

VOLUME 14, CHAPTER 3: “ANTIDEFICIENCY ACT VIOLATION PROCESS”**SUMMARY OF MAJOR CHANGES**

Changes are identified in this table and also 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 [April 2019](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
4.4, 4.5	Incorporated references to Chapter 2 for obligations charged to the wrong appropriation or wrong year and for obligations incurred in advance of an appropriation.	Revision
All	Administrative updates to include streamlining language for improved readability in accordance with Department of Defense Financial Management Regulation Revision Standard Operating Procedures.	Revision

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CHAPTER 3

ANTIDEFICIENCY ACT VIOLATION PROCESS

1.0 GENERAL

1.1 Overview

This chapter describes the Antideficiency Act (ADA) violation process from initial discovery to formal investigation and final report. If an activity suspects an ADA violation and validates those concerns with an internal review, the activity must conduct an in-depth investigation. The structured investigation process consists of two phases, a preliminary review and, if required, a formal investigation. Generally, the preliminary review must establish that a potential ADA violation occurred before a formal investigation begins. The preliminary review gathers facts and establishes by adequate evidence whether an uncorrectable deficiency has occurred. The formal investigation determines the event(s) that “more likely than not” caused the potential violation, the responsible individual(s), and action(s) taken to ensure that a similar violation does not reoccur. To ensure efficiency, it is important that those involved in the investigation of, and reporting on, ADA violations are adequately trained and qualified. Investigators are provided specific authority to collect and evaluate relevant information as well as obtain direct support from subject matter experts and personnel throughout the process.

1.2 Purpose

This chapter addresses potential and actual violations of statutes discussed in Chapters 1 and 2. The policy directs conducting initial reviews, structuring investigations, and other requirements to report an ADA violation properly. It also establishes training requirements for individuals assigned to investigate potential and actual ADA violations. Additionally, this chapter provides organizational corrective and disciplinary actions for civilian and military employees.

1.3 Authoritative Guidance

This chapter implements provisions of Title 31, United States Code (U.S.C.), especially sections 1511 – 1517 and 1519 (31 U.S.C. §§ 1511 – 1517 and 31 U.S.C. § 1519) on apportionment and allotment, and §§ 1341 and 1348 on limitations on obligations and expenditures, § on voluntary services and personal services, and §§ 1349 and 1518 on disciplinary actions. This chapter also implements reporting requirements as specified in 31 U.S.C. §§ 1351 and 1517(b), and the Office of Management and Budget (OMB Circular No. A-11, Exhibit 145A).

2.0 REPORTING SUSPECTED VIOLATIONS

2.1 Initial Discovery

A review is initiated if there is adequate information to suspect a potential ADA violation may have occurred. An event marks the date of discovery, such as the release of internal review findings suggesting an ADA violation may have occurred, or receipt of a status of funds report

showing irregularities. **The activity may conduct an** inquiry to confirm that the information is accurate, complete, and sufficient suggesting that **an ADA** violation occurred.

2.2 Initial Report

2.2.1. Fund holders **must** ensure their funds are properly executed in accordance with applicable laws and regulations. Consequently, fund holders **must** report all suspected violations of the ADA. **The professionals administering the funds, other than the fund holders, must also alert proper officials to** suspected violations.

2.2.2. Within two weeks of discovering a potential **ADA** violation, the activity holding the **allegedly misused funds conducts** an initial review and **prepares** an initial report. The review aids in **preparing** the initial report. It determines whether a suspected violation may have occurred – even when the suspected violation is curable. **Where the activity identifies a potential cure, note the cure** in the report. However, **do not** cure a potential ADA without concurrence from the authorities identified in 2.2.3.

2.2.3. **The activity/command channels must submit** initial reports to the applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller, Combatant Commands, or the Senior Financial Manager for other Department of Defense (DoD) Agencies and Field Activities (referred herein as DoD Component).

2.2.4. The initial report **does not determine** responsibility for causing the potential ADA; it merely **notifies leadership** that a suspected violation may have occurred. **The** initial report template is located at Figure 3-2. **If the following** information is available and pertinent to the potential ADA at issue, the report must contain the following:

- 2.2.4.1. Accounting classification of funds allegedly misspent;
- 2.2.4.2. Name and location of the activity where the alleged violation occurred;
- 2.2.4.3. Name and location of the activity issuing the fund authorization;
- 2.2.4.4. Amount of the alleged violation;
- 2.2.4.5. Nature of the alleged violation;
- 2.2.4.6. Date the alleged violation occurred, and date discovered;
- 2.2.4.7. Means of discovery; and
- 2.2.4.8. Description of the facts and circumstances of the case.

2.2.5. Initial reports addressing potential voluntary services ADA violations must include all items listed in subparagraph 2.2.4 (except subparagraphs 2.2.4.1 and 2.2.4.3).

2.3 Evaluation

The DoD Component must evaluate the initial report for validity and completeness. If this evaluation determines a suspected violation may have occurred, the DoD Component must assign a case number for tracking purposes and direct the initiation of a preliminary review. If the DoD Component determines that the suspected violation is curable, the impacted activity/command **must** provide all the necessary **correcting** information and documentation to the DoD Component, **correct the error, and implement** appropriate internal controls to prevent a recurrence of similar violations. There are no additional ADA violation requirements.

3.0 DOD COMPONENT INVESTIGATION ADMINISTRATION

3.1 Timeframes for Investigation

3.1.1. **Complete** the preliminary review within four months from the date it was directed by the DoD Component.

3.1.2. **Complete** the formal investigation within nine months from the date it was directed by the DoD Component.

3.1.3. The Office of the General Counsel (OGC) (Fiscal) **completes the** advance decision legal review within three months from the date the draft formal investigation report is submitted to the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)), Deputy Chief Financial Officer (DCFO) requesting an advanced decision.

3.1.4. The DoD Component must consider appropriate disciplinary action and document any disciplinary action taken. **The DoD Component completes a** final summary report within two months from the Office of the Secretary of Defense (OSD) OGC (Fiscal) receipt of an advance decision concurring with the formal investigation report. However, DoD Components may request additional time from the DCFO to complete disciplinary actions, if required.

3.1.5. The DCFO **completes and submits** the letters required by OMB Circular No. A-11, Exhibit 145A within one month after receiving the final investigation report from the DoD Component. **Complete** the total process for investigating and reporting potential ADA violations within 15 months from the start of the formal investigation. The preliminary review is not part of the 15 months timeline.

3.1.6. All appointing officials must stipulate **a due date for the ADA violation investigation report** in the investigating officer appointment memorandum. The due date must conform to the timeframes stipulated in paragraphs 3.1.1 through 3.1.5 regardless of the scope or amount of the potential violation.

3.2 Approving Exceptions to Timeframes

The DCFO may approve an exception to the timeframes on a case-by-case basis. Upon request, this responsibility may be delegated to the DoD Components. This responsibility may not

be redelegated. The DoD Components must provide sufficient justification for the extension. The DCFO notifies the DoD Components of any extension that is approved.

3.3 Special Interest Investigations

Special interest investigations include potential violations that are the subject of a news release; requested by the Secretary of Defense, Deputy Secretary of Defense, or the USD(C); or involve a high-level DoD official. When necessary, special interest investigations may deviate from the timeframes stipulated in paragraphs 3.1.1 through 3.1.5; however, the DoD Components must notify the DCFO when such deviations are necessary. If the DCFO agrees, the timeframes may be extended.

3.4 Involvement of the OUSD(C)

The OUSD(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 (IOs) and compressed timeframes.

3.5 Investigation Costs

When investigating outside the major activity/command to which the IO is assigned, identify, and accumulate incidental costs (e.g., temporary duty, local travel). In accordance with Volume 11A and Volume 11B, the activity/command under investigation must reimburse costs.

4.0 PRELIMINARY REVIEWS

4.1 Purpose

4.1.1. The preliminary review gathers facts adequately supporting the conclusion that an ADA reportable violation has occurred. It does not identify responsible officials or recommend corrective actions to prevent similar violations.

* 4.1.2. The DoD Component must assign the responsibility for conducting the preliminary review to the activity where funds were potentially misused.

4.2 Investigating Officer Appointment

4.2.1. The DoD Component official must appoint the IO. The appointing official is at the DoD Component level unless the Component delegates this authority to a senior Commander or director of the organization responsible for conducting the investigation. The official appoints a qualified IO assisted by an expert review team, if necessary. The official issues an appointment letter within two weeks after the DoD Component's evaluation of the initial report concluding that a potential reportable violation has occurred. An appointment orders template is located in Figure 3-3.

4.2.2. The appointing official certifies that the IO has been trained in fiscal law or appropriations law within the last three years and can conduct a complete, impartial, and unbiased review. Each DoD Component ensures that its ADA investigators are properly trained and that the training is current and documented.

4.2.3. Select the IO from an organization external to the activity/command being reviewed.

4.2.4. The IO does not need to be senior in grade to the persons potentially under investigation.

4.2.5. The IO must be competent and capable of gathering evidence, establishing facts, documenting findings and recommendations, and preparing investigation reports of violation.

4.2.6. The IO must manage time and meet the investigation timeframes established. The appointing official may prescribe additional training as required.

4.2.7. Appointing officials must ensure the investigation receives the appropriate level of activity/command emphasis and the IO has adequate time and resources to conduct a thorough investigation.

4.2.8. The appointment orders must certify that investigators are free of personal, external, and organizational impairments. Retain the document(s) in the ADA case file.

4.2.9. Submit the appointment orders to the DoD Component. The appointment orders are part of the case files for the investigation.

4.3 Conduct of the Investigation

4.3.1. Checklists. Figure 3-4 contains a template for the preparation of the preliminary review report.

4.3.2. The investigator gathers facts, establishes a narrative of events, and determines what should have happened before the preliminary review is concluded. The investigator may review funding documents, contracts, and other key documents, as well as interview key witnesses during the investigation.

4.3.3. The investigator must check for accounting errors such as duplications or other errors in recording the applicable obligation and/or expenditure; obligations and/or expenditures charged to invalid and/or improper fund accounts; and inaccurate fund status at the time the applicable transaction occurred. If the preliminary review determines that an accounting error occurred, the investigator must coordinate the appropriate accounting correction.

4.3.4. When an IO determines that a reportable violation can be cured, the fund holder must attempt to correct the accounts. Complete corrections with the concurrence of the DoD Component, and only after the DoD Component receives appropriate supporting documentation.

*4.4 Obligations Charged to the Wrong Appropriation or Wrong Year

For information on obligations charged to the wrong appropriation or wrong year, see Chapter 2, subparagraph 1.2.3.1.

*4.5 Obligations Incurred in Advance of an Appropriation

For information on obligations incurred in advance of an appropriation, see Chapter 2, subparagraph 1.2.3.2.

4.6 Review Results

The IO documents the findings of the preliminary report and accompanies the report with a legal review. Forward this report and legal review for approval to the applicable DoD Component and coordinate with the applicable DoD Component's General Counsel. If the DoD Component involved determines that there is no violation, then the preliminary report completes the required ADA violation investigation.

4.7 Preliminary Reviews Initiated by the OUSD(C)

When an audit report informs or the OUSD(C) otherwise learns of a potential violation, the OUSD(C) may direct the DoD Component to initiate a preliminary review of the circumstances surrounding the potential violation. The date the OUSD(C) directs the DoD Component is the discovery date for reporting purposes and the DoD Component must follow procedures in sections 2.0, and 3.0.

4.8 Oversight Entities

4.8.1. In some cases, the Government Accountability Office, DoD Office of Inspector General (DoD IG), a military department audit agency, or other organizations external to a DoD Component report that a potential violation may have occurred and recommends a preliminary review be conducted. The DoD Component must review the finding(s) and recommendation(s) provided in the report. The DoD Component may have to conduct an informed inquiry.

4.8.2. If the DoD Component agrees that a potential violation may have occurred and a preliminary review is warranted, then the starting date for the investigation is the discovery date for reporting purposes. The DoD Component must follow procedures in section 4.0 and must supply the preliminary review status as requested by the applicable external organization.

4.8.3. If the DoD Component disagrees that a potential violation has occurred and believes a preliminary review is not warranted, the DoD Component must provide applicable written comments to the report outlining the disagreement consistent with policy prescribed in [DoD Instruction 7650.03](#) "Follow-up on General Accountability Office, DoD IG, and Internal Audit Reports."

4.8.4. If the DoD Component and the oversight activity [disagree](#) as to whether a preliminary review is warranted, the DoD Component may request assistance from the DCFO.

4.9 Evaluation

The DCFO may routinely examine open or closed preliminary review cases.

5.0 ROLES OF THE DOD INSPECTOR GENERAL

5.0.1. The Inspector General Act of 1978 (P.L. 95-452), as amended, gives the DoD IG the authority to conduct investigations of violations of the ADA.

5.0.2. The DoD IG reserves the right to initiate investigations of potential [ADA](#) violations, depending upon the type, amount, or significance of the violation.

5.0.3. The DoD IG may elect to conduct investigations not requested by the OUSD(C) or [another DoD official](#).

5.0.4. When the DoD [IG](#) conducts such investigations, the resultant report must constitute the official DoD report on the matter; no other DoD Component must conduct parallel or supplemental investigations unless directed to do so by the Secretary of Defense, Deputy Secretary of Defense, or OUSD(C).

6.0 FORMAL INVESTIGATIONS

6.1 Overview

6.1.1. [Once](#) a preliminary review concludes that a reportable and incurable violation of the ADA has occurred, a formal investigation must be opened. [Report](#) the violation to the DCFO within 2 weeks of the determination. The DCFO [assigns](#) the DoD Component a unique tracking number and due date.

6.1.2. The formal investigation [determines](#) the event that caused the potential violation, the responsible individual(s), and action(s) taken to ensure that a similar violation does not occur in the future. [Additional evidence discovery](#), re-interviewing witness or interviewing new witness, re-examining documents, or discovery of new documents [may be required](#).

6.1.3. During a formal investigation, the DCFO may request periodic status reports.

6.1.4. The DoD Component generally [assigns](#) the investigation to the activity that performed the preliminary review. The DoD Component may request another organization to conduct the investigation to eliminate potential conflicts of interest, or to leverage the expertise of another activity/command.

6.2 Investigating Officer Appointment

6.2.1. The DoD Component official must appoint IOs. The appointing official is at the DoD Component level unless the Component delegates this authority to a senior activity/commander or director of the organization assigned responsibility for conducting the investigation. A qualified IO may be assisted by a review team with expertise in the areas being investigated, if necessary. A template for appointment orders is located in Figure 3-3. The formal investigation may be conducted by the same IO who conducted the preliminary review.

6.2.2. The appointing official certifies that the IO/review team lead has been trained in fiscal law or appropriations law within the last three years and can conduct a complete, impartial, and unbiased review. Each DoD Component must ensure that its ADA investigators are properly trained and that the training is current and documented.

6.2.3. The IO must be selected from an organization external to the activity/command being reviewed.

6.2.4. The IO does not need to be senior in grade to the persons potentially under investigation.

6.2.5. IOs must be competent and capable of interviewing witnesses, gathering evidence, establishing facts, documenting findings and recommendations, and preparing violation reports. They must also manage time and meet established investigation completion timeframes. The appointing official may prescribe additional training as required.

6.2.6. Appointing officials must ensure that the investigation receives the appropriate level of activity/command emphasis and gives the IO adequate time and resources to conduct a thorough investigation.

6.2.7. The appointment orders certify that investigators and/or review team leads are free of personal, external, and organizational impairments. Retain the document(s) in the ADA case file.

6.3 Conduct of Investigation and Preparation of Formal Report of ADA Violation Investigation (ROI)

6.3.1. Checklists

6.3.1.1. Figure 3-1 contains a checklist for use in the conduct of the Formal Investigation.

6.3.1.2. Figure 3-5 contains a template for the preparation of the formal report.

6.3.2. Examination of Physical Evidence

During the investigation, the IO expands upon the findings established in the preliminary investigation or makes new findings. The IO may revise dollar amounts based on witness statements, or, as more information is obtained, facts and conclusions also may be revised. The formal investigation finds the root cause(s) for the violation and identifies the individual(s) making or authorizing the improper obligations or expenditures, and the corrective action(s) implemented to reduce the risk of similar violations in the future.

6.3.3. Identifying Circumstances and Assigning Responsibility

6.3.3.1. Fully investigate all relevant aspects of the case, including all individuals and records connected with the event. Interview key personnel involved in a violation. If an employee to be interviewed is a member of a bargaining unit, comply with appropriate statutory and collective bargaining agreement protections for such employee.

6.3.3.2. Examine and document key event facts leading to the potential violation in the report and address any conflicts. If a series of events at several levels led to the violation, then the report clearly must identify what happened at each level and how the events contributed to the violation.

6.3.3.3. Where the subject matter of the potential violation is beyond the expertise of the IO, a subject matter expert must evaluate the evidence along with statements from personnel interviewed and provide an opinion on whether the key facts are correct and the conclusions reasonable. For example, when a potential violation involves the question of whether a military construction project results in a complete and usable facility, a civil engineer must analyze the facts and provide an opinion.

6.3.3.4. The IO must find facts supporting all conclusions reached in the investigation. All fact findings leading to a conclusion of an ADA violation must be supported by a preponderance of the evidence. A preponderance of the evidence is created when the evidence collected makes the existence of a fact more likely than not. If the IO cannot establish a fact by the preponderance of the evidence, that fact may not be used to support a conclusion that an ADA violation occurred or that an individual is a responsible official.

6.3.3.5. Where the IO concludes that a reportable ADA violation occurred, the IO must find facts and conclude that the responsible official(s), the individual or individuals made or authorized the improper obligations or expenditures pursuant to 31 U.S.C., §§ 1341(a) and/or 1517(a). Determine facts supporting an individual's responsibility for the violation by a preponderance of the evidence. A conclusion that an individual is a responsible official does not, by itself, result in pecuniary liability of an accountable official under 10 U.S.C., § 2773a.

6.3.3.6. Any report that concludes an ADA violation occurred must identify one or more responsible officials. A conclusion that no individual was responsible for the violation is not acceptable.

6.3.3.7. The same individuals may be responsible for more than one violation under the auspices of a single investigation. In these cases, the report **must** specifically clarify how they contributed to each discrete violation.

6.3.3.8. The responsible official is usually the highest-ranking individual in the decision-making process with actual or constructive knowledge of the actions taken and awareness of the possible risks.

6.3.3.9. To establish responsibility, the IO must conclude, based on findings of fact, that the act or omission was **the** proximate cause of the violation. An act or omission is **the** proximate cause when it sets into motion a chain of events that directly leads to the violation, and the violation would not have happened but for the act or omission. A violation may have more than one proximate cause, and therefore more than one responsible official.

6.3.3.10. In some cases, **the IO** establishes that an individual had a duty to take an action that may have prevented the ADA violation, knew or should have known of that duty, and failed to take that action. In such cases, collateral evidence, such as Position Descriptions, may be used as evidence of the individual's scope of duties. If used, such evidence must be included in the ROI.

6.3.3.11. Activity/commanding officers, directors, 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. Responsible officials may also include Information Technology specialists, program managers, facility engineers, and acquisition personnel.

6.3.3.12. The ROI must clearly identify the involvement of each individual and the acts or omissions that were the proximate cause(s) of the violation. The following questions must be considered:

6.3.3.12.1. Did the violation occur because an individual carelessly disregarded instruction?

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

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

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

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

6.3.3.13. If at any time during an investigation the IO believes there may be a criminal issue(s) involved, then the investigation must be stopped immediately. The IO must

consult with legal counsel to determine if the issue **must** be referred to appropriate criminal investigators for resolution. The IO must notify the DoD Component of the outcome of this consultation.

6.3.3.13.1. If at any time **the IO suspects** that the **ADA** violation was knowing and willful, then the IO must submit all available information to the DoD Component, which **considers** the case, in conjunction with the applicable Office of the General Counsel, for submission through DoD channels to the Department of Justice pursuant to 31 U.S.C., §§ 1350 or 1519, as applicable.

6.3.3.13.2. **The case closes** to avoid duplication of effort or interference with a criminal investigation. If appropriate, a new formal investigation opens **at the conclusion** of the criminal investigation.

6.3.4. Rebuttal Statements

6.3.4.1. Individuals found potentially responsible for the violation **are** provided a draft ROI detailing the facts and circumstances leading to the determination of their responsibility and given two weeks to issue a rebuttal statement.

6.3.4.2. **The IO grants** the individuals named potentially responsible this opportunity even if they no longer work where the violation occurred or have retired or separated from the DoD.

6.3.4.3. The ROI **documents** the steps taken to notify the proposed responsible officials and provide them an opportunity to submit a rebuttal statement. Certified mail and/or email with tracking may be used to verify a good faith attempt was made to deliver the draft report to the proposed responsible official.

6.3.4.4. **Where** proposed responsible officials may have separated and left no valid forwarding address, **make** a reasonable attempt to contact them. The report **must** be annotated accordingly. **Summarize** attempts to **contact** the proposed responsible official in the report.

6.3.4.5. **Include the declination statement as their response if** the proposed responsible official declines to give a statement in writing.

6.3.4.6. **Note if** they refuse to receive the report or submit a statement of any kind **in the report**. **Summarize** attempts to solicit a response in the report.

6.3.4.7. **Support** any oral statements **with** a memorandum for record.

6.3.4.8. **The proposed responsible officials must** acknowledge that they read the draft ADA report and understand that the draft ROI names them as being responsible for the violation. They may introduce any additional information they believe to be pertinent to the violation case.

6.3.4.9. The IO must evaluate the rebuttal statements of the proposed responsible officials to determine if they clarify certain facts, provide mitigating information that might alter the draft's conclusions, or provide additional leads that require follow up. If rebuttal statements

result in material changes to the draft ROI, the responsible official **must** have an opportunity to review the report again.

6.3.4.10. The final ROI includes the rationale for naming the individual as a responsible official, a synopsis of the rebuttal statements, and the IO's assessment. The IO **must** ensure the report is clearly written and the rationale for assigning responsibility to an individual is fully justified.

6.3.4.11. **Summarize** the salient points of the rebuttals in the ROI. Verbatim statements **must** be submitted as an exhibit. The IO assesses the accuracy of the rebuttal statements, following up on new leads, addressing questions regarding the responsibility of other personnel not named, and any other issues introduced by the rebuttal statements.

6.3.5. Corrective Actions

6.3.5.1. The ROI must state what actions were taken to request the proper funding. A **report stating funds are** requested is not sufficient. The report must 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 **more than** the limitation for minor construction, funds must be obligated from the Military Construction appropriation and the O&M appropriation restored to the proper balance.

6.3.5.2. When the **IO determines the** causes and the individuals responsible for the violation, officials of the DoD Component or the activity holding the funds that were misused, must develop lessons learned and implement internal control enhancements necessary to reduce risks **for future similar nature** violations. Those specific actions must be included in the formal report.

6.3.5.3. Corrective actions **must** be concrete actions that have been implemented, or that are in the process of being implemented.

6.3.5.4. Corrective actions **must** address the act or omission by the responsible official(s) that led to the violation.

6.3.5.5. Investigations resulting in no reportable violation are nonetheless permitted to recommend corrective actions, as appropriate, to address any deficiencies or practices documented during the investigation.

6.4 Reinvestigation

If **the DCFO requests** a reinvestigation, then after the reinvestigation is completed or other requested action has been taken, the applicable DoD Component must submit the revised report to the DCFO according to applicable procedures in paragraph 6.3. The DoD Component must submit the revised ROI within two weeks following completion of the reinvestigation or other requested action.

6.5 Formal Investigation Results

6.5.1. The IO **must** ensure the ROI is clearly written and that each **fact** and conclusion is supported by a preponderance of the evidence.

6.5.2. The DoD Component must carefully review the ROI and all enclosures.

6.5.3. The complete report must include:

6.5.3.1. Legal review;

6.5.3.2. Witness statements;

6.5.3.3. Responsible official notification;

6.5.3.4. Responsible official rebuttal or declination statement/proof of delivery/statement from IO regarding inability to contact;

6.5.3.5. Evaluation of responsible official statements;

6.5.3.6. Ongoing/completed corrective actions;

6.5.3.7. For ADAs susceptible to accounting adjustments, fund certifications supporting conclusions that the ADA is/is not correctable; and

6.5.3.8. **SME** functional reviews decisions that drove fund determinations, especially with respect to Military Construction, information technology procurements, and covered Defense Business Systems.

6.5.4. An incomplete ROI must be returned to the activity/command for rework. A firm suspense **must** be given to the activity/command to resubmit a legally supportable report.

7.0 DOD COMPONENT ROI

7.1 Preparation of the ROI

7.1.1. The **DoD Component** ROI must follow the same general format as described in Figure 3-5. However, it is generally a stand-alone product without enclosures or attachments. **Remove** extraneous information not supporting conclusions from the report. The DoD Component must keep these records and provide **them** on request.

7.1.2. **Remove or clarify** confusing information. **Verify** key dates mentioned in the report. Numbers in tables, graphs, and text **must** be accurate, consistent, and easy to follow. Unnecessary tables and photographs may be removed.

7.1.3. Personally Identifiable Information must be redacted and superfluous argument(s) not supporting the findings **must** be removed. Witness names **must** be replaced with position titles where practicable, to avoid potential Personally Identifiable Information concerns.

7.1.4. The ROI must be concise and avoid unnecessary historical background or references to external documents. **Highlight** salient points **and address** gaps in the narrative, utilizing extant supporting documentation.

7.2 Legal Coordination

7.2.1. **Prepare** the DoD Component ROI in close coordination with counsel and verify all information in the IO's report and compare it to information in the exhibits. When in doubt, **staff** the changes with the activity/command to ensure there are no material misstatements of fact and to ensure any factual gaps in the record are **closed**.

7.2.2. When the violation is incurable, the type of ADA violation **is** ultimately 31 U.S.C. §1341 (exceeding an appropriation or in advance of an appropriation), 31 U.S.C. §1517 (exceeding apportionment or formal subdivision) or 31 U.S.C. § 1342 (accepting voluntary services for the United States, or employing personal services not authorized by law).

7.2.3. **Remove** proposed responsible officials **if** facts do not support responsibility **and legal concurs**. **Identify** additional responsible individuals and coordinate adding them to the report with the IO. Proposed responsible officials **are** generally the highest-ranking individual in the decision-making process with actual or constructive knowledge of the actions taken.

7.2.4. **If** the formal investigation was materially incomplete, or the facts do not support the conclusions, **return** the ROI to the activity/command for revision and/or reinvestigation. **Give the activity/command a** firm suspense to resubmit a legally supportable ROI.

7.2.5. **Coordinate with the appropriate stakeholders and annotate the ROI accordingly** if the ADA violation involves the funds or personnel of another DoD Component.

7.2.6. **Prepare an ROI** if the results of a formal investigation **led** to a determination by the DoD Component that there was no violation. The ROI must contain appropriate justification that supports a revised finding that no violation occurred.

8.0 REQUEST FOR ADVANCE DECISION

8.1 Advance Decision Package Submission

8.1.1. **Submit** the ROI, to include the individual(s) responsible for the potential violation, to the DCFO with a copy to the DoD Office of the Deputy General Counsel (Fiscal) (OGC (Fiscal)) requesting an Advance Decision for a determination of whether the case is or is not an ADA violation.

8.1.2. Advance Decision is the pre-decisional OGC (Fiscal) review of the DoD Component ROI and determination that evidence substantiates the ADA violation and the naming of responsible officials. The Advance Decision examines the role of the proposed responsible officials and determines whether they may be legally held accountable in accordance with 31 U.S.C. §§1341(a), 1517, and 1342.

8.1.2.1. If the OGC (Fiscal) determines that no violation is substantiated, then the DoD Component is notified that no further action is required, and the investigation is closed.

8.1.2.2. If the OGC (Fiscal) concurs that the proposed responsible officials are correctly identified and the violation is substantiated by a preponderance of the evidence, then the DoD Component is notified and informed discipline against one or more individuals named in the report may proceed.

8.2 OUSD(C) DCFO Review

The DCFO must review each ADA violation report for completeness, clarity, and compliance with reporting requirements. If the report is determined incomplete by DCFO or OGC (Fiscal), then the ROI must be returned to the applicable DoD Component. The DoD Component must provide additional documentation, modify the report, or accomplish other actions as requested within the period specified by the DCFO.

9.0 DISCIPLINARY ACTION

9.1 Disciplinary Actions

9.1.1. Following OGC (Fiscal) concurrence and receipt of an advance decision from the OUSD(C), the DoD Component sends a tasking memorandum from the DoD Component to the appropriate organization or individual for potential administration of adverse action, as deemed warranted, along with a copy of the report.

9.1.2. The individual imposing discipline must be independent and free of external influence.

9.1.3. The disciplinary officer(s) must follow the appropriate disciplinary procedures applicable to the military member or civilian employee who has been determined in the ADA investigative process to be a responsible individual. The disciplinary officer consults with the staff judge advocate or servicing legal office, as well as the civilian personnel office (in the case of a civilian employee).

9.1.4. The IO is prohibited from also being appointed as the disciplinary officer. The IO does not have a role in recommending or determining discipline.

9.2 Imposing Discipline

9.2.1. Administrative Penalties

9.2.1.1. [Document](#) disciplinary action taken in the individual's personnel file in accordance with established policies.

9.2.1.2. Administrative discipline for a civilian employee may include but is not limited to, written/oral counseling, written/oral admonishment or reprimand, reduction in grade, suspension from duty without pay, or removal from office.

9.2.1.3. Military personnel may be subject to appropriate administrative discipline or to action under the [Uniform Code of Military Justice](#) (Common Access Card required.)

9.2.1.4. In general, individuals no longer on active duty or employed by a DoD Component may not be disciplined. However, disciplinary actions may still be imposed against some retired individuals who have separated from military service if it is warranted by circumstances and determined to be legally appropriate by counsel. DoD has no authority to discipline retired or former civilian employees.

9.2.2. Criminal Penalties

9.2.2.1. An officer or employee found responsible for committing a violation knowingly and willfully may be subject to criminal penalties. The IO consults with legal counsel to determine if the investigation [must](#) be referred to the appropriate criminal investigation organization for action.

9.2.2.2. 31 U.S.C. § 1350, prescribes that an officer or employee of the United States Government who knowingly and willfully violates 31 U.S.C., §§ 1341 or 1342 must be fined not more than \$5,000, imprisoned for not more than 2 years, or both. 31 U.S.C. § 1519 discusses the violation of 31 U.S.C., § 1517 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.

* 9.2.2.3. [Include in the ROI a statement from the DoD Components](#) to the DCFO that criminal penalties [may be required](#).

9.3 Documentation of Discipline Imposed

9.3.1. A suggested template for use by the disciplinary officer is located at Figure 3-6. In documenting discipline, the officer imposing discipline must acknowledge the following:

9.3.1.1. An ADA violation is a violation of federal statute;

9.3.1.2. ADA violations constitute misuse of DoD funds, even if the misuse was not knowing or willful and the misuse was not ultimately harmful to DoD, or the DoD Component;

9.3.1.3. DoD is required to report violations of the ADA to the President (via the Director, OMB), the U.S. Congress, and the Government Accountability Office;

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

9.3.1.5. Disciplinary actions must consider the severity of the violation.

9.3.2. Moreover, the officer imposing discipline must provide a written statement addressing why the disciplinary penalty imposed or not, is commensurate with the severity of the violation.

10.0 SUBMISSION OF THE FINAL REPORT

10.1 Submission to DCFO

[Submit](#) the original or an electronic copy of the final ROI, including a discussion of the disciplinary actions taken, to the DCFO and [include](#) a copy of all pertinent documents referenced in the body of the report.

10.2 ROI Due Date

The ROI is due to DCFO within 14 months from the date the formal investigation began.

11.0 NOTIFICATION TO EXTERNAL AUTHORITIES

11.1 Letter Preparation

Following receipt of an acceptable final ADA violation report from the applicable DoD Component, the DCFO prepares the required letters, in accordance with OMB Circular No. A-11, Exhibit 145A, that report an ADA 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. The notification letters must be coordinated with the OGC (Fiscal), Office of the Assistant Secretary of Defense for Legislative Affairs, and Office of the Deputy Comptroller (Program/Budget).

11.2 Letter Content/Submission

These letters are submitted to the USD(C) for signature and forwarded to the external authorities identified in paragraph 11.1. The letters and the attached ROI, 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.

Figure 3-1. Checklist for Formal Investigations

Initial Phase

- Open formal investigation
- Assign case control number for tracking
- Notify DCFO
- Direct activity to appoint an investigating officer
- Provide appointment memo to the DoD Component
- Name support team
- Conduct in-brief session
- Determine the scope of the investigation
- Consult legal counsel
- Review the results of the Preliminary Review
- Familiarize the team with a legal basis for potential violation
- Consult governing statutes, and regulations
- Meet with staff requesting or reporting investigation
- Compile a list of witnesses and questions
- Make travel arrangements

Phase II

- Examine for physical evidence
 - ✓ Assemble and analyze evidence
 - ✓ Trace and document transactions and funding documents
- Determine the roles and responsibilities of participants and decision-makers at each echelon
 - ✓ Develop a chronology of events
 - ✓ Consult subject matter experts and have them prepare written opinions, as required
 - ✓ Interview witnesses
 - ✓ Determine specific acts or decisions leading to violation
 - ✓ Assign responsibility for making/authorizing violation
- Make an initial assessment of whether anyone appears to have intentionally violated the ADA with knowing and willful intent. If so:
 - ✓ Halt investigation and notify appointing official
 - ✓ Consult with a legal advisor
- Prepare initial draft of findings

Phase III

- Notify proposed responsible officials
 - ✓ Allow two weeks for submission of rebuttal statements
 - ✓ Document delivery of report via email tracking or certified mail
 - ✓ Make a reasonable effort to locate former officials or employees
 - ✓ Provide draft report
- Analyze rebuttals to determine if they necessitate new interviews and follow up on new leads if required
 - ✓ Incorporate salient points from rebuttals in the revised report

Figure 3-1. Checklist for Formal Investigations (continued)

- ✓ Insert assessment on the impact of the rebuttal statements, if any, on conclusions
- ✓ Enclose verbatim rebuttals as [an](#) enclosure to report

Phase IV

- Engage activities involved to develop corrective actions to reduce [the](#) risk of similar violations recurring:
 - ✓ Document corrective actions that have already been put in place
 - ✓ Quantify enhanced controls being implemented
 - ✓ Obtain [a](#) listing of planned corrective actions and milestones
- Incorporate lessons learned and corrective actions in [the](#) report
- Finalize Formal Report
- Obtain legal review

Phase V

- Appointing official verifies the following information before endorsement and release:
 - ✓ Is a copy of the investigating officer's appointment memorandum included in the report?
 - ✓ Does the report include the case control number, title of the appropriation/fund involved, Treasury symbol, amount, date of occurrence, date discovered, 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?
 - ✓ Is the evidence clearly documented in the report and is the evidence relevant to the case?
 - ✓ Does the evidence appear to be complete or are significant factors missing that should be considered? Do there appear to be relevant unanswered questions?
 - ✓ Are the findings clearly stated, logical, supported by the evidence, and relevant to the case?
 - ✓ Is each finding that is based upon testimony properly cross-referenced to the testimony?
 - ✓ Are the findings and conclusions fully substantiated by the evidence and testimony?
 - ✓ Were all conflicts in testimony addressed in the report?
 - ✓ Does the report include a clear description of the causes and circumstances surrounding the violation?
- Transmit report to DoD Component

Final Phase

- DoD Component reviews report
- DoD Component [initiates the](#) summary report
- Coordinate [with](#) counsel
- DCFO review of report
- [Obtain an](#) Advance Decision
- Complete Investigation – Insert discipline imposed into the report.
- [Send](#) notification letters to external authorities
- [Complete](#) closure

Figure 3-2. Template for Initial Reports

Activity/command Letterhead

Initial Memorandum

MEMORANDUM FOR (DoD Component)

SUBJECT: Alleged Antideficiency Act Violation (Location and Subject Matter)

1. Reference: DOD Financial Management Regulation, Volume 14, Chapter 3.
2. In accordance with [the reference](#), [the initial](#) report of an alleged Antideficiency Act Violation (ADA) follows:
 - a. Accounting classification of funds allegedly misused:
 - b. Name and location of the activity where the alleged violation occurred:
 - c. Name and location of the activity issuing the fund authorization:
 - d. Amount of fund authorization or limitation that was allegedly exceeded:
 - e. Amount and nature of the alleged violation:
 - f. Date the alleged violation occurred:
 - g. Date of Discovery:
 - h. Means of Discovery:
 - i. Description:

Signature Block of
Activity/commanding Officer or
Head of Activity

Figure 3-3. Template for Appointment Orders

Investigating Officer Appointment

MEMORANDUM FOR (Investigating Officer's Name)

SUBJECT: Appointment as Investigating Officer, Case Number.

1. References:

- a. Department of Defense (DoD) Financial Management Regulation Volume 14, Chapter 3.
- b. Cite Initial Report.

2. You are hereby appointed as **an** investigating officer to conduct a preliminary review/formal investigation of a potential Antideficiency Act (ADA) Violation **that** allegedly occurred at (location or activity) in Fiscal Year xx.

3. I certify you have received qualifying fiscal law training within the previous three years and are qualified to perform this investigation. You are free of any known conflicts of interest and able to perform an independent review. You will be assisted by (names of legal advisor and support team subject matter experts).

4. A report detailing the results of your preliminary review/formal investigation will be submitted no later than (suspense date). Your report must include the facts surrounding the alleged violations and include a legal review, which supports the conclusion an ADA violation did or did not occur.

5. Provide any additional instructions to the investigating officer.

6. The point of contact for this report is xxx, who can be reached at (phone), or (email)

Signature Block of Appointing Official

Figure 3-4. Template for Preliminary Review

Preliminary Review

DEPARTMENT OF THE XXX
REPORT OF ANTIDEFICIENCY ACT VIOLATION
Name of Component/Agency and Case No.

1. Appropriations(s) Involved/Title, Symbol, and Apportionment Status. Example: Fiscal Year (FY) Operation and Maintenance, Defense-wide (9710100)
2. Where Violation Occurred.
3. Name and Location of Activity Issuing the Fund Authorization.
4. Amount of Violation.
5. Date Violation Occurred.
6. Type of Violation(s). Provide 31, U.S.C., section violated and a brief description of the violation and state whether the violation was an over-obligation of an appropriation, an apportionment, or an allotment. Example: 1341(a)(1)(A), exceeded the amount available in appropriation or fund.
7. Effect of Violation on the Next Higher Level of Funding. State whether the violation affected the next higher level of funding.
8. Date and Description of How Violation Was Discovered. Provide the date and who/how the violation was discovered.
9. Causes and Circumstances Surrounding the Violation. Provide a detailed description of the violation. Include the following:
 - a. A detailed summary of what caused the violation and the associated circumstances; what actions should have been, but were not, taken by specific individuals; what actions were taken that should not have been taken; and why the violation happened.
 - 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; and written explanation of the facts of the potential violation. Discuss the evolution of the issues investigated, number of people interviewed, mitigating circumstances surrounding the violation, 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.

Figure 3-4. Template for Preliminary Review (continued)

c. 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 **because of** a memorandum or letter directing an investigation, then reference that document and attach a copy to the report.

10. Conclusion. Summarize your findings in a paragraph to support your conclusion that a violation has occurred or that a violation did not occur.

11. Additional Information. Provide details not covered above.

Figure 3-5. Template for Formal Report

DOD COMPONENT OR AGENCY
REPORT OF ANTIDEFICIENCY ACT VIOLATION INVESTIGATION
Name of Component/Agency and Case No.

1. Appropriation(s) Allegedly Exceeded.

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.

Provide total and breakdown, if applicable.

5. Date Violation(s) Occurred.

6. Type of Violation(s).

Provide the section(s) of title 31, U.S.C. that was violated. For example, 31, U.S.C. §§ [1341\(a\)\(1\)\(A\)](#), [1342](#) or [1517\(a\)\(2\)](#).

7. Effect of Violation(s) on the Next Higher Level of Funding.

State whether the violation(s) **influenced** the next higher level of funding.

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 operating budget authority or an allotment, did this cause the higher activity/command operating budget authority or allocation to also be exceeded? If the higher activity/command operating budget authority or allocation is exceeded, also state why the DoD/Component apportionment or appropriation was also exceeded.

8. Name and Position of Responsible Individual(s).

a. If a violation(s) involves a centrally managed allotment, then the head of the operating agency at the time the violation was incurred must be named responsible.

b. Include **the** position description of the proposed responsible official as **a** backup to the report.

Figure 3-5. Template for Formal Report (continued)

9. Signed Statement(s) of Responsible Individual(s).

State whether a statement(s) was received from the individual(s). If so, enclose the verbatim statement. The ADA report must summarize salient points of the proposed responsible official's statements and an evaluation of their relevance by the investigating officer. The introduction of new witnesses and new evidence in the rebuttal statements **must** be addressed. Each individual named responsible for the violation(s) must be given the opportunity to state any circumstances believed to be extenuating. If the proposed responsible official could not be located or refused to provide a statement, the report **must** detail measures taken to contact them and solicit a response. The individual(s) found responsible for the alleged violation must 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 must 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.
- d. The report must 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. Material changes in findings as they relate to the role of the proposed responsible official must be stated with the proposed responsible official a final time.

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 caused the violation(s) and the associated circumstances; what actions should have been, but were not, taken by a specific individual(s); what actions were taken that should not have been taken, but were; and why the violation(s) happened. The description must 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 **must** not be so brief that it does not **clearly** convey the essential facts and circumstances of what happened.

Figure 3-5. Template for Formal Report (continued)

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; and written explanation of the facts of the potential violation. 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.
- 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 because 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 Figure 3-1.

12. Evidence of Willful Intent to Violate.

State whether the ADA was knowingly and willfully violated. If the violation was willfully committed, was the case referred to appropriate criminal investigators? If criminal investigators or the Department of Justice declined to pursue the case, clearly state the outcome.

13. Disciplinary Action Taken.

This section is not used by the investigating officer and must have a statement that discipline will be implemented only after DCFO review.

The DoD Component will complete this section only after discipline is implemented and documented.

Figure 3-5. Template for Formal Report (continued)

14. Corrective Action Taken.

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

Name and position of the holder of the funds and an evaluation of whether their exercise of fund control responsibilities contributed to the violation.

16. Component or Agency Coordination.

State steps taken to coordinate the report with the other components or agencies involved (if applicable).

17. Additional Information.

If applicable.

Figure 3-6. Template for Discipline Confirmation

OFFICE SYMBOL

MEMORANDUM FOR DoD Component

SUBJECT: Disciplinary Action imposed on Mr./Ms. _____, Antideficiency Act Violation Case XX-XX

1. An ADA violation occurred when Mr./Ms. _____, while assigned to (activity or installation) issued/authorized _____. This resulted in an uncorrectable violation of the Antideficiency Act.
2. I understand 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 unwilful or unintentional violation does not justify a decision to not administer disciplinary action; and (e) disciplinary action must be commensurate with the severity of the violation, and factors leading to the violation or its resolution may be considered.
3. As identified in the formal investigation, Mr./Ms. _____ is an individual primarily responsible for this violation. Mr./Ms. _____ caused an uncorrectable violation of the ADA when he/she (state specific actions). As the officer charged with imposing discipline in this case, I issued (state actions) to Mr./Ms. _____. While I considered _____, I have determined that _____ is appropriate for the following reasons: _____. No further discipline against Mr./Ms. _____ will be taken.
4. My point of contact for this action is xxx who can be reached at (xxx) xxx-xxxx, email: xxx.

Signed
Disciplinary Officer