

## CHAPTER 5

### CONDUCTING INVESTIGATIONS

- A. **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 should be taken to correct the current situation, and what actions should be taken to ensure that a similar violation does not occur in the future. Once an investigating officer is appointed, a formal investigation should begin.
- B. **CHECKLISTS.** A checklist at Enclosure 5-1 shall be used during an investigation to document the results. The checklist at Enclosure 5-2 shall be used by the appointing officer in the review of the investigating officer's report of violation. The checklist at Enclosure 7-1 also should be used during the investigation and preparation of the final summary report of violation.
- C. **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 shall normally 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.
- D. **TIMEFRAME 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.) All appointing officials shall stipulate in the appointing letter a due date for the investigative report. Such due date shall conform with 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). 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.
- E. **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 redelegate. The Office of the Under Secretary of Defense (Comptroller) shall be notified of any extension that is approved and provided a justification for that extension. However, any extension granted shall not allow the time for completing the entire investigation (see Section B., above) to exceed 1 year from the day the investigation began.

F. SPECIAL INTEREST INVESTIGATIONS. Investigations of special interest may deviate from the 9-month timeframe, when necessary. However, the Under Secretary of Defense (Comptroller) shall be notified by the applicable appointing officer or investigating officer when such deviations are necessary. If the Under Secretary of Defense (Comptroller) agrees, the timeframe maybe 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.

G. 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.

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

I. 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. However, the investigation 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.

1. 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.

2. 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, 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 any conflicts should be addressed immediately by the investigation officer. If a series of events at several levels led to the violation, the report should clearly identify what happened at each level and how the events contributed to the violation.

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

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

- a. Did the violation occur because an individual carelessly disregarded instructions?
- b. Did the violation occur because an individual was inadequately trained or lacked knowledge to perform their job properly? If so, was the individual or a supervisor at fault?
- c. Did the violation occur because of an error or mistake in judgment by an individual or a supervisor?
- d. Did the violation occur because of lack of adequate procedures and controls? If so who was at fault?
- e. Did the violation occur because of other reasons? If so, who was at fault?

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

J. **DEVELOPING CORRECTIVE ACTIONS.** Once 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 that are necessary to ensure that 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. Section D of Chapter 10 in this Volume contains further guidance on corrective actions.

K. **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, follow the procedures in paragraph B.7., Chapter 7 in 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). Chapter 9 of this Volume contains additional guidance regarding recommended disciplinary actions.

L. **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. Reimbursement shall be requested, in accordance with Volume 11 of this Regulation from the command that was under investigation.