

DoD 7000.14 - R



DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

VOLUME 14: “ADMINISTRATIVE CONTROL OF FUNDS AND ANTIDEFICIENCY ACT VIOLATIONS”

**UNDER SECRETARY OF DEFENSE
(COMPTROLLER)**

VOLUME 14, CHAPTER 1: “ADMINISTRATIVE CONTROL OF FUNDS”**SUMMARY OF MAJOR CHANGES**

Changes are identified in this table and also denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) 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 [May 2015](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
2.6.2.6. (010206.B.6)	Updated guidance to reflect that Nonexpenditure Transfers are processed using the Agency Transaction Module within the Central Accounting Reporting System.	Revision
010212.B (deleted)	Deleted the annual requirement to include a copy of the Statement of Assurance as an attachment to the Memorandum Certification Statements.	Deletion

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CHAPTER 1

ADMINISTRATIVE CONTROL OF FUNDS

1.0 GENERAL (0101)

1.1 Overview (010101)

The Volume 14 prescribes the requirements for the administrative control of funds and the Antideficiency Act (ADA) for Department of Defense (DoD) Components. Chapter 1 defines the statutory restrictions and limitations governing the administrative control of funds. Failure to comply with these restrictions and limitations is a violation of the ADA. Chapter 2 explains the ADA and related statutes, causes of violations, and preventive action including training requirements. [Chapter 3](#) prescribes the requirements for DoD Components when a potential ADA violation is discovered, conducting an ADA investigation, reporting ADA violations, and administering disciplinary action. The provisions of this volume take precedence over any conflicting guidance in other volumes or DoD regulations, manuals, instructions, or directives.

1.2 Purpose (010102)

This chapter establishes policy for the administrative control of funds and includes specific instruction for controlling available funds. The DoD Components are required to establish and maintain effective controls over appropriations and other funds in accordance with this chapter. All DoD organizations, appropriations, and funds are subject to the provisions contained herein.

1.3 Authoritative Guidance (010103)

Administrative division of apportionments and control of funds is prescribed by Title 31, United States Code, section 1514(a) ([31 U.S.C. § 1514\(a\)](#)). The Office of Management and Budget ([OMB Circular No. A-11](#)) prescribes implementing requirements for the control of funds in Section 150 and Appendix H. Additional authorities:

1.3.1. [31 U.S.C. §§ 1341-1342](#), [31 U.S.C. §§ 1349-1351](#), and [31 U.S.C. §§ 1511-1519](#) (The Antideficiency Act).

1.3.2. [31 U.S.C. §§ 1101](#), [31 U.S.C. §§ 1104-1108](#), and [31 U.S.C. § 3324](#) (part of the Budget and Accounting Act, 1921, as amended).

1.3.3. [31 U.S.C. §§ 1501-1502](#)

1.3.4. [31 U.S.C. § 1112](#), [31 U.S.C. § 1531](#), [31 U.S.C. § 3511-3512](#), and [31 U.S.C. § 3524](#) (part of the Budget and Accounting Procedures Act of 1950).

1.3.5. [2 U.S.C. §§ 681-688](#) (Congressional Budget and Impoundment Control Act of 1974).

2.0 POLICY (0102)

2.1 Defense-wide Appropriations (010201)

Unless otherwise specified, for purposes of this volume, the Office of the Under Secretary of Defense, Deputy Comptroller (Program/Budget) is considered a “DoD Component” for matters involving Defense-wide (Treasury Symbol “97”) appropriations.

2.2 Administrative Control Systems (010202)

DoD Components must:

2.2.1. Design systems for the administrative control of funds so that formal administrative subdivisions of funds are placed at the highest practical organizational level consistent with effective and efficient management.

2.2.2. Restrict the use of limitations on available funds to those necessary to comply with statutory provisions, such as those imposed by the appropriate DoD Authorization or DoD Appropriations Act, or to address specific management requirements.

2.3 Reporting Requirements for Administrative Control Systems (010203)

DoD Components must establish a reporting system for the administrative control of funds process to provide data for reviewing the efficiency (e.g., obligation rate) with which funds are used. Reporting requirements must be established separately from a formal administrative subdivision of funds limitation when a need exists for accumulating data below the allocation level.

2.4 Delegations of Authority (010204)

All delegations or redelegations of authority or functions under this chapter must be made in writing. Delegation or redelegation of authority or function is prohibited if the delegation or redelegation limits the capabilities of the Secretaries of the Military Departments, the Directors of the Defense Agencies, or designated officials of the Office of the Secretary of Defense to exercise the control necessary to discharge properly their responsibilities in accordance with this volume.

2.5 Statutory Limitations and Duties of DoD Officials (010205)

DoD officials are prohibited from authorizing or creating any obligation or making any expenditure beyond the amount permitted under any statutory limitation that modifies or restricts the availability of funds. Special or recurring statutory limitations on DoD funds are frequently imposed by the DoD Authorization or Appropriations Acts, or may be imposed by other legislation. Specifically, DoD officials to whom funds are entrusted or apportionments or formal administrative subdivisions of funds are issued at any level must:

2.5.1. Limit any further subdivision of funds to the amount provided and currently available.

2.5.2. Limit the obligation and expenditure of funds provided to the amount currently available at the time of the obligation or expenditure, enforce those limitations, and ensure that all personnel involved in administrative control and use of available funds are knowledgeable of such limitations.

2.5.3. Limit the obligation and expenditure of funds provided to the purposes authorized by type of fund or account.

2.5.4. Ensure that the obligation and expenditure of funds provide for a bona fide need of the period of availability of the fund or account.

2.5.5. Preclude acceptance and use of voluntary services, gifts, and donations except in accordance with specified provisions of law.

2.5.6. Ensure that all personnel, including the actual fund users, contracting personnel, and other personnel involved in administrative control and use of available funds, are fully aware of, and comply with, the requirements of the ADA as described in Chapter 2 and other applicable guidance. Potential ADA violation investigation and reporting requirements are also contained in this volume.

2.5.7. Ensure that decisions on the obligation of funds comply with the provisions of the ADA by careful review and examination of the facts involved in advance of the decision.

2.5.8. Enforce compliance with all the provisions of the ADA and other specific laws that limit the obligation and expenditure of funds.

2.5.9. Maintain internal control systems to ensure that:

2.5.9.1. All available funds are identified, controlled, and recorded in the official accounting records from the time received until subdivided to others or obligated and expended.

2.5.9.2. All available funds are identified with authorized purposes by account, period of availability for new obligations, and for the period of availability for expenditure.

2.5.9.3. All special and recurring provisions and limitations on the obligation and expenditure of funds are identified and documented for all available funds and accounts.

2.5.9.4. All proposed obligations of funds are reviewed to ensure that sufficient funds are available to cover the obligation, the purpose of the obligation is consistent with the authorized purposes of the fund or account, and the obligation does not violate any special or recurring provisions and limitations on the incurrence of obligations.

2.5.10. Issue and maintain appropriate delegations of authority.

2.5.11. Ensure that amounts reported to the Department of the Treasury are accurate, that is, recorded accurately and posted to the correct appropriation account.

2.5.12. Ensure that internal controls are in place and operating as required by [DoD Instruction 5010.40](#), “Managers’ Internal Control Program Procedures.”

2.5.13. Ensure that appropriate training programs are in place to provide all personnel involved in administrative control and use of available funds with the knowledge of funds control and the skills and abilities to perform the duties specified in paragraph 2.5. See Chapter 2 for training requirements.

2.6 Apportionments, Allotments, Suballotments and Allocations (010206)

The administrative control of funds process restricts obligations and expenditures (disbursements) to the amount available at the apportionment, allotment, suballotment and allocation levels. Apportionments, allotments, suballotments, allocations and other formal administrative subdivision of funds designated by a DoD Component are subject to the provisions of the ADA; therefore, obligations and disbursements of funds that exceed these limitations are violations of the ADA.

2.6.1. Apportionments. An apportionment is a distribution made by OMB of amounts available for obligation in an appropriation or fund account into amounts available for specified time periods, program, activities, projects, objects, or any combination of these. The apportioned amount limits the obligations that may be incurred. An apportionment may be further subdivided by an agency into allotments, suballotments, and allocations.

2.6.1.1. When DoD appropriations or other funds are required to be apportioned under law by OMB to a DoD Component, a request for the apportionment or reapportionment must be prepared and submitted through the Under Secretary of Defense (Comptroller) (USD(C)) to the Director of OMB. A request for an apportionment must be in such form and at such time as the USD(C) may prescribe to conform to the requirements of the Director of OMB. See Volume 3, Chapter 2 for the preparation of apportionment or reapportionment schedules and Volume 3, Chapter 13, paragraph [130303](#) for the accounting of DoD apportionments and reapportionments.

2.6.1.2. Obligations during any apportionment period must not exceed the amount of the apportionment available for that period or of any administrative subdivisions of the apportionment. Apportionments may include estimates of anticipated budgetary resources; however, these approved anticipated resources may not be obligated until realized.

2.6.1.3. Apportionments that anticipate the need for a deficiency appropriation or a supplemental under 31 U.S.C. § 1515 will be specifically identified on the apportionment request. To qualify as a deficiency apportionment, the request must be required by:

2.6.1.3.1. Laws enacted subsequent to the transmittal of the annual budget for the year to Congress;

2.6.1.3.2. Emergencies involving human life, the protection of property, or the immediate welfare of individuals; or

2.6.1.3.3. Specific authorization by law.

2.6.2. Allotments. An allotment is a subdivision of an apportionment that is made by the head of an agency (e.g., Secretary of Defense), or designee (e.g., USD(C)), to incur obligations within a prescribed amount. Formal distribution, i.e., subdivision of an allotment must contain at least the same statutory and other limitations applicable to the original allotment (e.g. suballotments/allocations to operating agencies or installation-level accounting activities).

2.6.2.1. The USD(C) must make allotments of apportioned amounts, in writing, to the heads of DoD Components. The Secretary of a Military Department, or designee, must make further allotments of apportioned amounts, in writing, to the heads of operating agencies.

2.6.2.1.1. The original signed document or an authenticated copy bearing a signature or an electronic equivalent of a signature must be forwarded to the recipient of the allotment. This does not preclude the use of an automated system to communicate and record fund subdivisions as long as a confirmation copy bearing an authenticated signature or an electronic equivalent of a signature is available to the recipient via the automated system.

2.6.2.1.2. At a minimum, this document must contain the following basic information:

2.6.2.1.2.1. Amount available;

2.6.2.1.2.2. Funding source;

2.6.2.1.2.3. Time period of availability;

2.6.2.1.2.4. Position and title of the responsible official and other agency limitations; and

2.6.2.1.2.5. Justification for changes in allotments.

2.6.2.1.3. A suballotment is a subdivision of an allotment. It is a formal distribution that must contain at least the same statutory and other limitations and requirements applicable to the original allotment. Amounts allotted may be suballotted to major subordinate operating commands.

2.6.2.2. Allotments/suballotments must not exceed the amount available for use for each apportionment period.

2.6.2.3. The use of an electronically reproduced equivalent of an original signature is considered an acceptable implementation of the requirement for a document containing an authenticated signature. However, in accomplishing electronic transmission of fund authorizations through linked computer systems, internal controls for electronically transmitted [allotments](#) and [suballotments](#) must have the following minimum characteristics:

2.6.2.3.1. Fund control systems must provide validation of fund authorities by use of access codes and lockout techniques.

2.6.2.3.2. One set of access codes must be used to issue fund authorizations.

2.6.2.3.3. Other controlled access codes must be used to process a signature section of fund control documents for transmission to funded activities.

2.6.2.3.4. The authentication, signature element, and symbol must be included as part of electronically produced funding documents.

2.6.2.4. Anticipated transfers or other items of anticipated receipts may be allotted/suballotted/allocated only when realized.

2.6.2.5. Allocations are subdivisions of suballotments, or subdivisions of allotments that are not required to be suballotted (reference subparagraph 2.6.3).

* 2.6.2.6. DoD Components must not authorize or incur an obligation, or make a disbursement against anticipated transfer authorizations until the transferred resources are realized. Such actions must be delayed until the completed [Standard Form \(SF\) 1151](#), “Nonexpenditure Transfer Authorization” is received and the resources realized. Nonexpenditure Transfers are processed using the Agency Transaction Module within the Central Accounting Reporting System (CARS). See the Treasury Financial Manual ([TFM](#)) [Volume 1, Part 2, Chapter 2000](#) for information and guidance on using the CARS.

2.6.2.7. DoD Components must not authorize or incur an obligation or make a disbursement against anticipated reimbursements. Such actions must be delayed until the applicable customer order is received from Federal Government activities and funds are collected from public activities. See Volume 11A for reimbursable policy.

2.6.3. Allocations. Allocations are subdivisions of suballotments or subdivisions of allotments that are not required to be suballotted.

2.6.3.1. The recipients of allotments or suballotments, or their designees, must make allocations in specific amounts to the heads of installations or organizational units of DoD Components, as required. The total of the amounts allocated must not exceed the amount of the allotment/suballotment available for each period.

2.6.3.2. A suballocation is a subdivision of an allocation. The recipients of allocations may make suballocations to the heads of other organizational units, including those of other DoD Components, as required. The total of the amounts suballocated must not exceed the amount of the allocation available for use for each period.

2.6.3.3. Allocations and suballocations must be made in writing and the recipient's copy must either be signed by the fund-issuing authority or be an authenticated copy bearing an authorized authenticated signature or an electronic equivalent of a signature. At a minimum, the document must contain the following basic information:

2.6.3.3.1. Name or title of the allocation/suballocation recipient.

2.6.3.3.2. Amount of the allocation/suballocation and the period of availability.

2.6.3.3.3. Legal restrictions or limitations on the obligation and disbursement of the allocated/suballocated funds.

2.6.3.3.4. The amount of anticipated reimbursements, specified to the organizational level responsible for receiving the reimbursable orders.

2.6.3.4. In emergency circumstances, it may not be possible to provide a formal allocation or suballocation document before incurring obligations. Under such emergency conditions, it may be necessary to use expedited means of communication pending formal confirmation.

2.6.3.4.1. A telephone or other electronic means may be used to make arrangements to indicate that funds will be provided. However, the official allocation or suballocation of funds does not occur until the substantiating documentation of the issuance of funds has been transmitted by the issuer and received by the recipient.

2.6.3.4.2. In such cases, both the issuer and recipient must document the funding transaction showing action taken, the date, amount involved, authorizing official, and method of communication. The issuer must immediately provide a copy of the documentation to the recipient and request acknowledgment of receipt. The recipient must provide confirmation of receipt and acceptance to the issuer. The issuer must sign the same documentation and return the document containing both signatures. The official funds issuance does not occur until this final double-signed (issuer and recipient) document has been received by the recipient of the funds.

2.6.3.4.3. The recipient is not authorized to issue funds to others or authorized to incur obligations with the funds received until after receipt of the double-signed document.

2.7 Other Fund Management (010207)

2.7.1. Centrally-Managed Account (CMA). The head of an operating agency that has specific written approval of the head of a DoD Component may establish CMAs. A CMA is a formal administrative subdivision of funds (allotment, suballotment, or allocation) that is managed at the highest practical level and allows officials at a lower echelon to incur obligations or charge expenditures to the CMA for authorized purposes without further determination or certification of fund availability for the individual transactions. Fund balances at the

allotment/suballotment/allocation level are subject to the provisions of [31 U.S.C. § 1517\(a\)\(1\)](#). Fund authorization documents forwarding budget authority to the CMA must include the following statement: “Authorizing or incurring obligations in excess of the cumulative allotment/suballotment/allocation amount, contained herein, is a reportable violation of 31 U.S.C. § 1517.”

2.7.1.1. These accounts must be established only when it is impractical to administer decentralized allotments/suballotments/allocations under normal operating procedures. The head of an operating agency, usually general officer or Senior Executive Service level, is responsible for establishing adequate controls to ensure CMA managers are expeditiously informed of obligations and expenditures at the lower echelon levels to prevent the CMA from becoming over-obligated/expended. Before approval, a specific written determination must be made that adequate controls have been established to avoid over-obligating/expending the CMA.

2.7.1.1.1. The amount of the CMA must be within the amount and terms of the allotment/suballotment/allocation.

2.7.1.1.2. Requests for the establishment of a CMA must fully justify the need, delineate possible alternatives, and clearly demonstrate why the CMA method is the only practical administrative procedure.

2.7.1.1.3. The official who establishes or continues the use of a CMA must be held responsible, to the extent prescribed by law, directive, and regulation, for ensuring that obligations are not incurred, or expenditures made, beyond the amount available under each CMA.

2.7.1.1.4. The establishing or continuing official is responsible for the administration of each CMA and must prescribe an adequate system of financial and nonfinancial control. The system must:

2.7.1.1.4.1. Designate the name or position of specific individuals authorized to incur obligations or make expenditures against each CMA.

2.7.1.1.4.2. Establish suitable limitations on the numbers, quantities or volume for which obligations may be incurred or expenditures made.

2.7.1.1.4.3. Provide for accounting and reporting at least monthly.

2.7.1.1.4.4. Ensure timely notice to prevent the CMA from being over-obligated/expended by taking necessary management action. This may include (a) increasing the amount of the CMA; (b) terminating the CMA; (c) terminating new obligations or disbursements; and/or (d) taking other necessary management actions to prevent an over-obligation/expenditure.

2.7.1.1.5. Each CMA must be reviewed annually to determine whether its operation should be continued. This determination must be made by the head of the DoD Component concerned, or designee. The annual review must include an evaluation, by an

internal audit group, of the adequacy of control procedures established to prevent violations of 31 U.S.C. § 1341(a)(1), 31 U.S.C. § 1517(a), or both, and a recommendation to the head of the DoD Component concerned, or designee, whether continuation of the CMA is justified. DoD Components must provide certification as to the adequacy of controls of the CMA. This certification must be submitted with the annual evaluation required by paragraph 2.12.

2.7.1.2. Components are required to maintain documentation supporting their assessment and produce it on request. At a minimum, Components must maintain records on the following:

2.7.1.2.1. Appropriation and dollar value of the CMA.

2.7.1.2.2. Rationale for establishing a CMA and why it is preferable to other methods of managing the appropriation.

2.7.1.2.3. Individuals primarily responsible for managing the CMA and ensuring fund controls are properly implemented.

2.7.1.2.4. Organizations authorized to make obligations against the CMA.

2.7.1.2.5. Fund controls in place to establish limits on the amount and type of obligations that may be charged to the CMA.

2.7.1.2.6. Monthly execution monitoring and procedures.

2.7.1.2.7. Date and method of testing of internal controls.

2.7.2. Reimbursable Orders. A reimbursable order is an order for services, supplies, material, or equipment placed by a requiring DoD Component (or Federal Agency) and furnished by another DoD Component (or Federal Agency) without separate identification of the items, or separate citation of the funds of the requiring DoD Component; and with subsequent delivery to and reimbursement by the requiring DoD Component. The requiring DoD Component records the reimbursable order as an obligation when the procuring DoD Component accepts the reimbursable order in writing. See Volume 3, Chapter 8 for recording standards.

2.7.2.1. DoD organizations may be authorized by law to accept reimbursable orders for services provided or goods sold to other Federal Government-funded customers and authorized private parties.

2.7.2.2. Apportioned reimbursements must not be allotted/suballotted/allocated unless there is reasonable assurance that orders will be received. Even though apportioned and allotted/suballotted/allocated, these estimates must not be considered budgetary resources available for obligation unless the following two conditions are met:

2.7.2.2.1. Valid orders, including written agreements, have been received from and obligated by Federal Government-funded customers.

2.7.2.2.2. Advance payment has been collected, in the case of orders from the public.

2.7.2.3. Officials responsible for incurring obligations and making expenditures must be particularly cognizant of reimbursable authority received. Controls must be established and carefully followed to avoid obligating or expending in excess of the amount of appropriated funds available, plus the amount of reimbursements that ultimately will be earned and collected.

2.7.2.4. Under certain circumstances, and only with the prior written approval of OMB, immediate and automatic apportionment of the amounts of reimbursable orders received and accepted may be authorized.

2.7.2.5. Reimbursable orders received from state or local governments, recognized international bodies such as the United Nations and North Atlantic Treaty Organization, foreign governments, corporations, or individuals are subject to special controls.

2.7.2.5.1. These orders are to be recognized as reimbursable orders received only to the extent that cash has been received and deposited with the Treasury. The exception is Foreign Military Sales (FMS) orders. Contract authority may be recognized for FMS orders based upon a dependable undertaking when cash advances are not provided for the full amount of the order from a foreign government or international body. Bills are then presented for payment from the account established in the FMS Trust Fund for the applicable country.

2.7.2.5.2. FMS disbursement controls must be established to ensure that disbursements are not made until the cash is actually received from the foreign country and deposited in the Treasury FMS Trust Fund. Expenditure authorizations are used to ensure that funds are available in the account for the country involved before disbursements are made.

2.7.2.6. Reimbursable orders that are financed by appropriated or revolving funds of Federal agencies provide expenditure as well as obligational authority.

2.7.3. Revolving Funds. A revolving fund is an account authorized by specific provisions of law to finance a continuing cycle of business-type operations and to incur obligations and expenditures that generate receipts.

2.7.3.1. General. Obligations and expenditures of a revolving fund, whether subject to, or exempt from, apportionment, must be controlled under applicable provisions of this chapter.

2.7.3.2. Cash Balances. The disbursement of amounts in excess of the Department of the Treasury cash balance of a revolving fund is a potential ADA violation. Additionally, the disbursement of amounts in excess of the balance of sub-numbered cash accounts or other subdivisions of cash within a revolving fund is a potential ADA violation when such sub-numbered accounts or subdivisions have been specifically designated as being subject to the provisions of the ADA.

2.7.3.3. Apportionment. A revolving fund may be subject to apportionment or it may be exempt from apportionment, depending upon the type of fund.

2.7.3.3.1. Revolving Funds Subject to Apportionment. An apportionment limits the obligations that may be incurred to the apportioned amount. The incurring of obligations in excess of apportioned budgetary resources is a potential ADA violation without regard to whether a revolving fund has additional unapportioned budgetary resources or other assets equal to or greater than the amount of the deficiency.

2.7.3.3.1.2. Revolving Funds Exempt from Apportionment. A revolving fund that is exempt from apportionment may not incur obligations in excess of available budgetary resources. The incurring of obligations in excess of available budgetary resources is a potential ADA violation.

2.7.3.4. Budgetary Resources. The incurring of obligations in excess of budgetary resources is a potential ADA violation. The concept of “budgetary resources” is defined and explained in OMB Circular A-11, “Preparation, Submission, and Execution of the Budget.” Budgetary resources available to revolving funds are composed of the same elements as budgetary resources available to appropriated funds. Further, while budgetary resources available for obligation for reimbursable work differ depending upon whether a reimbursable order is accepted from a Federal Government account or from the public, such budgetary resources are determined in the same manner for a revolving fund as they are for an appropriated fund.

2.7.3.4.1. Orders from other Federal Government Agencies. Funded orders from other Federal Government agencies, that represent valid obligations of the ordering account, provide a budgetary resource without regard to whether they are accompanied by an advance payment.

2.7.3.4.2. Orders from the Public. Orders from the public (except FMS orders) including local and state governments and international organizations (e.g., United Nations), provide a budgetary resource only to the extent that the order is accompanied by an advance payment of cash received and credited to the account.

2.7.3.5. Organizational Level for Revolving Fund Potential Violations. Systems for the administrative control of revolving funds should be placed at each organizational level at which budgetary resources may be received, held, transferred, obligated, or expended. The lowest organizational level for administrative control purposes generally should be the level, frequently a single site, at which an obligation may be incurred or expenditure approved. In the case of a revolving fund account that encompasses operations at multiple sites, responsibility for potential ADA violations generally should not be assigned to an organizational level lower than the level at which the administrative control system is adequate to prevent and detect a potential violation of the ADA.

2.8 Obligations and Expenditures (010208)

Available funds are used by the incurrence of obligations and expenditures. An amount must be recorded as an obligation or expenditure when incurred as supported by documentary evidence of the occurrence of the event. An oral order or agreement must be formalized in writing or conform to prescribed electronic standards in order to provide proper support and an audit trail for an obligation. Oral orders executed in this manner without a formal commitment of funds run a high risk of violating the ADA and should be avoided if possible. See Volume 3, Chapter 8 to determine the amount and accounting period in which commitments and obligations must be recorded.

2.8.1. Once incurred, all obligations and expenditures must be recorded, accurately and promptly, as of the date incurred even if recordation results in a negative amount in the accounting records for an appropriation or fund, or a formal administrative subdivision of an appropriation. (For this purpose, negative amount means that obligations or disbursements exceed the amount of funds that are appropriated or otherwise available.) A violation resulting from a negative amount is caused by the actions of the individual(s) who caused or created the obligation. The recording of the obligation in the accounting system merely records an obligation that already exists.

2.8.2. Adjustments in obligations may consist of recording changes to obligation amounts that existed in a prior period that may or may not have been identified and recorded during that period. If an adjustment causes total obligations for a prior period to exceed the amount that was available for obligation for that prior period after consideration of all known valid obligations and deobligations, violations of 31 U.S.C. § 1341(a)(1), 31 U.S.C. § 1517(a), or both, may have occurred.

2.8.3. A within-scope contract adjustment is properly chargeable to the funds that funded the original contract. Such adjustment must be charged to those funds even if sufficient funds are not available. If sufficient funds are not available, a potential violation may have occurred.

2.8.4. An increase-in-scope adjustment to a contract is properly chargeable to funds currently available at the time the change was made.

2.9 Reconciliations (010209)

DoD managers at all levels must ensure that accounting records for receipt and use of budgetary resources are reconciled. Obvious accounting errors must be corrected immediately and negative account balances must be researched and reconciled promptly with appropriate source documents.

2.9.1. Transactions or adjustments must be recorded in accounting records only when supported by appropriate source documents or electronic equivalents. Managers must not permit identified errors to go uncorrected for extended periods of time, inaccurate transactions to be recorded or failures to record transactions in a timely manner. Due diligence is necessary in order to avoid the appearance of a potential ADA violation that occurred because of careless record keeping.

2.9.2. An ADA investigation must be initiated by the applicable DoD Component and reported to the Office of the Under Secretary of Defense (Comptroller) (OUSDC) as required by this volume if a manager suspects that a potential ADA violation may have occurred. However, investigations of potential ADA violations are not required merely to force correction of erroneous records.

2.10 Records (010210)

2.10.1. The Defense Finance and Accounting Service (DFAS), working with other DoD Components, must ensure that accounting records are maintained that provide full disclosure and support of the financial operations and resource utilization applicable at each successive organizational level. The accounting records must show the amounts of funds received at each organizational level, funds issued to others, current available balances, and funds committed, obligated, and expended.

2.10.2. These fund control records must constitute an integral part of the official accounting records maintained for each successive organization level for the DoD Component. Financial reports reflecting funds received, issued, available, and utilized must be prepared from the official accounting records.

2.10.3. DoD Components must maintain key records and documents on appropriations, allotments/suballotments, allocations/suballocations, and budgetary data for the funds for which they are responsible.

2.10.4. DoD Components must retain, for 6 years, 3 months, work papers and documentary evidence developed and/or obtained during an investigation of an actual or potential ADA violation.

2.11 Financial Management Systems (010211)

In addition to effective and efficient administrative funds control systems established by the DoD Components, the DFAS and/or DoD Component must be responsible for establishing accounting and finance systems. The accounting and finance systems must be established for reporting commitments and obligations by the DFAS and/or DoD Component. Such systems of accounting and internal controls must comply with the requirements of 31 U.S.C. § 3512(b) and (c).

2.11.1. Federal agencies must maintain systems of accounting and internal controls that ensure:

2.11.1.1. Complete disclosure;

2.11.1.2. Adequate financial information;

2.11.1.3. Effective internal control over and accountability for assets;

2.11.1.4. Obligations and costs comply with applicable laws;

2.11.1.5. Revenues and expenditures or expenses applicable to DoD operations are accounted for properly so that accounts and reliable financial and statistical reports are prepared and accountability of assets is maintained;

2.11.1.6. Suitable integration of DoD accounting with the central accounting and reporting responsibilities of the Secretary of the Treasury under [31 U.S.C. § 3513](#); and

2.11.1.7. All assets are safeguarded against waste, loss, unauthorized use, and misappropriation.

2.11.2. Specifically, financial management systems must be:

2.11.2.1. Designed to assist responsible officials in restricting authorization or incurrence of obligations to the proper amount and authorized purpose for which obligational authority is available.

2.11.2.2. Capable of providing timely disclosure of the authorization or creation of an obligation and the disbursement of funds in excess of amounts available in both expired and unexpired accounts.

2.12 Annual Evaluation (010212)

The OUSD(C) requires DoD Components to conduct an annual evaluation of its overall administrative funds control processes as well as the processing of ADA violations. The applicable Office of the Assistant Secretary of the Military Department for Financial Management and Comptroller or the Senior Financial Manager for other DoD Components will provide a memorandum addressed to the OUSD(C). The memorandum must address the following information in subparagraph 2.12.1 and be submitted by October 31:

2.12.1. Memorandum Certification Statements.

2.12.1.1. “For Fiscal Year 20xx, the internal controls over centrally-managed accounts were in place and effective. Monthly accounting and reporting processes are adequate to reduce the risk of over obligations.”

2.12.1.2. “Corrective actions are being implemented and/or sustained and adequate evidentiary documentation is available to support this certification.”

2.12.1.3. A statement that provides the number of key fund control personnel identified and trained as prescribed in Chapter 2, paragraph [020401](#).

VOLUME 14, CHAPTER 2: “ANTIDEFICIENCY ACT VIOLATIONS”

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) 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 [September 2015](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Figure 2-2	Deleted violation examples (formerly subparagraphs B.e and D.3).	Deletion
1.2 (020102)	Added a requirement that in order to correct potential Antideficiency Act violations (Purpose and Time limitation), funds must have been properly available at the time of the error, during the entire period from the time of obligation until the time of correction, and at the time of correction.	Addition
4.1.2.4. (020401.B.4)	Added a sentence stating that key fund control personnel and requiring officials should coordinate to ensure that delivery of supplies and/or the period of performance for services aligns with the lifecycle of the associated funds.	Addition

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CHAPTER 2

ANTIDEFICIENCY ACT VIOLATIONS

1.0 GENERAL (0201)

1.1 Purpose (020101)

This chapter explains the Antideficiency Act (ADA) and related funding statutes that consist of certain provisions of law prescribed in sections (§) of Title 31, United States Code (U.S.C.). It also provides examples of circumstances in which ADA violations may occur and establishes requirements to prevent ADA violations. Additional requirements are contained in Volume 3, Chapter 11. Any military member or Department of Defense (DoD) employee who violates any provision or limitation imposed by any law may violate the ADA and be subject to discipline and/or criminal penalties.

*1.2 Authoritative Guidance (020102)

1.2.1. The ADA, prescribed in [31 U.S.C. §§ 1341–1342](#), and [31 U.S.C. § 1517](#), prohibits obligations and expenditures in excess of an appropriation or before an appropriation is available. 31 U.S.C. § 1517 is the primary foundation for the administrative control of funds set forth in Chapter 1. See Figure 2-3 for additional references.

1.2.1.1. Amount Limitation. 31 U.S.C. § 1341 stipulates that any officer or employee of the United States Government or of the District of Columbia government may not:

1.2.1.1.1. Make an obligation, expenditure, or authorize an obligation or expenditure of funds that exceeds the amount available in an appropriation or fund.

1.2.1.1.2. Involve the Government in any contract or obligation for the payment of money before an appropriation is made available, unless the law authorizes such contract or obligation.

1.2.1.2. Voluntary Services Limitation. 31 U.S.C. § 1342 stipulates that an officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services on behalf of the Government or employ personal services in excess of that authorized by law, except as it may be necessary in emergencies involving the safety of human life or the protection of property.

1.2.1.3. Administrative Control of Funds, Amount Limitation. 31 U.S.C. § 1517 stipulates that an officer or employee of the United States Government or of the District of Columbia government may not make an obligation or expenditure or authorize an obligation or expenditure that exceeds an apportionment or amount permitted by a regulation prescribed for the administrative control of an appropriation, including any other formal administrative subdivision of funds designated by a DoD Component. See Chapter 1 for DoD administrative control of funds policy.

1.2.2. [31 U.S.C. § 1301](#), [31 U.S.C. § 1502\(a\)](#), and [31 U.S.C. § 3302\(b\)](#) are additional funding statutes. Noncompliance with these statutes may result in an ADA violation.

1.2.2.1. Purpose Statute. 31 U.S.C. § 1301 stipulates that appropriations must be applied only to the objects for which the appropriations were made, except as otherwise provided by law.

1.2.2.2. Time Limitation. 31 U.S.C. § 1502(a) stipulates that the balance of a fixed-term appropriation is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made and obligated within that period. See Volume 3, Chapter 8 for obligation policy and Volume 3, Chapter 10 for expired and closed account policy.

1.2.2.3. Miscellaneous Receipts Statute. 31 U.S.C. § 3302(b) requires an official or agent of the Government to deposit money received for the Government from any source into the miscellaneous receipts account of the U.S. Treasury without deduction for any charge or claim if the retention of the money is not authorized or exceeds authorized levels.

1.2.3. [If sufficient amounts were available in the proper account for the proper fiscal year at the time of the obligation, and the amount is properly recorded as an obligation, then the use of the wrong appropriation \(purpose\) or the wrong fiscal year funds \(time limitation\) generally will not result in an ADA violation. It may be possible to adjust the accounts to replace the erroneously obligated funds with the proper funds. Under these conditions, the error can and should be corrected.](#)

1.2.3.1. The use of [the wrong appropriation \(purpose\)](#) can be corrected if the proper funds (appropriation, year, and amount) were available at the time of the erroneous obligation, available [during the entire period from the time of obligation until the time of correction, and available](#) at the time of correction. [In other words, to correct the error, not only must amounts have been properly available at the time of the error and be available at the time of correction, but the correct amount must be properly recorded as an obligation in the proper account, consistent with paragraph 2.2, thereby requiring accounting adjustments going forward from the time of correction to account for the change in balance.](#) Funds must be available at the lowest level of the administrative subdivision of funds, i.e., the lowest [level](#) of the appropriation, apportionment, allotment, suballotment, or allocation at which the ADA violation occurred.

1.2.3.2. The use of the wrong fiscal year funds (time limitation) can be corrected if the proper funds (appropriation, year, and amount) [were available during the entire period from the time of obligation until the time of correction, at the time of the erroneous obligation, and at the time of correction. In other words, to correct the error, not only must amounts have been properly available at the time of the error and be available at the time of correction, but the correct amount must be properly recorded as an obligation in the proper account, consistent with paragraph 2.2, thereby requiring accounting adjustments going forward from the time of correction to account for the change in balance.](#) Funds must be available at the lowest level of the administrative subdivision of funds, i.e., the lowest of the appropriation, apportionment, allotment, suballotment, or allocation level at which the ADA violation occurred.

1.2.3.3. See Volume 3, Chapter 8, paragraph 080304.A for Bona Fide Need recording requirements.

2.0 VIOLATIONS (0202)

2.1 General Violations (020201)

General ADA violations occur when:

2.1.1. Statutory limitation was exceeded for the amount authorized in an appropriation or fund, to include special and recurring statutory limitations or restrictions on the amounts for which an appropriation or fund may be used.

2.1.2. Statutory limitation on the purposes authorized in an appropriation or fund was violated and upon correction into the proper appropriation or fund, funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper appropriation or fund.

2.1.3. Funding authority was issued in excess of the amount available in an appropriation or fund and the excess amount was obligated or expended. The issuance of funds by means of a formal administrative subdivision of funds (apportionment, allotment, suballotment, allocation or other formal administrative subdivision of fund), in an amount that exceeds the amount currently available, would result in an ADA violation if those excess funds distributed are obligated or expended. The issuance of a reimbursable order in excess of available funds may also result in an ADA violation.

2.1.4. Obligations or expenditures are authorized or incurred in excess of the amount of funds available at the formal administrative subdivision of funds level. Apportionments, allotments, suballotments, allocations and other formal administrative subdivision of funds designated by a DoD Component are subject to the provisions of the ADA; therefore, obligations and disbursements of funds that exceed these limitations are violations of the ADA. Incurring an obligation or disbursement in excess of a target versus a formal administrative subdivision of funds does not in itself create an ADA violation; however, if exceeding a target causes the governing formal administrative fund subdivision level or limitation to be breached, then a potential ADA violation arises. Errors that require correction by obtaining additional funds at a formal administrative subdivision of fund level cannot eliminate the fact that a violation likely has occurred and must be investigated. An exception applies when funds are required at the formal administrative subdivision level but funds were returned to higher headquarters as the result of the customary practice of sweeping up funds near the end of a fiscal year.

2.1.5. Obligations were made or authorized in advance of funds being available.

2.1.6. Obligations or expenditures of funds did not provide for a bona fide need of the fund or account (time violation) and upon correction into the proper fund or account, proper funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper fund or account.

2.1.7. Obligations charged against a current account that would otherwise be properly chargeable (except as to amount) to an expired account, but sufficient funds did not exist in the applicable expired account to fund the obligation.

2.1.8. Obligations that otherwise would have been properly chargeable (both as to purpose and amount) to a canceled appropriation exceeds the limits specified in Volume 3, Chapter 10, subparagraph 100303.D.

2.1.9. Voluntary services were accepted, or personal services were employed, except as authorized by law.

2.1.10. Funds were retained without authority and were not deposited into the miscellaneous receipts of the U.S. Treasury but instead augmented an appropriation and, as a result, obligations or expenditures exceed the amount appropriated by Congress.

2.2 Recording Obligations/Expenditures (020202)

A violation may not be avoided by declining to record valid obligations or expenditures in the official accounting records. All obligations or expenditures must be recorded accurately and promptly, even if the recording results in a negative amount in the appropriation, fund, or at the formal administrative subdivision of funds level.

2.3 Recording Errors/Omissions (020203)

An ADA violation is not considered to have occurred when an over-obligation or over-expenditure results solely from recording a transaction in an erroneous account or recording an incorrect amount for a transaction. In each instance, the potential violation status is eliminated by correcting the erroneous transaction or by posting the omitted transaction. These actions must not include the deletion or adjustment of any valid transactions. If, after the proper recording of the transactions, an over-obligation or expenditure of the appropriation, fund or amount limited by a formal administrative subdivision of funds remains, then a potential ADA violation has occurred.

3.0 CAUSES OF VIOLATIONS (0203)

ADA violations occur for several reasons. The following is a list of the most frequent causes of DoD ADA violations:

- 3.0.1. Inadequate or obsolete internal controls and standard operating procedures;
- 3.0.2. Internal controls and standard operating procedures that are ignored;
- 3.0.3. Lack of appropriate training; and
- 3.0.4. Inadequate supervisory involvement or oversight.

4.0 PREVENTING VIOLATIONS (0204)

4.1 Requirements (020401)

Inadequate supervisory involvement and oversight combined with a lack of appropriate training are common throughout most DoD ADA violations. Therefore, supervisors of DoD personnel who have responsibility for control and use of DoD funds must ensure that their personnel receive proper oversight, support, and training to prevent violations. To assist in the prevention of ADA violations, DoD personnel must be knowledgeable of requirements in this chapter and Chapter 1. The following subparagraphs provide specific actions that must be taken to reduce or prevent violations.

4.1.1. Heads of DoD Components must:

4.1.1.1. Use the internal management control programs as required by [*DoD Instruction 5010.40*](#), “Managers’ Internal Control Program Procedures,” to periodically assess the reliability of internal controls to prevent ADA violations.

4.1.1.2. Develop a full spectrum of DoD formal education programs for all military officers, from staff officer courses to executive development courses, and incorporate relevant aspects of this volume to highlight the potential pitfalls and risks associated with the ADA. This volume must be used as source material to conduct seminars and workshops targeted to general and specific audiences including financial, program, and project managers; engineers; contracting, information system, and comptroller personnel; commanders; supervisors; and managers.

4.1.1.3. Develop formal education structures to educate personnel about the ADA. Formal courses can be used to alert personnel to common violations and high-risk business transactions and decisions that can result in a violation. Course materials will clearly state that taxpayer funds should not be spent when the requirement is no longer needed, i.e., the requirement is no longer a bona fide need at that time. The DoD financial management community sponsors professional development courses that include discussions on ADA violations. These courses include the Army Comptroller and Advanced Resource Management Programs at Syracuse (NY) University; the Naval Post Graduate School at Monterey, California; and the Defense Financial Management and Comptroller School at Maxwell Air Force Base, Alabama. In addition, the U.S. Army Judge Advocate General School at Charlottesville, Virginia, includes a fiscal law course in its curriculum; and both the Enhanced Defense Financial Management training course hosted by the American Society of Military Comptrollers and the Under Secretary of Defense (Comptroller) Defense Financial Management Certification Program include fiscal law in their accreditation programs.

4.1.2. DoD commanders, supervisors, and managers must:

4.1.2.1. Be aware of the ADA, related funding statutes, types of violations, and causes of violations as described in this chapter.

4.1.2.2. Provide appropriate ADA training to financial, program, and project managers; engineers; and contracting, information system, and comptroller personnel. Provide fiscal law training to educate DoD personnel with regard to their fiduciary and legal responsibilities to prevent wasteful spending of appropriated funds. The focus of this training must include the basics of fund control, the ADA statute, and related funding statutes; the types of violations that can occur; the most frequent types of violations that occur within the DoD and their causes; the necessary training, supervision, and oversight of personnel who perform financial management or programmatic functions; and methods for preventing violations. Require that all executive development and financial management course content be updated to ensure proper use and good stewardship of appropriated funds. The training must be maintained to ensure the information remains current. Videos, computer courses or handbooks may be used for such training.

4.1.2.3. Identify key fund control personnel, incorporate the provisions of this volume into key fund control personnel training programs, require that key fund control personnel receive appropriations law training at least every three years, maintain the documents that identify key fund control personnel, and maintain documents that confirm completion of the appropriations law training. Key fund control personnel are those responsible for the proper assignment of funding on a commitment or obligation document before the obligation is incurred. Examples are resource managers, fund holders, funds certifying officials, and authorizing officials. Key fund control personnel should inquire with their individual DoD Components as to the appropriate source of training that satisfies this requirement. Appropriations law training requirements for certification of fund availability are separate from training requirements for certification for payment. Personnel that certify vouchers for payment must adhere to additional requirements as prescribed in Volume 5, Chapter 5.

* 4.1.2.4. Ensure key fund control personnel coordinate with requiring officials, such as program managers, contracting officers, and engineers, to verify that requests comply with funding statutes applicable to the assignment of funding on a commitment or obligation document before the obligation is incurred. [This coordination should include ensuring delivery of supplies and/or the period of performance for services aligns with the lifecycle of the associated funds such that the obligation meets the bona fide need rules laid out in Volume 3, Chapter 8, subparagraph 080304.A.](#) Key fund personnel must review and verify on a continuous basis that the goods and/or services are still needed. Key fund control personnel must not spend taxpayer funds when goods and/or services are no longer needed.

4.1.2.5. Ensure that their employees receive the necessary training and experience in the control and use of funds at levels that correspond with their responsibilities. Furthermore, supervisors must perform oversight and validation checks to ensure that established internal controls and standard operating procedures are adequate and are being consistently followed by their subordinates. Inadequate supervisory involvement or oversight combined with lack of appropriate training is common in DoD ADA violations.

4.1.2.6. Ensure regular reviews of fund status type reports are performed. If the amount of commitments and obligations (undelivered orders and delivered orders unpaid or paid) exceed the total amount available in an appropriation or the total amount of funds available at the formal administrative subdivision level, a violation could occur if all or some of the commitments eventually become valid obligations.

4.1.2.7. Take proactive measures specifically tailored to address the causes and corrective actions required to prevent violations. See section 3.0 for causes of violations.

4.2 Common Violations (020402)

To prevent ADA violations, DoD personnel must be knowledgeable of the most common and frequent types of ADA violations to include the following:

4.2.1. Exceeding an Appropriation.

4.2.1.1. All DoD commanders, managers, and personnel whose duties include obligating and/or managing funds must be aware of this type of violation and causal factors. This violation often occurs when obligations from an obligation document are not timely or accurately recorded thus causing the official accounting records to reflect an inflated (and incorrect) availability of funds. Since personnel use those records to certify funds are available for other obligations, a violation can easily occur because the records do not reflect the correct amount of funds available for obligation. This violation also occurs when obligations are charged against a current account that would otherwise be properly chargeable (except as to the amount) to an expired account, but sufficient funds do not exist in the applicable expired account to fund the obligation.

4.2.1.2. This type of potential violation is commonly discovered when an unmatched disbursement is recorded in the accounting system when correcting inaccurately recorded obligations, or when a reprogramming action requests additional funds for an expired account. To help prevent this type of violation, DoD funds managers (for example, Comptrollers) must require that all organizations that incur obligations and record obligations maintain strict and absolute positive controls over-obligating documents (or their electronic equivalents) to ensure that none are lost or misplaced and all transactions are recorded accurately and in a timely manner. Such controls include batch totals of transactions and dollar amounts incurred, transmitted, received, processed, and recorded.

4.2.1.3. The establishment of a funds control system is also essential to ensure that all obligations are reconciled properly against available funds and authorized before they are incurred. This process must include reserving available funds for authorized obligations that are not immediately recorded as an obligation. The reservation must be made by means of a formal commitment or an informal reservation record that contains an estimated amount. The documented estimated reservation must closely approximate the obligation when incurred and recorded. Also, when recording estimated obligations, it is important to record the initial obligation based on the most current data available and adjust the estimated obligations as conditions change to avoid making an obligation or expenditure that exceeds the amount available in an appropriation or fund.

4.2.2. Exceeding Statutory Limitations on the Use of Operations and Maintenance Funds.

4.2.2.1. Military Construction. To prevent an ADA violation, engineering and contracting personnel must be advised of the provisions of [10 U.S.C. §§ 2801–2802](#), and [10 U.S.C. § 2805](#); and DoD rules and regulations that cover minor construction projects. Engineering personnel and those who authorized the construction are frequently identified responsible for violations involving construction projects exceeding statutory construction limitations and administrative construction limitations placed in engineering regulations. The following is a brief summary of some of the provisions of 10 U.S.C. §§ 2801, 2802, and 2805; and DoD rules and regulations on minor projects.

4.2.2.1.1. Congress establishes by statute, the amount of Operations and Maintenance (O&M) funds that may be used for a minor construction project. From time to time, that limit is increased by Congress. If the specified limit is exceeded, Military Construction funds must be used for the entire project including planning and design. A violation of [31 U.S.C. § 1341\(a\)\(1\)\(A\)](#) may occur when the limitation is exceeded. The limitation applies to the use of O&M funds for a minor construction project even though there is sufficient obligational authority available in the O&M account at the time that the project is authorized and approved.

4.2.2.1.2. A military construction project includes all work necessary to produce a complete and usable facility, or a complete and usable improvement to an existing facility under provisions of 10 U.S.C. § 2801(b). Incremental construction, which is the planned acquisition of, or improvement to, a real property facility through a series of minor construction projects is prohibited. See Volume 3, Chapter 17 for military construction project requirements.

4.2.2.1.3. Engineering and contracting personnel must be familiar with the statutory limitation, under the provisions of [10 U.S.C. § 2825](#), on the maintenance and repair funds that may be used for a family housing unit. That limit may not be exceeded without prior notification to Congress. When that limit is exceeded for any reason during the completion of a family housing maintenance and repair project, and the conditions specified in the law for a waiver of the statutory limitations have not been met, a violation of 31 U.S.C. § 1341(a)(1)(A) may occur.

4.2.2.1.4. The misclassification of construction costs as alterations by engineering personnel may result in an ADA violation. A potential violation may occur if the amount of the misclassification, when added to construction costs (if any), exceeds a statutory limitation. For example, an engineering project that has a minor construction cost close to the statutory limit, but which also has related maintenance and repair costs, could cause a violation of the statutory limit if the maintenance and repair work later is proven to be construction. Likewise, a maintenance and repair project exceeding the statutory construction limit could be a potential ADA violation if the maintenance and repair later is determined to be construction.

4.2.2.2. Equipment.

4.2.2.2.1. Congress designates an amount above which acquisitions of equipment must be funded from a procurement fund (expense versus investment threshold rule). Using O&M funds to acquire equipment items that exceed the designated threshold amount for the mandatory use of procurement funds could be a potential ADA violation. For instance, O&M funds are used to purchase a computer system when Other Procurement funds are required. Expense versus investment criteria is in Volume 2A, Chapter 1, paragraph 010212 and Volume 2B, Chapter 18.

4.2.2.2.2. Similar problems also frequently occur when acquiring low dollar value equipment items that are estimated to cost less than the congressionally designated amount for procurement funds, but actually cost more than that amount when acquired.

4.2.2.2.3. An ADA violation does not occur automatically in the situations outlined in subparagraphs 4.2.2.2.1 and 4.2.2.2.2 because the obligation can be moved from the O&M account to the applicable procurement account. If proper funds were available in the proper procurement account at the time of the erroneous obligation of O&M funds and funds are available when the obligation is recorded in the procurement account, including all other known valid obligations and deobligations, then a potential ADA violation has not occurred. However, if proper procurement funds were not available at the time of the erroneous obligation or were not available when the obligation is recorded in the procurement account to cover the obligation in the procurement account, a potential ADA violation may have occurred.

4.2.2.2.4. DoD decision makers, such as program managers, information systems managers, and contracting personnel, must be knowledgeable of the expense versus investment rules to prevent this type of violation. Program managers and information systems, contracting, and comptroller personnel must be trained on this issue. Such training should help reduce the incorrect application of the expense versus investment rule and the resulting ADA violations.

4.2.3. Exceeding a Formal Administrative Subdivision of Funds. If a formal administrative subdivision of funds level is exceeded, then a potential violation must be reported. The receipt of additional funds before the end of a reporting period does not mitigate a limitation violation or eliminate the potential violation reporting requirement as specified in Chapter 3. Also, failure to record a valid obligation or expenditure as of the date incurred does not avoid the incurrance of, and the requirement to report, a potential ADA violation if, upon recordation,

available funds in the appropriation fund or other formal administrative fund subdivision level are exceeded. For example, the Military Departments historically have experienced problems with over-obligated Reserve Component (RC) personnel accounts. Funds in these accounts are used to pay RC personnel for such items as weekend drills, travel, special tours, or other training. RC unit commanders who control a formal administrative subdivision of funds level are subject to the ADA and must, in advance of the incurrence and recording of these obligations, budget and reserve against available funds the amounts estimated for weekend drills and other scheduled training.

4.2.4. Obligating Funds in Advance of Availability.

4.2.4.1. A common scenario is the use of current year funds to procure goods or services that properly are funded only with a subsequent year appropriation. An ADA violation occurs when an individual obligates funds before those funds are authorized and appropriated by Congress. For example, signing a facility or equipment operating lease using one-year authority funds and agreeing to pay, or obligating the funds, for a two-year lease during the first year would constitute an obligation in advance of the availability of the funds for the amount associated to the second year of the lease. Similarly, agreeing to pay or obligating the funds for a two-year equipment maintenance agreement using one-year authority funds would constitute an ADA violation related to the amount associated with the second year of the agreement.

4.2.4.2. To help prevent this type of violation, training programs must include specific focus on the importance of ensuring funds are authorized and available before obligating the Government to contracts for future fiscal years' expenses.

4.2.4.3. For guidance on determining whether a violation may be properly corrected, see paragraph 1.2.3.

4.2.5. Providing Funds to Servicing Agencies Before or Past the Period of Availability.

4.2.5.1. A common scenario occurs when funds cited on an Economy or non-Economy Act order do not meet the bona fide need arising or existing in the fiscal year (or years) for which the appropriation is available for obligation. When an erroneous obligation is moved to the applicable fiscal year and proper funds were not available at the time of the erroneous obligation or were not available when the obligation was recorded in the proper fund or account, a potential ADA violation may have occurred.

4.2.5.2. To prevent this type of ADA violation, DoD personnel with the responsibility to control the use and type of funds used must be aware of the fiscal limitations of providing funds to servicing agencies before or past the period of availability. See specific policy for Economy Act orders in Volume 11A, Chapter 3, section 0304; and non-Economy Act orders in Volume 11A, Chapter 18, sections 1802 and 1803.

4.2.6. Retaining Funds Without Authority.

4.2.6.1. This violation often occurs when funds are retained without authority and are not deposited into the miscellaneous receipts of the U.S. Treasury but instead augments an appropriation and, as a result, obligations or expenditures exceed the amount appropriated by Congress.

4.2.6.2. This violation is often discovered when new personnel arrive and raise concerns over accepting and retaining unauthorized funds. Therefore, it is essential that DoD decision makers, such as DoD Commanders and Comptrollers, are knowledgeable of this type of violation and that financial managers be trained on this issue and understand the authority related to funds under their control to preclude augmenting an appropriation.

Figure 2-1. Potential Violations

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE SECTION
Any military member or DoD employee:	1. Makes or authorizes an obligation or expenditure that exceeds: a. The available amount of any appropriation or fund.	1341(a)(1)(A)
	b. Any statutory restriction imposed on the use of an appropriation or fund, such as limits on the use of O&M funds for unspecified minor construction or for purchase of investment items.	1341(a)(1)(A)
	c. The available amount of any apportionment or reapportionment.	1517(a)(1)
	d. The available amount of any formal administrative subdivision.	1517(a)(2)
	e. Any limitation imposed by an authorized official of the DoD or a DoD Component that is intended to restrict obligations of apportioned appropriations or funds.	1517(a)(2)
	2. Involves the Government in any contract or other obligation for the payment of money for any purpose before appropriations are made for such purposes, unless the law authorizes such contract or obligation.	1341(a)(1)(B)
	3. Makes or authorizes an obligation or expenditure against an appropriation account that was closed pursuant to 31 U.S.C. §§ 1552 or 1555 or the period prescribed in an appropriations act for making expenditures as authorized by 31 U.S.C. § 1557.	1341(a)(1)(A)
	4. Accepts voluntary service or employs personal service in excess of that authorized by law except in cases of emergency involving the safety of human life or the protection of property.	1342

Figure 2-1. Potential Violations (continued)

A VIOLATION MAY OCCUR WHEN	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE SECTION
Any military member or DoD employee:	5. Expends a working capital (revolving) fund established under 10 U.S.C. § 2208 in excess of amounts available in Fund Balance with Treasury whether apportioned or not. (Recurring provisions of annual DoD Appropriations Acts that establish cash balances (Fund Balance with Treasury) in working capital funds may be maintained only in such amounts as are necessary at any time for cash disbursements to be made from such funds. This provision allows working capital funds to incur liabilities in excess of available fund balances with Treasury.)	1341(a)(1)(A)
	6. Obligates a working capital (revolving) fund established under 10 U.S.C. § 2208 or a part of the fund, whether subject to or exempt from apportionment, in excess of the available amount.	1517(a)(1)
	7. Obligates a working capital (revolving) fund established under 10 U.S.C. § 2208 in excess of the available amount of budgetary resources.	1517(a)(2)
In Fund Distribution:	1. Total allotments, or operating budget authorities for O&M type funds exceed the amount available for each apportionment period.	1517(a)(1)
	2. Total suballotments, allocations, or operating budget authorities, and centrally managed accounts (CMAs) exceed the amount of the allotment or operating budget authority for each period.	1517(a)(2)
	3. Total allocations or operating budget authorities and CMAs exceed the amount of the available suballotment.	1517(a)(2)
	4. Total suballocations exceed the amount of the allocation.	1517(a)(2)

Figure 2-2. Violation Examples

A. GENERAL. Most of the examples described in items B – D are taken from actual violations that occurred within DoD. However, these violations are fact specific and in other circumstances a potential violation may or may not be incurred. These examples are supplied for information only and are not intended to imply that in all similar but not identical circumstances a violation would have been incurred.

B. TITLE 31, UNITED STATES CODE, SECTION 1341

1. 31 U.S.C. § 1341(a)(1)(A)

a. Obligated O&M funds for site preparation construction costs on a relocatable building project. The project was incorrectly scoped into multiple projects and the cumulative costs of the construction exceeded the minor construction threshold and should have been authorized by Congress and funded with military construction funds. This unauthorized obligation of O&M funds instead of military construction funds resulted in a violation.

b. Obligated O&M and Working Capital funds on a single military construction project. The project amount exceeded the minor construction statutory limitation and resulted in a violation. The Government Accountability Office takes the position that a violation of a funding restriction in an authorizing statute (such as 10 U.S.C. § 2805) results in a violation of the ADA (31 U.S.C. § 1341). The use of funds to finance the project is not consistent with the authorized purpose of the appropriation and resulted in an incurable violation of the “purpose statute” (31 U.S.C. § 1301).

Note: Although the circumstances described herein constitute a violation of 10 U.S.C. §§ 2802(a) and 2805(b), the Department of Justice (DOJ) Office of Legal Counsel (OLC) has concluded that “a violation of a statutory restriction on spending does not violate the ADA where the restriction is not ‘in an appropriation.’” See also: DOJ OLC opinion, “Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences,” April 5, 2007 (online at: <http://www.justice.gov/sites/default/files/olc/opinions/2007/04/31/epa-light-refreshments13.pdf>); and DOJ OLC letter, “Re: Whether the Federal Aviation Administration’s Finalizing and Implementing of Slot Auction Regulations Would Violate the Anti-Deficiency Act,” October 7, 2008.

c. Obligated O&M funds rather than Procurement funds for recapitalization of a system and Procurement funds were not available when the obligation was recorded which resulted in a violation.

Figure 2-2. Violation Examples (continued)

d. Failure to promptly record valid obligations in a reserve personnel appropriation resulted in valid obligations that exceeded the available amount in the appropriation and resulted in a violation

2. 31 U.S.C. § 1341(a)(1)(B)

a. Obligated O&M funds in advance of the appropriation when a 14 month severable services contract was awarded that exceeded the 12 month limit set forth in section 10 U.S.C. § 2410a, and resulted in a violation.

b. Obligated O&M funds for two and four year severable equipment leases in advance of an appropriation which resulted in a violation.

c. Obligated O&M funds for equipment with phased deliveries into subsequent fiscal years in advance of an appropriation which resulted in a violation.

C. TITLE 31, UNITED STATES CODE, SECTION 1342

Apparently, at the urging of the Chairman, a member of a Federal Commission agreed to waive his statutory entitlement to \$100 per day while involved in Commission business. The year after the Commission was disbanded, the former member changed his mind and filed a claim for a portion of the compensation he would have received had it not been for the waiver. Since the \$100 per day was a statutory entitlement, the purported waiver was invalid and the former commissioner was entitled to be paid. By accepting the waiver and allowing the commissioner to conduct Commission business without pay, the provision against acceptance of voluntary services was violated and a violation of the ADA occurred.

D. TITLE 31, UNITED STATES CODE, SECTION 1517

1. Obligated O&M funds in excess of the Continuing Resolution Authority allocation which resulted in a violation.

2. Obligated O&M funds for information technology equipment in excess of the investment threshold. When correction was made, Procurement funds were not available at the suballotment level which resulted in a violation.

Figure 2-2. Violation Examples (continued)

3. A DoD activity used O&M funds, rather than Other Procurement funds to purchase a data processing local area network (LAN). Even though the hardware components and LAN operating system software were purchased separately, the components and the software together constituted a system with an aggregate cost in excess of the expense/investment threshold specified by the Congress for the required use of procurement appropriation funds. A violation occurred because the DoD activity did not have the required amount of Other Procurement funds at the time of the purchases.
4. A funds holder at a formal administrative subdivision of fund level erroneously distributed more funds than available at the subdivision level. The activities receiving the funds incurred obligations and expenditures in excess of amounts available to the fund holder but below the amount distributed. The funds holder incurred an ADA violation because the obligations and expenditures exceeded the total amount in the formal administrative subdivision of funds.

Figure 2-3. Reference Hyperlinks

Office of Management and Budget [\(OMB\) Circular A-11](#), “Preparation, Submission, and Execution of the Budget”

U.S. Government Accountability Office [Principles of Federal Appropriations Law](#) (Red Book)

United States Code (U.S.C.) title and section:

U.S.C. Section	Title
<u>2 U.S.C. § 681</u>	Disclaimer
<u>2 U.S.C. § 682</u>	Definitions
<u>2 U.S.C. § 683</u>	Rescission of Budget Authority
<u>2 U.S.C. § 684</u>	Proposed Deferrals of Budget Authority
<u>2 U.S.C. § 685</u>	Transmission of Messages; Publication
<u>2 U.S.C. § 686</u>	Reports by Comptroller General
<u>2 U.S.C. § 687</u>	Suits by Comptroller General
<u>2 U.S.C. § 688</u>	Procedure in House of Representatives and Senate
<u>5 U.S.C. § 1304</u>	Loyalty Investigations; Reports; Revolving Fund
<u>10 U.S.C. § 2201</u>	Apportionment of Funds; Authority for Exemption; Excepted Expenses
<u>10 U.S.C. § 2204</u>	Obligation of Appropriations
<u>10 U.S.C. § 2208</u>	Working-Capital Funds
<u>10 U.S.C. § 2410a</u>	Severable Service Contracts for Periods Crossing Fiscal Years
<u>10 U.S.C. § 2805</u>	Unspecified Minor Construction
<u>10 U.S.C. § 2825</u>	Improvements to Family Housing Units
<u>18 U.S.C. § 4124</u>	Purchase of Prison-Made Products by Federal Departments

Figure 2-3. Reference Hyperlinks (continued)

U.S.C. Section	Title
<u>31 U.S.C. § 1104</u>	Budget and Appropriations Authority of the President
<u>31 U.S.C. § 1105</u>	Budget Contents and Submission to Congress
<u>31 U.S.C. § 1106</u>	Supplemental Budget Estimates and Changes
<u>31 U.S.C. § 1107</u>	Deficiency and Supplemental Appropriations
<u>31 U.S.C. § 1108</u>	Preparation and Submission of Appropriations Requests to the President
<u>31 U.S.C. § 1112</u>	Fiscal, Budget, and Program Information
<u>31 U.S.C. § 1301</u>	Application
<u>31 U.S.C. § 1321</u>	Trust Funds
<u>31 U.S.C. § 1341</u>	Limitations on Expending and Obligating Amounts
<u>31 U.S.C. § 1342</u>	Limitation on Voluntary Services
<u>31 U.S.C. § 1349</u>	Adverse Personnel Actions
<u>31 U.S.C. § 1350</u>	Criminal Penalty
<u>31 U.S.C. § 1351</u>	Reports on Violations
<u>31 U.S.C. § 1501</u>	Documentary Evidence Requirement for Government Obligations
<u>31 U.S.C. § 1502</u>	Balances Available
<u>31 U.S.C. § 1511</u>	Definition and Application
<u>31 U.S.C. § 1512</u>	Apportionment and Reserves
<u>31 U.S.C. § 1513</u>	Officials Controlling Apportionments
<u>31 U.S.C. § 1514</u>	Administrative Division of Apportionments
<u>31 U.S.C. § 1515</u>	Authorized Apportionments Necessitating Deficiency or Supplemental Appropriations
<u>31 U.S.C. § 1516</u>	Exemptions

Figure 2-3. Reference Hyperlinks (continued)

U.S.C. Section	Title
<u>31 U.S.C. § 1517</u>	Prohibited Obligations and Expenditures
<u>31 U.S.C. § 1518</u>	Adverse Personnel Actions
<u>31 U.S.C. § 1519</u>	Criminal Penalty
<u>31 U.S.C. § 1531</u>	Transfer of Functions and Activities
<u>31 U.S.C. § 1552</u>	Procedure for Appropriation Accounts Available for Definite Periods
<u>31 U.S.C. § 1553</u>	Availability for Appropriation Accounts to Pay Obligations
<u>31 U.S.C. § 1555</u>	Closing of Appropriation Accounts Available for Indefinite Periods
<u>31 U.S.C. § 1557</u>	Authority for Exemptions in Appropriation Laws
<u>31 U.S.C. § 3302</u>	Custodians of Money
<u>31 U.S.C. § 3324</u>	Advances
<u>31 U.S.C. § 3512</u>	Executive Agency Accounting and Other Financial Management Reports and Plans
<u>31 U.S.C. § 3524</u>	Auditing Expenditures Approved without Vouchers
<u>33 U.S.C. § 576</u>	Revolving Fund; Establishment; Availability; Reimbursement; Transfer of Funds; Limitation
<u>41 U.S.C. § 6301</u>	Authorization Requirement

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](#).

[This is the initial publication.](#)

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter is a consolidation of the following seven chapters that are now archived: Chapter 3, dated November 2010 Chapter 4, dated November 2010 Chapter 5, dated November 2010 Chapter 6, dated November 2010 Chapter 7, dated November 2010 Chapter 8, dated March 2009 Chapter 9, dated March 2009	New Chapter
Policy Memo	This revision incorporated and cancelled the Deputy Chief Financial Officer memorandum, “Antideficiency Act (ADA) Investigator Training Frequency,” dated December 13, 2011.	Cancellation

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CHAPTER 3

* ANTIDEFICIENCY ACT VIOLATION PROCESS

1.0 GENERAL (0301)

1.1 Overview (030101)

This chapter describes the Antideficiency Act (ADA) violation process from initial discovery to formal investigation and final report. When an ADA violation is suspected and those concerns are validated by an internal review, an in depth investigation is required. The structured investigation process consists of two phases, a preliminary review and, if required, a formal investigation. Generally, the likelihood that a potential ADA violation occurred must be established during the preliminary review, before a formal investigation begins. The preliminary review gathers facts and establishes by adequate evidence whether an uncorrectable deficiency has occurred. The formal investigation then determines the event(s) that “more likely than not” caused the potential violation, the responsible individual(s), and action(s) being 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 (030102)

This chapter provides guidance for addressing potential and actual violations of statutes discussed in Chapters 1 and 2. It establishes the policy for conducting initial reviews, structured investigations, and other requirements to report an ADA violation properly. It also establishes policies for training individuals assigned to investigate potential and actual ADA violations. Additionally, this chapter provides the process and policies regarding organizational corrective actions and disciplining of civilian and military employees.

1.3 Authoritative Guidance (030103)

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*) related to apportionment and allotment, and §§ 1341 and 1348 related to limitations on obligations and expenditures, § 1342 related to voluntary services and personal services, and §§ 1349 and 1518 related to 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 (0302)

2.1 Initial Discovery (030201)

Date of discovery is the point in time when there is adequate information to suspect a potential ADA violation may have occurred, triggering an initial review. Discovery is often marked by an event, such as release of internal review findings suggesting an ADA violation may have occurred, or receipt of a status of funds report showing irregularities. An inquiry may be conducted to confirm that the information is accurate, complete, and sufficient to suggest that a violation of the ADA has occurred.

2.2 Initial Report (030202)

2.2.1. Fund holders have a fiduciary responsibility to ensure their funds are properly executed in accordance with applicable laws and regulations. Consequently, fund holders are responsible for reporting all suspected violations of the ADA. This does not mean that others are not responsible for bringing suspected violations to the attention of the proper officials.

2.2.2. Within two weeks of discovering a potential violation of the ADA, an initial review must be conducted and an initial report must be prepared by the activity holding the funds that were allegedly misused. The review is intended to aid in the preparation of the initial report. It determines whether a suspected violation may have occurred – even when the suspected violation is presumed to be curable. In cases where the activity identifies a potential cure, it should be noted in the report. However, no action to cure a potential ADA should be undertaken without concurrence from the authorities identified in 2.2.3.

2.2.3. Initial reports must be submitted through activity/command channels 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 is not a determination of responsibility for causing the potential ADA; it merely serves as official notification that a suspected violation may have occurred. A template for an initial report is located at Figure 3-2. To the extent, such information is available and pertinent to the potential ADA at issue (e.g., some of the following may not be pertinent to a potential voluntary services ADA violation), 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 (030203)

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 will provide all the necessary information and documentation to support the correction to the DoD Component. Upon correction of the error and determination of appropriate internal controls to prevent a recurrence of similar violations, there are no additional ADA violation requirements.

3.0 DOD COMPONENT INVESTIGATION ADMINISTRATION (0303)

3.1 Timeframes for Investigation (030301)

3.1.1. The preliminary review must be completed within four months from the date it was directed by the DoD Component.

3.1.2. The formal investigation must be completed within nine months from the date it was directed by the DoD Component.

3.1.3. The Office of the General Counsel (OGC) (Fiscal) advance decision legal review must be completed within three months from the date the draft formal investigation report is submitted to the Office of the Under Secretary of Defense (Comptroller) (OUSDC), 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. A final summary report must be submitted by the DoD Component 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 must complete and submit the letters required by OMB Circular No. A-11, Exhibit 145A within one month after receiving the final investigation report from the DoD Component. The total process for investigating and reporting potential ADA violations must be completed 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 in the investigating officer appointment memorandum a due date for the ADA violation investigation report. The due date must conform to the timeframes stipulated in paragraph 3.1.1 through 3.1.5 regardless of the scope or amount of the potential violation.

3.2 Approving Exceptions to Timeframes (030302)

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 will notify the DoD Components of any extension that is approved.

3.3 Special Interest Investigations (030303)

Special interest investigations include potential violations that may have been 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, investigations of special interest 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) (030304)

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 (030305)

When conducting an investigation outside the major activity/command to which the IO is assigned, incidental costs (e.g., temporary duty, local travel) incurred must be identified and accumulated. In accordance with Volume 11A and Volume 11B, reimbursement must be provided by the activity/command that was under investigation.

4.0 PRELIMINARY REVIEWS (0304)

4.1 Purpose (030401)

4.1.1. The purpose of the preliminary review is to gather facts that adequately support, at a minimum, the conclusion that a reportable violation of the ADA has occurred. It does not identify responsible officials or recommend corrective actions to prevent similar violations. Applicable corrective actions will be developed during the formal investigation, if a formal investigation is warranted.

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

4.2 Investigating Officer Appointment (030402)

4.2.1. The IO's must be appointed by an appointing official. The appointing official is at the DoD Component level unless the Component delegates this authority to a senior Commander, or director of the organization assigned responsibility for conducting the investigation. The appointing official will appoint a qualified IO to be assisted by a review team with expertise in the areas being investigated, if necessary. The appointing official will issue an appointment letter within two weeks after the DoD Component's evaluation of the initial report concluded that a potential reportable violation has occurred. A template for appointment orders is located at Figure 3-3.

4.2.2. The appointing official must certify that the IO has been trained in fiscal law or appropriations law within the last three years and is capable of conducting a complete, impartial, and unbiased review. It is the responsibility of each DoD Component to ensure that its ADA investigators are properly trained and that the training is current and documented.

4.2.3. The IO should be selected 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 also be able to manage time and meet timeframes established for the completion of the investigation. 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 is given 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 and retain the document(s) in the ADA case file.

4.2.9. Appointment orders must be submitted to the DoD Component and are part of the case files for the investigation.

4.3 Conduct of the Investigation (030403)

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

4.3.2. At the conclusion of the preliminary review, the investigator must have gathered facts, established a narrative of events and determined what should have happened. This may involve reviewing funding documents, contracts, and other key documents, as well as interviewing key witnesses.

4.3.3. The investigation should 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. Corrections must be completed with the concurrence of the DoD Component, and only after appropriate supporting documentation is provided to the DoD Component.

4.4 Obligations Charged to the Wrong Appropriation or Wrong Year (030404)

4.4.1. To cure a potential ADA violation and to correct the accounts, (violations of Purpose (31 U.S.C. §1301) and the Bona Fide Need Rule (31 U.S.C. §1502)), the fund control personnel should first ascertain that:

4.4.1.1. The proper type of funds, fiscal year, and amount are currently available to correct the erroneous obligation(s), and

4.4.1.2. If so, they should also determine that the proper funds were available at the time of the erroneous obligations.

4.4.2. If the fund holder is able to certify that both of these conditions have been met and that the potential ADA violation can be cured via fund substitution by account adjustments, this should be explicitly stated in the report.

4.4.3. The IO should then coordinate with the necessary personnel to correct the potential violation and document completion of the proper accounting corrections. Once the accounting corrections have been made, the IO, in coordination with his/her legal advisor must determine whether a reportable violation occurred and document this in the Preliminary Report.

4.4.4. If fund control personnel do not provide the certification, then the preliminary review report must include evidence that adequately supports a determination that there is a reasonable likelihood that a violation of 31 U.S.C. §§ 1341 or 1517 occurred.

4.5 Obligations Incurred in Advance of an Appropriation (030405)

4.5.1. Obligations incurred in advance of the availability of the proper appropriation (31 U.S.C. §1341(a)(1)(B)) will not be regarded as reportable violations of the ADA, provided that there are sufficient funds available in the proper appropriation to cover the obligation.

4.5.2. To cure a potential ADA violation, fund control personnel should first ascertain that the proper type of funds, fiscal year, and amount are currently legally available to correct the premature erroneous obligation.

4.5.3. If the fund holder is able to certify that this condition has been met and that the potential ADA can be cured via fund substitution, this should be explicitly stated in the report.

4.5.4. The IO should then coordinate with the necessary personnel to correct the potential violation and document completion of the proper accounting corrections. Once the accounting corrections have been made, the IO, in coordination with his/her legal advisor must determine whether a reportable violation occurred and document this in the Preliminary Report.

4.5.5. If fund control personnel do not provide the certification, then the preliminary review report must include evidence that adequately supports a determination that a violation of 31 U.S.C. §§ 1341 or 1517 occurred.

4.6 Review Results (030406)

The findings of the preliminary review must be documented in the IO's preliminary report and the report must be accompanied by a legal review. This report and legal review are forwarded for approval to the applicable DoD Component, and coordinated 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) (030407)

When the OUSD(C) is informed of a potential violation by an audit report or otherwise learns of a potential violation, the applicable DoD Component may be directed to initiate a preliminary review of the circumstances surrounding the potential violation. The date the DoD Component receives the direction is considered the date of discovery for reporting purposes and the DoD Component must follow procedures in sections 2.0, and 3.0.

4.8 Oversight Entities (030408)

4.8.1. In some cases, the Government Accountability Office, DoD Office of Inspector General, a military department audit agency, or other organizations external to a DoD Component may advise in a 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. An informed inquiry may have to be conducted by the DoD component.

4.8.2. If the DoD Component agrees that a potential violation may have occurred and a preliminary review is warranted, then the date of the agreement is considered the date of discovery for reporting purposes. The DoD Component must follow procedures in section 4.0 and must supply the status of the preliminary review 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 (GAO), Inspector General of the Department of Defense (IG DoD), and Internal Audit Reports."

4.8.4. If disagreements between the DoD Component and the oversight activity arise as to whether a preliminary review is warranted, the DoD Component may request assistance from the DCFO.

4.9 Evaluation (030409)

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

5.0 ROLES OF THE DOD INSPECTOR GENERAL (0305)

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

5.0.1. The DoD IG reserves the right to initiate investigations of potential violations of the ADA, depending upon the type, amount, or significance of the violation.

5.0.2. The DoD IG may elect to conduct investigations not requested by the OUSD(C) or other DoD official.

5.0.3. When the DoD Inspector General 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 (0306)

6.1 Overview (030601)

6.1.1. Following completion of a preliminary review that concludes by adequate evidence that a reportable and incurable violation of the ADA has occurred, a formal investigation must be opened. The violation must be reported to the DCFO within 2 weeks of the determination. The DCFO will assign the DoD Component a unique tracking number and due date.

6.1.2. The purpose of the formal investigation is to determine 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. It may require the discovery of new or additional evidence, re-interviewing witness or interviewing new witness, re-examining documents or discovery of new documents.

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

6.1.4. The DoD Component will generally assign the responsibility for conducting 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 (030602)

6.2.1. IO's must be appointed by an appointing official. 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. The appointing official will appoint a qualified IO, to be assisted by a review team with expertise in the areas being investigated, if necessary. A template for appointment orders is located at Figure 3-3. The formal investigation may be conducted by the same IO who conducted the preliminary review.

6.2.2. The appointing official must certify that the IO/review team lead has been trained in fiscal law or appropriations law within the last three years and is capable of conducting a complete, impartial, and unbiased review. It is the responsibility of each DoD Component to ensure that its ADA investigators are properly trained and that the training is current and documented.

6.2.3. The IO should 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. IO's must be competent and capable of interviewing witnesses, gathering evidence, establishing facts, documenting findings and recommendations, and preparing reports of violation. They must also be able to manage time and meet timeframes established for the completion of the investigation. The appointing official may prescribe additional training as required.

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

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

6.3 Conduct of Investigation and Preparation of Formal Report of ADA Violation Investigation (ROI) (030603)

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 preparation of the formal report.

6.3.2. Examination of Physical Evidence

During the investigation, the IO will be required to expand upon the findings established in the preliminary investigation or make 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 focus of the formal investigation will be on finding the root cause(s) for the violation, and identifying the individual(s) making or authorizing the improper obligations or expenditures, as well as identifying the corrective action(s) that are being implemented to reduce the risk of similar violations in the future.

6.3.3. Identifying Circumstances and Assigning Responsibility

6.3.3.1. All relevant aspects of the case, including all individuals and records connected with the event, must be investigated to the fullest extent. Key personnel involved in a violation must be interviewed. If an employee to be interviewed is a member of a bargaining unit, then the IO must comply with appropriate statutory and collective bargaining agreement protections for such employee.

6.3.3.2. Key facts associated with the events leading to the potential violation must be examined and documented in the report and the IO must 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. In cases where the subject matter of the potential violation is beyond the expertise of the IO, a subject matter expert must be requested to evaluate the evidence along with statements from personnel interviewed and provide an opinion 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 will be required to analyze the facts and provide an opinion.

6.3.3.4. The IO must make findings of fact to support all conclusions reached in the investigation. All findings of fact that lead 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. In cases where the IO concludes that a reportable ADA violation occurred, the IO must make findings of fact and conclusions identifying the responsible official(s), the individual or individuals responsible for making or authorizing the improper obligations or expenditures pursuant to 31 U.S.C., §§ 1341(a) and/or 1517(a). Findings of fact used to support a determination that an individual is responsible for the violation must be established 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 individual(s) may be responsible for more than one violation under the auspices of a single investigation. In these cases, the report should 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. In order to establish responsibility, the IO must conclude, based on findings of fact, that the act or omission was a proximate cause of the violation. An act or omission is a 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, it is necessary to establish 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 instructions?

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 should 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 it is suspected that the violation of the ADA was knowing and willful, then the IO must submit all available information to the DoD Component, which will consider 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. At this time, the case will be closed to avoid duplication of effort or interference with a criminal investigation. If appropriate, a new formal investigation will be opened at the conclusion of the criminal investigation.

6.3.4. Rebuttal Statements

6.3.4.1. Individuals found potentially responsible for the violation will be 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 individuals named potentially responsible must be granted 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 should document 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. In cases where proposed responsible officials may have separated and left no valid forwarding address, a reasonable attempt to contact them should be made. The report should then be annotated accordingly. Attempts to make contact with the proposed responsible official should be summarized in the report.

6.3.4.5. If the proposed responsible official declines to give a statement in writing, then the DoD Component must include this declination statement as their response.

6.3.4.6. If they refuse to receive the report or submit a statement of any kind, the report should be noted accordingly. Attempts to solicit a response should be summarized in the report.

6.3.4.7. Any oral statements provided to the IO should be supported by a memorandum for record.

6.3.4.8. Statements from the proposed responsible official should 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 particular violation case.

6.3.4.9. The IO must evaluate the rebuttal statements of the proposed responsible official 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 should have an opportunity to review the report again.

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

6.3.4.11. The salient points of the rebuttals should be summarized in the ROI. Verbatim statements should be submitted as an exhibit. The IO should provide an assessment of 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 statement in the report to the effect that funds will be 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 in excess of 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 causes and the individuals responsible for the violation have been determined, officials of the DoD Component under investigation and/or the activity holding the funds that were misused, working with the IO, must develop lessons learned and implement

internal control enhancements necessary to reduce risks that a violation of a similar nature will reoccur. Those specific actions must be included in the formal report.

6.3.5.3. Corrective actions should not be merely prospective in nature, but also concrete actions that have been implemented, or that are in the process of being implemented.

6.3.5.4. Corrective actions should 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 (030604)

If a reinvestigation is requested by the DCFO, 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 (030605)

6.5.1. The IO should ensure the ROI is clearly written and that each finding of fact and conclusion leading to a violation and assigning responsibility 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 should 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 ADA's susceptible to accounting adjustments, fund certifications supporting conclusions that the ADA is/is not correctable; and

6.5.3.8. Functional reviews conducted by SMEs of 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 should be given to the activity/command to resubmit a legally supportable report.

7.0 DOD COMPONENT ROI (0307)

7.1 Preparation of the ROI. (030701)

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

7.1.2. Inaccurate or confusing information should be removed or clarified. Key dates mentioned in the report should be verified. Numbers in tables, graphs, and text should 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 should be removed. Witness names should 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. Salient points should be highlighted and gaps in the narrative should be addressed, utilizing extant supporting documentation.

7.2 Legal Coordination. (030702)

7.2.1. The DoD Component ROI should be prepared 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, the changes should be staffed with the activity/command to ensure there are no material misstatements of fact and to ensure any factual gaps in the record are filled in.

7.2.2. When the violation is incurable, the type of ADA violation will ultimately be 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. With legal concurrence, some proposed responsible officials may be removed in the event that facts do not support responsibility. The DoD Component may identify additional responsible individuals and will coordinate adding them to the report with the IO. Proposed responsible officials will generally be the highest-ranking individual in the decision-making process with actual or constructive knowledge of the actions taken.

7.2.4. In the event the formal investigation was materially incomplete or the facts do not support the conclusions, the ROI will be returned to the activity/command for revision and/or reinvestigation. A firm suspense should be given to the activity/command to resubmit a legally supportable ROI.

7.2.5. If the ADA violation is found to involve the funds or personnel of another DoD Component, the ROI must first be coordinated with the appropriate stakeholders and the ROI should be annotated accordingly.

7.2.6. If the results of a formal investigation lead to a determination by the DoD Component that there was no violation, then a ROI that concludes no violation occurred must still be prepared by the DoD Component. The ROI must contain appropriate justification that supports a revised finding that no violation occurred.

8.0 REQUEST FOR ADVANCE DECISION (0308)

8.1 Advance Decision Package Submission (030801)

8.1.1. The DoD Components, must 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 will examine the role of the proposed responsible officials and determine 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 will be 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 will be notified and informed that they may proceed with discipline against one or more individuals named in the report.

8.2 OUSD(C) DCFO Review (030802)

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 of time specified by the DCFO.

9.0 DISCIPLINARY ACTION (0309)

9.1 Disciplinary Actions (030901)

9.1.1. Following OGC (Fiscal) concurrence and receipt of an advance decision from the OUSD(C), a tasking memorandum from the DoD Component will be sent 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 will consult 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 (030902)

9.2.1. Administrative Penalties

9.2.1.1. Disciplinary action taken should be documented 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*.

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 should consult with legal counsel to determine if the investigation should 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. When submitting an ROI to the DCFO that may require criminal penalties, a statement to that effect must be included in the ROI from the DoD Components.

9.3 Documentation of Discipline Imposed (030903)

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 (0310)

10.1 Submission to DCFO (031001)

The original or an electronic copy of the final ROI, including a discussion of the disciplinary actions taken, must be submitted to the DCFO and it must contain a copy of all pertinent documents referenced in the body of the report.

10.2 ROI Due Date (031002)

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

11.0 NOTIFICATION TO EXTERNAL AUTHORITIES (0311)

11.1 Letter Preparation (031101)

Following receipt of an acceptable final ADA violation report from the applicable DoD Component, the DCFO will prepare 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 (031102)

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

- Formal investigation opened
- Case control number assigned for tracking
- DCFO notification
- Directs activity to appoint investigating officer
- Appointment memo provided to DoD Component
- Support team named
- In-Brief session
- Determine scope of investigation
- Consult legal counsel
- Review the results of Preliminary Review
- Familiarize team with legal basis for potential violation
- Consult governing statutes, and regulations
- Meet with staff requesting or reporting investigation
- Compile 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 roles and responsibilities of participants and decision-makers at each echelon
 - ✓ Develop chronology of events
 - ✓ Consult subject-matter-experts, have them prepare written opinions, as required
 - ✓ Interview witnesses
 - ✓ Determine specific acts or decisions leading to violation
 - ✓ Assign responsibility for making/authorizing violation
- Make 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 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
 - ✓ A reasonable effort must be made 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 revised report

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

- ✓ Insert assessment on the impact of the rebuttal statements, if any, on conclusions
- ✓ Enclose verbatim rebuttals as enclosure to report

Phase IV

- Engage activities involved to develop corrective actions to reduce risk of similar violations recurring
 - ✓ Document corrective actions that have already been put in place
 - ✓ Quantify enhanced controls being implemented
 - ✓ Obtain listing of planned corrective actions and milestones
- Incorporate lessons learned and corrective actions in 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, 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?
 - ✓ 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 summary report initiated
- Coordination with counsel
- DCFO review of report
- Advance Decision
- Complete Investigation – Insert discipline imposed into the report.
- Notification letters to external authorities
- 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 reference above, 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 investigating officer to conduct a preliminary review/formal investigation of a potential Antideficiency Act (ADA) Violation which 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 brief description of violation and state whether the violation was an over-obligation of an appropriation, an apportionment, or an allotment. Example: 1341(a)(1)(A), exceeded amount available in appropriation or fund.
7. Effect of Violation on the Next Higher Level of Funding. State whether the violation had an effect on the next higher level of funding.
8. Date and Description of How Violation Was Discovered. Provide date and who/how 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 actually 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 (cont.)

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

10. Conclusion. Summarize your finding 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) had an effect on 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 an 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 position description of the proposed responsible official as backup to the report.

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

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. Introduction of new witnesses and new evidence in the rebuttal statements should 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 should 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 staffed 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 actually caused the violation(s) and the associated circumstances; what actions should have been, but were not, taken by 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 should not be so brief that it does not convey clearly the essential facts and circumstances of what happened.

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

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 as a result 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 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 should 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 (cont.)

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 recurrence of the same type of violation. Describe actions in detail so that 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 unwillful 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

DoD 7000.14 - R



DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 4: "ARCHIVED"

**UNDER SECRETARY OF DEFENSE
(COMPTROLLER)**

DoD 7000.14 - R



DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 5: "ARCHIVED"

**UNDER SECRETARY OF DEFENSE
(COMPTROLLER)**

DoD 7000.14 - R



DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 6: "ARCHIVED"

**UNDER SECRETARY OF DEFENSE
(COMPTROLLER)**

DoD 7000.14 - R



DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 7: "ARCHIVED"

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DoD 7000.14 - R



DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 8: "ARCHIVED"

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(COMPTROLLER)**

DoD 7000.14 - R



DEPARTMENT OF DEFENSE

FINANCIAL MANAGEMENT REGULATION

CHAPTER 9: "ARCHIVED"

**UNDER SECRETARY OF DEFENSE
(COMPTROLLER)**