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**Financial Management**

**ANTIDEFICIENCY ACT VIOLATIONS**

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This instruction implements AFPD 65-6, *USAF Budget Policy*, and describes how the Air Force identifies, investigates, reports, and processes Antideficiency Act (ADA) Violations. This instruction carries out DoD Directive 7200.1, *Administrative Control of Appropriations*, 4 May 1995, and complements Volume 14 of the Department of Defense Financial Management Regulation, *Administrative Control of Funds and Antideficiency Act Violations*, 1 August 1995. This instruction applies to all activities who prepare, justify, and execute Air Force appropriations, including activity groups of the Air Force Working Capital Fund. Major Command (MAJCOM), Field Operating Agency (FOA), and Direct Reporting Unit (DRU) organizations shall not supplement this instruction. The reporting requirements in paragraph 2.5.4. is exempt from licensing in accordance with paragraph 2.11.11. of AFI 37-124, The Information Collection and Interagency Air Force Information Collections. Suggested changes to this instruction should be sent through channels to SAF/FMPF, 1130 Air Force Pentagon, Washington DC 20330-1130.

**SUMMARY OF REVISIONS**

This instruction aligns with AFPD 65-6. This is the initial publication of AFI 65-608 and supersedes Sections D and E of DFAS-DE Regulation 177-16 (formerly AFR 177-16).

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## Chapter 1

### OVERVIEW

**1.1. Antideficiency Act.** The Antideficiency Act (ADA) is codified in Sections 1341(a) and 1517(a) of Title 31, United States Code (U.S.C.). Funds are available to support contract obligations only if previously authorized and appropriated by Congress. The legislative process of authorization and appropriation creates different types of funds, with resulting limits on their use as to purpose, time, and amount. If those limitations are exceeded, corrective entries in the accounts are required upon discovery. A shortfall in unobligated funding authority in the proper account or subdivision of funds, whether occurring as of the time the liability was incurred, or at the time the obligation is properly posted, may result in a reportable violation of the ADA. The receipt of additional funds before the end of the accounting period does not necessarily mitigate the violation or eliminate the reporting requirement. However, such overobligations are not the only source of violations. By law, violations must be reported to the President through the Office of Management and Budget (OMB), and the Congress.

**1.2. Administrative Control of Funds.** The Air Force is also required by law to establish and operate a system of administrative controls over appropriated and non-appropriated funds. These controls are designed to regulate the quarterly rate of obligation, the management approval levels for obligations according to timing of individual contract actions, cumulative program dollar values, and the purposes for which the funds are used. The system also tracks funds availability and often facilitates a determination of those individuals responsible for ADA violations.

### 1.3. Violation Causes and Exemptions:

1.3.1. Generally, ADA violations may occur by:

1.3.1.1. Authorizing or creating obligations before funds become available.

1.3.1.2. Authorizing or creating obligations in excess of the amount available, including quarterly allotments, suballotments and allocations of appropriated funds, or other administrative controls.

1.3.1.3. Exceeding a statutory ceiling on the amount of funds that may either be obligated or expended for a specific purpose, even if otherwise available for obligation.

1.3.1.4. Distributing funds in excess of the amount available.

1.3.1.5. Exceeding the amount available in an administrative subdivision of funds.

1.3.1.6. Failing to comply with statutory or regulatory limits or prohibitions on the use of an appropriation or fund.

1.3.1.7. Accepting voluntary service, or employing personal service, in excess of that authorized by law, except in case of emergency involving the safety of human life or the protection of property.

1.3.1.8. Augmenting available appropriations by retaining and expending earned receipts or reimbursements from outside sources without either a DoD charter as a revolving fund activity or a statutory exception to 31 U.S.C. d 3302(b) (Miscellaneous Receipts)

1.3.2. Exemptions to some provisions of the ADA are:

1.3.2.1. Certain appropriations exempted from apportionment by the Congress.

1.3.2.2. Revised Statute 3732 (41 U.S.C. d 11(A)). Authorizes award of contracts by DoD and the Coast Guard in advance of funds availability for current year necessities in the categories of clothing, subsistence, forage, fuel, quarters, transportation or medical or hospital supplies.

1.3.2.3. Appropriations exempted from apportionment by the President under 10 U.S.C. 2201(a), i.e. Foreign Military Sales Trust Funds.

1.3.2.4. Meritorious contract claims, under 10 U.S.C. § 2863.

**1.4. Related Guidance.** See related guidance in DoD Directive 7200.1, *Administrative Control of Appropriations*, May 4, 1995; DoD 7000.14-R, *Department of Defense Financial Management Regulation*, Volumes 2A & B, *Budget Presentation and Formulation*, 9 July 1996, and Volume 14, *Administrative Control of Funds and Antideficiency Act Violations*, August 1, 1995; AFI 65-601, *Budget Management for Operations*, Volumes 1 & 2, October 21, 1994; AFI 65-106, *Appropriated Fund Support of Morale, Welfare, and Recreation and Nonappropriated Fund Instrumentalities*, October 28, 1994; AFI 90-301, *Inspector General Complaints*, May 23, 1994; AFI 37-131, *Freedom of Information Act Program*, February 1995; AFI 37-132, *Privacy Act Program*, March 1994; and DFAS-DE Regulation 170-8, *Obligation of Appropriations*, January 15, 1990.

## Chapter 2

### RESPONSIBILITIES

#### 2.1. Secretary of the Air Force:

2.1.1. Implements the policies in DoD Directive 7200.1, *Administrative Control of Appropriations*, May 4, 1995, and DoD 7000.14-R, *Department of Defense Financial Management Regulation*, Volume 14, *Administrative Control of Funds and Antideficiency Act Violations*, August 1, 1995.

2.1.2. Delegates overall ADA program management responsibility to the Assistant Secretary of the Air Force (Financial Management and Comptroller) (SAF/FM).

#### 2.2. SAF/FM:

2.2.1. Directs the investigation of all suspected ADA violations not otherwise referred to the DoD Inspector General.

2.2.2. Directs Major Command (MAJCOM), Field Operating Agency (FOA), or Direct Reporting Unit (DRU) and Air Staff organizations to perform a formal investigation when the preliminary review results determine that a potential ADA violation has occurred.

2.2.3. Ensures that a roster of individuals, qualified to perform the duties and responsibilities of an investigating officer (IO), is established.

2.2.4. Appoints the IO when a potential violation is of special interest to the Secretary of the Air Force, the investigation is requested by the Under Secretary of Defense (Comptroller) (USD(C)), or is otherwise warranted under the circumstances. Special Interest Investigations are defined in DoD 7000.14-R, Volume 14, Chapter 5, para. F. See also AFI 90-301, Glossary of Terms, page 42.

2.2.5. Reviews and approves the results of each formal ADA investigation.

2.2.6. Ensures the results of each formal ADA investigation are reported to the Office of the USD(C) within nine months of the violation's discovery.

2.2.7. Considers and, when appropriate, approves extensions to ADA reporting timeframes. All extension requests shall be submitted in writing and fully justified.

2.2.8. Ensures that an annual evaluation is made of the overall administration and processing of Air Force ADA violations and internal control of appropriations.

2.2.9. Delegates execution of the Air Force's ADA program to the Deputy Assistant Secretary, Financial Operations (SAF/FMP).

#### 2.3. Deputy Assistant Secretary, Budget (SAF/FMB):

2.3.1. Establishes Air Force budget policies and procedures for preparing, justifying and executing budgets to include administrative control of appropriations.

2.3.2. Provides guidance on organizational and appropriation funding responsibilities and use of funds (propriety) issues.

2.3.3. Develops and maintains the budget structure and associated codes.

**2.4. SAF/FMP:**

2.4.1. Executes the Air Force's program for identifying, investigating, reporting, and processing ADA violations.

2.4.2. Delegates the day-to-day responsibility for monitoring and implementing the ADA program to the Director for Audit Liaison and Followup (SAF/FMPF).

**2.5. SAF/FMPF.** Oversees implementation of the Air Force's ADA program and assists MAJCOM, FOA, DRU, and Air Staff organizations in matters relating to actual or suspected ADA violations and in the investigation of such violations. SAF/FMPF is notified of all potential ADA violations and shall:

2.5.1. Assign case numbers and establish completion dates for preliminary reviews and formal investigations of ADA violations.

2.5.2. Receive and approve all preliminary reviews of potential violations.

2.5.3. Receive and review the IO's Report of Violation (ROV). The ROV is reviewed for:

2.5.3.1. Adequacy of facts presented in support of the conclusions reached, including, but not limited to, (1) identifying the individual(s) responsible for the violation, and (2) naming the holder of the funds subdivision (for example, the installation commander) and evaluating the execution of his/her fund control performance.

2.5.3.2. Accuracy of the accounting records after correction of the error(s).

2.5.3.3. Adequacy of the procedural or policy changes already instituted, or as otherwise proposed by the IO, to prevent similar violations from occurring.

2.5.3.4. An evaluation of any statements made by those individuals identified as responsible for the violation. To the extent that the statements suggest a lack of culpability or extenuating circumstances not previously addressed in the ROV, SAF/FMPF may suggest that the Assistant Secretary request further fact finding and comment by the IO, or consider the evidentiary value of such statements in light of the quantity and quality of available independent evidence. Such written statements furnished by the named responsible party(s) shall be appended to the final report and transmitted to the USD(C).

2.5.4. Prepare a Summary Report of Violation (SRV) for SAF/FM's approval and submission to the USD(C). The SRV is prepared from the IO's ROV, other documentation, and legal opinions accompanying the ROV.

2.5.5. Prepare and submit a monthly ADA activity report to the USD(C). The activity report identifies new ADA cases, presents the status of overdue cases and summarizes the Air Force's ADA cases presently under investigation.

2.5.6. Conduct an annual evaluation of the Air Force's administrative funds control processes as well as the processing of ADA violations. This information is reported to the USD(C).

**2.6. Air Force General Counsel (SAF/GC).** Acts as the final legal authority on all matters arising within or referred to the Department of the Air Force, except those relating to the administration of military justice and such other matters as may be assigned to the Judge Advocate General (AF/JA). SAF/GC:

- 2.6.1. Furnishes all necessary legal advice and assistance to the Office of the Secretary of the Air Force.
- 2.6.2. Provides legal advice and assistance to the Air Staff on all matters relating to budgetary, appropriation accounting, and related fiscal matters.
- 2.6.3. Issues legal opinions that establish the Air Force position on the legal questions addressed.

**2.7. Deputy General Counsel (Fiscal Law) (SAF/GCA).** Reviews, provides legal advice, and coordinates on the results of all formal ADA investigations. SAF/GCA:

- 2.7.1. Rules on the application of particular statutes or policy directives to specific funding situations.
- 2.7.2. Unless the investigation was directed by the USD(C) or Department of Defense Inspector General, resolves matters in dispute and makes the final legal determination regarding the existence of a reportable violation.
- 2.7.3. Advises as to whether the actions taken or facts developed to establish responsibility for a violation and the disciplinary action taken are consistent with statutory and DoD directive requirements.

**2.8. MAJCOM, FOA, DRU and Air Staff Commanders .** The Commander appoints qualified IOs in a written letter of designation. The Commander ensures that the investigation is the IO's primary duty until completed, the ROV is completed within allowed timeframes, the report is legally sufficient, and the conclusions are fully supported by the documentation included in the ROV. The Commander, in consultation with the Command Staff Judge Advocate (SJA) or SAF/GCA for investigations performed by Air Staff organizations, is the final approving official for the command (i.e., he or she makes the final determination for the MAJCOM as to whether a violation has occurred). Therefore, disciplinary action should not be taken prior to the MAJCOM, FOA, DRU or Air Staff Commander's approval of the ROV. These duties may be delegated to the Vice Commander. Imposition of administrative discipline, if any, by the responsible individual's commander or supervisor need not be further deferred pending SAF/FMP's acceptance of the ROV.

**2.9. MAJCOM, FOA, and DRU Financial Management Organizations.** Each MAJCOM, FOA, and DRU Financial Management organization establishes an Integrated Process Team (IPT) consisting of senior representatives from the Judge Advocate, Inspector General, Contracting, Civil Engineering, Services, and Operations support functions. The members will be familiar with fiscal law, understand the Air Force's ADA investigation process, and have expertise in their respective functional areas. The Financial Manager/Comptroller will be the team leader. Individual members will be called together on an "as needed" basis. The IPT is responsible for:

- 2.9.1. Developing and maintaining a roster of trained and qualified ADA IO's. The roster will be used to select individuals to investigate potential violations. The roster will include current data such as the date initial training was received, rank/grade, organization to which the investigator is assigned, functional specialty(ies), number of investigations previously conducted and when they were conducted.
- 2.9.2. Ensuring IOs are adequately trained. This should include an "in-brief" with the appropriate members of the IPT prior to commencing an investigation. The IO, or member(s) of the investigation team, must have successfully completed fiscal law training and have knowledge in financial management and any other applicable functional specialty. At a minimum, all IOs shall have successfully

completed either the Air Force Judge Advocate General's School Distance Learning Fiscal Law Course, the in-residence Fiscal Law Course of the Army Judge Advocate General's School, the Fiscal Law portion of the Air Force Institute of Technology's Air Force Systems and Logistics Contracting Course, or a comparable program of instruction. The IPT will also ensure that a refresher course is available on an "as needed" basis but in no event shall an individual be designated to serve as an IO more than five years after completing his/her last formal fiscal law training.

2.9.3. Updating the roster periodically to ensure a sufficient number of qualified individuals in the appropriate ranks or grades remain available. Should a sufficient number of previously qualified IOs be unavailable, the IPT may provide a nominee with in-house training, add his or her name to the Command roster, and recommend to the designating official (MAJCOM, FOA, DRU or Air Staff Commander/Vice Commander) that the individual be designated a provisional IO, pending completion of formal training at one of the above referenced programs of instruction (Para. 2.9.2) at the earliest practical opportunity.

2.9.4. Ensuring IO independence.

2.9.5. Providing expert technical assistance, as necessary, to IOs.

2.9.6. Developing and maintaining an ADA awareness program, to include lessons learned. The IPT will compile, maintain and distribute, throughout the command, a current ADA case summary of lessons learned. The IPT will ensure senior financial and program managers are knowledgeable about the basic principles of funds control, fiscal law, and the ADA statutes; the types of violations that can occur; the most frequent types of violations that occur in the organization/command and their causes; and methods for preventing violations.

**2.10. Holders of Funds.** The holder of funds usually can be identified by referencing the addressee on the Funding Authorization document which authorizes the funds for use by the acquiring activity. Individuals to whom apportionment's or administrative subdivisions of funds are issued shall:

2.10.1. Use funds only for the purpose prescribed and not exceed funding authority, including any limitations within or on that authority.

2.10.2. Ensure compliance with all statutory or regulatory limits on the use of Air Force funds or funds allocated to the Air Force from the USD(C).

2.10.3. Ensure all obligations are promptly recorded against the proper administrative subdivision and all recorded obligations meet fiscal law requirements.

2.10.4. Comply with Air Force fund control policies and procedures, including full use of the capabilities of existing systems and control techniques. Provide any implementing guidance needed and emphasize the requirement for strict control to preclude violations.

2.10.5. Promptly report all suspected ADA violations.

**2.11. The Commander/Supervisor of Individuals Named as Responsible.** Reviews the MAJCOM, FOA, DRU or Air Staff Commander-approved ROV and, in consultation with his/her legal advisor, determines and implements appropriate disciplinary action. Since the IO's report must address the propriety of imposing disciplinary action, as well as furnish a recommendation of appropriate discipline for the commander's consideration, a decision which is contrary to the advice of the IO must be justified in writing. Irrespective of the IO's recommendation, a commander or supervisor's decision not to impose disciplin-

ary action on one or more responsible individuals under his/her command or authority must be fully explained. The commander/supervisor of the individual named responsible then returns the report, with attachments, to the MAJCOM, FOA or DRU financial management organization for transmittal through the MAJCOM, FOA, or DRU Commander to SAF/FMP. ROV's prepared at the Air Staff level will be transmitted to SAF/FMP through the appointing official. The package should contain a signed statement, by the responsible individual(s) commander or supervisor, acknowledging an understanding of certain key principles concerning violations of the ADA, and explaining why he or she believes that the discipline to be imposed is commensurate with the severity of the violation, including a full explanation of any extenuating circumstances.

**2.12. Command Staff Judge Advocate (SJA):**

- 2.12.1. Provides expert advice to the local attorney assigned to the case.
- 2.12.2. Disseminates information on current fiscal law issues.
- 2.12.3. Reviews Preliminary Review Reports (PRRs) and formal ROV's as counsel to the command comptroller.
- 2.12.4. Advises the appointing official with a written opinion on the legal sufficiency of the ROV.

**2.13. Supporting Functional Experts (Including Local SJA):** An attorney shall be assigned to support the IO from the office which is most capable of rendering timely advice based on ready access to documentary evidence, as well as personnel qualifications, staffing levels, and current workload. Before a legal advisor is selected, the MAJCOM, FOA, or DRU Acquisition Law Directorate, or applicable legal office, will coordinate the selection through the servicing SJA. Among the duties of the legal advisor will be the identification and interpretation of statutes, regulations and administrative guidance germane to the issues. The legal advisor is to work with the IO throughout the investigation. A written legal opinion which will become a part of the IO's report, shall be prepared prior to finalizing the PRR or ROV. All other functional experts shall be made available to support the IO on an "as needed" basis.

**2.14. Air Force Members and Employees.** The responsibility for administrative control of Air Force funds must be retained in the Air Force. The actual obligation of government funds must be authorized or incurred by government employees or military members with actual authority to do so. Contracting out the legal responsibility for the control or obligation of government funds is prohibited since, under the law, a contractor or his employees cannot be held responsible for violations of Sections 1341(a) or 1517(a) or Section 1342 of Title 31 U.S.C. Only military members and employees of the government can be held responsible for such violations and subjected to disciplinary action and criminal penalties. Where an accounting error made by a contractor employee supporting a government program or financial management office causes a violation, and the error was not discoverable in the ordinary course of contract administration, consideration must be given to naming the holder of funds as the responsible party due to his/her overall responsibility/position.

## Chapter 3

### PRELIMINARY ANTIDEFICIENCY ACT REVIEWS

**3.1. Preliminary Reviews.** A preliminary review is performed to determine whether a potential ADA violation has occurred and often forms the foundation for a formal investigation. Preliminary reviews develop the facts and circumstances which are used in deciding whether to commit further resources to a formal investigation, and includes checks for duplications or other errors in reviewing and recording commitments and obligations to ensure they are valid and properly chargeable against the funds involved, and verifying actual fund status in the correct account at the time the transaction creating the problem occurred. A preliminary review does not attempt to identify responsible individuals, recommend corrective actions, or collect other information required during a formal investigation. However, it can provide a formal investigating officer with information which is vital to quickly gaining an understanding of facts, issues, and the identities of potential witnesses.

**3.2. Identifying Potential Violations.** Potential ADA violations are often identified based on the findings and recommendations presented in audit reports. However, it is not uncommon for preliminary reviews to be initiated based on information provided by individuals who suspect a potential violation as a result of information acquired through the normal course of business.

**3.3. Reporting Suspected Violations.** Once a potential violation is suspected, it must be reported within 10 working days to the cognizant MAJCOM, FOA, or DRU Financial Management organization. Within the Air Staff, the violation must be reported to the respective Commander or his/her Resource Management organization. Upon notification of a suspected violation, the MAJCOM, FOA, DRU or Air Staff organization will contact SAF/FMPF and (1) provide a brief description of the basis for a suspected violation, and (2) request SAF/FMPF assign a preliminary review control number. Once a control number is assigned, the MAJCOM, FOA, DRU or Air Staff organization will initiate a preliminary review. The organization performing the preliminary review will provide SAF/FMPF with the name, address, office symbol and telephone number of the individual(s) responsible for determining whether a potential violation occurred. The preliminary review of the circumstances surrounding the potential violation will be completed and reported to SAF/FMPF no later than 90 days from the review start date.

**3.4. Selecting a Preliminary Review Official (PRO).** Preliminary Review Officials (PROs) are appointed by the MAJCOM, FOA, or DRU Director of Financial Management (may be delegated to the Budget Officer). Within the Air Staff, the respective Commander or his/her Resource Management organization appoints the PRO. In selecting a PRO, consideration will be given to his or her expertise in Financial Management and understanding of Fiscal Law, as well as the ability to perform an independent review. To ensure independence, it is highly recommended that the PRO be selected from an organization external to the immediate organization being investigated (e.g., outside the program office where the potential violation may have occurred). The appearance of a conflict of interest or bias should be determining factors against selection. It is also desirable, but not mandatory, that the reviewer's grade/rank be equal to, or greater than, the highest ranking individual whose actions are under review. PRO's do not have to be selected from the roster of qualified ADA investigators.

**3.5. Local SJA Responsibilities.** The PRO is entitled to the full cooperation of the assigned SJA and the supporting financial management directorate for the installation where the preliminary review is conducted.

**3.6. Functional Expert Responsibilities.** Functional expertise will be provided to the PRO as needed. Areas of expertise may include civil engineering, contract management, and financial management.

**3.7. PRO Responsibilities.** The PRO's role is that of fact-finder and advisor to the appointing organization and SAF/FMP as to the likelihood that a potential ADA violation has occurred. The reviewer's position is not one of advocate for or against a particular interpretation of the facts, but rather an impartial investigator. The reviewer and his/her legal advisor are encouraged to consult with the MAJCOM, FOA, or DRU Acquisition Law Directorate, or applicable legal office, during the preliminary review who, in turn, will consult with SAF/GCA as required.

**3.8. Preliminary Review Report (PRR) Requirements.** The preliminary review results should be reported in a PRR. Use the following outline in preparing the PRR.

3.8.1. Authority:

3.8.1.1. Identify the Case Control Number

3.8.1.2. Identify the name, rank/grade, title, and date of appointment (appointment letter should be included as an attachment)

3.8.2. Matters reviewed:

3.8.2.1. Include the names, ranks, and titles of the individuals contacted who provided information relevant to the review.

3.8.2.2. Include the date the potential violation occurred, the date of discovery, amount of violation and accounting classification.

3.8.2.3. Describe the methods used to accomplish the review (face-to-face or telephone interview; research of legal, financial, and management issues; review of financial management records and documents, etc.).

3.8.2.4. Discuss any related issues that were identified but found not to be within the scope of the review, and the rationale for omitting them.

3.8.3. Facts and Discussion:

3.8.3.1. Describe in detail the events, circumstances, and evolution of the issues that led to the suspected potential violation. Provide facts deemed relevant to resolving the issues. These facts must be listed in the report to support the recommendation for or against initiating a formal investigation. The facts shall be listed along with a discussion on how they are relevant. This section should include a description of the process in place at the time and the problem(s) the process created.

3.8.3.2. Discuss how concerns over the potential violation surfaced (if it resulted from an audit, identify the audit report by title, number, date, and issuing organization). If an audit recommendation is based on asserted conclusions of law, request the assigned legal advisor provide an independent analysis of the auditor's legal conclusions. Conclusions of law are not facts, but are

characterizations of the duties, responsibilities, or liabilities of individuals or organizations which result from facts. If the facts recited by the audit report are not material to the conclusion of law being drawn, or are lacking altogether, such a finding by the reviewing official is appropriate and necessary in a PRR. For example, if an audit report concludes that expenditures from an operation and maintenance (O&M) appropriation for renovation of a building exceeded the statutory limit on maintenance and repair thus triggering a potential ADA violation, a conclusion of law has been stated by the auditor, i.e., that the work performed was construction and not repair. A material fact supporting the conclusion of law would be the conversion of the original structure to an entirely different use or purpose. Such a fact would be inconsistent with a repair (a legitimate purpose of the O&M appropriation), to which no absolute ceiling on expenditure applies<sup>1</sup>.

3.8.3.3. Summarize relevant testimony and state any presumptions that were sustained or rebutted through facts established by the review, any questions of fact that cannot be resolved without a formal investigation, and any other comments or findings that are pertinent to the subject of the review.

3.8.3.4. Clearly articulate the basis of any potential violation. The bases include:

- Accepted voluntary services.
- Charged an incorrect appropriation when funds are not available from the correct appropriation.
- Disbursement(s) exceeded recorded obligations(s).
- Obligation exceeded appropriation/fund availability.
- Exceeded limitation on local obligation authority.
- Exceeded minor construction limitation.
- Charged incorrect fiscal year when funds are not available from a correct fiscal year.
- Other (explain).

3.8.3.5. Identify the statutory rule or regulation purportedly violated, i.e., 31 U.S.C. §

1517(a) or 1341(a). Identify the level at which available funding was allegedly exceeded (program office, product or logistics center, MAJCOM, FOA, DRU, appropriation or limitation). This can be determined by identifying the holder of funds at the time that a liability was incurred. If budget authority was provided to a lower echelon of command or program responsibility by means of a Budget Authorization (BA) document, the addressee is usually the holder of funds. If the BA is withdrawn without obtaining written confirmation of availability for withdrawal from the lower subdivision of funds, the holder of funds will be at the higher or withdrawing subdivision level. If an overobligation results from a failure of the lower subdivision to post a valid pre-existing obligation prior to advising the withdrawing subdivision of the unobligated balance available, the holder of funds will be at the lower subdivision.

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<sup>1</sup>However, see 10 U.S.C. § 2811(b) which requires advance Secretarial approval of real property repair projects exceeding \$5,000,000.

3.8.3.6. Identify the level at which available funding was allegedly exceeded (program office, product or logistics center, MAJCOM, FOA, DRU, appropriation or limitation). This can be determined by identifying the holder of funds at the time that a liability was incurred. If budget authority was provided to a lower echelon of command or program responsibility by means of a BA, the addressee is usually the holder of funds. If the BA is withdrawn without obtaining written confirmation of availability for withdrawal from the lower subdivision of funds, the holder of funds will be at the higher or withdrawing subdivision level. If an overobligation results from a failure of the lower subdivision to post a valid pre-existing obligation prior to advising the withdrawing subdivision of the unobligated balance available, the holder of funds will be at the lower subdivision.

3.8.3.7. State when the corrective entry (funding correction) was posted or when it will be posted (additional funds received, funds realigned, etc.). Note that a deferred posting of a corrective entry does not avoid the necessity to report a violation.

3.8.4. Other Areas of Discussion. Discuss any other issues which may not have directly caused the violation but are essential to complete the report.

3.8.5. Conclusion. State whether, based on the findings of the preliminary review, a formal investigation is necessary. Attach all documentation which supports the conclusion. In certain cases, a reasoned conclusion may be impossible without audit support. If an audit is considered necessary to properly develop the facts, explain the reason(s) why in the conclusion.

3.8.6. Legal Opinion. The PRR is incomplete without an attached legal opinion. The legal opinion should not declare an actual ADA violation. This is the function of the formal investigation. The legal opinion should identify, interpret, and apply relevant statutes, instructions, regulations, and precedent from Comptroller General Opinions and other sources to the facts. The legal opinion should also assess the adequacy of the fact-finding to support the reviewer's recommendation:

3.8.6.1. Do descriptions of the roles played by involved individuals suggest a need for follow-up questions? If the apparent overobligation resulted from the unratified actions of someone who lacked authority to bind the Government, there is no apparent violation.

3.8.6.2. In potential violations of the purpose statute, has the underlying basis for the choice of appropriation been fully developed? If an exercise in professional judgment as to choice of funds appears to be rationally based, properly documented, and not clearly outside the parameters of published funding guidance at the time of the decision, then a formal investigation may not be warranted. Explain why.

3.8.6.3. Has the impact of a correction to an unobligated balance been adequately explained, i.e., was the unobligated balance in the proper account sufficient to absorb the corrective entry?

3.8.6.4. Has the context for the alleged funding error or omission been adequately established, i.e., potential violation versus accounting error? The latter is more likely when the mistake is discovered soon after it is made, and can be corrected without the necessity of reprogramming actions or withdrawals from a higher level subdivision of funds.

3.8.6.5. Was the appropriation apparently exceeded (31 U.S.C. 1341(a)) or only the lowest administrative subdivision (31 U.S.C. 1517(a)). If the latter, a violation is still possible, but the remedy will not require a supplemental appropriation. If funds are available for withdrawal from other programs or accounts at the lowest subdivision of funds to cover the corrective entry and no

other statutory or administrative limitation on obligation authority has been exceeded (e.g., exceeding an allotment or a statutory cost ceiling), a recommendation against a formal investigation is a likely result.

## Chapter 4

### FORMAL ANTIDEFICIENCY ACT INVESTIGATIONS

**4.1. Formal ADA Investigations.** Formal investigations are performed when the preliminary review determines that a potential ADA violation has occurred, or a formal investigation has been requested by USD(C) or SAF/FM. When appropriate, coordinate formal investigations through your servicing Air Force Office of Special Investigations (AFOSI) detachment where a determination will be made on whether to open an AFOSI investigation.

4.1.1. In those situations where an AFOSI investigation is not warranted, the following guidelines apply. The purpose of the formal investigation is to (1) identify and document the relevant facts and circumstances surrounding the potential violation (this may consist largely of a validation of facts found in a preliminary review), (2) state a conclusion as to the existence of an actual violation, supported by the evidence and applicable legal precedent, (3) identify the events which caused the violation, (4) establish whose action or inaction brought about the violation, and at what level of management it might reasonably have been prevented, (5) recommend appropriate disciplinary action, or explain a recommendation against disciplinary action by reference to extenuating facts and circumstances, (6) identify the required procedural and funding corrections and whether the correction has already been made, and (7) recommend management actions to prevent a recurrence.

4.1.2. The formal investigation should be completed, and the results reported to SAF/FMPF, no later than six months from the start of the investigation. SAF/FM may approve an extension of the six month timeframe on a case-by-case basis. However, any extension requires written justification and shall not exceed 45 days.

**4.2. Selecting an Investigating Officer.** In selecting an IO, consideration will be given to his or her expertise in Financial Management, completion of Fiscal Law training, and the ability to perform an independent review. In order to ensure independence and impartiality during an investigation, the IO must be selected from an organization external to the immediate organization being investigated (e.g., outside the program office where the potential violation may have occurred). Apparent conflict of interest or bias should be the determining factor in nonselection. It is also desirable, but not mandatory, that the IO's grade/rank be equal to, or greater than, the highest ranking individual directly involved in the transaction(s) under investigation.

**4.3. Appointing an Investigating Officer.** The IO is normally appointed by the MAJCOM, FOA, DRU or Air Staff Commander/Vice Commander from a roster of certified/qualified individuals. The roster is maintained at the appropriate MAJCOM, FOA, DRU or Air Staff Financial Management organization. However, in extenuating circumstances, the MAJCOM, FOA, DRU or Air Staff Commander/Vice Commander may direct that the IO first be identified and then trained, placed on a roster of certified/qualified individuals, and then appointed. The IO shall be appointed in writing. The written correspondence appointing the IO shall include (1) the ADA case number, (2) the specific time frames to be met during the investigation, (3) a statement noting that the IO is certified as properly trained and qualified, and (4) a statement noting that the investigation is the individual's primary duty until completion. **Attachment 2** contains a sample appointment letter.

**4.4. Investigating Officer Responsibilities.** The IO shall prepare a ROV that contains all the evidence required to support a factually and legally sound determination that an ADA violation has or has not occurred. The investigation shall be accomplished within the framework of DoD Financial Management Regulation 7000.14-R, Volume 14, and this instruction, with proper regard for the substantive and procedural rights of potentially responsible parties, as explained within this guidance. Where a violation has been found the IO is responsible for, among other things, (1) identifying the individual or individuals responsible, (2) obtaining a legal sufficiency review from the SJA, (3) notifying the responsible individuals in writing of the tentative conclusion(s) and providing the responsible parties an opportunity to comment on the facts and circumstances, (4) recommending in the ROV whether disciplinary action is warranted, and if so, in what measure, and (5) identifying any remedial action taken by the affected organization to correct the accounts and properly fund the subject liability, and to prevent a recurrence. In discharging these responsibilities, the IO is entitled to support from staff activities having expertise in the subject areas relevant to the actions and activities under investigation.

**4.5. The SJA Investigative Role.** An IO may face a number of legal issues during the course of an investigation. An SJA representative shall be available to advise the IO throughout the course of the investigation. Therefore, initial and subsequent periodic consultations with the assigned legal advisor are mandatory.

**4.6. Performing the Investigation - Gathering and Reviewing Evidence.** The IO shall ensure the following information has been obtained and reviewed during the course of the investigation:

4.6.1. Review the PRR to ensure a full understanding of the facts and circumstances of the potential violation.

4.6.2. Identify by name and duty title the holder of the funds subdivision (e.g., Air Base Wing Commander) and obtain an evaluation of the performance of his/her fund control responsibilities. The level of command immediately above the holder normally will furnish this evaluation.

4.6.3. Examine the documentary evidence associated with the potential violation and list each document.

4.6.3.1. Copy relevant supporting documents for the transaction(s) which are the source of the potential violation. Such documents will be attached to the final report.

4.6.3.2. Trace and document management approval(s) of transactions, including any exercise of professional judgment concerning the means and method of funding, that caused the violation.

4.6.3.3. If limitations found in an instruction, funding document, or other administrative control were allegedly violated, review the pertinent document.

4.6.3.4. If a statutory limitation was allegedly exceeded, review the pertinent statute.

4.6.4. Examine relevant circumstantial evidence associated with the potential violation and describe how each piece of circumstantial evidence relates to the case, as well as the weight given to such evidence in arriving at a conclusion. Circumstantial evidence consists of facts or circumstances from which the existence or nonexistence of a fact in issue may be inferred.

4.6.5. Assemble and analyze the documented evidence.

4.6.5.1. Develop and document a list of findings based upon the evidence. Identify the evidence that supports each finding.

4.6.5.2. Develop and document a list of conclusions, including which specific act, or failure to act, caused the potential violation. Identify the evidence and findings that support each conclusion.

4.6.5.3. Determine conclusively that an ADA violation occurred and, if so, which provision of the Act was violated. This determination should be made in consultation with the assigned SJA representative.

4.6.5.4. Identify the date and amount of the potential violation.

4.6.6. Determine if the acts that caused the violation were in compliance with established internal controls or local operating procedures.

4.6.6.1. If the acts were not in compliance with either the controls or procedures, determine what improvements are required to the controls and procedures to prevent future violations of this type.

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

4.6.6.3. In consultation with the installation commander, operating personnel, and supervisor(s), recommend or review revised controls and procedures to prevent future violations of the same type.

4.6.6.4. In consultation with management officials of the Air Force component involved, provide any lessons learned from this event for use by others in addressing similar circumstances.

**4.7. Performing the Investigation - Taking Testimony.** Testimony shall be obtained from individuals having knowledge of the transactions and events surrounding the suspected violation, including the individual(s) tentatively identified as potentially responsible. Testimony may be sworn or unsworn, but potentially responsible individual(s), once identified, are entitled to make a sworn statement, and must be so advised. Verbatim transcripts are not mandatory but are desirable. Such documentary evidence as may exist should be appended to the report. The investigative procedures described in AFI 90-301, *Inspector General Complaints*, dated May 23, 1994, should be used as a point of departure. Follow up on testimony given by witnesses which conflicts with documentary or testimonial evidence by reinterviewing the witness, and/or seeking corroboration through interview of additional witnesses, as appropriate.

4.7.1. Note the inability of the IO in ADA investigations to offer an unqualified promise of confidentiality<sup>2</sup> to witnesses, based on the regulatory requirement<sup>3</sup> to provide a named responsible party with a copy of the IO's draft report for comment and presentation of rebuttal evidence or additional witnesses. A further distinction between ADA investigations and AFI 90-301 Air Force Inspector General (IG) investigations is the mandatory requirement for sworn testimony in IG "Inquiries" and "Investigations." However, in either case, only personal information protected under the Privacy Act, or qualifying for an exception to release under the Freedom of Information Act (FOIA) can be withheld from release.

4.7.2. Interview the individuals involved with the suspected transactions and document their testimony. This includes persons who either initiated the actions under investigation or provided input or advice to the decision makers. Establish the role of all participants in the specific decisions or actions taken, as well as their functional responsibilities in the organization.

4.7.3. It is desirable, but not mandatory, that interviews with potentially responsible parties be electronically recorded. At the beginning of the interview, these individuals must be allowed to read the Privacy Act Statement contained in AFI 90-301, May 1994, and then asked, for the record, if they have read it and understand it.

4.7.4. For those individuals viewed as potentially responsible in any way, elicit an explanation of why they did what they did and when they did it. However, if statements are made which suggest a conscious, willful and deliberate intent to act in disregard of the fiscal consequences, the interview with the potentially responsible party should be terminated immediately. The matters under investigation must then be referred to the SJA for coordination with the Air Force Office of Special Investigations to determine whether a separate criminal investigation should be initiated. The ADA Investigative Officer should not attempt to continue the interview under an advisement of rights under the 5th Amendment or Article 31 of the Uniform Code of Military Justice.

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<sup>2</sup>However, the identities of certain witnesses in IG investigations performed pursuant to AFI 90-301 may be protected when essential information can not otherwise be obtained without a guarantee of confidentiality. As such, a FOIA exemption may be available to permit the withholding of *discrete portions* of the full IG report of investigation from public release. DoD 7000.14-R, Vol. 14, Chapter 7, para. B.3. requires that the person(s) named responsible in an ADA Report of Violation be given an opportunity to read the report of facts and circumstances leading to the violation. This includes transcripts of witness statements. However, a responsible individuals right to review a copy of the draft report in an ADA investigation does not automatically create a corresponding right of access in third parties, and until the report is approved by USD(C) for transmittal to the President, through OMB, and to the Congress, it should be treated as a predecisional document. Pending approval by USD(C), the final report, summary report and all interim drafts should be marked "For Official Use Only". See AFI 37-131 for a discussion of the proper application of the FOUO legend. See AFI 37-132 for a discussion of promises of confidentiality covered under the Privacy Act.

<sup>3</sup>See DoD 7000.14-R, Vol. 14, Chapter 7, Para. B. 3.

**4.8. Performing the Investigation - Determining Responsibility.** A responsible individual is the person(s) who authorized or created the over distribution, obligation, or expenditure in question. An investigation is considered incomplete until an individual has been named as responsible for the ADA violation. A conclusion that the IO could not identify a responsible individual is not acceptable. Identification of more than one responsible party in appropriate circumstances is expected.

4.8.1. Carefully analyze the facts and circumstances of the situation before fixing responsibility for a violation. Generally, the responsible party will be the highest ranking official in the decision making process who had either actual or constructive knowledge of precisely what actions were taken and the impropriety or questionable nature of such actions. There often will be officials who had knowledge of either factor. The person in the best position to prevent the ultimate error, however, is the highest ranking official who was aware of both factors. The IO shall attempt to discover the specific act, or the failure to take an action, that caused the violation and who was responsible for that act or the failure to taken an action. Document clearly what each person involved did, or failed to do, that caused or contributed to the violation. The investigator shall also assess and document whether the individual(s) named responsible committed the violation knowingly and willfully.

4.8.2. Determine to what degree each key individual was responsible for the violation.

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

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

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

4.8.3. The IO should not name commanders, budget officers, or finance officers as responsible solely because of their positions. However, if it is impossible to identify the individual whose actions or inaction brought about the violation, the holder of funds must be named as the responsible party.

4.8.4. Name the head of the operating agency at the time the violation was incurred as responsible for the violation if the violation involves a centrally managed allotment. However, other individuals may also be named responsible for the violation.

4.8.5. If an accounting error causes a violation, name the individual who made the accounting error as responsible assuming no other official should have detected the mistake.

**4.9. Reporting the Investigation Results.** At the conclusion of an investigation, the IO shall prepare a ROV which documents the investigation results. The IO's report, including a recommendation for or against disciplinary action, the SJA's legal sufficiency review, the Commanding Officer/Supervisor's statement concerning the appropriateness of disciplinary action against the responsible party(s), and the appointing official's approval of the ROV shall be completed and submitted to SAF/FMP within six months of the investigation start date. The only exception is when an extension has been approved. The ROV shall be prepared and submitted in the following six part format.

**4.9.1. Part I. Authority:**

4.9.1.1. Identify the case control number.

4.9.1.2. Provide the name, rank or grade, and title of the appointing official and the investigating officer. Include the investigating officer's date of appointment.

**4.9.2. Part II. Matters Investigated:**

4.9.2.1. Summarize the scope of the investigation (include a comprehensive discussion into the background of the alleged potential violation, investigation timeframes, locations visited, and type of officials contacted) and the methods used to accomplish the investigation, for example, face-to-face interview; research of legal, financial, and management issues; review of financial management records and documents, etc.

4.9.2.2. Include the names, ranks, and the present, as well as, relevant past duty titles of the individuals who were interviewed or who provided written statements.

4.9.2.3. Discuss any related areas and matters that were not investigated and the rationale for omitting them from the investigation.

**4.9.3. Part III. Facts and Discussion:**

4.9.3.1. Identify the Treasury symbol and title of the appropriation or other fund account involved.

4.9.3.2. If no additional facts beyond those identified in a preliminary review have been found, briefly summarize the relevant facts found in that review, and specifically accept or reject those findings, as appropriate, for the purpose of the formal investigation.

4.9.3.3. Identify the amount of the purported violation. The amount of the violation must correspond to the suggested amount of additional funds required to support a corrective entry in the accounts, or by which an administrative or statutory ceiling on funding authority was allegedly exceeded. In the latter case, the amount of the violation would be the total and not just the amount that was exceeded.

4.9.3.4. Identify when and where the potential violation(s) occurred.

4.9.3.5. Identify the date the potential violation(s) was discovered.

4.9.3.6. Describe how the potential violation(s) was discovered. If the investigation was undertaken because of an audit report, identify the report by title, number, date, and issuing audit organization.

4.9.3.7. Identify the name and position of the subdivision's holder of funds and provide an evaluation of the performance of his or her fund control responsibilities. This evaluation may be omitted if the holder of funds is named responsible for the violation(s).

4.9.3.8. Summarize the usual operation of the funds control procedures, processes, etc., that were in place when the events under investigation occurred. Facts relevant to the adequacy of funds control procedures or the oversight of their operation at the time of events under investigation should also be enumerated.

**4.9.4. Part IV. Other Areas of Discussion.** Without unnecessary re-statement of the facts, focus attention on the events and circumstances that led to a determination of a potential violation. Discuss any evolution of the issues under investigation, including a validation, clarification or outright contradiction of facts and conclusions drawn in prior reviews or audit reports. Provide your perspective as the IO on the credibility or weight of conflicting documentary or testimonial evidence, if any. State

the number of people interviewed, characterize the evidence as to credibility or weight, identify any mitigating facts or extenuating circumstances surrounding the potential violation, crucial facts that could or could not be satisfactorily established based on the accumulated evidence, any technical issues on which consensus could not be achieved among the support team, and any other comments or findings that are pertinent to the investigation.

**4.9.5. Part V. Conclusions.** The body of evidence consists of both testimony and documents. Conflicts may exist between the testimony of two or more witnesses, or between the testimony of a witness and a document prepared at the time of the events being recalled. The IO's job is to reconcile such conflicts by weighing such conflicting evidence and drawing conclusions based on the weight of the evidence overall.

4.9.5.1. If an actual violation is found, in consultation with the assigned legal advisor, identify the section or subsection of Title 31, United States Code that was violated. For example, Title 31, United States Code, Section 1341(a)(1)(A); Title 31, United States Code, Section 1517(a); or Title 31, United States Code, Section 1342.

4.9.5.2. Provide a detailed summary of what actually caused the violation and the associated circumstances.

4.9.5.3. Identify the individual(s) responsible for the violation. Descriptions shall include:

4.9.5.3.1. Name and rank (at the time of the violation) of the officer(s) responsible for the violation.

4.9.5.3.2. Name, grade and civilian job series number (at the time of the violation) of the civilian employee(s) responsible for the violation.

4.9.5.3.3. Position title (at the time of the violation) of the officer(s) or civilian employee(s) responsible for the violation.

4.9.5.3.4. Organization at the time of violation or presently of the officer(s) or civilian employees(s) responsible for the violation.

4.9.5.4. Explain the nature of the error or omission that caused the violation. Consider the following questions in describing the process failure or judgmental error .

4.9.5.4.1. Did the violation occur because the individual carelessly disregarded instructions?

4.9.5.4.2. Did the violation occur because the individual was inadequately trained or lacked knowledge to perform their job properly?

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

4.9.5.4.4. Did the violation occur because of a lack of adequate procedures and controls?

4.9.5.5. Provide the person(s) named responsible for a violation the opportunity to

(1) read the report of the facts and circumstances leading to the determination of responsibility (note that any written legal advice provided to the IO is not releasable), and (2) identify any facts or circumstances they believe to be extenuating or mitigating. Approximately 10 working days should be allowed for a response. Transmittal of the report and notification of potential responsibility should be accomplished via registered mail (restricted delivery), return receipt requested.

4.9.5.6. Provide the individual(s) named responsible an opportunity to comment/provide rebuttal evidence even if he or she is no longer working where the violation occurred, or is retired or is no longer working for the Department of Defense. If the responsible individual is presently assigned to another command, the IO shall send the responsible individual's new commander or supervisor a copy of the ROV for his or her decision on the appropriate disciplinary action, if warranted. The commander, in consultation with the SJA, shall determine the disciplinary action and notify the appointing official.

4.9.5.7. All individual(s) identified as responsible for an ADA violation shall be:

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

4.9.5.7.2. Advised that upon USD(C) approval of the ROV, his/her name(s) will be provided to the President, through OMB, and to the Congress.

4.9.5.7.3. Advised that he/she may consult with private legal counsel at his/her own expense or, when applicable, a union representative. (In special interest investigations, a government legal advisor may be provided to the potentially responsible party).

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

4.9.5.7.5. Allowed to designate witnesses to testify in their behalf. Designated witnesses shall be either interviewed or provided an opportunity to make a written statement for the record. If the designated witness declines to make a statement, the report will so indicate.

4.9.5.8. Advise the responsible individual(s) that his or her statements should acknowledge that they have read the report and understand that they are being held responsible for the violation. In addition, they understand that they may provide pertinent additional information which was not addressed in the draft report, including the names of additional witnesses. The responsible individual may also refute statements made by others through a sworn or unsworn statement, or identification/production of additional documentary evidence. If a responsible individual refuses to give a statement, he or she should submit a signed statement of declination. If he or she refuses to sign a declination, the IO should include a statement to that effect in the report. The IO will give the responsible individual(s) approximately 10 working days to respond. If the person(s) named responsible for the violation cannot be located despite a due diligent effort, a statement to that effect, signed by the IO, shall be included in the ROV.

4.9.5.9. The opportunity to provide a second (i.e., final) statement should be offered when the report has been substantially changed since the individual's first opportunity to comment or has been changed in a way that has a bearing on the responsibility of the individual. The IO shall evaluate the comments of the responsible party(s), and his or her additional witnesses. Any new or conflicting facts or circumstances that differ from the report contents shall be evaluated and presented in the final ROV.

4.9.5.10. Include a statement as to whether the individual(s) determined to be responsible for the violation either did, or did not, knowingly and willfully incur the violation.

#### **4.9.6. Part VI. Recommendations:**

4.9.6.1. Recommend whether, based on the facts and circumstances surrounding the case, disciplinary action is appropriate against the responsible individual(s). The recommended disciplinary action, if any, should be commensurate with the severity of the violation and the degree of responsibility of the individual. Administrative disciplinary action for civilian personnel includes admonishments, reprimands, suspensions, reductions in grade or pay, or removal from federal service (See AFI 36-704). Administrative disciplinary action for military personnel includes administrative reprimands and admonitions, punishment under Article 15, UCMJ, and trial by court-martial.

4.9.6.2. Recommend actions to prevent future violations of a similar type (procedural corrections) as well as specific corrections to accounts required as a result of the error or oversight.

4.9.6.2.1. Include in the ROV any recommended improvements in procedures or controls and the actions taken on those recommendations by the local command. Describe remedial actions in detail so they may be evaluated for possible command-wide application. The ROV must state what corrective actions were actually taken or are being taken to preclude similar violations in the future. Recommendations for future consideration of installation-level corrective actions are not acceptable.

4.9.6.2.2. The ROV must state what specific actions were taken to correct the funding violation. Wording in the report to the effect that funds will be requested is not sufficient. Attach a copy of the documentation making the funding correction.

4.9.6.3. Include any recommended lessons learned in the report. Obtain from management officials of the Air Force component involved any lessons learned from this event for use by others in addressing similar circumstances.

**4.10. Processing the Report of Violation (ROV).** The IO shall sign and forward the ROV directly to the MAJCOM, FOA, or DRU Financial Management organization. The MAJCOM, FOA, or DRU Financial Management organization reviews the ROV for accuracy and completeness and forwards it to the Command SJA to review for legal sufficiency. An Air Staff appointed IO shall sign and forward the ROV directly to his/her legal advisor for a legal sufficiency review. Upon completion of the legal sufficiency review, the report is then endorsed and forwarded to the appointing official (usually the MAJCOM, FOA, DRU or Air Staff Commander) for approval.

4.10.1. The appointing official reviews the ROV, and if it is found satisfactory, ensures a Memorandum of Notification is sent to the responsible individual(s). The notification must inform them of the conclusion that they are being named responsible for the ADA violation, as documented in the ROV; and that the violation will be reported to the President, through OMB, and to the Congress upon USD(C) approval. If disciplinary action is warranted, this notification should state what disciplinary action will be taken. This notification should be provided to the responsible individual(s) via certified mail (restricted delivery). A copy of this notification should be submitted with the ROV.

4.10.2. After the disciplinary action process has been completed, the appointing official sends the ROV to SAF/FMP for preparation of the SRV and further forwarding to USD(C).

**4.11. Imposing Disciplinary Action.** After the appointing official approves the ROV, a copy of the final report is sent to the responsible individual(s) commander or supervisor for a decision on whether disciplinary action is appropriate.

4.11.1. The responsible individual(s) commander or supervisor, in consultation with his/her legal advisor, shall determine whether disciplinary action is warranted. Disciplinary action should be approved before the ROV is submitted to SAF/FMP.

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

4.11.3. Even though the individual(s) determined to be responsible for a violation is no longer on active duty or employed by the Air Force, appropriate disciplinary action shall be pursued.

4.11.3.1. When it is determined that a retired military member was responsible for an ADA violation while on active duty, to the extent practical the same disciplinary action should be taken as would have been taken if the retired member were still on active duty. In many cases, the appropriate disciplinary action is an administrative reprimand or admonition issued pursuant to AFI 36-2907, *Unfavorable Information File (UIF) Program*, Chapter 3, May 1, 1997. In the case of retired military members, a particularly aggravated case involving serious malfeasance may warrant a recall to active duty for the purpose of military justice action. However, such a decision must be made by the Secretary of the Air Force.

4.11.3.2. Actions taken against retired civilians may be limited to letters of notification because these individuals have no continuing relationship with the government. However, if the command chooses, the letter of notification can state what disciplinary action the civilian would have received if he or she were still a government employee.

4.11.4. The disciplining official must submit a memo, through the MAJCOM, FOA, or DRU Financial Management organization, to SAF/FMP for all ADA cases where a violation is found to exist. The disciplining official's memo is required whether or not disciplinary action is imposed. The memo must fully explain, with very strong rationale, the disciplinary action or lack of disciplinary action imposed. The disciplining official's memo must also acknowledge that he or she understands that (1) an ADA violation is a violation of Federal statute; (2) the DoD is required to report the violation to the President, through OMB, and to the Congress; (3) even though a violation may not have been committed willfully or knowingly, that, by itself, does not justify the absence of disciplinary action; and (4) disciplinary action commensurate with the severity of the violation should be taken against the individual(s) named responsible for a violation--including individuals that may have retired or are no longer working for the DoD.

ROBERT F. HALE  
Assistant Secretary of the Air Force for Financial  
Management and Comptroller

**Attachment 1****GLOSSARY OF REFERENCES AND OTHER SUPPORTING INFORMATION*****Abbreviations and Acronyms*****ADA**—Antideficiency Act**AFOSI**—Air Force Office of Special Investigations**DoD**—Department of Defense**DRU**—Direct Reporting Unit**FOA**—Field Operating Agency**FOIA**—Freedom of Information Act**IG**—Inspector General**IO**—Investigating Officer(s)**IPT**—Integrated Process Team**MAJCOM**—Major Command**O&M**—Operation and Maintenance**OMB**—Office of Management and Budget**PRO**—Preliminary Review Officer**PRR**—Preliminary Review Report**ROV**—Report of Violation**SAF/FM**—Assistant Secretary of the Air Force (Financial Management and Comptroller)**SAF/FMB**—Deputy Assistant Secretary, Budget**SAF/FMP**—Deputy Assistant Secretary, Financial Operations**SAF/FMPF**—Director for Audit Liaison and Followup**SAF/GC**—Air Force General Counsel**SAF/GCA**—Deputy General Counsel (Fiscal Law)**SJA**—Staff Judge Advocate**SRV**—Summary Report of Violation**USD(C)**—Under Secretary of Defense (Comptroller)

**Attachment 2**

**SAMPLE LETTER OF APPOINTMENT FOR ANTIDEFICIENCY ACT INVESTIGATIONS**

MEMORANDUM FOR (Unit/Office Symbol)

ATTENTION: (Rank, Name)

FROM: (Commander/Appointing Official)

SUBJECT: Case No. F9X-XX, Potential Antideficiency Act Violation--Title, Location

1. You are appointed to conduct a formal investigation of a potential violation of the Antideficiency Act (ADA) in accordance with DoD 7000.14-R, Vol. 14, 1 August 1995. The Preliminary Review Report (See Attachment) concluded that a probable violation of the ADA, in the amount of \$XXXXXX occurred at (specify location). The potential violation resulted from a violation of (cite applicable statute(s)). Your investigation is to be documented in a Report of Violation (ROV). The format for this report can be found in AFI 65-608.

2. The purpose of this investigation is to:

- a. Identify and document the relevant facts and circumstances surrounding the suspected violation.
- b. State a conclusion as to the existence of an actual violation, supported by the evidence and applicable legal precedent.
- c. Identify the events which caused the violation.
- d. Identify the required funding corrections and whether the corrections have already been made.
- e. Recommend management actions designed to ensure that a similar violation does not occur in the future.
- f. Establish whose action or inaction brought about the violation and at what level of management it might reasonably have been prevented.
- g. Determine appropriate administrative discipline or provide strong rationale against disciplinary action by reference to extenuating facts and circumstances (Atch 2). The disciplining official, in consul-

tation with the investigating officer and the Staff Judge Advocate, shall determine appropriate disciplinary action against the individual(s) named responsible.

3. As part of your investigation, you are authorized to obtain testimony from individuals having knowledge of the transactions and events surrounding the suspected violation. The testimony is to be documented in the report. Testimony may be sworn or unsworn, but potentially responsible parties, once identified, are entitled to make a sworn statement, and must be so advised.
4. If you conclude that a violation has occurred, your ROV must name a responsible party. The person(s) believed to be responsible must be provided an opportunity to read the draft report (note that any written legal advice provided to you is not releasable) and offered the opportunity to suggest additional witnesses or evidence relevant to their own culpability in the matter. Also, he/she must be notified that they are entitled to provide a written statement which addresses any mitigating facts or extenuating circumstances surrounding the violation. The ROV should be forwarded to MAJCOM/FM only after the responsible individual's commander or supervisor has had an opportunity to review the report and approve any recommended disciplinary action or explain his/her reasons for a decision which departs from your recommendation.
5. This is to be your primary duty until the ROV has been approved by USD(C). You will be assigned a legal advisor. You are encouraged to consult with him/her throughout your investigation and particularly at the outset so that the potential legal issues may be timely identified along with the applicable statutes and regulations. You and your assigned legal advisor are encouraged to consult with MAJCOM/FM and MAJCOM/JA at any time you require assistance during your investigation. You are entitled to advice from functional area experts as well.
6. The control number for this investigation is F9X-XX. Refer to this number when discussing the case and preparing correspondence. The report must be provided to MAJCOM/FM by (date). If you have any questions concerning this case, please contact MAJCOM/FM, POC,  
DSN XXX-XXXX.

Signature Block

Commander/Appointing Official

Attachments:

Preliminary Review Report

cc:

Center/CC/FM

MAJCOM/JA