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## CHAPTER 5

### CONDUCTING INVESTIGATIONS

#### 0501 PURPOSE OF AN INVESTIGATION

The purpose of an investigation of a potential violation of the Antideficiency Act is to determine what happened, what were the causes, who was responsible, what actions shall be taken to correct the current situation, and what actions shall be taken to ensure that a similar violation does not occur in the future. When an investigating officer is appointed, a formal investigation shall begin.

050101. Checklists. The “Checklist for Investigating Officers” at Figure 5-1, below, shall be used during an investigation to document the results. The “Checklist for Appointing Officers” at Figure 5-2, below, shall be used by the appointing officer in the review of the investigating officer’s report of violation. The checklist in [Chapter 7](#) at Figure 7-1 of this volume also shall be used during the investigation and preparation of the final summary report of violation.

050102. Research Effort. During the investigation, an investigating officer may be required to perform extensive research. The research effort may include accounting directives and regulations, directives and regulations related to the functional area involved (such as civil engineering or contracting), legal directives, public law, and legal opinions. An investigation officer normally shall review all specific documentation in the functional area involved related to the violation such as purchase requests, contracts, work orders, vouchers, and supporting materials, etc.

#### 0502 TIMEFRAMES

050201. Timeframes for Investigation. Investigations of potential violations of the Antideficiency Act, including the submission of the final summary reports to the Office of the Under Secretary of Defense (Comptroller), shall be completed within 9 months. (See reporting requirements in [Chapter 6](#) of this volume.)

A. All appointing officials shall stipulate in the appointing letter a due date for the investigative report. Such due date shall conform to the 9-month timeframe regardless of the scope of the event or amount of the potential violation. The date established by the appointing official also shall consider the requirement for the Assistant Secretary of a Military Department for Financial Management, or equivalent, to submit a final summary report to the Office of the Under Secretary of Defense (Comptroller).

B. The total process for investigating and reporting potential violations of the Antideficiency Act shall not take more than 1 year from date of discovery through the preparation of transmittal letters to the President, the Director of the Office of Management and Budget, and the leaders of both Houses of the Congress.

050202. Approving Exceptions to Timeframes. The Heads of the DoD Components may approve an exception to the above timeframe on a case-by-case basis. This responsibility may be delegated to the Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components. This responsibility shall not be redelegated. The Office of the Under Secretary of Defense (Comptroller) shall be notified of any extension that is approved and furnished a justification for that extension; however, any extension granted shall not allow the time for completing the entire investigation (see paragraph 050101, above) to exceed 1 year from the day the investigation began.

050203 Special Interest Investigations. When necessary, investigations of special interest may deviate from the 9-month timeframe; however, the applicable appointing officer or investigating officer shall notify the Under Secretary of Defense (Comptroller) when such deviations are necessary. If the Under Secretary of Defense (Comptroller) agrees, the timeframe may be extended. Special interest investigations include potential violations that may have been the subject of a news release; requested by the Secretary, Deputy Secretary, or the Under Secretary of Defense (Comptroller); or involve a high-level DoD official.

050204 Involvement of the Under Secretary of Defense (Comptroller). The Under Secretary of Defense (Comptroller) may supervise the progress of an investigation when the nature of the violation or the implication of individuals in the violation warrants such involvement. Such supervision may include requirements for oral and written progress reports and may require a team of investigating officers and compressed timeframes.

### 0503 DEVELOPING CONCLUSIONS

During the investigative process, the investigating officer shall use extreme care in obtaining and documenting all the relevant and specific facts of the case. The conclusions in the Investigating Officer's Report, including the identification of the person or persons as responsible for the violation, shall be supported by the facts presented in the report.

050301. Identifying Circumstances and Fixing Responsibility. The investigating officer shall consider carefully the facts and circumstances of the situation before fixing responsibility for a violation. Commanding officers, budget officers, or fiscal officers may be named because of their overall responsibility or position, or the fact that they are designated as the holder of a subdivision of funds, if they failed to properly exercise their responsibilities. The investigation, however, shall attempt to discover the specific act--or the failure to take an action--that caused the violation and who was responsible for that act or the failure to take an action. A report of violation is considered incomplete until an individual(s) has been named as responsible for a violation. A conclusion that no one could be determined to be responsible for a violation is not acceptable.

A. A report of violation shall include assignment of responsibility to one or more individuals for a violation so that appropriate administrative or disciplinary action, if any, may be imposed as required by Title 31, United States Code, sections 1349, 1350, 1518, and 1519.

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

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

D. The investigating officer clearly shall show what each person involved did, or failed to do, that caused the violation. The following questions shall be considered:

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

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

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

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

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

E. If, at any time during an investigation, the investigating officer believes there may be a criminal issue(s) involved, then the investigation immediately shall be stopped. The investigating officer shall consult with legal counsel to determine if the issue shall be referred to appropriate criminal investigators for resolution.

0504 CORRECTIVE ACTIONS

050401. Developing Corrective Actions. When the causes and the individual(s) responsible for the violation have been determined, officials of the DoD Component under investigation, working with the investigating officer, shall determine the corrective actions necessary to ensure a violation of a similar nature will not recur. Those actions shall be included in both the report of violation and the final summary report. In addition, officials of the DoD Component under investigation, working with the investigating officer, shall develop a summary of lessons learned from the specific circumstances of the case that can be applied to the installation involved, the major command, the DoD Component, or all DoD Components. [Chapter 10](#), section 1004 of this volume contains further guidance on corrective actions.

050402. Recommending Disciplinary Action. At the conclusion of an investigation, appropriate disciplinary action (to include no disciplinary action) shall be determined for the individual(s) named as responsible for the violation. That determination shall be based on consultations involving the individual's commander, the investigating officer, the staff judge advocate, and others with appropriate authority but on the ultimate responsibility of the appropriate commander or other official. The recommended disciplinary action, if any, shall be based on the severity of the violation, the degree of responsibility of the named individual and any mitigating circumstances. If responsibility for the violation is that of an individual(s) from an organization outside the organization under investigation, then follow the procedures in [Chapter 7](#), paragraph 070207 of this volume. The type of disciplinary action taken shall be included in the report of violation and the final summary report of violation (see [Chapter 7](#) of this volume). [Chapter 9](#) of this volume contains additional guidance regarding recommended disciplinary actions.

0505 ACCUMULATING COSTS

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

**CHECKLIST FOR INVESTIGATING OFFICERS**

The investigating officer shall ensure the following items have been considered during the course of an investigation and the preparation of the investigating officer's report of violation:

1. Review the Preliminary Review Report and develop questions, as needed, to:
  - a. Ensure a full understanding of the facts and circumstances of the potential violation.
  - b. Validate the existence of the potential violation.
2. Examine the physical evidence associated with the potential violation and document each piece of evidence.
  - a. Make copies of the transaction(s) that caused the potential violation. The transactions may consist of working group documents, planning documents, commitment documents, obligating documents, payment documents, or others. Copies of the transactions related to the violation may be located in the functional area originating the obligation, the contracting office, engineering office, or Defense Accounting Office.
  - b. Trace and document who authorized or approved the transaction(s).
  - c. Trace and document all of the relevant decisions that led up to, and the contributing circumstances that set the stage for, the transaction(s) that caused the potential violation. These decisions might be traced to minutes of installation financial board meetings, installation financial working group meetings, or any other installation group meeting in which decisions concerning an installation's financial decisions are conducted.
  - d. If a regulation, funding document, or other administrative document was violated, then review the pertinent document. Determine specifically what administrative limitation was exceeded. Review the sections of Title 31 of the United States Code (U.S.C.) related to administrative violations: Sections 1511 through 1519. Determine specifically which section of Title 31 was violated.
  - e. If a statutory limitation was exceeded, then review the pertinent statute. Title 31, United States Code, sections 1341 through 1348 contain general government-wide provisions dealing with statutory limitations. Voluntary services are covered by section 1342. Other statutory limitations in 10 U.S.C. or DoD Appropriations or Authorization Acts may be involved. Determine specifically which statute was violated.

Figure 5-1 (continued)

**CHECKLIST FOR INVESTIGATING OFFICERS (continued)**

3. Interview the key players and document the results of the interviews. (When interviewing DoD civilian employees, who also are bargaining unit members, ensure that the relevant questions of the United States Code and the collective bargaining agreement are adhered to.)
  - a. Question each key person to determine the role each played in the violation.
  - b. Question facts and circumstances that do not appear logical or supportable.
  - c. For those that are viewed as potentially responsible in any way, question why they did what they did and when they did it.
  - d. If they indicate that their supervisor instructed them to perform certain acts that contributed to the potential violation, interview their supervisors.
  - e. Reinterview to address conflicts in documented evidence.
4. Examine relevant circumstantial evidence associated with the potential violation and describe how each piece of circumstantial evidence relates to the case. Label all circumstantial evidence as such in the report. Inclusion of photographs, drawings, etc., particularly of construction projects, is not mandatory, but could be helpful in explaining the violation.
5. Assemble and analyze the documented evidence.
  - a. Develop and document a list of findings based upon the evidence. Identify the evidence that supports each finding.
  - b. Develop and document a list of conclusions, including which specific act, or failure to act, caused the potential violation. Identify the evidence and findings that supports each conclusion.
  - c. Determine if a violation of the Antideficiency Act has, in fact, occurred and if so, which provision of the Act was violated. Include in the documentation the rationale and evidence that support this conclusion and state the type of violation and the section of the Antideficiency Act that was violated.
  - d. Identify the amount and date of the potential violation.

Figure 5-1 (continued)

**CHECKLIST FOR INVESTIGATING OFFICERS (continued)**

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

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

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

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

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

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

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

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

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

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

Figure 5-1 (continued)



**CHECKLIST FOR INVESTIGATING OFFICERS (continued)**

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

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

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

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

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

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

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

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

a. Advised that he/she may consult with legal counsel or, when applicable, union representative.

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

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

d. Allowed to designate witnesses to testify in his or her behalf.

Figure 5-1 (continued)

**CHECKLIST FOR INVESTIGATING OFFICERS (continued)**

9. Designated witnesses shall be interviewed for the record.
  - a. In the report, the investigator shall address any new facts presented in the statement(s).
  - b. If a designated witness declines to make a statement, then the report will so indicate.
10. The investigator shall assess whether the individual(s) named responsible knowingly and willfully committed the violation.
11. In consultation with the investigating officer and legal officials, the commander shall determine appropriate disciplinary action against the individual(s) named responsible.
  - a. The recommended disciplinary action, if any, shall be commensurate with the severity of the violation and the degree of responsibility of the individual.
  - b. Include in the report the recommended disciplinary actions and a statement by the local commander describing any administrative discipline imposed and any further action taken with respect to the officer(s) or employee(s) named responsible for the violation. The individual responsible for determining disciplinary action shall attach a written statement to the report acknowledging that:
    - (1) A violation is a serious matter.
    - (2) Disciplinary action taken shall be appropriate to the causes and circumstances determined during the investigation.
    - (3) The Department shall report the violation to the Congress and the President.
    - (4) The disciplinary action that was taken is commensurate with the severity of the violation, with full justification of extenuating circumstances. ([Chapter 9](#) of this volume contains further guidance on these statements.) If no disciplinary action is deemed appropriate, then a full justification is required.
12. The investigator shall review the report before transmittal to the appointing official to determine that:
  - a. The report includes copies of the designation of the investigator by the appointing authority and the preliminary report.

Figure 5-1 (continued)

**CHECKLIST FOR INVESTIGATING OFFICERS (continued)**

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

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

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

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

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

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

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

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

j. The investigator has indicated that the individual(s) named responsible did not commit the violation willfully and knowingly. If there were indications that an individual(s) may have willfully and knowingly committed a violation, then the case shall have been referred to criminal investigators. (See paragraph 050301, above.)

k. Corrective actions have been taken or recommended and the report identifies any lessons learned.

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

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

Figure 5-1 (continued)

**CHECKLIST FOR INVESTIGATING OFFICERS (continued)**

- n. The report includes the name and position of the fund holder and an evaluation of his/her performance.
- o. The investigator has signed the report.

Figure 5-1

**CHECKLIST FOR APPOINTING OFFICERS**

The appointing officer shall ensure the following items are addressed in the investigating officer's report of violation:

1. Is a copy of the appointing officer's memorandum and the Preliminary Review Report included in the report?
2. Does the report include the case control number, title of the appropriation/fund involved, Treasury symbol, amount, date of occurrence, date discovered, and a description of how the potential violation was identified, the name and title of the investigating officer, the dates, place and scope of the investigation?
3. Is the evidence clearly documented in the report and is the evidence relevant to the case?
4. Does the evidence appear to be complete or are significant factors missing that should be considered? Do there appear to be relevant unanswered questions?
5. Are the findings clearly stated, logical, supported by the evidence, and relevant to the case?
6. Is each finding that is based upon testimony properly cross-referenced to the testimony?
7. Are the findings and conclusions fully substantiated by the evidence and testimony?
8. Were all conflicts in testimony addressed in the report?
9. Is there an explicit statement that a violation, in fact, occurred or that no violation occurred? If a violation occurred, does the report include a citation of the section of the Antideficiency Act that was violated?
10. Does the report name at least one individual as being responsible for the violation? Does the evidence support the determination of responsibility made by the investigating officer? Is the individual(s) named responsible identified by name, rank/grade, position title, job series, and organization? Does the report identify the date of the potential violation and the amount?

Figure 5-2 (continued)

**CHECKLIST FOR APPOINTING OFFICERS (continued)**

11. Does the report include a clear description of the causes and circumstances surrounding the violation?
- a. The description shall state clearly what the officer(s) or employee(s) responsible for the violation did, or failed to do, that caused the violation.
  - b. State whether the violation was due to careless disregard of instructions; an error; a lack of adequate training, procedures, or controls; or due to other reasons.
  - c. The report shall not be so brief that it does not convey clearly the essential facts and circumstances of what happened. Clearly state in sufficient detail what happened.
  - d. Identify the name and position of the holder of the funds subdivision (e.g., installation commander) and an evaluation of the performance of his or her fund control responsibilities. The level of command immediately above the holder normally will furnish this evaluation. This evaluation may be omitted if the holder of funds is named the responsible individual for the violation.
12. Does the report indicate that each individual named responsible was:
- a. Advised that he or she may consult with legal counsel?
  - b. Advised that a violation has been determined to have occurred, that he or she is named a responsible individual for the violation, and he or she will be allowed to review the report and examine evidence on which the determination was based?
  - c. Allowed to submit a sworn or unsworn statement regarding the alleged violation after reviewing the report and evidence? If the individual declines to make a statement, then the report shall so indicate.
  - d. Allowed to designate witnesses to testify in his or her behalf?
13. Were the rights of the individual(s) named responsible protected? Are there indications in the report that suggest that their rights were not fully protected? If so, the case may have to be reinvestigated.
14. Were all witnesses--designated by the individual(s) named responsible--interviewed or does the report include valid reasons why they were not interviewed?

Figure 5-2 (continued)

**CHECKLIST FOR APPOINTING OFFICERS (continued)**

15. Was there any relevant new information furnished by the oral or written statements by the individual(s) named responsible, or their designated witnesses? If so, does the report address this new evidence and its bearing on the responsibility of the named individual(s)?
16. Does the report explicitly state whether the violation was willfully and knowingly committed? If there are indications the violation willfully and knowingly was committed, the investigation shall have been referred to criminal investigators. (See subparagraph 050301.E, above.)
17. Has the investigating officer included a discussion of the following items in the report and have appropriate actions been taken by the local command to:
  - a. Discipline the named individual(s), if appropriate, and furnish a statement by the local commander justifying the action taken.
  - b. Identify and install corrective actions to prevent similar violations in the future.
  - c. Improve procedures and controls, if appropriate.
  - d. Identify lessons learned from this case.
18. Has the report been signed by the investigator?

Figure 5-2