

TABLE OF CONTENTS

VIOLATIONS OF THE ANTIDEFICIENCY ACT

- | | |
|------|--|
| 0201 | Violations |
| 0202 | Codification of the Antideficiency Act |

CHAPTER 2**VIOLATIONS OF THE ANTIDEFICIENCY ACT****0201 VIOLATIONS**

020101. How Violations Occur. Generally, violations of the Antideficiency Act occur under the circumstances listed below.

A. Funding authority is issued in excess of the amount available and the excess amount is obligated or expended. The issuance of funds by means of a formal subdivision of funds (allocation, allotment, suballotment or other formal designation of a limitation), in an amount that exceeds the amount currently available, would result in a violation of the Antideficiency Act if those excess funds distributed actually are obligated or expended. The individual authorizing the release of those funds would be responsible for the violation. The issuance of a funded order in excess of available funds may also result in a violation of the Antideficiency Act.

B. Obligations or expenditures are authorized or incurred in excess of the amount of funds available at the formal subdivision of funds level. Incurring an obligation or disbursement in excess of a target (vice a formal subdivision of funds) does not in itself create a violation of the Antideficiency Act; however, if exceeding a target causes the governing formal fund subdivision or limitation to be breached, a potential violation of the Antideficiency Act would be incurred.

C. Special and recurring statutory limitations or restrictions on the amounts for which an appropriation or fund may be used are violated.

D. Regulatory limitation on the amounts for which an appropriation or fund may be used are violated, when specifically carrying an antideficiency limitation.

E. Statutory limitations on the purposes for which an appropriation or fund may be used are violated.

F. Regulatory limitation on the purposes for which an appropriation or fund may be used are violated, when specifically carrying an antideficiency limitation and corrective funding is not available.

G. Obligations are authorized or incurred in advance of funds being available.

H. Obligations or expenditures of funds do not provide for a bona fide need of the period of availability of the fund or account and corrective funding is not available.

I. Voluntary services are accepted, or personal services are employed, in excess of that authorized by law.

020102. **Significant Provisions of Public Law 101-510 and Public Law 102-484.**

A. General. A DoD employee is at risk of violating the Antideficiency Act under certain provisions of Public Law 101-510 or Public Law 102-484. Public Law 101-510 allows for the cancellation of appropriations after specified periods, extension of the expired status for appropriations from 2 years to 5 years, and elimination of the merged accounts. Section 1004 of Public Law 102-484 allows a currently available appropriation to be charged for obligation adjustments when certain expired appropriations have insufficient obligational authority.

1. A potential violation may occur if the following limitation is exceeded when a currently available appropriation is being charged: the unexpended balance of the canceled appropriation. Subparagraph 020102.B, below, supplies additional guidance.

2. A potential violation may occur if an obligation is incurred in an expired account for a contract change that exceeds \$4 million in a fiscal year without prior written approval of the Office of the Under Secretary of Defense (Comptroller). In addition, a potential violation may occur if a DoD Component incurs an obligation in an expired account for a contract change that exceeds \$25 million in a fiscal year without requesting approval from the Congress 30 days before the obligation is incurred. Subparagraph 020102.C. and D, below, supplies additional guidance.

3. A potential violation may occur if an obligation is created or authorized against, or an expenditure is made or authorized from, an account that was canceled pursuant to Public Law 101-510.

4. Under section 1004 of Public Law 102-484, DoD Components are required to submit a report of violation to the Congress if currently available appropriations are used for obligations properly chargeable to expired accounts whose availability for new obligations expired during the period FY 1986 through FY 1991 (but have not yet been canceled). A violation also may occur if charges to a currently available appropriation exceed (1) 1 percent of the appropriation of the expired account that has insufficient availability, or (2) 1 percent of the currently available appropriation being charged. Subparagraph 020102.E, below, supplies additional guidance.

B. Public Law 101-510. Under certain circumstances, a payment that otherwise would be chargeable to a canceled account--both as to purpose and amount--except that the account has been canceled, can be paid from, and charged to, an appropriation that, at the time of the payment, is available for incurring new obligations for the same purpose as the canceled account, however, the total of all such payments charged to a currently available appropriation may not exceed the lesser of:

1. 1 percent of the total amount originally appropriated to the current appropriation being charged.

2. The unobligated balance of the currently available appropriation.

3. The unobligated balance of the canceled appropriation.

C. Contract Changes Exceeding \$4 Million. Under certain circumstances, the Office of the Under Secretary of Defense (Comptroller) shall approve obligations before being incurred for contract changes in expired accounts that exceed \$4 million in a fiscal year within a program, project, or activity of an appropriation.

D. Contract Changes Exceeding \$25 Million. Under certain circumstances, obligations for contract changes in expired accounts that exceed \$25 million in a fiscal year within a program, project, or activity of an appropriation shall be submitted to the Congress for at least 30 days before they are incurred.

E. Section 1004, Public Law 102-484. Section 1004 of Public Law 102-484 permits, in certain circumstances, currently available appropriations to be charged when sufficient obligational authority does not exist in certain expired accounts.

1. The amount charged to a currently available appropriation may not exceed 1 percent of the appropriation for the currently available account being charged, or 1 percent of the appropriation of the expired account, whichever is less.

2. A potential violation shall be reported and investigated when charges to a currently available appropriation would have resulted in a violation of the Antideficiency Act had they been charged to the applicable expired account.

0202 CODIFICATION OF THE ANTIDEFICIENCY ACT

020201. Title 31, Antideficiency Provisions and Limitations

A. Sections 1341, 1342, 1517. When the “Antideficiency Act” was codified into Title 31 of the United States Code, its provisions were incorporated into a number of sections of that Title. The most frequently cited sections are 1341, 1342, and 1517. Subparagraphs 020201.A through 020201.C, below, summarize the highlights. Chapter 10 of this volume and Figure 2-1, below, furnish examples of the most common types of Antideficiency Act violations. Figure 2-2, below, furnishes examples of actual violations that have occurred.

B. Title 31, United States Code, Section 1341, Limitation on Expending and Obligating Amounts. Section 1341 forbids any officer or employee of the United States from the following actions:

1. Obligating, expending, or authorizing the use of funds exceeding the amount available in an appropriation or fund.

2. Involving the Federal Government in any contract or obligation for the payment of money before an appropriation is made available.

3. Obligating, expending, or authorizing of funds required to be sequestered.

4. Involving the Federal Government in any contract or obligation for the payment of money required to be sequestered.

C. Title 31, United States Code (U.S.C.), Section 1342, Limitation of Voluntary Services. Section 1342 forbids the acceptance of voluntary services on behalf of the Federal Government or employment of 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.

D. Title 31, United States Code, Section 1517, Obligation and Expenditure Limits. Section 1517 forbids the overobligation and overexpenditure of an apportionment or an amount permitted by a regulation prescribed for the administrative control of appropriations.

E. Violations Caused by Exceeding Limitations Imposed by Law. Violating a limitation imposed by law (the Congress) may be a violation of the Antideficiency Act under 31 U.S.C. 1341(a)(1).

F. Violations Caused by Exceeding Limitations Imposed by the Office of Management and Budget, Department of Defense, and DoD Components/Agencies

1. Exceeding a limitation of funds administratively imposed by the Office of Management and Budget, Department of Defense, or a DoD Component, on obligations or expenditures may be a violation of the Antideficiency Act under subsection 1517(a).

2. If an administrative subdivision of funds is exceeded, then a potential violation shall be reported. The receipt of additional funds before the end of a reporting period does not mitigate a violation of a limitation or eliminate the reporting requirement for a potential violation. Also, a 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 violation of the Antideficiency Act if, upon recordation, available funds in the account or other limitations are exceeded.

POTENTIAL VIOLATIONS

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE, SECTION
Any Federal employee or military member:	<p>1. Makes or authorizes an expenditure or obligation against an appropriation account that was closed pursuant to Title 31, United States Code (U.S.C), sections 1552 or 1555, or the period prescribed in an appropriations act for making expenditures as authorized by 31 U.S.C. 1557.</p>	1341(a)(1)(A)
	<p>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.</p>	1341(a)(1)(B)
	<p>3. Makes or authorizes an obligation or expenditure of funds required to be sequestered under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.</p>	1341(a)(1)(C)
	<p>4. Involves the Government in a contract or other obligation for the payment of money required to be sequestered under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.</p>	1341(a)(1)(D)
	<p>5. 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.</p>	1342

Figure 2-1 (continued)

POTENTIAL VIOLATIONS
(continued)

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE, SECTION
Obligations authorized or incurred or expenditures made exceed:	1. The available amount of any appropriation or fund. 2. The available amount of any apportionment or reapportionment. 3. The available amount of any administrative subdivision authorized by DoD Directive 7200.1 or Volume 14, DoD 7000.14-R. 4. Any statutory restriction imposed on the use of an appropriation or fund, such as limits on the use of Operation and Maintenance funds for unspecified minor construction or for purchase of investment items. 5. Any limitation imposed by an authorized official of the Department of Defense (DoD) or a DoD Component that is intended to restrict obligations of apportioned appropriations or funds.	1341(a)(1)(A) 1517(a)(1) 1517(a)(2) 1341(a)(1)(A) 1517(a)(2)

Figure 2-1 (continued)

POTENTIAL VIOLATIONS
(continued)

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE, SECTION
In a working capital (revolving) fund established under 10 U.S.C. 2208, when:	<p>1. A working capital (revolving) fund or a part of that fund is apportioned and obligations of that fund or part of that fund exceed the available amount of the apportionment.</p>	1517(a)(1)
	2. Obligations exceed the available amount of budgetary resources.	1517(a)(2)
	3. Amounts expended that exceed available fund balances with Treasury whether apportioned or not.	1341(a)(1)(A)
	(Recurring provisions of annual DoD Appropriations Acts establish that 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)

Figure 2-1 (continued)

POTENTIAL VIOLATIONS
(continued)

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE, SECTION
In fund distribution:	1. Total allocations or operating budget authorities for Operation and Maintenance-type funds exceed the amount available for each apportionment period.	1517(a)(1)
	2. Total suballocations, allotments or operating budget authorities, and centrally managed allotments (CMAs) exceed the amount of the allocation or operating budget authority for each period.	1517(a)(2)
	3. Total allotments or operating budget authorities and CMAs exceed the amount of the available suballocation.	1517(a)(2)
	4. Total suballotments exceed the amount of the allotment.	1517(a)(2)

Figure 2-1

EXAMPLES OF POSSIBLE VIOLATIONS OF THE ANTIDEFICIENCY ACT

A. GENERAL. Most of the examples described below are taken from actual violations that have occurred within the Department; 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 (U.S.C.), SECTION 1341**1. Title 31, United States Code, section 1341(a)(1)(A)**

a. An overobligation by a DoD activity exceeded a target distributed to that activity and caused the total appropriation to be exceeded. For example, a target of \$1 million of an operation and maintenance appropriation was exceeded by \$250,000, but the responsibility for violations was not passed to the organization that was furnished the target. When the total obligations were summarized at the appropriation level, the total appropriation was exceeded because of this specific overobligation. There is no violation at the organization that was furnished the target, but a potential violation has occurred at the appropriation level.

b. An overobligation by a DoD activity exceeded an allotment distributed to that activity--and the responsibility for violations was established at the allotment level--and caused the total appropriation to be exceeded. For example, an allotment of \$1 million of an operation and maintenance appropriation was exceeded by \$250,000, and the responsibility for violations was established at the allotment level. When the total obligations were summarized at the appropriation level, the total appropriation also was exceeded because of this specific overobligation. There is one potential violation at two different funding levels--the allotment level and the appropriation level.

c. A DoD activity exceeded the limitation specified in 10 U.S.C. 2805(c) by using operation and maintenance funds in excess of the minor construction limitation to construct improvements to a hazardous waste storage facility.

2. TITLE 31, UNITED STATES CODE, SECTION 1341(a)(1)(B)

A DoD activity arranged for a lease to obligate and pay for a subsequent fiscal year's 12-month lease of a building with current fiscal year operation and maintenance funds. Specifically, fiscal year 19XX funds of \$180,000 were used to contract, obligate, and pay for a FY 19XX+1 building lease. This action violated the Antideficiency Act because it obligated the Federal Government to a contract for the payment of money before the appropriation to be charged was available.

Figure 2-2 (continued)

**EXAMPLES OF POSSIBLE VIOLATIONS OF THE ANTIDEFICIENCY ACT
(continued)****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 Antideficiency Act occurred.

D. TITLE 31, UNITED STATES CODE, SECTION 1517

1. A DoD activity improperly obligated \$225,000 of other procurement funds instead of required operation and maintenance (O&M) funds to document, not acquire, a specialized communications equipment program. When the error was discovered, the DoD activity had no O&M funds available to replace the other procurement funds obligated improperly. Therefore, the O&M appropriation apportionment was exceeded, and a violation of 31 U.S.C.1517 occurred. To fund the violation, \$225,000 of O&M funds were requested from the Headquarters of the DoD activity. While this action corrected the funding of the obligation, a violation of the Antideficiency Act occurred because the fund holder did not have sufficient funds available to replace the other procurement funds improperly obligated.

2. A DoD activity used operation and maintenance 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 of 31 U.S.C. 1517 occurred because the DoD activity did not have the required amount of other procurement funds at the time of the purchases.

3. A DoD activity used family housing operation and maintenance funds in excess of the statutory limit for the maintenance and repair of a family housing unit without prior congressional approval. The statutory limit was exceeded when the contracting officer approved additional cost. Therefore, a violation of the Antideficiency Act occurred because a statutory limit was exceeded.

Figure 2-2 (continued)

**EXAMPLES OF POSSIBLE VIOLATIONS OF THE ANTIDEFICIENCY ACT
(continued)**

4. Two different activities holding targets within an O&M appropriation at a DoD installation exceeded the targets established for their activities by the holder of the allotment. Even though both activities contributed to a violation of an allotment--an administrative subdivision of funds--the allotment holder is responsible for the resulting violation of the Antideficiency Act. The activities that exceeded their targets did not violate the Antideficiency Act because the holder of the allotment did not assign responsibility for violations of the Antideficiency Act to the two activities.

5. A funds holder erroneously distributed more funds than he/she had available. The activities receiving the funds incurred obligations and expenditures in excess of amounts available to the fund holder, but below the amount distributed to them. The funds holder incurred a violation of the Antideficiency Act because he/she was responsible for exceeding the total fund availability.

Figure 2-2