

## CHAPTER 9

### DISCIPLINARY ACTION

A. **ADMINISTRATIVE DISCIPLINE.** A military member or DoD employee who is responsible for a violation under DoD Directive 7200.1, “Administrative Control of Appropriations,” or this Volume, shall be subject to appropriate administrative discipline. Appropriate administrative discipline for violations of Title 31, United States Code, sections 1341(a), 1342, or 1517, is authorized by Title 31, United States Code, sections 1349 or 1518.

1. Disciplinary action shall be administered on a case-by-case basis as determined by the appropriate authority. The level of discipline administered to the individual responsible shall be commensurate with the nature and seriousness of the offense, the record of the person responsible, their level of experience, the degree and level of responsibility of the individual. Any mitigating circumstances shall also be considered.

2. Administrative discipline for a civilian employee may include written admonishment or reprimand, reduction in grade, suspension from duty without pay, or removal from office.

3. Military personnel may be subject to appropriate administrative discipline or may be subject to action under the Uniform Code of Military Justice.

4. Even though the individual determined to be responsible for a violation is no longer on active duty or employed by the applicable DoD Component, appropriate disciplinary action may be pursued. If disciplinary action is taken, such action shall be documented in the individual’s personnel file in accordance with established policies.

B. **DOCUMENTING DISCIPLINARY ACTION.** A violation of the Antideficiency Act is a serious matter as it represents a violation of a Federal statute. The fact that a violation was not willfully and knowingly committed does not, by itself, justify a decision not to impose disciplinary action. The individual who is responsible for determining the appropriate disciplinary action shall:

1. Acknowledge, in writing, that he or she understands that (a) a violation of the Antideficiency Act is a violation of Federal statute; (b) the Department is required to report the violation to the President and the Congress of the United States; (c) even though a violation may not have been committed willfully or knowingly that, by itself, does not justify a decision not to administer disciplinary action; and (d) disciplinary action commensurate with the severity of the violation and other factors should be taken against the individual(s) named responsible for a violation.

2. Provide a written statement addressing why he or she believes that the disciplinary action taken, or the failure to take disciplinary action, is commensurate with the severity of the violation. If there are extenuating circumstances, they must be considered.

3. Include both statements discussed above in the report of investigation.

C. **CRIMINAL PENALTIES.** If a violation has been determined to have been knowingly and willfully committed, there are statutory provisions requiring criminal penalties. Thus, an officer or employee found responsible for committing a violation knowingly and willfully may be subject to criminal penalties. All investigations that provide any indications that the violation was knowingly and willfully committed shall be terminated by the investigating officer. The investigating officer should consult with legal counsel to determine if the investigation should be referred to the appropriate criminal investigation organization. for action.

1. Both sections 1350 and 1519 of Title 31, United States Code, discuss criminal penalties for violations of the Antideficiency Act. Title 31, United States Code, section 1350, prescribes that “an officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.” Title 31, United States Code, section 1519, includes the violation of section 1517(a) 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.

2. When submitting a final summary report of violation to the Office of the Under Secretary of Defense (Comptroller) that may require criminal penalties, a statement to that effect--which is required by OMB Circular No. A-34--shall be included in the summary report from the Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components.