violation. Also, include the actions taken to supply funds, if required, to cover the amount of the violation. A statement summarizing lessons learned from the investigation. Recommended lessons learned shall include those applicable to the installation where the violation occurred, the major command, the DoD Component involved, or all DoD Components.

NOTE: In the ADA Report reference only relevant information. In the case of an ADA Violation Report, do not reference documents that are not sent to the President, through the Director of the Office of Management and Budget, the President of the Senate, the Speaker of the House of Representatives, and the Comptroller General of the United States. When references are made, ensure all referenced documents are supplied to the OUSD(C) DCFO with the related report. Within the report include the testimony from witnesses; other documentation such as photographs, drawings, or copies of appropriate pages of regulations that were gathered to support any conclusion(s) reached; and any other pertinent information generated as the result of the investigation.

VOLUME 14, CHAPTER 8: "INVESTIGATOR TRAINING"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue and underlined font*.**

The previous version dated September 2008 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Title	Changed title from "Training" to "Investigator Training."	Update
0802	Removed the requirement for DoD Components to coordinate investigator training through the Defense Finance and Accounting Service. Renumbered paragraphs and subparagraphs. Paragraph 080203 was paragraph 080206 in the previous version.	Update
080202.B	Removed incorrect wording that investigators can recommend discipline.	Delete
0803	Deleted section and moved content to Chapter 2, paragraph 020401.A.2.	Delete

Table of Contents

VOLUME 14, CHAPTER 8: "INVESTIGATOR TRAINING" 1

0801 INTRODUCTION 3

*0802 TRAINING 3

080201. Responsibility 3
080202. Requirements 3
080203. Frequency 3
080204. Investigator Roster 4

CHAPTER 8

INVESTIGATOR TRAINING

0801 INTRODUCTION

This chapter establishes policies and procedures for the training of individuals assigned to investigate potential and actual violations of the Antideficiency Act (ADA). To ensure efficiency in the investigation of, and reporting on, ADA violations, those involved in the investigation process must receive adequate training.

*0802 TRAINING

080201. Responsibility

One of the most important individuals involved in the ADA violation investigation process is the investigator. It is the responsibility of each Department of Defense (DoD) Component to ensure that its ADA investigators are properly trained.

080202. Requirements

Training requirements for ADA investigators are as follows:

A. Completion of an Appropriations Law or equivalent course must be a prerequisite for ADA investigators.

B. ADA investigators must be qualified and/or trained to: interview witnesses, gather evidence, establish "facts," document findings and recommendations, prepare reports of violation, meet timeframes established for the completion of an investigation, and recommend corrective actions. Chapter 5, Figure 5-1 also has a checklist which should be used by investigators.

C. ADA investigators shall receive additional training on an as needed basis.

080203. Frequency

Upon completion of appropriate training; each individual must receive a certificate stating that he or she has completed the training course. In order to continue to remain eligible to conduct investigations, individuals must be required to renew their certificates every 5 years by attending a refresher-training course.

080204. Investigator Roster

Once an individual completes appropriate training, his or her name must be included on a roster of available ADA investigators maintained by each DoD Component. Data to be maintained on the roster of available investigators include the name, rank/grade, date initial and/or refresher training was received, when refresher training is required in order to remain eligible, organization to which assigned, and contact information such as phone numbers and email address. Controls must be established to ensure that the required roster is kept current. The roster must be used by DoD Components to select individuals to investigate potential ADA violations.

VOLUME 14, CHAPTER 9: "DISCIPLINARY ACTION"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue and underlined font*.**

The previous version dated October 2006 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Various	Updated and inserted hyperlinks.	Update

Table of Contents

VOLUME 14, CHAPTER 9: "DISCIPLINARY ACTION" 1

0901 ADMINISTRATIVE DISCIPLINE 3

090101. Disciplinary Officer 3
090102. Civilian Personnel 3
090103. Military Personnel 4
090104. Non-DoD Personnel 4

0902 DOCUMENTING DISCIPLINARY ACTION 4

090201. Acknowledgement Statement 4
090202. Commensurate Action Statement 4
090203. Reporting 4

0903 CRIMINAL PENALTIES 5

090301. Investigator 5
090302. Governance 5
090303. Reporting 5

CHAPTER 9

DISCIPLINARY ACTION

0901 ADMINISTRATIVE DISCIPLINE

A military member or DoD employee who is responsible for an Antideficiency Act Violation shall be subject to appropriate administrative discipline. Appropriate administrative discipline for violations of sections ***1341***, ***1342***, or ***1517*** of title 31, United States Code (U.S.C.), is authorized by sections ***1349*** or ***1518*** of title 31, U.S.C. The types of disciplinary actions that are appropriate when a provision of a law, rule, or regulation is violated can be found in ***section 1215 of title 5, U.S.C.***

090101. Disciplinary Officer

A disciplinary officer's decision to administer a given level of discipline shall be in accordance with applicable laws and negotiated agreements. In no case can any due process be eliminated.

A. An appointment of a disciplinary officer may be made or reviewed by the Under Secretary of Defense (Comptroller), an Assistant Secretary of a Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components. The appointment of the disciplinary officer may need to be bargained, depending upon the status of the employee and the content of the applicable negotiated bargaining agreements. The independence of disciplinary officers must be verified before their selection. Disciplinary officers shall be chosen only to review cases and administer discipline. In no case shall the investigating officer also be appointed as the disciplinary officer. The investigating officer shall not make recommendations or determine discipline. A civilian employee must be given a proposal letter and an opportunity to respond before discipline is assessed.

B. Commanders and supervisors, with the assistance of counsel, shall determine discipline based on the investigating officer's facts. A disciplinary officer's decision shall not be influenced or undermined by any individual.

C. The Assistant Secretary of a Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components must notify their commands to appoint disciplinary officers whose individual independence is free from any influence.

090102. Civilian Personnel

Administrative discipline for a civilian employee may include written admonishment or reprimand, reduction in grade, suspension from duty without pay, or removal from office.

090103. Military Personnel

Military personnel may be subject to appropriate administrative discipline or may be subject to action under the Uniform Code of Military Justice.

090104. Non-DoD Personnel

If an individual determined to be responsible for a violation is no longer on active duty or employed by the applicable DoD Component, appropriate disciplinary action may be pursued if determined to be legally appropriate by counsel. In general, civilians may not be disciplined after they are no longer employed by the U.S. Government. If disciplinary action is taken, such action shall be documented in the individual's personnel file in accordance with established policies.

0902 DOCUMENTING DISCIPLINARY ACTION

An Antideficiency Act violation is a serious matter as it represents a violation of a Federal statute. Antideficiency Act violations constitute a misuse of DoD funds even if the violation was not willfully or knowingly committed. The individual who is responsible for determining the appropriate disciplinary action shall perform the following tasks:

090201. Acknowledgement Statement

Acknowledge, in writing, that he or she understands that (a) an Antideficiency Act violation is a violation of Federal statute; (b) Antideficiency Act violations constitute a misuse of DoD funds even though the misuse may not have been knowing or willful, and despite whether the disciplinary officer considers the misuse harmful to DoD, the Military Department or Service, or to the Defense Agency; (c) the Department is required to report the violation to the President (via the Director, Office of Management and Budget), the U.S. Congress, and to the Government Accountability Office; (d) an unwillful or unintentional violation does not justify a decision to not administer disciplinary action; and (e) disciplinary action shall be commensurate with the severity of the violation, and factors leading to the violation or its resolution may be considered.

090202. Commensurate Action Statement

Provide a written statement addressing why he or she believes that the disciplinary action taken, or the failure to take disciplinary action, is commensurate with the severity of the violation. If there are extenuating circumstances, they must be considered.

090203. Reporting

Include both statements discussed in paragraphs 090201 and 090202 in the report of investigation.

0903 CRIMINAL PENALTIES

090301. Investigator

If a violation has been determined to have been knowingly and willfully committed, there are statutory provisions requiring criminal penalties. Thus, an officer or employee found responsible for committing a violation knowingly and willfully may be subject to criminal penalties. All investigations that provide any indications that the violation was knowingly and willfully committed shall be terminated by the investigating officer. The investigating officer should consult with legal counsel to determine if the investigation should be referred to the appropriate criminal investigation organization for action.

090302. Governance

Section 1350 of title 31, U.S.C., prescribes that an officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating sections 1341 or 1342 of title 31, U.S.C., shall be fined not more than $5,000, imprisoned for not more than 2 years, or both. ***Section 1519 of title 31, U.S.C.*** discusses the violation of section 1517 of title 31, U.S.C. and provides the same level of punishment. Criminal penalties for military personnel may include punishment under ***Article 15 of the Uniform Code of Military Justice*** or trial by Courts Martial.

090303. Reporting

When submitting a Report of Antideficiency Act Violation to the Office of the Under Secretary of Defense (Comptroller) Deputy Chief Financial Officer that may require criminal penalties, a statement to that effect—which is required by ***OMB Circular A-11***—shall be included in the Report of Antideficiency Act Violation from the Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components.