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APPENDIX C

LOSS OF FUNDS - INFORMATION FOR INVESTIGATING OFFICERA. OVERVIEW

This appendix contains general information concerning the main issues that should be addressed in a loss of funds investigation and fully considered in making findings of fact and recommendations.

B. APPOINTMENT OF AN INVESTIGATING OFFICER OR BOARD OF OFFICERS

★ 1. General. The convening authority shall appoint either an investigating officer or investigating board of officers to investigate the loss. The purpose of the investigation is to: develop all facts leading up to and connected with the loss, including the amount, date, time and place of the loss; identification of accountable individuals and others involved; the authenticity of documentary evidence; and the veracity of oral testimony. If possible, the investigation should identify the cause of the loss. The investigation should also include a determination with respect to the adequacy of internal controls and whether they were effectively implemented. Specific instructions for conducting both formal and informal investigations are contained in regulations of each of the DoD Components. The following paragraphs summarize the basic requirements as related to fiscal irregularities.

2. Appoint an Investigating Board of Officers (IBO). The convening authority shall appoint an IBO in writing. When feasible, members of the IBO should include officers who are skilled in investigative techniques, financial accounting control, and interpretation of law, and who do not have a vested interest in the outcome of the investigation. If considered necessary, military members or DoD civilian employees with these skills may be designated as technical advisors to the IBO.

3. Appointment of an Investigating Officer (IO). The convening authority shall direct issuance of an order to appoint an IO. The order shall name the individual, specify the matter to be investigated, and cite this volume and any authorizing DoD Component directive as the authority for the investigation. The order also shall specify the approximate period of time allowed for the investigation. A copy of the order shall be entered in the report of investigation as an exhibit. Only commissioned officers of field grade or equivalent civilian employees may be appointed an IO. Officers appointed to conduct investigations under this Regulation should be senior in rank to persons under investigation (whenever possible) and must not have a vested interest in the outcome of the investigation. The best qualified officers should be appointed as IOs. They should be familiar with investigative techniques and have knowledge of the required internal controls, pertinent laws and directives. (This requirement should not be interpreted to require the appointment of comptroller personnel. Comptroller personnel should be used only when there is no feasible alternative.) Officers appointed as IOs, who do not fully meet these

requirements, should be given technical guidance by the base comptroller and staff judge advocate.

4. Required Loss Status Reports. Status reports must be made as follows:

a. Loss of Funds. The IO or IBO must report every 30 days on the current status of each case. Reports shall be sent through the commander to the servicing DFAS Center with an information copy to the major command.

b. Loss of Blank Treasury Checks or Blank Savings Bonds. Status reports are not required.

5. Investigations

★ a. Investigations by Board of Officers. Before conducting its hearing, the IBO must ensure that each accountable individual receives and reviews Chapters 6 and 33 of this volume regarding liabilities and responsibilities of accountable individuals and statutory authority for relief of liability. Prior to testifying, an accountable individual may examine records or documents relating to the loss in the DO's or IBO's custody. All factual information pertaining to the loss or deficiency should be developed and be available for use by higher authority.

b. Investigations by Investigating Officer. The IO shall obtain evidence in the form of statements from accountable individuals and others concerning the loss. The IO shall ensure that each accountable individual receives and reviews Chapters 6 and 33 of this volume regarding liabilities and responsibilities of accountable individuals and statutory authority for relief of liability before the IO interviews the individual for the first time. An accountable individual may examine records or documents in the IO's custody that relate to the loss. Testimony may be reported verbatim or summarized by the IO. Whenever possible, the transcript or summary of testimony should be reviewed, sworn to, and signed by the witness. (When sworn testimony cannot be obtained, the IO shall submit a statement giving the substance of the interview and the reason for absence of attestation.) In addition, the IO shall gather records, documents, photographs, and sworn affidavits relating to the loss. The IO may use evidence developed in investigations already conducted concerning the loss by other agencies (e.g., FBI, U.S. Secret Service or local authorities). However, those investigations usually are for purposes other than those outlined above, and it might be necessary to obtain additional evidence from a source previously contacted in another investigation. The IO, by further investigation, shall make a determined effort to resolve or clarify all apparent discrepancies or contradictions in the evidence.

6. Preparation of the Report of Investigation (ROI). Within 90 days after the loss was discovered, the IO or IBO shall complete the investigation and submit an ROI to the convening authority in triplicate. When extraordinary circumstances require it, the IO or IBO may request an extension from the supporting DFAS Center through the convening authority. The ROI must include the following elements:

a. Facts

(1) Identities of all accountable individuals who are pecuniarily liable for the loss, the amount for which each is accountable, and the involvement of each in the loss.

(2) Circumstances leading to the loss, or the efforts undertaken to discover the cause of a loss that remains unexplained.

(3) Description of the internal controls prescribed to prevent losses of the type experienced and the steps taken to implement them.

(4) Other relevant information that would aid in understanding how the loss occurred and in evaluating whether relief is appropriate for the accountable individuals involved.

(5) Documentary evidence (for example, statements, transcripts, affidavits, investigative reports of other agencies, records, and photographs) as exhibits to the ROI.

b. Findings

(1) Whether there was a loss to the U.S. Government.

(2) The amount of the loss.

(3) Whether the loss is a physical loss or one that involves fraud.

★ (4) Whether the accountable individual was acting in the line of duty with respect to the loss.

★ (5) Whether the loss was due to the fault or negligence of the accountable individual. A separate finding shall be made for each accountable individual involved.

c. Recommendations

★ (1) Whether the accountable individual should be relieved of pecuniary liability for the loss. Separate recommendations concerning each accountable individual involved are required.

(2) Corrective action for improving controls or procedures, if applicable.

(3) Any other recommendations that are appropriate considering the facts developed during the investigation.

7. Distribution of the Report of Investigation (ROI). Prepare the ROI in triplicate and deliver to the convening authority. The convening authority will distribute the ROI as follows:

a. Upon completion of action by the convening authority, the original ROI and allied papers will be sent through the major command to the supporting DFAS Center.

★ b. If the major command is the convening authority, one copy of the ROI will be forwarded to the commander of the base, station, activity, ship, or unit where the accountable individual is located. For Army Finance Battalions, a copy also shall be transmitted to the parent Finance Group or Command.

c. The convening authority will keep one copy of the ROI.

8. Convening Authority Actions on Reports of Investigation. Without delay, the convening authority will review the ROI for compliance with the requirements set forth above. If a report is not thorough, comprehensive or complete, the convening authority will return it to the original investigator, if possible, explaining the defects and directing supplementation. Upon acceptance of the ROI, the convening authority will send one copy to the commander of the base, station, camp, post, activity, vessel, or unit where the accountable individual is located. Note that the convening authority does not have the authority to grant relief. Within 30 days following acceptance of the ROI, the convening authority will:

a. Consider all the facts, findings, and recommendations.

★ b. Determine whether satisfactory evidence exists to support a recommendation for relief from liability of each accountable individual involved as a part of the ROI.

c. If sufficient evidence exists, recommend relief from liability for each accountable individual involved. Otherwise recommend denial of relief. A specific, separate recommendation is required for each accountable individual involved.

d. Attach these actions, with a detailed explanation of the reasons therefor, to the ROI.

★ e. Set forth all evidence used to support a recommendation for denial of relief of each accountable individual involved in the loss or deficiency. The convening authority should formally inform the individual(s) concerned of the recommendation to grant or deny relief.

f. Forward the ROI, and all attachments thereto, through the major command to the supporting DFAS Center.

9. Commander Actions on Report of Investigation. Recommendations by local commanders other than the convening authority are not required. However, the ROI may be used for disciplinary or administrative action considered necessary by the commander.

10. Major Command Actions on Report of Investigation. All transmittals and correspondence between the convening authority and the servicing DFAS Center concerning a loss shall be routed through the major command. This will keep the major command informed of issues involved in the loss and the progress toward their resolution. The major command also must review the ROI and forward its own comments and recommendations to the supporting DFAS Center within 30 days. Requests for an extension should be sent to the servicing DFAS Center with a complete explanation of the delay and the estimated date of submission. Note that the major command does not have the authority to grant or deny relief.

11. DFAS Center Action on Report of Investigation. The ROI will be reviewed by the supporting DFAS Center. If the ROI is not considered thorough, comprehensive or complete, it will be returned to the convening authority, with an explanation of the deficiencies, for correction. The convening authority will review the supplementary report from the investigator and, if there is no change in action, forward it to the DFAS Center. The supporting DFAS Center Director will use the completed ROI as the basis from which to determine whether the accountable individual(s) will be granted or denied relief of liability. If the DFAS Center Director holds the DO or any other accountable individual liable for a loss investigated by an IO or IBO, and that individual(s) has not been afforded an opportunity to file a rebuttal to the findings of the ROI, the file will be returned through the major command to the convening authority giving the reasons for the adverse determination. The convening authority must give the individual(s) held liable the opportunity to file a rebuttal. Upon receipt of the rebuttal, the convening authority will return the file through the major command to the supporting DFAS Center with comments on the rebuttal (if any). The Director of the DFAS Center will reconsider the adverse determination and affirm or reverse the determination.

★C. ACCOUNTABLE INDIVIDUALS

An accountable individual is any government employee or military member who, by reason of his or her position, is responsible for or has custody of government funds. There may be, and usually is, more than one accountable individual in a given case. This occurs since the concept of accountability is not limited to the person in whose name the account officially is held, but also extends to those individuals who actually have control of the funds. Examples of those individuals considered to be accountable include deputy DOs, agents, cashiers, collection agents, paying agents, imprest fund cashiers, change fund custodians, cash control officers, certifying officers and accountable officials as defined in Chapter 33 of this volume.

★D. LIABILITY OF ACCOUNTABLE INDIVIDUALS

Certifying officers, DOs, deputy DOs, agents, cashiers, collection agents, paying agents, imprest fund cashiers, change fund custodians, cash control officers, and other accountable individuals who have physical custody of government funds are held to a standard of strict liability. They are, in effect, insurers of the public funds and are excusable only for losses due to acts of God or the public enemy. This liability has been established in a line of Supreme Court decisions (*United States v. Prescott*, 44 U.S. (3 How) 578 (1845); *United States v. Thomas*, 82 U.S. (15 Wall 337) (1872); *Smythe v. United States*, 188 U.S. 156 (1903)). A certifying officer, DO deputy DO, agent, cashier, collection agent, paying agent, imprest fund cashier, change fund custodian, or cash control officer automatically is liable at the moment either a physical loss occurs or an illegal, incorrect, or improper payment is made. See Volume 54, Decisions of the Comptroller General, 1974, pages 112, 114. Where a subordinate of the DO actually disburses the funds, the DO will be relieved of liability only upon a showing that the DO properly supervised the subordinate, maintained an adequate system of procedures and controls to safeguard the funds, and took steps to insure the system's implementation and effectiveness. The standard of automatic liability does not apply to accountable officials appointed as prescribed in Chapter 33 of this volume. For these accountable officials, liability attaches upon a showing that the official negligently provided information, data or service to a certifying officer.

★E. RELIEF OF ACCOUNTABLE INDIVIDUALS

It is important to distinguish between liability and relief from such liability. The basic legal liability of an accountable individual (excluding an accountable official as prescribed in Chapter 33 of this volume) is strict, automatic, and not affected by any lack of fault or negligence on his or her part. However, lack of fault or negligence may provide a basis for relief upon proper administrative request.

1. The relief of accountable individuals of the DoD (excluding accountable officials as prescribed in Chapter 33 of this volume) responsible for the physical loss or deficiency of any public funds, vouchers, or records is authorized by 31 U.S.C. 3527(b) (reference (e)). In order for relief to be granted, the Secretary of Defense, or designee, shall make the following determinations.

- a. The individual was carrying out official duties when the loss or deficiency occurred.
- b. The loss or deficiency was not the result of an illegal, incorrect, or improper payment.
- c. The loss or deficiency was not the result of fault or negligence by the individual.

2. As relief may be granted only when the Secretary of Defense, or designee, is able to make these determinations based upon a review of available evidence, these requirements

should be considered during the course of the investigation. Additionally, findings of fact in this regard should be made in conjunction with all accountable individuals for whom relief is being sought.

3. Title 31 U.S.C. 3527(b) (reference (e)) also provides the authority for the granting of relief of an official of the armed forces for an illegal, improper, or incorrect payment. Relief of liability is granted when the Secretary of Defense determines that diligent collection action was taken, the certification was based on official records, and that the official did not know, and by reasonable diligence and inquiry could not have discovered the correct information, or the obligation was incurred in good faith, no law specifically prohibited the payment, and the U.S. Government received value for the payment.

4. Accountable officials appointed under the provisions of Chapter 33 of this volume shall be pecuniarily liable for erroneous payments that result from information, data or service they negligently provide to a certifying officer. For relief of liability of an accountable official, a presumption of negligence does not apply. The investigator must obtain relevant facts concerning (1) whether there is a fiscal irregularity, and (2) whether there is evidence of fault or negligence on the part of the accountable official.

★F. STANDARDS OF NEGLIGENCE

The liability of an accountable individual (excluding an accountable official as prescribed in Chapter 33 of this volume) is strict and independent of any fault or negligence. However, in evaluating the facts to determine whether any accountable individual (including an accountable official as prescribed in Chapter 33 of this volume) was negligent for purposes of relief from liability, the standard of "reasonable care" is applied. This is the standard of simple or ordinary negligence, not gross negligence. The standard has been stated as what the reasonably prudent and careful person would have done to take care of his or her own property of the like description under like circumstances. See Volume 54, Decision of the Comptroller General, page 112.

★G. PRESUMPTION OF NEGLIGENCE

Since liability of an accountable individual (excluding an accountable official as prescribed in Chapter 33 of this volume) is strict and automatic at the time of the loss or deficiency, the fact of the occurrence of a loss or deficiency gives rise to a presumption of negligence on the part of the accountable individual. While the presumption may be rebutted by evidence to the contrary, it is the accountable individual's burden to produce the evidence. The administrative determination that there was not fault or negligence, unsupported by evidence, is not sufficient to rebut the presumption. The accountable individual shall come forward with affirmative evidence that he or she exercised the required degree of care. It should be emphasized that the government does not have to produce evidence to establish that the accountable individual was at fault to hold him or her liable; liability is automatic. Rather, in order to be entitled to relief, the accountable individual must produce evidence to show that there was no contributing fault or negligence on his or her part. Thus, in the case of an unexplained loss or deficiency where there is no evidence to rebut the presumption of negligence, there is no

basis upon which to grant relief. The presumption of negligence and its application to unexplained losses are discussed in Volume 48, Decisions of the Comptroller General, page 566 (case no. B-166174). The Court of Claims has affirmed this concept in *Serrano v. United States*, 612 F.2d 525 (Ct. Cl. 1979). For accountable officials as prescribed in Chapter 33 of this volume, the government must establish that the loss or deficiency was the result of negligence on the part of the accountable official. The accountable official may submit a request for relief supported by a statement explaining how the evidence fails to show negligence on the accountable official's part.

★H. PROXIMATE CAUSE

An accountable individual may be relieved from liability even though negligent if it can be established that the negligence was not the proximate cause of the loss. The proximate cause concept implies a cause-and-effect relationship between the negligence and the loss. In other words, the negligence must have contributed to the loss. In analyzing proximate cause, it may be helpful to ask certain questions. First, if the accountable individual had not been negligent, would the loss have occurred? If the answer to this question is yes, the negligence is not the proximate cause of the loss and relief will probably be granted. However, it may not be possible to answer this question with any degree of clarity. If not, the next question to ask is whether the negligence was a "substantial factor" in bringing about the loss. If the answer to this question is yes, relief probably will be denied.

I. LOSSES BY CASHIERS

1. If the shortage is in funds for which a cashier is accountable, the following questions should be considered when completing the investigation.

a. Have the disbursing officer and any other persons who might be held liable for the loss been afforded all the rights and privileges of parties in interest?

b. Has testimony been obtained from every person who should be questioned in regard to the circumstances surrounding the loss?

c. Have sufficient questions been asked of each witness and has any other investigation made of the loss been considered, with the exception of such part, if any, that pertains to lie detector tests?

d. Was a thorough search of the physical area made for missing cash or vouchers?

e. Were the day's transactions thoroughly reviewed in an effort to determine the cause of the shortage?

f. Were any individuals contacted in an effort to determine if an overpayment has been made and could be recovered?

- g. Were individuals who made collections contacted to determine if they found a compensating overage in their accounts?
- h. Was all the cash-on-hand in the disbursing office counted to make sure that there was no compensating overage?
- i. What was the number of transactions handled by the cashier during the period in which the loss occurred? Did distracting influences exist or were working conditions poor?
- j. Was the cashier working under pressure because of the heavy volume of business?
- k. Was the cashier handling new currency that has a tendency to stick together?
- l. Was the cashier experienced or inexperienced?
- m. What procedures and internal controls has the disbursing officer established for safeguarding funds? What written standard operating procedures (SOPs) has he or she provided for the guidance of cashiers? Has he or she issued any oral instructions?
- n. Are the SOPs adequate?
- o. Has the cashier complied with the SOPs?
- p. On the day of the loss, what procedures were followed by the cashier in counting money when he or she received advances of public funds from the disbursing officer or his or her deputies, made disbursements, or received collections?
- q. What actions were taken by the cashier to protect cash and vouchers during temporary absences from the cashier's window?
- r. What facilities were furnished to the cashier to protect cash for which he or she was accountable, such as a cash drawer with key lock or a separate safe?
- s. Was the cashier's cage accessible to persons other than the cashier?
- t. What procedures were followed by the disbursing officer, deputy, cash control officer, and/or chief cashier in making daily settlements with the cashier?
- u. Did theft occur?

- v. Are there any inconsistencies between the testimonies of different witnesses?
- w. Are orders appointing cashiers, deputies, etc., amended where appropriate?
- x. Were paid vouchers properly safeguarded by both the cashier and the disbursing officer?

J. LOSSES BY RECEIPT OF COUNTERFEIT CURRENCY

1. If the loss was caused by receipt of counterfeit currency, the following questions should be considered when completing the investigation.

- a. Have the disbursing officer and any other persons who might be held liable for the loss been afforded all the rights and privileges of parties in interest?
- b. Has testimony been obtained from every person who should be questioned in regard to the circumstances surrounding the receipt of the counterfeit currency?
- c. When and by whom was the receipt of counterfeit currency detected?
- d. Was an effort made to determine the source of the counterfeit note(s)?
- e. Has the disbursing officer provided instructions in detecting counterfeit money for those in the office who shall handle money?
- f. Does the volume of transactions handled by cashiers preclude a careful inspection of each and every piece of currency?
- g. Are there any inconsistencies between the testimonies of different witnesses?

K. LOSSES BY AGENT OFFICERS

1. If the loss involved agent officers, the following questions should be considered when completing the investigation.

- a. Have the disbursing officer and any other persons who might be held liable for the loss been afforded all the rights and privileges of parties in interest?
- b. Has testimony been obtained from every person who should be questioned in regard to the circumstances surrounding the loss?
- c. Have sufficient questions been asked of each witness?

- d. Have any other investigations made of the loss been considered, with the exception of such part, if any, that pertains to lie detector tests?
- e. Was a thorough search of the physical area made for missing cash or vouchers?
- f. Were the day's transactions thoroughly reviewed in an effort to determine the cause of the shortage?
- g. Do exhibits show the amount of entrustment made by the disbursing officer to the agent officer, signature of agent officer in receipt of funds, turn-in made by agent officer, and the amount of the shortage, or a statement of the agent officer's account?
- h. Does an exhibit show the appointment of the individual as an agent officer?
- i. Has the disbursing officer provided the agent officer with adequate instructions?
- j. If the loss involves funds in the hands of an agent officer, has the disbursing officer inspected and supervised the agent office, or arranged for such inspections?
- k. If the loss involves funds advanced to an agent officer appointed for the specific purpose of exchanging foreign currency for MPCs, has the disbursing officer made certain that verification of the fund on an unannounced basis has been made at least once each quarter?
 - l. Did the agent officer verify money at the time of receipt?
 - m. What precautions did the agent officer take to safeguard government funds?
 - n. If the agent officer used a safe to which any other persons had access, did he or she attempt to obtain other safekeeping facilities? Was he or she directed to use the safe in question?
 - o. Were all persons who had access to the funds during the period in which the loss occurred questioned?
 - p. Did theft occur?
 - q. What procedures did the agent officer follow in making payments?
 - r. Was the agent officer working under pressure?

- s. Did the agent officer have previous experience in making payments.
- t. Were working conditions poor in any respect?
- u. Are there any inconsistencies between the testimonies of different witnesses?

L. LOSSES BY FRAUD IN THE DISBURSING OFFICE

1. If the loss involved payments as a result of fraud in the disbursing office, the following questions should be considered when completing the investigation.

a. Have the disbursing officer or any other persons who might be held liable for the loss been afforded all the rights and privileges of parties in interest?

b. Has testimony been obtained from every person who should be questioned in regard to the circumstances surrounding the fraudulent payments?

c. Has consideration been given to any other investigation made, with the exception of such part, if any, that pertains to lie detector tests?

d. Has a thorough investigation been made in order to discover the full extent of the loss due to fraudulent activity that has been uncovered?

e. Have the methods used to defraud the U.S. Government clearly been described?

f. What internal controls have been established by the disbursing officer in an effort to preclude fraudulent activity by disbursing personnel?

g. Has all possible collection action been taken?

(1) In the case of military personnel, is collection action being taken in the field or by the servicing DFAS Center in cases when personnel have been separated from the service?

(2) In case of civilian employees, has the individual involved authorized application of pay to the shortage? Have steps been taken to secure application of final pay to settlement of the indebtedness? If the amount of indebtedness has been determined, has a request been made to the Office of Personnel Management for set off against the Civil Service Retirement and Disability Fund?

M. LOSSES BY IMPREST FUND CASHIERS AND CHANGE FUND CUSTODIANS

1. If the loss was in funds advanced to imprest fund cashiers or individuals accountable for change funds (e.g., the accountable officer for quartermaster account, medical services accountable officer or post signal officer), the following questions should be considered when completing the investigation.

a. Has the disbursing officer and any other person who might be held liable for the loss been afforded all the rights and privileges of parties in interest?

b. Has testimony been obtained from every person who should be questioned in regard to the circumstances surrounding the loss?

c. Has consideration been given any other investigation made of the loss, with the exception of such part, if any, that pertains to lie detector tests?

d. Did the accountable individual follow procedures applicable to the particular fund?

e. Has the cause of loss been clearly established?

f. Did theft occur?

g. Are there any inconsistencies between the testimonies of different witnesses?