



**DEPARTMENT OF DEFENSE**

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***FINANCIAL MANAGEMENT  
REGULATION***

**VOLUME 14**

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**ADMINISTRATIVE CONTROL OF FUNDS  
AND  
ANTIDEFICIENCY ACT VIOLATIONS**

**AUGUST 1995**

**UNDER SECRETARY OF DEFENSE  
(COMPTROLLER)**

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COMPTROLLER

UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100



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FOREWORD

This Volume of the Department of Defense Financial Management Regulation is issued under the authority of DoD Instruction 7000.14, "DoD Financial Management Policy and Procedures," November 15, 1992. It governs financial management by establishing and enforcing requirements, principles, standards, systems, procedures, and practices necessary to comply with financial management statutory and regulatory requirements applicable to the Department of Defense. It directs financial management requirements, systems, and functions for all appropriated, working capital, revolving, and trust fund activities. In addition, it directs statutory and regulatory financial reporting requirements.

This Volume establishes procedures for DoD Components to use in identifying, investigating, reporting, and processing violations of the Antideficiency Act. These procedures are consistent with the policies established in DoD Directive 7200.1, "Administrative Control of Appropriations," May 7, 1984.

This Volume of the Regulation applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

This Volume of the Regulation is effective immediately and is mandatory for use by all DoD Components. Heads of DoD Components shall ensure that the provisions of this Volume are adhered to in day-to-day operations and in the design, modification, and maintenance of their Component's financial management and reporting system or systems. The Heads of DoD Components shall not issue supplementary directives and/or regulations without the prior written approval of the Office of the Under Secretary of Defense (Comptroller).

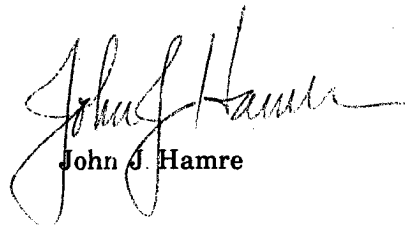
The reporting requirements in this regulation are exempt from licensing in accordance with paragraph E.4.f. of DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," November 1986.

Forward recommended changes to this Volume of the Regulation through channels to the address below. Submit requests for deviations from or exceptions to specific standards, with justification, to:

Office of the Under Secretary of Defense (Comptroller)  
1100 Defense Pentagon  
Washington, DC 20301-1100

The Defense Finance and Accounting Service will provide copies of this Volume of the Regulation through its normal publication channels. Other Federal Agencies and the public may obtain copies of this Volume from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; telephone (703) 487-4650.

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**INTRODUCTION  
TO THE  
DOD FINANCIAL MANAGEMENT REGULATION**

**GENERAL**

The DoD Financial Management regulation provides all DoD Components with the policy, regulation, and procedures within the area of responsibility of the Under Secretary of Defense (Comptroller). The regulation consists of the following 15 volumes:

1. General Financial Management Information, Systems, and Requirements
2. Budget Formulation
3. Budget Execution
4. Accounting Policy and Procedures
5. Disbursing Policy and Procedures
6. Reporting Policy and Procedures
7. Military Pay Policy and Procedures
8. Civilian Pay Policy and Procedures
9. Travel Policy and Procedures
10. Contract Payment Policy and Procedures
11. Reimbursables Policy and Procedures
12. Special Accounts Policy and Procedures
13. Nonappropriated Funds Policy and Procedures
14. Administrative Control of Funds and Antideficiency Act Violations
15. Security Assistance Policy and Procedures

**Authorization**

This Regulation is issued by the Under Secretary of Defense (Comptroller) under authority of DoD Instruction 7000.14, "DoD Financial Management Policy and Procedures, November 15, 1992.

## **PUBLICATIONS AND MEMORANDA INCORPORATED**

Volume 14 of the Regulation has incorporated the following:

Enclosures 1, 2, 5, 6, and 7 of DoD Directive 7200.1, "Administrative Control of Appropriations," May 7, 1984.

Under Secretary of Defense (Comptroller) memorandum of December 19, 1994, subject: Reporting Antideficiency Act Violations.

Under Secretary of Defense (Comptroller) memorandum of December 19, 1994, subject: Violations of the Antideficiency Act.

## CHAPTER 1

### ADMINISTRATIVE CONTROL OF APPROPRIATIONS

#### A. PURPOSE

1. This chapter establishes policy and procedures for the administrative control of funds. Procedures and details for controlling available funds are contained in Appendix A. The DoD Components are required to establish and maintain effective controls over appropriations and other funds in accordance with this Chapter and Appendix A.

2. Definitions of terms used in this Volume are contained in Volume 1 of this Regulation.

3. The provisions of this Volume take precedence over any conflicting guidance in other volumes of this regulation, other DoD regulations, manuals, or directives, with the exception of DoD Directive 7200.1, "Administrative Control of Appropriations."

#### B. POLICY

1. Defense-wide Appropriations. Unless otherwise specified, for purposes of this Volume, the Office of the Deputy Comptroller (Program/Budget) shall be considered a "DoD Component" for matters involving Defense-wide (Treasury Symbol "97") appropriations.

2. Administrative Control Systems. DoD Components shall:

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

b. 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.

3. Reporting Requirements for Administrative Control Systems. DoD Components shall 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 shall be established separately from an administrative subdivision of funds limitation when a need exists for accumulating data below the allotment level.

4. Delegations of Authority. All delegations or redelegations of authority or functions under this Chapter shall be made in writing. Appendix A provides additional information on this subject.

5. Statutory Limitations and Duties of DoD Officials. No DoD official shall authorize or create any obligation or make 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, including commanders and supervisors to whom funds are entrusted or apportionments or administrative subdivisions of funds are issued, shall:

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

b. 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.

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

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

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

f. 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 Antideficiency Act as described in this Volume and other applicable guidance.

g. Ensure that decisions on the obligation of funds are in compliance with the provisions of the Antideficiency Act by careful review and examination of the facts involved in advance of the decision.

h. Rigorously enforce compliance with all the provisions of the Antideficiency Act and other specific laws that limit the obligation and expenditure of funds.

i. Maintain internal control systems to ensure that:

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

(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.

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

j. Issue and maintain appropriate delegations of authority.

k. Ensure that amounts reported to the U.S. Treasury are accurate, that is, recorded accurately and posted to the correct appropriation account.

l. Ensure that general and specific internal controls are in place and operating as required by DoD Directive 5010.38, "Internal Management Control Program."

m. Ensure that appropriate training programs are in place to provide personnel with the knowledge, skills, and abilities to perform the duties specified above.

6. Apportionments, Allocations, Allotments, and Reimbursable Orders. The administrative control of appropriations process includes apportionments, allocations, allotments, and reimbursable orders. Information about those types of fund control mechanisms is contained in Appendix A to this Volume and Volume 2 of this Regulation.

7. Obligations and Expenditures. Available funds are used by the incurrence of obligations and expenditures. An amount shall 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 shall 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 strong risk of violating the Antideficiency Act and should be avoided if at all possible.

a. Once incurred, all obligations and expenditures shall 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 an 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.

b. 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, after consideration of all known valid obligations and deobligations, to exceed the amount that was available for obligation for that prior period, a potential violation of subsections 1341(a) or 1517(a), or both, of Title 31, United States Code, may have occurred.

c. 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.

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

e. Additional guidance for both types of contract adjustments is available in chapter 25 of the DoD Accounting Manual, DoD 7200.9-M, or, when published, Volume 3 of this Regulation.

#### 8. Administrative Control of Revolving Funds

a. General. Obligations and expenditures of a revolving fund, whether subject to, or exempt from, apportionment, shall be controlled under applicable provisions of this Chapter and Appendix A.

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

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

(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 violation of the Antideficiency Act 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) 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 violation of the Antideficiency Act.

d. Budgetary Resources. The incurring of obligations in excess of budgetary resources is a potential violation of the Antideficiency Act. The concept of "budgetary resources" is defined and explained in OMB Circular A-34, "Instructions on Budget Execution." 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.

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

(2) Orders from the Public. Orders from the public, including local and State governments and international organizations (e.g., United Nations), provide a budgetary resource only to the extent accompanied by an advance payment of cash which is received and credited to the account.

e. 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 occurred or an expenditure approved. In the case of a revolving fund account that encompasses operations at multiple sites, responsibility for potential Antideficiency Act 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 Antideficiency Act.

## 9. Records

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

b. These fund control records shall 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 shall be prepared from the official accounting records.

c. DoD Components shall maintain key records and documents on appropriations, allocations, and budgetary data for the funds for which they are responsible.

d. DoD Components shall retain, for 6 years, 3 months, workpapers and documentary evidence developed and/or obtained during an investigation of an actual or potential violation of the Antideficiency Act.

10. Annual Report of Evaluation. Each DoD Component shall annually conduct an evaluation of its overall administrative funds control processes as well as the processing of violations of the Antideficiency Act.



a. The evaluation shall address actions taken in the following areas:

(1) To improve compliance with the Antideficiency Act.

(2) To improve the timeliness of processing violations, including time spent on legal reviews.

(3) To ensure the quality and independence of the investigators of potential violations.

(4) To impose appropriate disciplinary action for all individuals determined to be responsible for a violation.

(5) To improve the effectiveness of and compliance with internal controls over appropriations and funds in the Component.

(6) To identify lessons learned from the investigation of violations of the Antideficiency Act, publicize the lessons learned and implement appropriate corrective actions to preclude the reoccurrence of violations of the Antideficiency Act.

b. The evaluation shall (1) address actions taken, for each of the six areas discussed above, in the prior fiscal year and (2) be completed by December 31 of each calendar year. The first evaluation shall be performed for fiscal year 1995. A copy of the results of the evaluation shall be provided to the Office of the Under Secretary of Defense (Comptroller) by January 31, 1996, and each January 31 thereafter.

c. The Office of the Under Secretary of Defense (Comptroller) shall review the evaluation reports and may request briefings or other actions as appropriate. In addition, DoD Components may be requested to evaluate areas of special interest.

## CHAPTER 2

### VIOLATIONS OF THE ANTIDEFICIENCY ACT

A. **HOW VIOLATIONS OCCUR.** Generally, violations of the Antideficiency Act may occur when:

1. Funding authority is issued in excess of the amount available and the excess amount is obligated or expended.

a. The issuance of funds by means of a formal subdivision of funds (allocation, allotment, suballotment or other formal designation of a limitation) in an amount that exceeds the amount currently available would result in a violation of the Antideficiency Act if those excess funds distributed are actually obligated or expended. The individual authorizing the release of those funds would be responsible for the violation.

b. The issuance of a funded order in excess of available funds may also result in a violation of the Antideficiency Act.

2. Obligations or expenditures are authorized or incurred in excess of the amount of funds available at the formal subdivision of funds level. Incurring an obligation or disbursement in excess of a target (vice a formal subdivision of funds) does not in itself create a violation of the Antideficiency Act. However, if exceeding a target causes the governing formal fund subdivision or limitation to be breached, a potential violation of the Antideficiency Act would be incurred.

3. Special and recurring statutory limitations or restrictions on the amounts for which an appropriation or fund may be used are violated.

4. Regulatory limitation on the amounts for which an appropriation or fund may be used are violated, when specifically carrying an antideficiency limitation.

5. Statutory limitations on the purposes for which an appropriation or fund may be used are violated.

6. Regulatory limitation on the purposes for which an appropriation or fund may be used are violated, when specifically carrying an antideficiency limitation and corrective funding is not available.

7. Obligations are authorized or incurred in advance of funds being available.

8. Obligations or expenditures of funds do not provide for a bona fide need of the period of availability of the fund or account and corrective funding is not available.

9. Voluntary services are accepted, or personal services are employed, in excess of that authorized by law.

B. SIGNIFICANT PROVISIONS OF PUBLIC LAW 101-510 AND PUBLIC LAW 102-484

1. General. A DoD employee is at risk of violating the Antideficiency Act under certain provisions of Public Law 101-510 or Public Law 102-484. Public Law 101-510 provides for the cancellation of appropriations after specified periods, extension of the expired status for appropriations from 2 years to 5 years, and elimination of the merged accounts. Section 1004 of Public Law 102-484 allows a currently available appropriation to be charged for obligation adjustments when certain expired appropriations have insufficient obligational authority.

a. A potential violation may occur if the following limitation is exceeded when a currently available appropriation is being charged: the unexpended balance of the canceled appropriation. Paragraph 2, below, provides additional guidance.

b. A potential violation may occur if an obligation is incurred in an expired account for a contract change that exceeds \$4 million in a fiscal year without prior written approval of the Office of the Under Secretary of Defense (Comptroller). In addition, a potential violation may occur if a DoD Component incurs an obligation in an expired account for a contract change that exceeds \$25 million in a fiscal year without requesting approval from the Congress 30 days before the obligation is incurred. Paragraphs 3 and 4, below, provide additional guidance.

c. A potential violation may occur if an obligation is created or authorized against, or an expenditure is made or authorized from, an account that was canceled pursuant to Public Law 101-510.

d. Under section 1004 of Public Law 102-484, DoD Components are required to submit a report of violation to the Congress if currently available appropriations are used for obligations properly chargeable to expired accounts whose availability for new obligations expired during the period FY 1986 through FY 1991 (but have not yet been canceled). A violation also may occur if charges to a currently available appropriation exceed (1) 1 percent of the appropriation of the expired account that has insufficient availability, or (2) 1 percent of the currently available appropriation being charged. Paragraph 5, below, provides additional guidance.

2. Public Law 101-510. Under certain circumstances, a payment that otherwise would be chargeable to a canceled account--both as to purpose and amount--except that the account has been canceled, can be paid from, and charged to, an appropriation that, at the time of the payment, is available for incurring new obligations for the same purpose as the canceled account. However, the total of all such payments charged to a currently available appropriation may not exceed the lesser of:

a. One percent of the total amount originally appropriated to the current appropriation being charged.

- b. The unobligated balance of the currently available appropriation.
- c. The unobligated balance of the canceled appropriation.

3. Contract Changes Exceeding \$4 Million. Under certain circumstances, obligations for contract changes in expired accounts that exceed \$4 million in a fiscal year within a program, project, or activity of an appropriation must be approved by the Office of the Under Secretary of Defense (Comptroller) before being incurred.

4. Contract Changes Exceeding \$25 Million. Under certain circumstances, obligations for contract changes in expired accounts that exceed \$25 million in a fiscal year within a program, project or activity of an appropriation must be submitted to the Congress for at least 30 days prior to being incurred.

5. Section 1004, Public Law 102-484. Section 1004 of Public Law 102-484 permits, in certain circumstances, currently available appropriations to be charged when sufficient obligational authority does not exist in certain expired accounts.

- a. The amount charged to a currently available appropriation may not exceed 1 percent of the appropriation for the currently available account being charged, or 1 percent of the appropriation of the expired account, whichever is less.

- b. A potential violation must be reported and investigated when charges to a currently available appropriation would have resulted in a violation of the Antideficiency Act had they been charged to the applicable expired account.

6. Additional Guidance. Specific guidance on accounting for, and paying amounts otherwise chargeable to, canceled accounts or expired accounts, is available in (a) a Principal Deputy Comptroller memorandum, dated June 13, 1991, subject: "Revised DoD Guidance on Accounting for Expired Accounts, Including 'M' and Merged Surplus Accounts"; as modified by (b) a Principal Deputy Comptroller memorandum, dated April 20, 1992, subject: "DoD Accounting Guidance for Contract Changes"; and further modified by (c) an Acting Comptroller memorandum, dated December 4, 1992, subject: "Additional Requirements Associated with Merged, Expired, and Canceled Accounts"; and (d) Volume 3 of this Regulation, upon publication.

C. **CODIFICATION OF THE ANTIDEFICIENCY ACT.** When the "Antideficiency Act" was codified into Title 31 of the United States Code, its provisions were incorporated into a number of sections of that Title. The sections that are most frequently cited are sections 1341, 1342, and 1517. Paragraphs 1 through 3, below, summarize the highlights, and Appendix B contains the full wording, of those three sections of Title 31. Chapter 10 of this volume and Enclosure 2-1 provide examples of the most common types of violations of the Antideficiency Act. Enclosure 2-2 provides examples of actual violations that have occurred.

1. Title 31, United States Code, Section 1341, Limitation on Expending and Obligating Amounts. Section 1341 forbids any officer or employee of the United States from:

a. Obligating, expending, or authorizing the use of funds exceeding the amount available in an appropriation or fund.

b. Involving the Federal Government in any contract or obligation for the payment of money before an appropriation is made available.

c. Obligating, expending, or authorizing of funds required to be sequestered.

d. Involving the Federal Government in any contract or obligation for the payment of money required to be sequestered.

2. Title 31, United States Code, Section 1342, Limitation of Voluntary Services. Section 1342 forbids the acceptance of voluntary services on behalf of the Federal Government, or employment of 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.

3. Title 31, United States Code, Section 1517, Obligation and Expenditure Limits. Section 1517 forbids the overobligation and overexpenditure of an apportionment or an amount permitted by a regulation prescribed for the administrative control of appropriations.

4. Violations Caused by Exceeding Limitations Imposed by Law. Violating a limitation imposed by law (the Congress) may be a violation of the Antideficiency Act under Title 31, United States Code, subsection 1341(a)(1).

5. Violations Caused by Exceeding Limitations Imposed by the Office of Management and Budget, Department of Defense, and DoD Components/Agencies.

a. Exceeding a limitation of funds administratively imposed by the Office of Management and Budget, Department of Defense, or a DoD Component, on obligations or expenditures may be a violation of the Antideficiency Act under subsection 1517(a).

b. If an administrative subdivision of funds is exceeded, a potential violation shall be reported. The receipt of additional funds before the end of a reporting period does not mitigate a violation of a limitation or eliminate the reporting requirement for a potential violation. Also, a failure to record a valid obligation or expenditure as of the date incurred does not avoid the incurrence of, and the requirement to report, a potential violation of the Antideficiency Act if, upon recordation, available funds in the account or other limitations are exceeded.

TYPES OF POSSIBLE VIOLATIONS AND TITLE 31, UNITED STATES CODE, REFERENCE

A VIOLATION MAY OCCUR WHEN:	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE, SECTION
Any Federal employee or military member.	1. Makes or authorizes an expenditure or obligation against an appropriation account that was closed pursuant to Title 31, United States Code, sections 1552 or 1555, or the period prescribed in an appropriations act for making expenditures as authorized by section 1557 of Title 31.	1341(a)(1)(A)
	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 such contract or obligation is authorized by law.	1341(a)(1)(B)
	3. Makes or authorizes an obligation or expenditure of funds required to be sequestered under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.	1341(a)(1)(C)
	4. Involves the Government in a contract or other obligation for the payment of money required to be sequestered under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.	1341(a)(1)(D)
	5. 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

TYPES OF POSSIBLE VIOLATIONS AND TITLE 31, UNITED STATES CODE, REFERENCE

A VIOLATION MAY OCCUR WHEN:	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE, SECTION
Obligations authorized or incurred or expenditures made exceed:	1. The available amount of any appropriation or fund.	1341(a)(1)(A)
	2. The available amount of any apportionment or reappropriation.	1517(a)(1)
	3. The available amount of any administrative subdivision authorized by DoD Directive 7200.1 or Volume 14, DoD 7000.14-R.	1517(a)(2)
	4. Any statutory restriction imposed on the use of an appropriation or fund, such as limits on the use of Operation and Maintenance funds for unspecified minor construction or for purchase of investment items.	1341(a)(1)(A)
	5. Any limitation imposed by an authorized official of the Department of Defense (DoD) or a DoD Component that is intended to restrict obligations of apportioned appropriations or funds.	1517(a)(2)

TYPES OF POSSIBLE VIOLATIONS AND TITLE 31, UNITED STATES CODE, REFERENCE

A VIOLATION MAY OCCUR WHEN:	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE, SECTION
In a working capital (revolving) fund established under Title 10, United States Code section 2208, when:	1. A working capital (revolving) fund or a part of that fund is apportioned and obligations of that fund or part of that fund exceed the available amount of the apportionment.	1517(a)(1)
	2. Obligations exceed the available amount of budgetary resources.	1517(a)(2)
	3. Amounts expended that exceed available fund balances with Treasury whether apportioned or not.	1341(a)(1)(A)
	(Recurring provisions of annual DoD Appropriations Acts provide that 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)



TYPES OF POSSIBLE VIOLATIONS AND TITLE 31, UNITED STATES CODE, REFERENCE

A VIOLATION MAY OCCUR WHEN:	DESCRIPTION OF POTENTIAL VIOLATION	TITLE 31, UNITED STATES CODE, SECTION
In fund distribution	1. Total allocations or operating budget authorities for Operation and Maintenance-type funds exceed the amount available for each apportionment period.	1517(a)(1)
	2. Total suballocations, allotments or operating budget authorities, and centrally managed allotments (CMAs) exceed the amount of the allocation or operating budget authority for each period.	1517(a)(2)
	3. Total allotments or operating budget authorities and CMAs exceed the amount of the available suballocation.	1517(a)(2)
	4. Total suballotments exceed the amount of the allotment.	1517(a)(2)

## EXAMPLES OF POSSIBLE VIOLATIONS OF THE ANTIDEFICIENCY ACT

A. GENERAL. Most of the examples described below are taken from actual violations that have occurred within the Department. However, these violations are fact-specific and, in other circumstances, a potential violation may or may not be incurred. These examples are provided 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. Title 31, United States Code, section 1341(a)(1)(A)

a. An overobligation by a DoD activity exceeded a target distributed to that activity and caused the total appropriation to be exceeded. For example, a target of \$1 million of an operation and maintenance appropriation was exceeded by \$250,000, but the responsibility for violations was not passed to the organization that was provided the target. When the total obligations were summarized at the appropriation level, the total appropriation was exceeded because of this specific overobligation. There is no violation at the organization that was provided the target, but a potential violation has occurred at the appropriation level.

b. An overobligation by a DoD activity exceeded an allotment distributed to that activity--and the responsibility for violations was established at the allotment level--and caused the total appropriation to be exceeded. For example, an allotment of \$1 million of an operation and maintenance appropriation was exceeded by \$250,000, and the responsibility for violations was established at the allotment level. When the total obligations were summarized at the appropriation level, the total appropriation also was exceeded because of this specific overobligation. There is one potential violation at two different funding levels--the allotment level and the appropriation level.

c. A DoD activity exceeded the limitation specified in Title 10, United States Code, section 2805(c), by using operation and maintenance funds in excess of the minor construction limitation to construct improvements to a hazardous waste storage facility.

#### 2. TITLE 31, UNITED STATES CODE, SECTION 1341(a)(1)(B)

A DoD activity arranged for a lease to obligate and pay for a subsequent fiscal year's 12-month lease of a building with current fiscal year operation and maintenance funds. Specifically, fiscal year 19XX funds of \$180,000 were used to contract, obligate and pay for a FY 19XX+1 building lease. This action violated the Antideficiency Act because it obligated the Federal Government to a contract for the payment of money before the appropriation to be charged was available.

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 Antideficiency Act occurred.

D. TITLE 31, UNITED STATES CODE, SECTION 1517

1. A DoD activity improperly obligated \$225,000 of other procurement funds instead of required operation and maintenance (O&M) funds to document, not acquire, a specialized communications equipment program. When the error was discovered, the DoD activity had no O&M funds available to replace the other procurement funds obligated improperly. Therefore, the O&M appropriation apportionment was exceeded, and a violation of Title 31, United States Code, section 1517, occurred. To fund the violation, \$225,000 of O&M funds were requested from the Headquarters of the DoD activity. While this action corrected the funding of the obligation, a violation of the Antideficiency Act occurred because the fund holder did not have sufficient funds available to replace the other procurement funds improperly obligated.

2. A DoD activity used operation and maintenance 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 of Title 31, United States Code, section 1517, occurred because the DoD activity did not have the required amount of other procurement funds at the time of the purchases.

3. A DoD activity used family housing operation and maintenance funds in excess of the statutory limit for the maintenance and repair of a family housing unit without prior congressional approval. The statutory limit was exceeded when additional costs were approved by the contracting officer. Therefore, a violation of the Antideficiency Act occurred because a statutory limit was exceeded.

4. Two different activities holding targets within an O&M appropriation at a DoD installation exceeded the targets established for their activities by the holder of the allotment. Even though both activities contributed to a violation of an allotment--an administrative subdivision of funds--the allotment holder is responsible for the resulting violation of the Antideficiency Act. The activities that exceeded their targets did not violate the Antideficiency Act because the holder of the allotment did not assign responsibility for violations of the Antideficiency Act to the two activities.

5. A funds holder erroneously distributed more funds than he/she had available. The activities receiving the funds incurred obligations and expenditures in excess of amounts available to the fund holder, but below the amount distributed to them. The funds holder incurred a violation of the Antideficiency Act because he/she was responsible for exceeding the total fund availability.

## CHAPTER 3

### PRELIMINARY REVIEWS OF POTENTIAL VIOLATIONS

#### A. PRELIMINARY REVIEWS

1. The purpose of a preliminary review is to gather basic facts and determine whether a violation has apparently occurred. When a DoD Component has some evidence that a violation may have occurred, preliminary checks of the applicable business transaction and accounting records shall be made to determine whether a potential violation exists. These actions include checking for duplications or other errors in recording, checking commitments and obligations to ensure they are valid and properly chargeable against the funds involved, and checking actual fund status in the account affected at the time the questionable transaction occurred. A preliminary review shall focus on the potential violation and not the corrective actions. If a potential violation occurs at an appropriation level, the preliminary review shall be completed by an individual meeting the criteria in Section D of Chapter 4 in this Volume.

2. The existence of a violation may depend upon an interpretation of statutory or regulatory constraints imposed on the use of a particular appropriation or account, the proper fiscal year to be charged, or similar issues. In all cases, the advice of legal counsel shall be requested to address legal issues raised during a preliminary review.

3. The results of the preliminary review shall be documented in a report of preliminary review and provided to an Assistant Secretary of a Military Department for Financial Management; or the Comptroller or Senior Financial Manager of the Joint Staff; Unified Combatant Commands; Inspector General, DoD; Defense Agency; DoD Field Activity; or the Uniformed Services of the University of Health Sciences (hereafter referred to collectively as "DoD Components") for approval. The preliminary review report shall be coordinated with the applicable DoD Component office of legal counsel.

4. If the DoD Component involved determines that there is a potential violation, a formal investigation shall be initiated within 15 business days of the approval of the report of preliminary review. The provisions in Chapters 4 and 5 shall be followed for conducting a formal investigation. Procedures for reporting progress and the status of investigations are contained in Chapter 6. Reporting procedures for violations are discussed in Chapter 7.

5. If the DoD Component involved determines that there is no violation, the preliminary review report completes the actions regarding the potential violation. No further action is required after the report is approved.

**B. PRELIMINARY REVIEWS INITIATED BY THE UNDER SECRETARY OF DEFENSE (COMPTROLLER)**

1. When the Office of the Under Secretary of Defense (Comptroller) is apprised of a potential violation by an audit report or otherwise learns of a potential violation, the applicable DoD Component may be requested, by memorandum, to perform a preliminary review of the circumstances surrounding the potential violation in a timely manner, usually within 90 days.

2. Once the preliminary review report has been completed and the findings indicate a potential violation, a formal investigation shall be initiated by the applicable DoD Component within 15 business days of the approval of the report. An investigating officer shall be assigned in accordance with the provisions of Chapter 4 of this Volume and the Under Secretary of Defense (Comptroller) shall be advised of the results of the review report.

3. If the results of the preliminary review indicate that "no violation" occurred, the preliminary review report completes the actions regarding the potential violation and no further action is required after the report is approved. However, the results of the review shall be coordinated with the Office of the Under Secretary of Defense (Comptroller).

**C. PRELIMINARY REVIEWS INITIATED AS A RESULT OF EXTERNAL REPORTS**

1. In some cases, the General Accounting Office; Inspector General (IG), DoD; 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. Generally, in the case of audit reports, a recommendation to investigate the potential violation is included in the report.

2. Within 10 business days of receipt of a draft report that alleges a potential violation, the Office of the Under Secretary of Defense (Comptroller), the Assistant Secretary for Financial Management of a Military Department or the Comptroller of a Defense Agency or DoD Field Activity, as applicable, shall request that a preliminary review of the potential violation be initiated within the next 30 days.

3. In responding to the findings and recommendations in the reports, the DoD Component shall provide the status of the preliminary review or formal investigation as requested by the applicable organization.

4. Otherwise, the policies and procedures prescribed in section A., above, for the preliminary review shall apply.

#### D. ROLE OF THE INSPECTOR GENERAL, DOD

1. The Inspector General Act of 1978 provides the Inspector General, DoD, with the authority to conduct investigations of violations of the Antideficiency Act.
2. The IG, DoD, reserves the right to initiate investigations of potential violations of the Antideficiency Act, depending upon the type, amount, or significance of the violation.
3. The IG, DoD, may elect to conduct investigations not requested by the Under Secretary of Defense (Comptroller) or other DoD official.
4. When the IG, DoD, conducts such investigations, the resultant report shall constitute the official DoD report on the matter; no other DoD Component shall conduct parallel or supplemental investigations unless directed to do so by the Secretary of Defense, Deputy Secretary of Defense, or Under Secretary of Defense (Comptroller).

## CHAPTER 4

### BEGINNING AN INVESTIGATION

A. **PURPOSE OF A FORMAL INVESTIGATION.** A formal investigation is required under the provisions of this Volume whenever a preliminary review determines that a potential violation has occurred. Generally, the existence of a potential violation shall be established during the preliminary review and before a formal investigation begins. The purpose of the formal investigation is to determine the relevant facts and circumstances concerning the potential violation--if a violation has occurred, what caused it, what are appropriate corrective actions and lessons learned, and who was responsible for the violation.

B. **APPOINTMENT OF AN INVESTIGATING OFFICER.** A formal investigation shall be performed by an appointed investigating officer. The investigating officer shall be advised of his or her appointment by a formal memorandum. Included in that memorandum will be the case number and specific time frames to be met during the investigation. The case number shall be used on all applicable correspondence and reports related to the formal investigation.

C. **WHEN MORE THAN ONE DOD COMPONENT IS INVOLVED.** In some cases, a DoD Component whose funds are involved, rather than the DoD Component where the potential violation occurred, may request a formal investigation by the DoD Component where the potential violation occurred. A case number shall be assigned by the DoD Component whose funds are involved and the required information regarding the investigation shall be included in the next monthly activity report (Enclosure 6-1) of that DoD Component. If the DoD Component whose funds are involved is not successful in obtaining cooperation from other DoD Components implicated, the matter shall be referred to the Office of the Under Secretary of Defense (Comptroller) for resolution.

D. **PROCEDURES FOR SELECTING AN INVESTIGATING OFFICER.** Investigations of violations shall be conducted by individuals with no vested interest in the outcome, and who are capable of conducting a complete, impartial, unbiased investigation. A commander of a major command, a superior to a commander of a major command who is in the chain-of-command, or equivalent in an organization other than a Military Department, shall appoint an adequately trained and qualified individual to serve as an investigating officer. To help assure independence and impartiality during an investigation, an investigating officer shall be selected from an organization external to an installation-level organization being investigated.

1. When the Office of the Under Secretary of Defense (Comptroller) requires that a formal investigation be conducted, the applicable major command, or higher command, shall assign an investigating officer within 15 business days of the receipt of the request.

2. If the Under Secretary of Defense (Comptroller) notifies the Inspector General, DoD, (IG, DoD) (or other audit organization) that a potential violation requiring IG, DoD, investigation has been reported, the IG, DoD, shall assign an investigating officer and advise the Office of the



Under Secretary of Defense (Comptroller) of the date the investigation began in the next monthly activity report. A case number shall be assigned by the organization being investigated.

3. Except as provided for in paragraphs D.4. and D.5., below, an investigating officer shall meet all of the following qualifications:

a. Be chosen from a roster of qualified personnel as required by DoD Directive 7200.1, "Administrative Control of Appropriations."

b. Be adequately trained to conduct an investigation of this type, including having successfully completed a training course after May 1, 1995, as specified in Section B. or C. of Chapter 8 of this Volume.

c. Have adequate experience in the functional area that is involved in the apparent violation.

d. Have knowledge of financial management policies and procedures and the Antideficiency Act.

e. Have skill in investigating potential violations.

f. Otherwise be fully qualified to serve as an investigating officer.

4. An auditor from the IG, DoD; Army Audit Agency; Naval Audit Service; or Air Force Audit Agency can be considered to be fully qualified to serve as an investigating officer if he or she has an appropriate background in fiscal matters. Likewise, an investigator from the IG, DoD, or from the Inspector General organizations of the Military Departments (The Inspector General of the Army, The Naval Inspector General, and The Inspector General of the Air Force) can be considered fully qualified to serve as an investigating officer, if he or she has an appropriate background in fiscal matters.

5. Individuals not meeting the requirements of paragraphs D.3. and D.4., above, may be considered to be "trained" investigation officers, and be eligible for selection to conduct investigations, provided that all of the following conditions are met:

a. They have successfully conducted and completed a previous investigation of an actual violation of the Antideficiency Act.

b. The prior investigation began after January 1, 1991, but before October 1, 1995.

c. Their name is included on the roster of approved qualified personnel as discussed in Chapter 8 of this Volume.

d. The current investigation begins before September 30, 1996.

6. After September 30, 1996, investigating officers must meet the requirements of either paragraph D.3. or D.4., above.

7. An investigating officer(s) need not be senior-in-grade to the person(s) being investigated.

8. If an individual involved in the investigation or in the process of selecting and appointing the investigating officer has a conflict of interest or any personal stake in the outcome of the investigation, that individual shall remove himself or herself from the process. Those matters that may not lend themselves to impartial investigation--because the investigator is assigned to the level where the violation occurred--shall be referred to the next higher level, through command channels, for the appointment of an investigator.

E. **APPOINTMENT OF AN INVESTIGATING OFFICER BY THE UNDER SECRETARY OF DEFENSE (COMPTROLLER) OR OTHERS.** An appointment of an investigating officer may be made or reviewed by the Under Secretary of Defense (Comptroller), an Assistant Secretary of a Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components, whenever a potential violation (a) is of special interest to that official, (b) demands specific attention, or (c) may involve a high-level official. Such a review or appointment also may be made whenever other circumstances warrant such involvement.

F. **LEGAL ISSUES.** An investigating officer may face a number of legal issues during the course of an investigation and may be expected to take statements. An investigating officer should consult with appropriate legal counsel on any legal issues associated with the investigation.

G. **USING AN INVESTIGATING TEAM.** If a potential violation appears to involve a complex situation or a multitude of functional areas, a team approach may be necessary. The appointing official shall ensure that the investigating officer receives adequate support, including access to additional personnel with the requisite knowledge in all of the functional areas involved. The appointment of a legal advisor for the investigating team also should be considered.

## CHAPTER 5

### CONDUCTING INVESTIGATIONS

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

B. **CHECKLISTS.** A checklist at Enclosure 5-1 shall be used during an investigation to document the results. The checklist at Enclosure 5-2 shall be used by the appointing officer in the review of the investigating officer's report of violation. The checklist at Enclosure 7-1 also should be used during the investigation and preparation of the final summary report of violation.

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

D. **TIMEFRAME FOR INVESTIGATIONS.** Investigations of potential violations of the Antideficiency Act, including the submission of the final summary reports to the Office of the Under Secretary of Defense (Comptroller), shall be completed within 9 months. (See reporting requirements in Chapter 6.) All appointing officials shall stipulate in the appointing letter a due date for the investigative report. Such due date shall conform with the 9-month timeframe regardless of the scope of the event or amount of the potential violation. The date established by the appointing official also shall consider the requirement for the Assistant Secretary of a Military Department for Financial Management, or equivalent, to submit a final summary report to the Office of the Under Secretary of Defense (Comptroller). The total process for investigating and reporting potential violations of the Antideficiency Act shall not take more than 1 year from date of discovery through the preparation of transmittal letters to the President, the Director of the Office of Management and Budget, and the leaders of both Houses of the Congress.

E. **APPROVING EXCEPTIONS TO TIMEFRAMES.** The Heads of the DoD Components may approve an exception to the above timeframe, on a case-by-case basis. This responsibility may be delegated to the Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components. This

responsibility shall not be redelegated. The Office of the Under Secretary of Defense (Comptroller) shall be notified of any extension that is approved and provided a justification for that extension. However, any extension granted shall not allow the time for completing the entire investigation (see Section B., above) to exceed 1 year from the day the investigation began.

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

G. **INVOLVEMENT OF THE UNDER SECRETARY OF DEFENSE (COMPTROLLER).** The Under Secretary of Defense (Comptroller) may supervise the progress of an investigation when the nature of the violation or the implication of individuals in the violation warrants such involvement. Such supervision may include requirements for oral and written progress reports and may require a team of investigating officers and compressed timeframes.

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

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

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

2. All relevant aspects of the case, including all persons and records connected with the event, shall be investigated fully. The key personnel involved in a violation shall be interviewed.

If an employee to be interviewed is a member of a bargaining unit, the investigating officer shall comply with appropriate statutory and collective bargaining agreement protections for such employee. Key facts associated with the events leading to the potential violation shall be examined and documented in the report and any conflicts should be addressed immediately by the investigation officer. If a series of events at several levels led to the violation, the report should clearly identify what happened at each level and how the events contributed to the violation.

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

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

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

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

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

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

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

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

J. **DEVELOPING CORRECTIVE ACTIONS.** Once the causes and the individual(s) responsible for the violation have been determined, officials of the DoD Component under investigation, working with the investigating officer, shall determine the corrective actions that are necessary to ensure that a violation of a similar nature will not recur. Those actions shall be included in both the report of violation and the final summary report. In addition, officials of the DoD Component under investigation, working with the investigating officer, shall develop a summary of lessons learned from the specific circumstances of the case that can be applied to the installation involved, the major command, the DoD Component, or all DoD Components. Section D of Chapter 10 in this Volume contains further guidance on corrective actions.

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

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

## CHECKLIST FOR INVESTIGATING OFFICERS

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

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

- a. Question each key person to determine the role each played in the violation.
  - b. Question facts and circumstances that do not appear logical or supportable.
  - c. For those that are viewed as potentially responsible in any way, question why they did what they did and when they did it.
  - d. If they indicate that their supervisor instructed them to perform certain acts that contributed to the potential violation, interview their supervisors.
  - e. Reinterview to address conflicts in documented evidence.
4. Examine relevant circumstantial evidence associated with the potential violation and describe how each piece of circumstantial evidence relates to the case. Label all circumstantial evidence as such in the report. Inclusion of photographs, drawings, etc., particularly of construction projects, is not mandatory, but could be helpful in explaining the violation.
5. Assemble and analyze the documented evidence.
- a. Develop and document a list of findings based upon the evidence. Identify the evidence that supports each finding.
  - b. Develop and document a list of conclusions, including which specific act, or failure to act, caused the potential violation. Identify the evidence and findings that supports each conclusion.
  - c. Determine if a violation of the Antideficiency Act has, in fact, occurred and if so, which provision of the Act was violated. Include in the documentation the rationale and evidence that support this conclusion and state the type of violation and the section of the Antideficiency Act that was violated.
  - d. Identify the amount and date of the potential violation.
6. Determine if the acts that caused the violation were in compliance with established internal controls or local operating procedures.
- a. If the acts were in compliance with either the controls or procedures, determine what improvements are required to the controls and procedures to prevent future violations of this type.
  - b. If the controls or procedures were deficient or in need of improvement, interview the supervisors of the operating personnel to determine why the controls and procedures were deficient.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Allowed to designate witnesses to testify in their behalf.

9. Designated witnesses shall be interviewed for the record.

a. Any new facts presented in the statement(s) will be addressed by the investigator in the report.

b. If a designed witness declines to make a statement, the report will so indicate.

10. The investigator shall assess whether the individual(s) named responsible committed the violation knowingly and willfully.

11. The commander, in consultation with the investigating officer and legal officials, shall determine appropriate disciplinary action against the individual(s) named responsible.

a. The recommended disciplinary action, if any, should be commensurate with the severity of the violation and the degree of responsibility of the individual.

b. Include in the report the recommended disciplinary actions and a statement by the local commander describing any administrative discipline imposed and any further action taken with respect to the officer(s) or employee(s) named responsible for the violation. The individual responsible for determining disciplinary action should attach a written statement to the report acknowledging that:

(1) A violation is a serious matter.

(2) Disciplinary action taken should be appropriate to the causes and circumstances determined during the investigation.

(3) The Department must report the violation to the Congress and the President.

(4) The disciplinary action that was taken is commensurate with the severity of the violation, with full justification of extenuating circumstances. (Chapter 9 contains further guidance on these statements.) If no disciplinary action is deemed appropriate, a full justification is required.

12. The investigator shall review the report before transmittal to the appointing official to determine that:

a. The report includes copies of the designation of the investigator by the appointing authority and the preliminary report.

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

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

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

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

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

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

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

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

j. The investigator has indicated that the individual(s) named responsible did not commit the violation willfully and knowingly. If there were indications that an individual(s) may have

willfully and knowingly committed a violation, the case should have been referred to criminal investigators--see paragraph I.5. in Chapter 5.

k. Corrective actions have been taken or recommended and any lessons learned are identified in the report.

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

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

n. The name and position of the fund holder and an evaluation of his/her performance are included in the report.

o. The report has been signed by the investigator.

## CHECKLIST FOR APPOINTING OFFICERS

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

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

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

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

12. Does the report indicate that each individual named responsible was:
- a. Advised that he or she may consult with legal counsel?
  - b. Advised that a violation has been determined to have occurred, that he or she is named a responsible individual for the violation, and he or she will be allowed to review the report and examine evidence on which the determination was based?
  - c. Allowed to submit a sworn or unsworn statement regarding the alleged violation after reviewing the report and evidence? If the individual declines to make a statement, the report should so indicate.
  - d. Allowed to designate witnesses to testify in his or her behalf?
13. Were the rights of the individual(s) named responsible protected? Are there indications in the report that suggest that their rights were not fully protected? If so, the case may have to be reinvestigated.
14. Were all witnesses--designated by the individual(s) named responsible--interviewed or does the report include valid reasons why they were not interviewed?
15. Was there any relevant new information provided by the oral or written statements by the individual(s) named responsible, or their designated witnesses? If so, does the report address this new evidence and its bearing on the responsibility of the named individual(s)?
16. Does the report explicitly state whether the violation was willfully and knowingly committed? If there are indications that the violation was willfully and knowingly committed, the investigation should have been referred to criminal investigators--see paragraph I.5. in Chapter 5.
17. Has the investigating officer included a discussion of the following items in the report and have appropriate actions been taken by the local command to:
- a. Discipline the named individual(s), if appropriate, and provide a statement by the local commander justifying the action taken.
  - b. Identify and install corrective actions to prevent similar violations in the future.

- c. Improve procedures and controls, if appropriate.
  - d. Identify lessons learned from this case.
18. Has the report been signed by the investigator?

## CHAPTER 6

### STATUS REPORTS ON INVESTIGATIONS

A. **OVERVIEW.** During the course of an investigation, reports of progress are required to provide status to the DoD Component concerned and to the Office of the Under Secretary of Defense (Comptroller). In addition, status of investigations that are overdue to the Office of the Under Secretary of Defense (Comptroller) is required.

B. **MONTHLY ACTIVITY INFORMATION.** Information as indicated on Enclosure 6-1 is required on a monthly basis to report progress on overdue investigations and status on all other on-going investigations.

C. **INFORMATION REQUIREMENTS.** The Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components, shall report the required information on a monthly basis to the Office of the Under Secretary of Defense (Comptroller) by the fifth business day of the month following the reporting month.

1. When a formal investigation is initiated, the applicable Office of the Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components, shall assign a case number and ensure that the appointing official establishes a completion date for the investigation. That completion date shall allow sufficient time for the DoD Component to submit the final report of violation to the Under Secretary of Defense (Comptroller) within 9 months after the formal investigation began.

2. If the 9-month completion date for final reports of violation is not met, a monthly report providing status of those overdue investigations is required. In addition, the status of on-going investigations must be reported each month.

a. The information required by Enclosure 6-1 includes a list of the overdue reports of violation, the date each report is due to the Under Secretary of Defense (Comptroller), and the current status.

b. The information required by Enclosure 6-1 also includes any information not reported previously, including changes or new information for on-going investigations.

c. If necessary, all information on all on-going investigations may be reported each month, but the new or revised information should be highlighted in bold or underlined. Annotating the reporting of changes and new information will facilitate the analysis of the current status of the investigations.



3. Status on cases shall continue to be reported on a monthly basis from the beginning of the formal investigation through the date a final violation report or a "No Violation" Report is provided to the Office of the Under Secretary of Defense (Comptroller). Procedures for reporting a violation to the Office of the Under Secretary of Defense (Comptroller) are contained in Chapter 7. If a case is returned to a DoD Component by the Office of the Under Secretary of Defense (Comptroller), monthly status reporting shall be resumed by the DoD Component until that case is again provided to the Office of the Under Secretary of Defense (Comptroller). When the case is returned, a suspense date for returning the case shall be assigned to the DoD Component commensurate with the time required to (a) provide the additional information, (b) correct the report, or (c) complete other actions requested.

(INSERT COMPONENT)

SUMMARY STATUS OF ANTIDEFICIENCY ACT INVESTIGATIONS

AS OF (Insert Last Day of Month)

PART I

OVERDUE CASES

CASE #	DATE DUE TO USD(C)	CURRENT STATUS

NOTE: Include the case number for all cases that are overdue, the initial date due to the Under Secretary of Defense (Comptroller), and a statement of the most current status. Address any steps taken to expedite the case. If the status has not changed since the prior month's report, indicate "status unchanged from previous month."

PART II

UPDATE OF INFORMATION PREVIOUSLY PROVIDED

(1) CASE NUMBER	(2) STATUS	(3) AMOUNT	(4) APPN & TREASURY ACCT SYMBOL	(5) US CODE REF	(6) ORGANIZATION	(7) LOCATION
95-01	Under Investigation Completed--No Violation Completed--A Violation	\$1,000.00	SCN, 17 _ 1611 O&M, 57 _ 3400 WPN, 17 _ 1507 OPA, 21 _ 2035	1341(a)(1)(A) 1341(a)(1)(B) 1342 1517(a)(1) 1517(a)(2)		

(8) NATURE OF VIOLATION	(9) DATE POTENTIAL VIOLATION OCCURRED	(10) DATE POTENTIAL VIOLATION DISCOVERED	(11) DATE INVESTIGATION BEGAN	(12) SOURCE OF POTENTIAL VIOLATION
(See examples attached)	00/00/00	00/00/00	00/00/00	Source (If identified by an audit report, provide the report number and title).

(13) BRIEF DESCRIPTION OF POTENTIAL VIOLATION	(14) PROGRESS OF VIOLATION/ OTHER COMMENTS
Briefly describe what appears to have caused the potential violation.	Provide significant milestones regarding progress of the case--e.g., date investigating officer was appointed, date report was submitted to the appointing official, the FM, the Legal Office, etc. Also provide other comments as appropriate.

## PART II (CONTINUED)

- (1) Insert the case number assigned by the DoD Component.
- (2) Insert the current status of the case.
- (3) Insert the amount of the violation.
- (4) Insert the Appropriation and the Treasury Account Symbol.
- (5) Insert the United States Code Reference suspected of being, potentially at risk of being, or actually violated.
- (6) Insert the name/designation of the organization where the suspected or potential violation occurred.
- (7) Insert the location of the organization where the suspected or potential violation occurred.
- (8) Insert the nature of the violation--see Table 2-1.
- (9) Insert the date the suspected, potential, or actual violation occurred.
- (10) Insert the date the suspected, potential, or actual violation was discovered.
- (11) Insert the date the investigation began.
- (12) Insert the source of the suspected, potential or actual violation (if identified by an audit report, include the report title and number).
- (13) Insert a brief narrative description of the suspected, potential or actual violation--describe what appears to have caused the suspected, potential or actual violation.
- (14) Insert a brief narrative on the progress of the investigation--include significant milestones, such as date the report was submitted to the appointing official, date the report was submitted to the FM, etc. Also provide other appropriate comments regarding the violation.

NOTE: The case number, amount and appropriation should be reported each month for all investigations not yet formally submitted to the OUSD(C). For all other information requested, report only information that previously has not been reported, or information that has changed since reported previously.

TABLE 2-1

NATURE OF VIOLATIONS

Accepted Voluntary Services
Charged Incorrect Appropriation
Disbursement(s) Exceeded Recorded Obligation(s)
Exceeded Appropriation/Fund Availability
Exceeded Available Obligation Authority
Exceeded Expense Versus Procurement Limitation
Exceeded Minor Construction Limitation
Charged Incorrect Fiscal Year
Exceeded Repair and Maintenance Family Housing Limitation
Obligation Not Recorded
Other (Explain)

## CHAPTER 7

### REPORTING VIOLATIONS OR FINDINGS OF "NO VIOLATION"

A. **OVERVIEW.** One of the most important responsibilities of investigating a violation of the Antideficiency Act is that of documenting the results and preparing the necessary reports.

1. The investigating officer must submit a detailed report to the appointing official.

2. The Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components shall ensure that a summary report of violation is prepared and submitted to the Office of the Under Secretary of Defense (Comptroller) within 9 months of discovery of the violation. This report should summarize the results of the investigation report and include as attachments the statement(s) of the individual(s) named responsible and other significant information.

3. Letters reporting a violation to the President, the Office of Management and Budget, and the Congress are required and will be prepared by the Office of the Under Secretary of Defense (Comptroller).

B. **INVESTIGATING OFFICER'S REPORT OF VIOLATION.** At the conclusion of an investigation, the investigating officer shall prepare a Report of Violation that documents the results of the investigation. The report shall be completed within 9 months of appointment, unless an extension has been granted in accordance with the provisions in Chapter 5 of this Volume. The timeline for preparing the report should take into consideration the review process to meet the 9-month deadline for submitting the final report.

1. The report shall be prepared in accordance with the policies and procedures in DoD Directive 7200.1, "Administrative Control of Appropriations," and chapter 5 of this Volume. Investigating officers shall use the checklist provided in Enclosure 5-1 to ensure that all appropriate elements have been considered in the report.

a. The appointing official and legal counsel also shall ensure that the report includes all pertinent items. For example, the investigating officer's report should contain statements of individuals having knowledge of the transaction(s) causing the violation, including the person(s) determined to be responsible.

b. Documentation evidencing all material elements of the violation and supporting the conclusions reached shall be included with the report.

c. The holder of funds shall be identified by name and position and an evaluation made of the exercise of his or her responsibilities.

2. The formal Report of Violation has no detailed format requirements, but must contain the following six parts: Part I, Authority; Part II, Matters Investigated; Part III, Facts; Part IV, Discussion; Part V, Conclusions; and Part VI, Recommendations.

a. Part I, Authority, shall contain the names, ranks or grades, and titles of the appointing official and the investigating officer(s), the date of the appointment, and an overview of the issues that are to be investigated.

b. Part II, Matters Investigated, shall contain a summary of 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; an explanation of the facts of the potential violation, etc. It should 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 should be included. Part II should contain a discussion on any related areas and matters that were not investigated and the rationale for omitting them from the investigation.

c. Part III, Facts, shall contain the details of what was actually determined and documented during the investigation. Attachments that substantiate the details should be referenced. For example, the amount of funds that were involved in the violation; the section or subsection of Title 31, United States Code that was violated; the year and name of the appropriation(s) involved; the date(s) on which the potential violation occurred and when and how it was discovered; the name and location of the organization involved; the results of interviews of individuals involved in the violation; and a summary of how the area(s), procedures, processes, etc.--that were involved in the investigation--operated. If the investigation has been undertaken because of an audit report, that report shall be identified by title, number, date, and issuing audit organization. If the investigation was conducted as a result of a memorandum or letter directing an investigation, that document should be referenced and a copy attached to the report. The checklists at enclosures 5-1 and 7-1 should be used to ensure that all essential items are discussed.

d. Part IV, Discussion, shall contain a summary of what was accomplished during the investigation. Include a discussion of the evolution of the issues being investigated, number of people interviewed, mitigating circumstances surrounding the violation, issues that could or could not be proved 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.

e. Part V, Conclusions, shall contain 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; why the violation happened; whether the violation was committed knowingly and willfully; the name(s) of the individuals responsible for the violation; and the name(s) of the organization(s) involved.

f. Part VI, Recommendations, shall contain recommendations for (1) improving the overall and specific policies, procedures, and processes used by the functional areas involved in

the violation; (2) revising specific statutes or regulatory guidance that may have been involved; (3) obtaining funding to correct the violation; (4) imposing appropriate disciplinary action against the individual(s) responsible; and (5) ensuring that a similar violation will not occur in the future.

3. The person(s) named responsible for a violation shall be given an opportunity to (a) read the report of the facts and circumstances leading to the determination of responsibility and (b) provide a statement of any circumstances they believed to be extenuating. The individual named responsible shall be granted this opportunity even if he or she is no longer working where the violation occurred, or is retired or separated from the Department of Defense.

a. The opportunity to provide a second (i.e., final) statement should be offered after a final determination of responsibility has been made. The statement should not be based on an uncompleted investigation.

(1) The statement should first acknowledge that he or she has read the report and understands that he or she is being held responsible for the violation. If the individual can provide additional information, pertinent to the particular case, which was not addressed in the investigation and has a bearing on responsibility for the violation, he or she has the right, and should be requested, to do so.

(2) The individual also may refute statements made by others and make other comments. The final written statement, including any extenuating circumstances, shall be included in the Report of Violation and also attached to the summary report of violation submitted to the Under Secretary of Defense (Comptroller).

b. If the person(s) named responsible refuses to give a statement, request the person(s) to submit a signed statement of declination. If he or she refuses to sign a declination, include a statement to that effect, signed by an appropriate official, in the report. If the person(s) named responsible for the violation cannot be located despite a due diligent effort, a statement to that effect, signed by an appropriate official, shall be included in the report.

c. The report shall include an evaluation of any new or conflicting facts or circumstances when the statement of the responsible individual(s) differs from the report contents.

d. The report shall include a statement as to whether the person(s) determined to be responsible for the violation either did or did not knowingly and willfully incur the violation. If, in the judgment of the investigating officer, the violation was willfully committed, the procedures in Chapter 5, paragraph I.4. of this volume shall be followed.

4. The report shall include the required acknowledgments and a written statement, from the official responsible for determining the appropriate discipline for those individuals responsible for a violation, as required by the Under Secretary of Defense (Comptroller) in a memorandum dated December 19, 1994, subject: Violations of the Antideficiency Act. See section P of enclosure 7-1 and section B in Chapter 9 of this Volume for these requirements.



5. The investigating officer shall compile the Report of Violation and forward that report directly to the appointing official.

6. The appointing official shall add comments; ensure a legal review; coordinate the report with responsible officials in other functional areas involved in the violation (such as contracting, civil engineer or comptroller); and forward the report to the applicable Assistant Secretary of the Military Department, or the Comptroller or Senior Financial Manager for other DoD Components.

7. When the violation affects the funds of another DoD Component or the responsible individual is from another DoD Component, the appointing official shall (a) immediately notify the Office of the Under Secretary of Defense (Comptroller); (b) advise the other DoD Component involved before submission of the final summary report of violation; and (c) obtain coordination on the report from the other DoD Component involved.

C. **DOD COMPONENT SUMMARY REPORT OF VIOLATION.** After receipt of the Report of Violation from the appointing official, the Assistant Secretary of a Military Department for Financial Management, or Comptroller (or equivalent) for other DoD Components, shall ensure that a Summary Report of Violation is prepared, using the checklist at Enclosure 7-1. (Alternatively, the appointing official may prepare, or have the investigating officer prepare, and submit, the Summary Report of Violation.) The original and seven copies of the Summary Report shall be submitted to the Office of the Under Secretary of Defense (Comptroller). The Summary Report of Violation shall contain a copy of all pertinent documents referenced in the body of the report.

1. If funds of another DoD Component are involved, a copy of the Report of Violation shall be furnished to that Component.

2. If the same official is responsible for more than one violation under the same circumstances, one Report of Violation may encompass multiple violations. As an example, if--on several different occasions--an individual authorized obligations against an appropriation that should not have been used for that particular purpose, and funds in the correct appropriation were not available, those violations could be combined into one Report of Violation.

D. **REVIEW OF SUMMARY REPORT OF VIOLATION.** The Office of the Under Secretary of Defense (Comptroller) shall review the Summary Report of Violations for completeness, clarity, compliance with reporting requirements, and adequacy of corrective and administrative disciplinary action taken. If the Office of the Under Secretary of Defense (Comptroller) determines that the Summary Report of Violation does not meet the requirements of this Volume or DoD Directive 7200.1, the report shall be returned to the Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components. That official will be asked to resubmit the report with the requested information within the period of time as specified by the Office of the Under Secretary of Defense (Comptroller).

E. **REPORT TO THE PRESIDENT AND THE CONGRESS.** Following receipt of the Summary Report of Violation from the Assistant Secretary of a Military Department for Financial Management, or Comptroller (or equivalent) for other DoD Components, the Office of the Under Secretary of Defense (Comptroller) shall prepare notification letters for the President, through the Director of the Office of Management and Budget; the President Pro Tem of the Senate; and the Speaker of the House of Representatives. These letters notify the President and the Congress of the violation, its cause(s) and circumstances, the names of the individual(s) responsible for the violation, and the disciplinary action taken. The notification letters shall be coordinated with the Office of the Deputy General Counsel (Fiscal) (ODGC(F)).

F. **REPORT OF "NO VIOLATION."** If the results of a formal investigation determine that there was no violation, the investigation report shall include that conclusion supported by appropriate justification.

1. The Office of the Under Secretary of Defense (Comptroller) shall evaluate the "no violation" investigation report and submit a copy to the ODGC(F) for a review and concurrence.

2. If the Office of the Under Secretary of Defense (Comptroller) and the ODGC(F) agree with the conclusion of "no violation," no further action is required of the DoD Component involved. If, however, the Office of the Under Secretary of Defense (Comptroller) and the ODGC(F) do not agree that there was "no violation," the report shall be returned to the applicable Assistant Secretary of the Military Department for Financial Management, or equivalent. That official shall be requested to reopen the investigation and report the results, provide additional documentation of "no violation," or accomplish some other action within a specified timeframe.

3. After the second investigation is completed or the requested action has been taken, the investigating officer shall submit the revised report to the applicable Assistant Secretary of the Military Department for Financial Management, or equivalent, for the preparation of a summary report of violation in accordance with the procedures in section B, above. The summary report shall be submitted to the Office of the Under Secretary of Defense (Comptroller) within 15 days following receipt by the applicable Assistant Secretary of the Military Department for Financial Management, or equivalent.

## CHECKLIST FOR FINAL SUMMARY REPORT OF VIOLATION

During preparation of the final summary report of an Antideficiency Act violation, the following items should be considered. This checklist is intended for the investigating officer, the appointing official, DoD managers, and commanders. Adherence to this checklist can help to reduce requests by the Office of the Under Secretary of Defense (Comptroller) for additional information on cases.

    A. Case Control Number

All violation cases are identified by a case control number. Case control numbers are assigned by the Office of the Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components, and provided through channels to the investigating officer. The reports must contain the case control number for control and monitoring requirements of the Department.

    B. The title of the appropriation or other fund account involved.

For instance, Operation and Maintenance, Air Force.

    C. The Treasury symbol of the appropriation or fund account involved.

For instance, 2142020 which stands for Army, fiscal year 1994 Operation and Maintenance, Army, funds.

    D. The amount of the violation.

The amount of the violation must correspond to the amount of funds which will be requested to correct the violation or the amount for which approval will be obtained to correct the violation.

    E. The date(s) on which the violation occurred.

    F. The date on which the violation was discovered.

    G. How the violation was discovered.

Was it discovered locally? Did an audit agency discover the violation?

    H. Name and rank of the officer(s) responsible for the violation. Name, grade, and civilian job series number--required by the Office of Management and Budget--of the civilian(s) responsible for the violation.

1. If a violation involves a centrally-managed allotment, the head of the operating agency at the time the violation was incurred shall be named responsible.
2. Others, in addition to the head of the operating agency, also may be determined to be responsible for the violation.

\_\_\_I. The position title of the officers(s) or employee(s) responsible for the violation.

Spell out completely the position title. For instance, Chief, XYZ branch, is not sufficient. Spell out the formal name for the XYZ branch. Include enough detail so that an outsider will be able to understand the individual's position.

\_\_\_J. The organization of the officer(s) or employee(s) responsible for the violation.

Completely spell out the name of the organization. For instance, base civil engineering is not sufficient. Spell out the full formal name and numerical designation, if any, of the base civil engineering office, such as 366 Combat Support Group Civil Engineering Squadron. Again, an outsider should be able to understand what the organization is.

\_\_\_K. The section or subsection of Title 31, United States Code that was violated--for example, Title 31, United States Code, subsection 1341(a)(1)(A); Title 31, United States Code, subsection 1517(a)(2); or Title 31, United States Code, section 1342.

1. If a legal limitation is exceeded, usually Title 31, United States Code, subsection 1341(a)(1)(A) was violated. However, refer to Chapter 2 and subsection 1341(a)(1) for more specific guidance.

2. If a DoD or DoD Component administrative limitation was exceeded, usually Title 31, United States Code, subsection 1517(a)(2), was violated. However, refer to Chapter 2 or subsection 1517(a) for more specific guidance.

3. Title 31, United States Code, section 1342 (acceptance of voluntary services) is very seldom violated. However, see Enclosure 2-2 for an example.

\_\_\_L. State whether the violation was an overobligation of an appropriation, an apportionment, or an allotment.

If an administrative subdivision of funds is involved with the violation, state whether the administrative subdivision of funds was overobligated. An administrative subdivision of funds can be an allotment, a centrally-managed allotment, an operating budget authority, an allocation, a suballotment, a suballocation, etc.

\_\_\_M. A statement about the effect on the next higher level of funding.

1. Exceeding an administrative subdivision at the local level can lead to the next higher level exceeding its subdivision of funds and could also lead to the DoD Component's apportionment and appropriation being exceeded.

2. For instance, if an installation exceeded an amount in an operating budget authority or an allotment, did this cause the higher command operating budget authority or allocation to also be exceeded? If the higher command operating budget authority or allocation is exceeded, did this also cause the DoD/Component apportionment or appropriation to also be exceeded?

- \_\_\_N. A brief, clear description of the causes and circumstances surrounding the violation. The description must clearly state what the officer(s) or employee(s) responsible for the violation did, or failed to do, that caused the violation. State whether the violation was due to careless disregard of instructions; an error; a lack of adequate training, procedures, or controls; due to other reasons, etc.

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

- \_\_\_O. A statement that either the violation was knowingly and willfully committed or that the violation was not knowingly or willfully incurred.

- \_\_\_P. A statement of the administrative discipline imposed and any further action taken with respect to the officer(s) or employee(s) named responsible for the violation. The individual responsible for determining disciplinary action should attach written statements to the report acknowledging that (1) a violation is a serious matter and (2) disciplinary action taken/to be taken is appropriate to the causes and circumstances determined during the investigation, (3) the Department must report the violation to the Congress and the President, and (4) the disciplinary action taken/to be taken is commensurate with the severity of the violation, with full justification of extenuating circumstances. (Chapter 9 contains further guidance on these statements.) If no disciplinary action is deemed appropriate, a full justification is required.

- \_\_\_Q. Description of specific action(s) taken to correct the violation. 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.

- \_\_\_R. A statement as to the adequacy of the system of administrative control prescribed under Chapter 1 and Appendix A. If the official signing the report recommends changes to this Volume, he or she shall submit the proposed changes to the Accounting Policy Directorate, Office of the Under Secretary of Defense (Comptroller).

- \_\_\_S. A statement shall be made concerning the steps taken to coordinate the report with the other component or agency, if another DoD Component or another Federal agency is involved.

The appointing official should coordinate the report with the applicable Assistant Secretary of the Military Department for Financial Management, or the Comptroller or Senior Financial Manager for other DoD Components or Federal agencies.

- \_\_\_T. Each officer or employee named responsible for the violation shall be given the opportunity to state any circumstances believed to be extenuating. The statement should not be based on a preliminary investigation, but should be made after a determination of responsibility has been made. If possible, the officer or employee shall be encouraged not to refer to documents that are not part of the report submission.

The individual(s) found responsible for the alleged violation must be:

1. Allowed to consult with legal counsel.
2. Advised that a violation has been determined to have occurred and that he or she is named a responsible individual for the violation and will be allowed to review the report and examine evidence on which the determination was based.
3. Allowed to submit a sworn or unsworn statement regarding the alleged violation after reviewing the report and evidence.

- \_\_\_U. The report shall include an evaluation of any conflicting facts or circumstances when the statement of the responsible officer(s) or employee(s) differs from the report itself.

- \_\_\_V. Name and position of the holder of the funds subdivision (for example, an installation commander) and an evaluation of the performance of his or her fund control responsibilities. The level of command immediately above the holder normally will furnish this evaluation. This evaluation may be omitted if the holder of funds is named the responsible individual for the violation.

Provide the name and position of the holder of funds along with the evaluation.

- \_\_\_W. A statement of any additional action taken by, or at the direction of, the head of the DoD Component with respect to the overallocation, overallotment, authority, or directive to overobligate, or overexpend, and any procedural changes or new safeguards established to prevent recurrence of such violation. Also include the actions taken to provide funds, if required, to cover the amount of the violation.

See item Q, above.

\_\_\_X. Lessons learned. A statement summarizing lessons learned from the results of the investigation. Recommended lessons learned shall include those applicable to (1) the installation where the violation occurred, (2) the major command, (3) the DoD Component involved, and (4) all DoD Components.

\_\_\_Y. Additional Information. Include in the report of violation the following information:

1. Testimony from witnesses.
2. Other documentation such as photographs, drawings, copies of appropriate pages of regulations, etc., gathered to support any conclusion(s) reached.
3. The review of such report by the appointing official.
4. Any other pertinent information generated as the result of the investigation. If the violation involved an appropriation with a negative balance, state whether the cause of the negative balance was systemic or a unique situation. (Includes item X, above.)

\_\_\_Z. Other Comments. Each report is a unique work reflecting each investigating officer's individual effort.

Assistance may be requested of the legal counsel at the major command which appointed the investigating officer. Please ensure the report is tabbed so that information referenced in the report can be located easily.

## CHAPTER 8

### TRAINING

A. **INTRODUCTION.** To ensure an efficient process for investigating and reporting on potential and actual violations of the Antideficiency Act, an effective training program is essential for those individuals involved in the investigation process.

B. **AVAILABILITY OF TRAINING COURSES.** The most important individual involved in the Antideficiency Act violation process is the investigator. Accordingly, the Defense Business Management University shall ensure that training courses are available for those personnel who may be selected, in the future, to investigate a potential violation of the Antideficiency Act. Those courses shall be included in the Financial Management curriculum of the Department's education and training program.

1. The focus of the training course shall be on the duties and responsibilities of an investigating officer. The courses shall include extensive training on such aspects of a proper investigation as interviewing witnesses, gathering evidence, developing the "facts," documenting the findings and recommendations, preparing the report of investigation, recommending discipline, meeting the timeframes of the investigation, recommending corrective actions, concentrating on lessons learned from prior investigations, and maintaining independence throughout the investigation.

2. Temporary duty costs for attendance at the resident courses shall be funded by the DoD Component nominating each student. In addition, the course curriculum should be available on video tape, or similar media, supplemented by workbooks. DoD Components may request these tapes and workbooks from the Defense Business Management University. The tapes or other media are to be used as supplemental training devices and not as a substitute for formal training.

3. The DoD Components shall nominate a number of civilian and military personnel to attend a training course for investigating officers based upon the DoD Components' projected needs for investigating officers. Such individuals need not be from a financial management functional area, but should otherwise be qualified to serve--except for the lack of appropriate training--as an investigating officer of a potential violation of the Antideficiency Act. The total nominations shall be based on the size of the DoD Component; number of major commands, or equivalent; and the average number of investigation cases experienced by the DoD Component. A DoD Component should nominate a least one candidate per projected investigation per year. When selecting military nominees, consideration should be given to the numbers of members needed for each rank since it is desirable, but not mandatory, that investigators should be equal to, or greater than, the highest ranking individual being investigated.

4. Upon completion of the course, each graduate will receive a certificate, signed by the school director, with an expiration date of 5 years after completion of the training. Graduates are



encouraged to renew their certificates every 5 years by attending a refresher training course for investigators established by the Defense Business Management University or using a hands-on or computer course discussed in sections C and D, below.

5. Graduates of the investigation training course with current certificates shall be included on a roster maintained by each DoD Component. Data to be maintained on the roster for each graduate shall include the date initial training was received, rank/grade, organization to which he/she is assigned, functional specialty(ies), and number of investigations previously conducted. Controls shall be established to ensure that the required roster is kept current. The roster shall be used by each major command or DoD Component to select individuals to investigate potential violations of the Antideficiency Act.

C. **HANDS-ON TRAINING COURSES.** As an alternative, DoD Components may develop a "hands-on" course for individuals eligible to be selected as investigating officers. The requirements for the focus of the course shall be the same as those discussed in paragraph B.1., above. The course shall be approved by the Director, Defense Business Management University, and the Under Secretary of Defense (Comptroller). The supervisor of an individual who completes a "hands-on" course for either initial or refresher training shall issue a certificate of completion annotated with the appropriate 5-year expiration date. The names of individuals completing the course shall be included on the roster as discussed in paragraph B.5., above.

D. **REFRESHER TRAINING COURSES.** DoD Components are encouraged to develop video or computer courses to be used either as refresher training or as a "hands-on" guide during an investigation. The course shall be approved by the Director, Defense Business Management University, and the Under Secretary of Defense (Comptroller).

E. **TRAINING FOR FINANCIAL AND PROGRAM MANAGERS.** DoD Components shall provide training, on a periodic basis, for senior financial managers and program managers. Video or computer courses similar to those discussed in section D, above, could be used for these officials. The focus of the training should include the basics of fund control and the Antideficiency Act statute; the types of violations that can occur; the most frequent types of violations that occur in the Department of Defense and their causes; the requisite training, supervision, and oversight of personnel who perform financial management or programmatic functions; and methods for preventing violations.

## CHAPTER 9

### DISCIPLINARY ACTION

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

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

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

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

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

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

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

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

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

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

1. Both sections 1350 and 1519 of Title 31, United States Code, discuss criminal penalties for violations of the Antideficiency Act. Title 31, United States Code, section 1350, prescribes that "an officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both." Title 31, United States Code, section 1519, includes the violation of section 1517(a) and provides the same level of punishment. Criminal penalties for military personnel may include punishment under Article 15 of the Uniform Code of Military Justice or trial by Courts Martial.

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

## CHAPTER 10

### VIOLATIONS--CAUSES, PREVENTION, AND CORRECTION

#### A. CAUSES OF VIOLATIONS

1. Based on an analysis of investigations of violations, the Office of the Under Secretary of Defense (Comptroller) has developed the following list of the most frequent causes of violations of the Antideficiency Act:

- Established internal controls and standard operating procedures not followed.
- Inadequate supervisory involvement or oversight.
- Lack of appropriate training.
- Inadequate standard operating procedures and internal controls.

2. As the above list indicates, supervisors of DoD personnel who have responsibility for control and use of DoD funds should ensure that their personnel are provided with proper oversight, support, and necessary training to help prevent violations. The following section discusses specific actions that can be taken to reduce or prevent violations.

#### B. PREVENTING VIOLATIONS

1. To help prevent violations of the Antideficiency Act, DoD personnel should be knowledgeable of the requirements in this Volume. Supervisors at all levels should provide their employees with the requisite training and experience in the control and use of funds at levels commensurate with their responsibilities. Furthermore, supervisors should perform oversight and validation checks to ensure that established internal controls and standard operating procedures are adequate and are being consistently followed by their employees. Supervisors shall use their internal management control programs as required by DoD Directive 5010.38, "Internal Management Control Programs," to assess periodically the reliability of internal control systems and employee internal management control accountability.

2. One of the most effective ways to prevent violations is to perform regular reviews of the status of funds reports. In this regard, commitments shall not be added to obligations to determine whether a violation has occurred. However, if the amount of commitments and the amount of obligations (undelivered orders, accrued expenditures unpaid, and accrued expenditures paid) exceed the total availability of an allotment, allocation, or appropriation, a violation could occur if all or some of the commitments eventually become valid obligations.

3. The most common types of violations in the Department of Defense can be significantly decreased by proactive measures specifically tailored to address the causes and corrective actions required to prevent their occurrence. DoD personnel with responsibilities for the control and use of funds of the types described below should be aware of these common types of violations and be required to take positive actions to avoid their occurrence.

4. The five types of circumstances that account for most of the violations of the Antideficiency Act in the Department, in order of precedence, are as follows:

a. Exceeding limits on the use of Operation and Maintenance (O&M) funds for minor construction projects.

b. Exceeding the fund availability amount in an appropriation or exceeding the amount of an allotment/ suballotment.

c. Using O&M funds to acquire equipment items that exceed the designated amount for the mandatory use of procurement funds (expense versus investment threshold rule).

d. Not recording obligating documents in a timely or accurate manner which results in overobligating funds already obligated (because the obligating document was not recorded timely or correctly).

e. Obligating in advance of funds being provided.

5. To prevent the most common violation (paragraph B.4.a., above), engineering and contracting personnel shall be advised of the provisions of Title 10, United States Code, section 2805, and DoD rules and regulations that cover minor construction projects. Engineering personnel frequently are determined to be responsible for violations involving construction projects exceeding statutory construction limitations and administrative construction limitations placed in engineering regulations. A brief summary of some of the provisions of section 2805 and the DoD rules and regulations follows:

a. The amount of O&M funds that may be used for a minor construction project is limited by statute. However, from time to time, that limit is increased by the Congress. If the specified limit is exceeded, Military Construction funds are required to be used for the entire project including planning and design. A violation of Title 31, United States Code, section 1341(a)(1)(a), may occur when the limitation is exceeded. The limitation applies for the use of O&M funds for a minor construction project even though there is sufficient obligational authority available in the O&M account (that was charged) at the time the project is authorized and approved.

b. Engineering and contracting personnel also should be familiar with the statutory limitation, under the provisions of Title 10, United States Code, section 2825, on the maintenance and repair funds that may be used for a family housing unit. That limit may not be exceeded without prior approval by the 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 waiver of the statutory limitations have not been met, a violation of Title 31, United States Code, section 1341(a)(1)(a), may occur. However, in FY 1992, the Congress approved after-the-fact notification of increased costs beyond the statutory limit only for the removal of "encountered asbestos" under specific conditions.

c. Construction costs which are misclassified as alternations by engineering personnel may result in a violation of the Antideficiency Act. A potential violation may occur if the amount of the misclassification added to construction costs, if any, exceeds a statutory limitation. For example, an engineering project which has a minor construction cost of \$280,000 plus maintenance and repair costs of \$70,000 could cause a violation of a \$300,000 operation and maintenance minor construction statutory limitation if the maintenance and repair work is later proved to be construction. Likewise, a maintenance and repair project in the amount of \$350,000 could be a potential violation of the Antideficiency Act if the maintenance and repair is determined later to be construction.

6. The second most common violation is exceeding availability of funds (paragraph B.4.b., above). The frequency of this type of overobligation condition is reported to have contributed to the passage of the Antideficiency Act.

a. A violation of the Antideficiency Act has occurred if an obligation or expenditure exceeds the amounts available in an apportionment, a reapportionment, a revolving fund, or an administrative subdivision of funds. All DoD commanders, managers, and personnel should be aware that this type of violation accounts for about one-third of the Antideficiency Act violation cases in the Department.

b. The establishment of a funds control system is essential to ensure that all obligations are properly edited against available funds and authorized, before they are incurred. This process must include the recording of a reservation of available funds for authorized obligations that are not immediately obligated and recorded. The reservation shall be by means of a formal commitment or an informal reservation record of the estimated amount of the obligation, or an estimated obligation that is documented to approximate closely the obligation when incurred and recorded.

c. Some of the Military Departments have experienced problems with overobligated reserve component personnel accounts. Funds in these accounts are used to pay reservists for week-end drills, travel, special tours, other training, etc. Reserve component unit commanders--who control a formal administrative subdivision of funds subject to the Antideficiency Act--should budget and reserve against available funds estimated amounts for week-end drills and other scheduled training in advance of the incurrence and recording of these obligations.

7. The third most common type of violation (see paragraph 4.c., above) involves the use of O&M funds to purchase equipment items that should be acquired with procurement funds.

a. The Congress designates an amount above which acquisitions of equipment shall be funded with procurement funds. The amount has been frequently increased in recent fiscal years.

b. The commonly reported scenario involves DoD personnel using operation and maintenance (O&M) funds to purchase a computer system when Other Procurement funds are required. Other procurement funds shall be used whenever a piece of computer equipment becomes an integral part of a computer system or local area network (LAN) unless the total costs of the entire system or LAN is less than the amount designated for use of procurement funds. Additional expense/investment criteria, as it applies to information technology equipment and software can be found in Chapter 1, Volume 2A, and Chapter 18, Volume 2B of this Regulation.

c. 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.

d. A violation of the Antideficiency Act does not automatically occur in these situations (paragraphs B.7a.- B.7.c., above) because, when discovered, the obligation is simply moved from the O&M account to the applicable procurement account. If sufficient funds are available after recording the obligation in the procurement account, including all other known valid obligations and deobligations, a potential violation of the Antideficiency Act has not occurred. However, if sufficient funds are not available to cover the obligation in the procurement account, a potential violation of the Antideficiency Act may have occurred.

e. DoD decision makers, such as program managers, information systems and contracting personnel, must be knowledgeable of the expense versus investment rules if this type of violation is to be prevented. Training of program managers and information systems, contracting and comptroller personnel should be focused on this issue. Such training should help to reduce the incorrect application of the expense versus investment rule and the resulting violations of the Antideficiency Act.

8. The fourth most common type of violation (paragraph B.4.d., above) occurs when obligating documents are not recorded in the accounting system in a timely and accurate manner and, as a result, funds subject to the Antideficiency Act are overobligated.

a. When obligations are not recorded, the official records in the accounting systems reflect an inflated (and incorrect) availability of funds. Since those records are used by personnel to certify fund availability for other obligations, a violation can easily occur because the records do not reflect the correct amount of funds available for obligation.

b. To help prevent this type of violation, the comptroller community shall require that all organizations that incur obligations and record obligations maintain strict and absolute positive controls over obligating documents and/or their electronic equivalents to ensure that none are lost or misplaced and are accurately recorded in a timely manner. Such controls include batch totals of transactions and dollar amounts incurred, transmitted, received, processed and recorded.

9. The fifth most common type of violation (paragraph B.4.e., above) is caused when managers obligate funds in advance of their availability.

a. The most common scenario is the use of current year funds to procure goods or services that only are properly funded with subsequent years' appropriations. A violation of the Antideficiency Act occurs when an individual has obligated funds before they have been authorized and appropriated by the Congress.

b. The signing of a lease for a facility or equipment and agreeing to pay, or simply obligating, for 2 years of lease cost during the first year would constitute an obligation in advance of the availability of the funds for the second year. Similarly, agreeing to pay for, or obligating, a maintenance agreement for equipment for 2 years would constitute a violation of the Antideficiency Act.

c. The signing of a contract for a new project or new work effort for which funds are not previously authorized and approved by the Congress would also constitute this type of violation of the Antideficiency Act.

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

10. The Department can make significant progress in the reduction of these common violations through proper education and effective training of personnel and ensuring that adequate internal controls and standing operating procedures are in place and being followed.

a. This volume should be used to communicate--to the personnel involved in the stewardship of DoD funds throughout the Department--the importance of learning about violations. Other sources on the subject of the Antideficiency Act include the United States Code and opinions and decisions of the Comptroller General.

b. This volume should be used as source material to conduct seminars and workshops targeted to general and specific audiences including program managers, engineers, contracting, information systems, comptroller personnel, commanders, supervisors, and managers.

c. The formal education structure within the Department is another avenue available to educate personnel on the Antideficiency Act. Formal courses can be used to alert personnel to common violations and high-risk business transactions and decisions that can result in a violation. The DoD financial management community sponsors professional development courses that include discussion on Antideficiency Act violations. These courses are located at Syracuse University, at Syracuse, New York, primarily for Army-sponsored personnel; the Naval Post Graduate School, at Monterey, California, primarily for Navy-sponsored personnel; and the Air Force Professional Military Comptroller School at Maxwell AFB, Alabama, primarily for Air Force-sponsored personnel. In addition, the Judge Advocate General School at Charlottesville,



Virginia, includes a fiscal law course in its curriculum. See Chapter 8 of this Volume for a further discussion of training.

11. It is critical that DoD commanders and managers are aware of the Antideficiency Act concepts and the most common causes of violations--see Section A. above. The full spectrum of DoD's formal education programs for all military officers, from staff officer courses to executive development classes, should incorporate relevant aspects of this volume for use in highlighting the potential pitfalls and risks associated with the Antideficiency Act.

12. On-the-job training is the responsibility of all supervisors and personnel. Supervisors and managers should incorporate the provisions of this volume in their on-the-job training programs for those employees responsible for funds administration and for use of funds.

### C. NO VIOLATION--ERRONEOUS CHARGING OR RECORDING

1. No violation of the Antideficiency Act is considered to have occurred when an overobligation or overexpenditure is solely the result of not recording available documents or transactions that increase fund availability, recording an erroneous transaction, or recording a transaction erroneously. In each instance, the potential violation status is eliminated by correcting the erroneous transaction, or by posting the omitted transaction. However, such actions should not include the deletion or adjustment of any valid transactions. If after the proper recording of the transactions, an overobligation or expenditure remains, a potential violation of the Antideficiency Act has occurred.

2. A violation of Title 31, United States Code, section 1517, may exist when the amount of authorizations of funds granted to other activities exceeds the amount of funds available under the applicable authorization of funds received. Sometimes errors occur when recording transactions that have the effect of showing more funds in the allotment, operating budget authority, or other administrative subdivision of funds than are actually available. When such errors do occur and the funds are not obligated or expended, there generally is no potential violation. However, the error must be corrected as soon as it is detected. Conversely, errors which require correction by obtaining additional funds in the administrative subdivision of funds cannot eliminate the fact that a violation has, indeed, occurred and must be investigated.

3. An erroneous recording is the recording of an authorization of funds, obligation, commitment, or expenditure in an incorrect fund or account; or the posting of an amount other than the correct amount for the transaction. An erroneous recording may occur by citing the wrong fund, appropriation, subhead, budget project, or allotment/suballotment authorization number on an obligation and/or expenditure document. Examples may also include the recording of duplicate payments or overpayments and/or related obligations. An omission is the failure to post a properly executed authorization of funds (either received or granted), a purchase requisition, commitment, an obligation, or an expenditure, when the document/transaction is available for recording.

4. Once incurred, failure to record valid obligations or expenditures, in the official accounting records will not preclude or avoid a potential violation. All obligations or expenditures shall be recorded accurately and promptly even if the recording results in a negative amount in the accounting records.

5. A potential violation may not exist after an error in the records has been corrected if the following situation exists: Neither obligations nor expenditures incurred exceed the amount of the applicable authorization of funds received at the time of correction and would not have exceeded the applicable authorization of funds received at the time of the initial transaction(s) that are being corrected.

6. A failure to record a valid obligation or expenditure as of the date incurred does not avoid the occurrence of a violation of the Antideficiency Act if the recording results in the account balance or other limitation being exceeded. A potential violation must be reported if this occurs. Obtaining additional funds to cover the violation is required. However, obtaining the additional funds does not eliminate the fact that a violation occurred.

#### D. CORRECTIVE ACTION

1. Part of an investigating officer's responsibilities includes recommended actions to prevent future violations of a similar type (procedural corrections) and to correct the specific adverse funding condition (funding corrections) that resulted from the violation.

2. The report of violation does not serve to condone, retroactively approve, or financially justify, a violation. All violations must be corrected with the proper funding or the necessary approval from the proper approving authority.

##### 3. Procedural Corrections

a. These corrective actions usually are made by the installation activity causing the violation and may include training or changes in procedures to preclude similar violations. Other activities may also be involved. For instance, it is possible that, as a part of an installation's overall corrective action, a change in local procedures for an organization such as contracting, engineering, information systems, or Defense Accounting Office--which supports the installation--is required. Additionally, changes in practices or procedures by the finance office could provide benefits to the activity that caused the violation. However, unless individuals in the finance office caused the violation, corrective actions taken by that office would be secondary to the corrective actions taken by the responsible organization.

b. Recommendations for future consideration of installation-level corrective actions are not acceptable in the report. The report must state what corrective actions were actually taken and are being taken to preclude similar violations in the future.

c. Recommendations that apply at other installations and organizations should be included in the report and so identified. Such recommendations should be specific and not general in nature. The major command, or equivalent, shall address such recommendations and include a statement whether these recommendations are considered appropriate for adoption by the major command. The Head of the DoD Component, or designee, shall evaluate such recommendations and include a statement whether they are considered appropriated for adoption by the DoD Component.

d. The investigating officer also may make recommendations for improvements in the contents of the Checklists or other portions in this Volume.

e. If recommendations are directed towards changing DoD Component regulations, the recommendation should include the number and name of the regulation, the paragraph which is recommended for change, the recommended wording of the change, and the rationale for the recommended change. A situation in which an investigation determines that a particular regulation caused or contributed to the cause of a violation, the report of violation shall contain a recommendation for changing that portion of the regulation.

#### 4. Funding Corrections

a. The report must state what actions were taken to request the proper funding. Wording in the report to the effect that funds will be requested is not sufficient.

(1) Under Title 31, United States Code, section 1301(a), appropriations shall be applied only to the objects for which the appropriations were made, except as otherwise provided by law. This means that if improper funds were used, the correct funds must be used as provided by law. The funding correction should be made as soon as possible. However, since it may take some time to obtain the proper funds, the report should not be held until the funds are provided. The report shall state what action has been taken to ensure the violation is "financially corrected" and when the funds are expected to be received.

(2) As an example, if O&M funds were improperly used for a minor construction project costing in excess of the limitation for minor construction, the installation must request proper funding to comply with Title 31, United States Code, section 1301(a). The proper funds, in this example, should be requested from the Military Construction appropriation to restore the O&M appropriation to the proper balance. The installation budget office requests the proper funds. Obtaining these funds may take some time to accomplish. Therefore, the report should state what action has been taken to obtain the funds and when the funds are expected to be received.

(3) Care must be taken when correcting financial transactions that involve foreign currency fluctuations budget rates. The appropriate budget rate for the appropriate year must be used.

(a) The appropriation from which the incorrect transaction took place must be corrected as well as the applicable foreign currency fluctuations centrally-managed allotment from which any gain or loss (difference between the current rate actually paid and the budget rate actually obligated) was incorrectly credited or charged. If the appropriation to which the charge must be made is subject to foreign currency fluctuations budget rates, i.e., when an O&M account was charged when a military construction account should have been charged instead, a charge to the appropriation at the applicable budget rate and a charge or credit to the applicable centrally-managed allotment will be required.

(b) Corrections applying to foreign currency fluctuations centrally-managed allotments require coordination with the funds manager of the applicable foreign currency fluctuations centrally-managed allotment at the DoD Component.

b. In some cases, the appropriation that should provide the proper funding to correct a violation may now be closed. Volume 3 of this Regulation will address guidance on the treatment of transactions that should have been charged to accounts that are now closed.

c. In some cases involving violations of departmental or DoD Component administrative limitations, proper funding may not be needed. However, administrative approval after-the-fact from the proper approving authority should be obtained in order to properly document the records associated with the violation.

d. The correction of a violation by means of receipt of the proper funding or the after-the-fact approval does not negate the occurrence of the violation. Violations, even though financially corrected subsequently, must still be properly investigated and reported.

## APPENDIX A--PROCEDURES FOR THE ADMINISTRATIVE CONTROL OF FUNDS

A. **ADMINISTRATIVE CONTROL SYSTEMS.** As discussed in chapter 1, systems for administrative control of funds should be designed so that administrative subdivisions of funds are placed at the highest practical organizational level consistent with effective and efficient management. For instance, a single allotment for an appropriation or other fund normally provides a sufficient basis for control of funds without further allotments or suballotments at lower levels, such as program elements, object classes, or other types of data. Use of limitations on funding documents shall be restricted to those necessary (1) to comply with statutory provisions imposed by the DoD Authorization or DoD Appropriation Acts, or other legislation, and (2) to address specific management requirements.

1. Reporting Requirements for Administrative Control Systems. A system for administrative control of funds shall be established to provide data for reviewing the efficiency with which funds are administered or used. When a need exists for accumulating data below the allotment level, reporting requirements shall be established separately from an administrative subdivision of funds.

2. Delegations of Authority. All delegations or redelegations of authority or functions under Chapter 1 of this Volume shall be made in writing. No delegation or redelegation of authority or functions shall be exercised in any manner that 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 under this Volume.

3. Apportionments

a. When DoD-military appropriations or other funds are required to be apportioned under law by the Office and Management and Budget (OMB) to a DoD Component, a request for the apportionment or reapportionment shall be prepared and submitted through the Under Secretary of Defense (Comptroller) to the Director of OMB. A request for an apportionment shall be in such form and at such time as the Under Secretary of Defense (Comptroller) may prescribe to conform with the requirements of the Director of OMB (see Volume 2 of this Regulation).

b. Obligations during any apportionment period shall not exceed the amount of the apportionment available for that period or of any administrative subdivisions of the apportionment.

4. Allocations

a. The Under Secretary of Defense (Comptroller) or designee, shall make allocations of apportioned amounts, in writing, to the heads of DoD Components. The Secretary of a

Military Department, or designee, shall make further allocations of apportioned amounts, in writing, to the heads of operating agencies.

(1) The original signed document or an authenticated copy bearing a signature or an electronic equivalent of a signature shall be forwarded to the recipient of the allocation. 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) Amounts allocated may be suballocated to major subordinate operating commands.

b. Allocations shall not exceed the amount available for use for each apportionment period.

c. 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 allocations and suballocations shall have the following minimum characteristics:

(1) Fund control systems shall provide validation of fund authorities by use of access codes and lockout techniques.

(2) One set of access codes shall be used to issue fund authorizations.

(3) Other controlled access codes shall be used to process a signature section of fund control documents for transmissions to funded activities.

(4) The authentication, signature element, and symbol shall be included as part of electronically-produced funding documents.

d. Anticipated transfers or other items of anticipated receipts may be allocated only when realized.

e. Allocations, suballocations, or portions of an allocation, that are not required to be subdivided further may be treated and recorded as allotments.

f. DoD Components shall not authorize or incur an obligation, or make a disbursement against apportioned anticipated transfer authorizations until received. Such actions must be delayed until the completed Standard Form (SF) 1151, "Nonexpenditure Transfer Authorization," is received and the resources realized.

g. DoD Components shall not authorize or incur an obligation or make a disbursement against apportioned anticipated reimbursements. Such actions shall be delayed until the applicable customer order is received in the case of the Federal Government activities and funds are collected in the case of other customers.

## 5. Allotments

a. The recipients of allocations and suballocations, or their designees, shall make allotments in specific amounts to the heads of installations or organizational units of DoD Components, as required. The total of the amounts allotted shall not exceed the amount of the allocation available for each period.

b. The recipients of allotments may make suballotments to the heads of other organizational units, including those of other DoD Components, as required. The total of the amounts suballotted shall not exceed the amount of the allotment available for use for each period.

c. Allotments and suballotments shall be made in writing and the recipient's copy either shall be signed by the fund-issuing authority or be an authenticated copy bearing an authorized authenticated signature or an electronic equivalent of a signature. The document shall contain at least the following basic information:

- (1) Name or title of the allottee.
- (2) Amount of the allotment and the period of availability.
- (3) Legal restrictions or limitations on the obligation and disbursement of the allotted funds.
- (4) The amount of anticipated reimbursements, specified to the organizational level responsible for receiving the reimbursable orders.

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

(1) A telephone may be used to make oral arrangements to indicate that funds will be provided. However, the official allocation or allotment of funds does not occur until the documentation of the issuance of funds has been transmitted by the issuer and received by the recipient by means of a facsimile machine (fax) record.

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

(3) The recipient is not authorized to issue funds to others or authorize or incur obligations with the funds received until after receipt of the double-signed transmission record.

e. The head of an operating agency, who has specific written approval of the Head of a DoD Component, may establish centrally-managed allotments. These allotments shall be established only when it is impractical to administer decentralized allotments under normal operating procedures. More specific guidance on requirements for establishing centrally-managed allotments are provided in Volume 3 of this Regulation. Before approval, a specific written determination shall be made that adequate controls have been established to avoid overobligating or overexpending such an allotment.

(1) The amount of the centrally-managed allotment shall be within the amount and terms of the allocation.

(2) Requests for the establishment of a centrally-managed allotment must justify fully the need, delineate possible alternatives, and demonstrate clearly why the centrally-managed allotment method is the only practical administrative procedure.

(3) The official who establishes or continues the use of a centrally-managed allotment shall 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 centrally-managed allotment.

(4) The establishing or continuing official is responsible for the administration of each centrally-managed allotment and shall prescribe an adequate system of financial and nonfinancial control. The system shall:

(a) Designate the name or position of specific individuals authorized to incur obligations or make expenditures against each centrally-managed allotment.

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

(c) Provide for accounting and reporting at least monthly.

(d) Ensure timely notice to prevent the centrally-managed allotment from being overobligated or overexpended by taking necessary management action, which may include:

1. Increasing the amount of the centrally-managed allotment.

2. Terminating the centrally-managed allotment.

3. Terminating new obligations or disbursements.



4. Taking other necessary management actions to prevent an overobligation or overexpenditure.

(5) Each centrally-managed allotment shall be reviewed annually to determine whether its operation should be continued. This determination shall be made by the head of the DoD Component concerned, or designee. The annual review shall include an evaluation by an internal audit group of the adequacy of control procedures established to prevent violations of subsections 1341(a)(1) or 1517(a) or both, of Title 31, United States Code, and a recommendation whether continuation of the centrally-managed allotment is justified.

#### 6. Reimbursable Orders

a. 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.

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

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

(2) Advance payment has been collected, in the case of orders from the public.

c. In the case of Federal Government customer orders, the value of the reimbursable order and the associated budgetary resources is subject to the amount of the goods and services as provided to the customer and ultimately collected from the customer. In the case of the supply management area of the Defense Business Operation Fund, anticipated contract authority is provided by the OMB that allows for issuance of obligations and disbursements prior to receipt of customer orders.

d. Under certain circumstances, and only with the prior written approval of the OMB, immediate and automatic apportionment of the amounts of reimbursable orders received and accepted may be authorized. (See Volume 2 of this Regulation.)

e. 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.

(1) These orders, except Foreign Military Sales (FMS) orders, shall be recognized as reimbursable orders received only to the extent that cash has been received and deposited with the Treasury. 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) FMS Disbursement controls shall be established to ensure that disbursements are not made until the cash is actually received from the foreign country and deposited in the Treasury by the FMS Trust Fund. Expenditure authorizations are used to ensure that funds are available in the account for the country involved before disbursements are made.

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

f. Officials responsible for incurring obligations and making expenditures shall be particularly cognizant of reimbursable authority received. Controls shall be established 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.

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

a. Transactions or adjustments shall be recorded in accounting records only when supported by appropriate source documents or electronic equivalents. Managers shall 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 mistaken appearance of a potential Antideficiency Act violation which occurred because of careless record keeping.

b. An investigation shall be initiated by the applicable DoD Component and reported to the Office of the Under Secretary of Defense (Comptroller) as required by this Volume if a manager suspects that a potential violation of the Antideficiency Act may have occurred. However, investigations of potential violations of the Antideficiency Act should not be required merely to force correction of erroneous records.

B. **FINANCIAL MANAGEMENT SYSTEMS**. In addition to effective and efficient administrative funds control systems established by the DoD Components, the Defense Finance and Accounting Service (DFAS) shall be responsible for establishing accounting and finance systems. The accounting and finance systems shall be established for reporting commitments and obligations created by DFAS's customers and expenditures made against those customers' obligations by the DFAS. Title 31, United States Code, section 3512, contains the following requirements for those systems:

1. Federal Agencies shall maintain systems of accounting and internal controls that ensure (a) complete disclosure; (b) adequate financial information; (c) effective control over, and accountability for, assets; (d) obligations and costs comply with applicable laws; and (e) revenues and expenditures applicable to the Department's operations are properly accounted for, so that accounts and reliable financial and statistical reports are prepared and accountability of assets are maintained.

2. Specifically, financial management systems shall be:

a. Designed to assist responsible officials in restricting the authorization or incurrence of obligations to the amount of, and for the authorized purposes for which the obligational authority is available.

b. Capable of providing timely disclosure of the authorization or creation of an obligation, or the making of disbursements in excess of amounts available in both unexpired and expired accounts.

## APPENDIX B--EXCERPTS FROM TITLE 31, UNITED STATES CODE

## "MONEY AND FINANCE"

## SUBTITLE II - THE BUDGET PROCESS

## CHAPTER 11 - THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

## 31 UNITED STATES CODE 1104 BUDGET AND APPROPRIATIONS AUTHORITY OF THE PRESIDENT

## § 1104. Budget and appropriations authority of the President

(a) The President shall prepare budgets of the United States Government under section 1105 of this title and proposed deficiency and supplemental appropriations under section 1107 of this title. To the extent practicable, the President shall use uniform terms in stating the purposes and conditions of appropriations.

(b) Except as provided in this chapter, the President shall prescribe the contents and order of statements in the budget on expenditures and estimated expenditures and statements on proposed appropriations and information submitted with the budget and proposed appropriations. The President shall include with the budget and proposed appropriations information on personnel and other objects of expenditure in the way that information was included in the budget for fiscal year 1950. However, the requirement that information be included in the budget in that way may be waived or changed by joint action of the Committees on Appropriations of both Houses of Congress. This Subsection does not limit the authority of a committee of Congress to request information in a form it prescribes.

(c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress. Committees of the House of Representatives and Senate shall receive prompt notification of all such changes.

(d) The President shall develop programs and prescribe regulations to improve the compilation, analysis, publication, and dissemination of statistical information by executive agencies. The President shall carry out this subsection through the Administrator for the Office of Information and Regulatory Affairs in the Office of Management and Budget.

(e) Under regulations prescribed by the President, each agency shall provide information required by the President in carrying out this chapter. The President has access to, and may inspect, records of an agency to obtain information."

## 31 UNITED STATES CODE 1105 BUDGET CONTENTS AND SUBMISSION TO CONGRESS

## § 1105. Budget contents and submission to Congress

“(a) On or after the first Monday in January but not later than the first Monday in February of each year, the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

- (1) information on activities and functions of Government.
- (2) when practicable, information on costs and achievements of Government programs.
- (3) other desirable classifications of information.
- (4) a reconciliation of the summary information on expenditures with proposed appropriations.
- (5) except as provided in subsection (b) of this section, estimated expenditures and proposed appropriations the President decides are necessary to support the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year.
- (6) estimated receipts of the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year under--
  - (A) laws in effect when the budget is submitted; and
  - (B) proposals in the budget to increase revenues.
- (7) appropriations, expenditures, and receipts of the Government in the prior fiscal year.
- (8) estimated expenditures and receipts, and appropriations and proposed appropriations, of the Government for the current fiscal year.
- (9) balanced statements of the--
  - (A) condition of the Treasury at the end of the prior fiscal year;
  - (B) estimated condition of the Treasury at the end of the current fiscal year; and
  - (C) estimated condition of the Treasury at the end of the fiscal year for which the budget is submitted if financial proposals in the budget are adopted.
- (10) essential information about the debt of the Government.

(11) other financial information the President decides is desirable to explain in the practicable detail the financial condition of the Government.

(12) for each proposal in the budget for legislation that would establish or expand a Government activity or function, a table showing--

(A) the amount proposed in the budget for appropriation and for expenditure because of the proposal in the fiscal year for which the budget is submitted; and

(B) the estimated appropriation required because of the proposal for each of the 4 fiscal years after that year that the proposal will be in effect.

(13) an allowance for additional estimated expenditures and proposed appropriations for the fiscal year for which the budget is submitted.

(14) an allowance for unanticipated uncontrollable expenditures for that year.

(15) a separate statement on each of the items referred to in section 301(a)(1)-(5) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)(1)-(5)).

(16) the level of tax expenditures under existing law in the tax expenditures budget (as defined in section 3(a)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 622(a)(3))) for the fiscal year for which the budget is submitted, considering projected economic factors and changes in the existing levels based on proposals in the budget.

(17) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for grants, contracts, and other payments under each program for which there is an authorization of appropriations for that following fiscal year when the appropriations are authorized to be included in an appropriation law for the fiscal year before the fiscal year in which the appropriation is to be available for obligation.

(18) a comparison of the total amount of budget outlays for the prior fiscal year, estimated in the budget submitted for that year, for each major program having relatively uncontrollable outlays with the total amount of outlays for that program in that year.

(19) a comparison of the total amount of receipts for the prior fiscal year, estimated in the budget submitted for that year, with receipts received in that year, and for each major source of receipts, a comparison of the amount of receipts estimated in that budget with the amount of receipts from that source in that year.

(20) an analysis and explanation of the differences between each amount compared under clauses (18) and (19) of this subsection.

(21) a horizontal budget showing--

(A) the programs for meteorology and of the National Climate Program established under section 5 of the National Climate Program Act (15 U.S.C. 2904);

(B) specific aspects of the program of, and appropriations for, each agency; and

(C) estimated goals and financial requirements.

(22) a statement of budget authority, proposed budget authority, budget outlays, and proposed budget outlays, and descriptive information in terms of --

(A) a detailed structure of national needs that refers to the missions and programs of agencies (as defined in section 101 of this title); and

(B) the missions and basic programs.

(23) separate appropriation accounts for appropriations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.).

(24) recommendations on the return of Government capital to the Treasury by a mixed ownership corporation (as defined in section 9101(2) of this title) that the President decides are desirable.

(25) a separate appropriation account for appropriations for each Office of Inspector General of an establishment defined under section 11(2) of the Inspector General Act of 1978.

(26) an analysis, prepared by the Office of Management and Budget after consultation with the chairman of the Council of Economic Advisors, of the budget's impact on the international competitiveness of United States business and the United States balance of payments position and shall include the following projections, based upon the best information available at the time, for the fiscal year for which the budget is submitted--

(A) the amount of borrowing by the Government in private credit markets;

(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of state and local governments);

(C) net private domestic investment;

(D) the merchandise trade and current accounts;

(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on real effective exchange rate of the United States dollar.

(27) a separate statement of the amount of appropriations requested for the Office of National Drug Control Policy and each program of the National Drug Control Program.

(28) a separate statement of the amount of appropriations requested for the Office of Federal Financial Management.

(b) estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change.

(c) The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

(d) When the President submits a budget or supporting information about a budget, the President shall include a statement on all changes about the current fiscal year that were made before the budget or information was submitted.

(e)(1) The President shall submit with materials related to each budget transmitted under subsection (a) on or after January 1, 1985, an analysis for the ensuing fiscal year that shall identify requested appropriations or new obligational authority and outlays for each major program that may be classified as a public civilian capital investment program, and for each major program that may be classified as a military capital investment program, and shall contain summaries of the total amount of such appropriations or new obligational authority and outlays for public civilian capital investment programs and summaries of the total amount of such appropriations or new obligational authority and outlays for military capital investment programs. In addition, the analysis under this paragraph shall contain --

(A) an estimate of the current service levels of public civilian capital investment and of military capital investment and alternative high and low levels of such investments over a period of ten years in current dollars and over a period of five years in constant dollars;

(B) the most recent assessment analysis and summary, in a standard format, of public civilian capital investment needs in each major program area over a period of ten years;



(C) an identification and analysis of the principle policy issues that affect estimated public civilian capital investment needs for each major program; and

(D) an identification and analysis of factors that affect estimated public civilian capital investment needs for each major program, including but not limited to the following factors:

(i) economic assumptions;

(ii) engineering standards;

(iii) estimates of spending for operation and maintenance;

(iv) estimates of expenditures for similar investments by State and local governments; and

(v) estimates of demand for public services derived from such capital investments and estimates of the service capacity of such investments.

To the extent that any analysis required by this paragraph relates to any program for which Federal financial assistance is distributed under a formula prescribed by law, such analysis shall be organized by State and within each State by major metropolitan area if data are available.

(2) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a public civilian capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for a number of years and is not classified as a military capital investment under paragraph (3). Such assets shall include (but not be limited to)--

(A) roadways or bridges,

(B) airports or airway facilities,

(C) mass transportation systems,

(D) waste water treatment or related facilities,

(E) water resources projects,

(F) hospitals,

(G) resource recovery facilities,

(H) public buildings,

(I) space or communications facilities,

(J) railroads, and

(K) federally assisted housing.

(3) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a military capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for purposes of national defense and security for a number of years. Such assets shall include military bases, posts, installations, and facilities.

(4) Criteria and guidelines for use in the identification of public civilian and military capital investments, for distinguishing between public civilian and military capital investments, and for distinguishing between major and non-major capital investment programs shall be issued by the Director of the Office of Management and Budget after consultation with the Comptroller General and the Congressional Budget Office. The analysis submitted under this subsection shall be accompanied by an explanation of such criteria and guidelines.

(5) For purposes of this subsection--

(A) the term "construction" includes the design, planning, and erection of new structures and facilities, the expansion of existing structures and facilities, the reconstruction of a project at an existing site or adjacent to an existing site, and the installation of initial and replacement equipment for such structures and facilities;

(B) the term "acquisition" includes the addition of land, sites, equipment, structures, facilities, or rolling stock by purchase, lease-purchase, trade, or donation; and

(C) the term "rehabilitation" includes the alteration of or correction of deficiencies in an existing structure or facility so as to extend the useful life or improve the effectiveness of the structure or facility, the modernization or replacement of equipment at an existing structure or facility, and the modernization of, or replacement of parts for, rolling stock.

(f) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years."

31 UNITED STATES CODE 1106 SUPPLEMENTAL BUDGET ESTIMATES AND  
CHANGES

§ 1106. Supplemental budget estimates and changes

“(a) Before July 16 of each year, the President shall submit to Congress a supplemental summary of the budget for the fiscal year for which the budget is submitted under section 1105(a) of this title. The summary shall include--

(1) for that fiscal year--

(A) substantial changes in or reappraisals of estimates of expenditures and receipts;

(B) substantial obligations imposed on the budget after its submission;

(C) current information on matters referred to in section 1105(a)(8) and (9)(B) and (C) of this title, and

(D) additional information the President decides is advisable to provide Congress with complete and current information about the budget and current estimates of the functions, obligations, requirements, and financial condition of the United States Government.

(2) for the 4 fiscal years following the fiscal year for which the budget is submitted, information on estimated expenditures for programs authorized to continue in future years, or considered mandatory, under law; and

(3) for future fiscal years, information on estimated expenditures of balances carried over from the fiscal year for which the budget is submitted.

(b) Before July 16 of each year, the President shall submit to Congress a statement of changes in budget authority requested, estimated budget outlays, and estimated receipts for the fiscal year for which the budget is submitted (including prior changes proposed for the executive branch of the Government) that the President decides are necessary and appropriate based on current information. The statement shall include the effect of those changes on the information submitted under section 1105(a)(1)-(14) and (b) of this title and shall include supporting information as practicable. The statement submitted before July 16 may be included in the information submitted under subsection (a)(1) of this section.

(c) Subsection (f) of section 1105 shall apply to revisions and supplemental summaries submitted under this section to the same extent that such subsection applies to the budget submitted under section 1105(a) to which such revisions and summaries relate.”

### 31 UNITED STATES CODE 1107 DEFICIENCY AND SUPPLEMENTAL APPROPRIATIONS

#### § 1107. Deficiency and supplemental appropriations

“The President may submit to Congress proposed deficiency and supplemental appropriations the President decides are necessary because of laws enacted after submission of the budget or that are

in the public interest. The President shall include the reasons for the submission of the proposed appropriations and the reasons the proposed appropriations were not included in the budget. When the total proposed appropriations would have required the President to make a recommendation under section 1105(c) of this title if they had been included in the budget, the President shall make a recommendation under that section."

### 31 UNITED STATES CODE 1108 PREPARATION AND SUBMISSION OF APPROPRIATIONS REQUESTS TO THE PRESIDENT

#### § 1108. Preparation and submission of appropriations requests to the President

"(a) In this section (except subsections (b)(1) and (e)), "agency" means a department, agency, or instrumentality of the United States Government.

(b)(1) The head of each agency shall prepare and submit to the President each appropriation request for the agency. The request shall be prepared and submitted in the form prescribed by the President under this chapter and by the date established by the President. When the head of the agency does not submit a request by that date, the President shall prepare the request for the agency to be included in the budget or changes in the budget or as deficiency and supplemental appropriations. The President may change agency appropriation requests. Agency appropriation requests shall be developed from cost-based budgets in the way and at times prescribed by the President. The head of the agency shall use the cost-based budget to administer the agency and to divide appropriations or amounts.

(2) An officer or employee of an agency in the executive branch may submit to the President or Congress a request for legislation authorizing deficiency or supplemental appropriations for the agency only with the approval of the head of the agency.

(c) The head of the agency shall include with an appropriation request submitted to the President a report that the statement of obligations submitted with the request contains obligations consistent with section 1501 of this title. The head of the agency shall support the report with a certification of the consistency and shall support the certification with records showing that the amounts have been obligated. The head of the agency shall designate officials to make the certifications, and those officials may not delegate the duty to make the certifications. The certifications and records shall be kept in the agency--

- (1) in a form that makes audits and reconciliations easy; and
- (2) for a period necessary to carry out audits and reconciliations.

(d) To the extent practicable, the head of the agency shall--

- (1) Provide information supporting the agency's budget request for its missions by function and subfunction (including the mission of each organizational unit of the agency); and

- (2) relate the agency's programs to its missions.
- (e) Except as provided in subsection (f) of this section, an officer or employee of an agency (as defined in section 1101 of this title) may submit to Congress or a committee of Congress an appropriation estimate or request, a request for an increase in that estimate or request, or a recommendation on meeting the financial needs of the Government only when requested by either House of Congress.
- (f) (Not applicable to DoD)
- (g) amounts available under law are available for field examination of appropriation estimates. The use of the amounts is subject only to regulations prescribed by the appropriate standing committees of Congress."

### 31 UNITED STATES CODE 1112 FISCAL, BUDGET, AND PROGRAM INFORMATION

#### § 1112. Fiscal, budget, and program information

- "(a) In this section, "agency" means a department, agency, or instrumentality of the United States Government except a mixed-ownership Government corporation.
- (b) In cooperation with the Comptroller General, the Secretary of the Treasury and the Director of the Office of Management and Budget (OMB) shall establish and maintain standard data processing and information systems for fiscal, budget, and program information for use by agencies to meet the needs of the Government, and to the extent practicable, of State and local governments.
- (c) The Comptroller General
  - (1) in cooperation with the Secretary, the Director of OMB, and the Director of the Congressional Budget Office (CBO), shall establish, maintain, and publish standard terms and classifications for fiscal, budget, and program information of the Government, including information on fiscal policy, receipts, expenditures, programs, projects, activities, and functions;
  - (2) when advisable, shall report to Congress on those terms and classifications, and recommend legislation necessary to promote the establishment, maintenance, and use of standard terms and classifications by the executive branch of the Government; and
  - (3) in carrying out this subsection, shall give particular consideration to the needs of the Committees of Appropriations and on the Budget of both Houses of Congress, the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the CBO.

(d) Agencies shall use the standard terms and classifications published under subsection (c)(1) of this section in providing fiscal budget, and program information to Congress.

(e) In consultation with the President, the head of each executive agency shall take actions necessary to achieve to the extent possible--

(1) consistency in budget and accounting classifications;

(2) synchronization between those classifications and organizational structure; and

(3) information by organizational unit on performance and program costs to support budget justifications.

(f) In cooperation with the Director of the CBO, the Comptroller General, and appropriate representatives of State and local governments, the Director of OMB (to the extent practicable) shall provide State and local governments with fiscal, budget, and program information necessary for accurate and timely determination by those governments of the impact on their budgets of assistance of the United States Government."

## EXCERPTS FROM CHAPTER 13, TITLE 31, UNITED STATES CODE

### "MONEY AND FINANCE"

#### SUBTITLE II - THE BUDGET PROCESS

#### CHAPTER 13 - APPROPRIATIONS

#### SUBCHAPTER I - GENERAL

#### 31 UNITED STATES CODE 1301 APPLICATION

#### § 1301. Application

"(a) Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.

(b) The reappropriation and diversion of the unexpended balance of an appropriation for a purpose other than that for which the appropriation was originally made shall be construed and accounted for as a new appropriation. The unexpended balance shall be reduced by the amount to be diverted.

(c) An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation--

(1) is for rivers and harbors, lighthouses, public buildings, or the pay of the Navy and Marine Corps; or

(2) expressly provides that it is available after the fiscal year covered by the law in which it appears.

(d) A law may be construed to make an appropriation out of the Treasury or to authorize making a contract for the payment of money in excess of an appropriation only if the law specifically states that an appropriation is made or that such a contract may be made.”

## SUBCHAPTER II - TRUST FUNDS AND REFUNDS

### 31 UNITED STATES CODE 1321 TRUST FUNDS

#### § 1321. Trust funds

“(a) The following are classified as trust funds:

- (1) Philippine special fund (custom duties).
- (2) Philippine special fund (internal revenue).
- (3) Unclaimed condemnation awards, Dept. of Treasury.
- (4) Naval reservation, Olangapo civil fund.
- (5) Armed Forces Retirement Home Trust Fund.
- (6) Return to deported aliens of passage money collected from steamship companies.
- (7) Vocational Rehabilitation, special fund.
- (8-11) Library of Congress - trust funds.
- (12) Relief and Rehabilitation, Longshoremen's and Harbor Workers' Compensation Act.
- (13) Cooperative work, Forest Service.
- (14) Wages and effects American Seamen, Dept. of Commerce.
- (15-16) St. Elizabeth's Hospital.
- (17-19) National Park Service, donations.

- (20) Indian monies.
- (21) Funds of Federal prisoners.
- (22) Commissary Funds, Federal prisons.
- (23) Pay of Navy, deposit funds.
- (24) Pay of Marine Corps, deposit funds.
- (25) Pay of Army, deposit funds.
- (26) Lincoln birthplace.
- (27) Flood control, Mississippi River.
- (28) Flood control, Sacramento River.
- (29) Effects deceased employees, Dept. of Treasury.
- (30) Effects of patients, Public Health Service.
- (31) Effects of deceased employees, Dept. of Commerce.
- (32) Topographic survey, contributions.
- (33-34) National Institutes of Health, gift funds.
- (35) Patients' deposits, U.S. Marine Hospital, Carville.
- (36) Estates deceased personnel, Department of Army.
- (37) Effects of deceased personnel, Department of Interior.
- (38) Fredericksburg and Spotsylvania Battlefields memorial fund.
- (39) Petersburg Military Park.
- (40) Gorgas laboratory quotas.
- (41) Contributions, boundary commission U.S. and Mexico.
- (42) Salvage proceeds, American vessels.
- (43) Wages due American seamen.



- (44) Federal Industrial Institution for Women, chapel.
- (45) General Post funds, National Homes, Dept of V.A.
- (46) Repatriation of American seamen.
- (47-48) Expenses, public survey.
- (49) Contributions, Alaska roads.
- (50) Protective works Lake of Woods/Rainy River, Minn.
- (51) Washington redemption fund.
- (52-58) District of Columbia funds.
- (59) Repealed.
- (60) Music auditorium, Library of Congress.
- (61) Bequest Gertrude Hubbard.
- (62) Puerto Rico special fund (Internal Revenue).
- (63) Miscellaneous trust funds, Department of State.
- (64) Improvement funds contributed (name of river or harbor).
- (65) Improvement funds, advanced (name of river or harbor).
- (66) Funds contributed for Indian projects.
- (67) Trust funds Indian tribes.
- (68) Ships stores profits, Navy.
- (69) Completing Surveys within Railroad land grants.
- (70) Memorial to Women of World War, contributions.
- (71) Memorial to John Ericsson.
- (72) Red Cross Building, contributions.

- (73) Estate of decedents, Dept. of State Trust Fund.
  - (74) Funds due Incompetent Beneficiaries, Dept of V. A.
  - (75) Promote Education of Blind.
  - (76) Fort Sill road paving.
  - (77) Bequest, museum and library - Army Surgeon General.
  - (78) Contributed, flood control (river, harbor or project).
  - (79) Matured obligations, District of Columbia.
  - (80) Promote Education of Blind, interest.
  - (81) Repealed.
  - (82) Post-Vietnam era Veterans Education Acct., Dept of V. A.
  - (83) U. S. Government Life Insurance Fund, Dept of V. A.
  - (84) Estates of deceased soldiers, U.S. Army.
  - (85-86) District of Columbia funds.
  - (87) Expenses Smithsonian Trust.
  - (88) Civil Service Retirement and Disability Fund.
  - (89) Canal Zone Retirement and Disability Fund.
  - (90) Foreign Service Retirement and Disability Fund.
- (b) Amounts (except amounts received by the Comptroller of the Currency and the Federal Deposit Insurance Corporation) that are analogous to the funds named in subsection (a) of this section and are received by the United States Government as trustee shall be deposited in an appropriate trust fund account in the Treasury. Amounts accruing to these funds (except to the trust fund "Soldiers' Home, Permanent Fund") are appropriated to be disbursed in compliance with the terms of the trust. Expenditures from the trust fund "Soldiers' Home, Permanent Fund" shall be made only under annual appropriations. Those appropriations are authorized to be made."

### SUBCHAPTER III - LIMITATIONS, EXCEPTIONS, AND PENALTIES

### 31 UNITED STATES CODE 1341 LIMITATIONS ON EXPENDING AND OBLIGATING AMOUNTS

#### § 1341. Limitations on expending and obligating amounts

“(a)(1)An officer or employee of the United States Government or of the District of Columbia government may not--

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

(b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.”

### 31 UNITED STATES CODE 1342 LIMITATION ON VOLUNTARY SERVICES

#### § 1342. Limitation on voluntary services

“An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”

## 31 UNITED STATES CODE 1349 ADVERSE PERSONNEL ACTIONS

## § 1349. Adverse personnel actions

“(a) An officer or employee of the United States Government or of the District of Columbia government violating section 1341(a) or 1342 of this title shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.”

b) An officer or employee who willfully uses or authorizes the use of a passenger motor vehicle or aircraft owned or leased by the United States Government (except for an official purpose authorized by section 1344 of this title) or otherwise violates section 1344 shall be suspended without pay by the head of the agency. The officer or employee shall be suspended for at least one month, and when circumstances warrant, for a longer period or summarily removed from office.”

## 31 UNITED STATES CODE 1350. CRIMINAL PENALTY

## § 1350 Criminal penalty

“An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than \$5000, imprisoned for not more than 2 years, or both.”

## 31 UNITED STATES CODE 1351 REPORTS OF VIOLATIONS

## § 1351. Reports on violations

“If an officer or an employee of an executive agency or an officer or employee of the District of Columbia government violates section 1341(a) or 1342 of this title, the head of the agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.”

## EXCERPTS FROM CHAPTER 15, TITLE 31, UNITED STATES CODE

## CHAPTER 15 - APPROPRIATION ACCOUNTING

## SUBCHAPTER I -- GENERAL

## 31 UNITED STATES CODE 1501 DOCUMENTARY EVIDENCE REQUIREMENT FOR GOVERNMENT OBLIGATIONS

§ 1501. Documentary evidence requirement for Government obligations

“(a) An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of--

(1) a binding agreement between an agency and another person (including an agency) that is--

(A) in writing, in a way and form, and for a purpose authorized by law; and

(B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided;

(2) a loan agreement showing the amount and terms of repayment;

(3) an order required by law to be placed with an agency;

(4) an order issued under a law authorizing purchases without advertising--

(A) when necessary because of a public exigency;

(B) for perishable subsistence supplies; or

(C) within specific monetary limits;

(5) a grant or subsidy payable--

(A) from appropriations made for payment of, or contributions to, amounts required to be paid in specific amounts fixed by law or under formulas prescribed by law;

(B) under an agreement authorized by law; or

(C) under plans approved consistent with and authorized by law;

(6) a liability that may result from pending litigation;

(7) employment or services of persons or expenses of travel under law;

(8) services provided by public utilities; or

(9) other legal liability of the Government against an available appropriation or fund.

(b) A statement of obligations provided to Congress or a committee of Congress by an agency shall include only those amounts that are obligations consistent with subsection (a) of this section."

### 31 UNITED STATES CODE 1502 BALANCES AVAILABLE

#### § 1502. Balances available

"(a) The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law."

(b) A provision of law requiring that the balance of an appropriation or fund to be returned to the general fund of the Treasury at the end of a definite period does not affect the status of lawsuits or rights of action involving the right to an amount payable from the balance.

### SUBCHAPTER II - APPORTIONMENT

### 31 UNITED STATES CODE 1511 DEFINITION AND APPLICATION

#### § 1511. Definition and application

"(a) In this subchapter, "appropriations" means--

- (1) appropriated amounts;
- (2) funds; and
- (3) authority to make obligations by contract before appropriations.

(b) This subchapter does not apply to--

(1) amounts (except amounts for administrative expenses) available--

(A) for price support and surplus removal of agricultural commodities; and

(B) under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c);

(2) a corporation getting amounts to make loans (except paid in capital amounts) without legal liability on the part of the United States Government; and

(3) the Senate, the House of Representatives, a committee of Congress, a member, officer, employee, or office of either House of Congress, or the Office of the Architect of the Capitol or an officer or employee of that Office.”

### 31 UNITED STATES CODE 1512 APPORTIONMENT AND RESERVES

#### § 1512. Apportionment and reserves

“(a) Except as provided in this subchapter, an appropriation available for obligation for a definite period shall be apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for the period. An appropriation for an indefinite period and authority to make obligations by contract before appropriations shall be apportioned to achieve the most effective and economical use. An apportionment may be reapportioned under this section.

(b)(1) An appropriation subject to apportionment is apportioned by--

- (A) months, calendar quarters, operating seasons or other time periods;
- (B) activities, functions, projects, or objects; or
- (C) a combination of the ways referred to in clauses (A) and (B) of this paragraph.

(2) The official designated in section 1513 of this title to make apportionments shall apportion an appropriation under paragraph (1) of this subsection as the official considers appropriate. Except as specified by the official, an amount apportioned is available for obligation under the terms of the appropriation on a cumulative basis unless reapportioned.

(c)(1) In apportioning or reapportioning an appropriation, a reserve may be established only--

- (A) to provide for contingencies;
- (B) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or
- (C) as specifically provided by law.

(2) A reserve established under this subsection may be changed as necessary to carry out the scope and objectives of the appropriation concerned. When an official designated in section 1513 of this title to make apportionments decides that an amount reserved will not be required to carry out the objectives and scope of the appropriation concerned, the official shall recommend the rescission of the amount in the way provided in Chapter 11 of this title for appropriation requests. Reserves established under this section shall be reported to Congress as provided in the Impoundment Control Act of 1974 (2 U.S.C. 681 et seq.).

(d) An apportionment or reapportionment shall be reviewed at least 4 times a year by the official designated in section 1513 of this title to make apportionments.”

### 31 UNITED STATES CODE 1513 OFFICIALS CONTROLLING APPORTIONMENTS

#### § 1513. Officials controlling apportionments

“(a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government that is required to be apportioned under section 1512 of this title shall apportion the appropriation in writing. An appropriation shall be apportioned not later than the later of the following:

(1) 30 days before the beginning of the fiscal year for which the appropriation is available;  
or

(2) 30 days after the date of enactment of the law by which the appropriation is made available.

(b)(1) The President shall apportion in writing an appropriation available to an executive agency (except the Commission) that is required to be apportioned under section 1512 of this title. The head of each executive agency to which the appropriation is available shall submit to the President information required for the apportionment in the form and the way and at the time specified by the President. The information shall be submitted not later than the following:

(A) 40 days before the beginning of the fiscal year for which the appropriation is available; or

(B) 15 days after the date of enactment of the law by which the appropriation is made available.

(2) The President shall notify the head of the executive agency of the action taken in apportioning the appropriation under paragraph (1) of this subsection not later than the later of the following:

(A) 20 days before the beginning of the fiscal year for which the appropriation is available; or

(B) 30 days after the date of enactment of the law by which the appropriation is made available.

(c) By the first day of each fiscal year, the head of each executive department of the United States Government shall apportion among the major organizational units of the department the



maximum amount to be expended by each unit during the fiscal year out of each contingent fund appropriated for the entire year for the department. Each amount may be changed during the fiscal year only by written direction of the head of the department. The direction shall state the reasons for the change.

(d) An appropriation apportioned under this subchapter may be divided and subdivided administratively within the limits of the apportionment.

(e) This section does not affect the initiation and operation of agricultural price support programs.”

### 31 UNITED STATES CODE 1514 ADMINISTRATIVE DIVISION OF APPORTIONMENTS

#### § 1514. Administrative division of apportionments

“(a) The official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government, and, subject to the approval of the President, the head of each executive agency (except the Commission) shall prescribe by regulation a system of administrative control not inconsistent with accounting procedures prescribed under law. The system shall be designed to--

(1) restrict obligations or expenditures from each appropriation to the amount of apportionments or reapportionments of the appropriation; and

(2) enable the official or the head of the executive agency to fix responsibility for an obligation or expenditure exceeding an apportionment or reapportionment.

(b) To have a simplified system for administratively dividing appropriations, the head of each executive agency (except the Commission) shall work toward the objective of financing each operating unit, at the highest practical level, from not more than one administrative division for each appropriation affecting the unit.”

### 31 UNITED STATES CODE 1515 AUTHORIZED APPORTIONMENTS NECESSITATING DEFICIENCY OR SUPPLEMENTAL APPROPRIATIONS

#### § 1515. Authorized apportionments necessitating deficiency or supplemental appropriations

“(a) An appropriation required to be apportioned under section 1512 of this title may be apportioned on a basis that indicates the need for a deficiency or supplemental appropriation to the extent necessary to permit payment of such pay increases as may be granted pursuant to law

to civilian officers and employees (including prevailing rate employees whose pay is fixed and adjusted under subchapter IV of Chapter 53 of title 5) and to retired and active military personnel.

(b)(1) Except as provided in subsection (a) of this section, an official may make, and the head of an executive agency may request, an apportionment under section 1512 of this title that would indicate a necessity for a deficiency or supplemental appropriation only when the official or agency head decides that the action is required because of--

(A) a law enacted after submission to Congress of the estimates for an appropriation that requires an expenditure beyond administrative control; or

(B) an emergency involving the safety of human life, the protection of property, or the immediate welfare of individuals when an appropriation that would allow the United States Government to pay, or contribute to, amounts required to be paid to individuals in specific amounts fixed by law or under formulas prescribed by law, is insufficient.

(2) If an official making an apportionment decides that an apportionment would indicate a necessity for a deficiency or supplemental appropriation, the official shall submit immediately a detailed report of the facts to Congress. The report shall be referred to in submitting a proposed deficiency or supplemental appropriation."

### 31 UNITED STATES CODE 1516 EXEMPTIONS

#### § 1516. Exemptions

"An official designated in section 1513 of this title to make apportionments may exempt from apportionment--

(1) a trust fund or working fund if an expenditure from the fund has no significant effect on the financial operations of the United States Government;

(2) a working capital fund or a revolving fund established for intragovernmental operations;

(3) receipts from industrial and power operations available under law; and

(4) appropriations made specifically for--

(A) interest on, or retirement of, the public debt;

(B) payment of claims, judgments, refunds, and drawbacks;

(C) items the President decides are of a confidential nature;

(D) payment under a law requiring payment of the total amount of the appropriation to a designated payee; and

(E) grants to the States under the Social Security Act (42 U.S.C. 301 et seq.).”

### 31 UNITED STATES CODE 1517 PROHIBITED OBLIGATIONS AND EXPENDITURES

#### § 1517. Prohibited obligations and expenditures

“(a) An officer or employee of the United States Government or of the District of Columbia government may not make or authorize an expenditure or obligation exceeding--

(1) an apportionment; or

(2) the amount permitted by regulations prescribed under section 1514(a) of this title.

(b) If an officer or employee of an executive agency or of the District of Columbia government violates subsection (a) of this section, the head of the executive agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

### 31 UNITED STATES CODE 1518 ADVERSE PERSONNEL ACTIONS

#### § 1518. Adverse personnel actions

“An officer or employee of the United States Government or of the District of Columbia government violating section 1517(a) of this title shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office.”

### 31 UNITED STATES CODE 1519 CRIMINAL PENALTY

#### § 1519. Criminal penalty

“An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1517(a) of this title shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.”

### SUBCHAPTER III - TRANSFERS AND REIMBURSEMENTS

### 31 UNITED STATES CODE 1531 TRANSFERS OF FUNCTIONS AND ACTIVITIES

§ 1531. Transfers of functions and activities

“(a) The balance of an appropriation available and necessary to finance or discharge a function or activity transferred or assigned under law within an executive agency or from one executive agency to another may be transferred to and used--

(1) by the organizational unit or agency to which the function or activity was transferred or assigned; and

(2) for the purpose for which the appropriation was originally available.

(b) The head of the executive agency determines the amount that, with the approval of the President, is necessary to be transferred when the transfer or assignment of the function or activity is within the agency. The President determines the amount necessary to be transferred when the transfer or assignment of the function or activity is from one executive agency to another.

(c) A balance transferred under this section is--

(1) credited to an applicable existing or new appropriation account;

(2) merged with the amount in an account to which the balance is credited; and

(3) with the amount with which the balance is merged, accounted for as one amount.

(d) New appropriation accounts may be established to carry out subsection (c)(1) of this section.”

SUBCHAPTER IV - CLOSING ACCOUNTS

31 UNITED STATES CODE 1552 PROCEDURE FOR APPROPRIATION ACCOUNTS  
AVAILABLE FOR DEFINITE PERIODS

§ 1552. Procedure for appropriation accounts available for definite periods

“(a) On September 30th of the 5th fiscal year after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose.

(b) Collections authorized or required to be credited to an appropriation account, but not received before closing of the account under subsection (a) or under section 1555 of this title shall be deposited in the Treasury as miscellaneous receipts.”

31 UNITED STATES CODE 1553 AVAILABILITY OF APPROPRIATION ACCOUNTS  
TO PAY OBLIGATIONS

## § 1553. Availability of appropriation accounts to pay obligations

“(a) After the end of the period of availability for obligation of a fixed appropriation account and before the closing of that account under section 1552(a) of this title, the account shall retain its fiscal-year identity and remain available for recording, adjusting, and liquidating obligations properly chargeable to that account.

(b)(1) Subject to the provisions of paragraph (2), after the closing of an account under section 1552(a) or 1555 of this title, obligations and adjustments to obligations that would have been properly chargeable to that account, both as to purpose and in amount, before closing and that are not otherwise chargeable to any current appropriation account of the agency may be charged to any current appropriation account of the agency available for the same purpose.

(2) The total amount of charges to an account under paragraph (1) may not exceed an amount equal to 1 percent of the total appropriations for that account.

(c)(1) In the case of a fixed appropriation account with respect to which the period of availability for obligation has ended, if an obligation of funds from that account to provide funds for a program, project, or activity to cover amounts required for contract changes would cause the total amount of obligations from that from that appropriation during a fiscal year for contract changes for that program, project, or activity to exceed \$4,000,000, the obligation may only be made if the obligation is approved by the head of the agency (or an officer of the agency within the Office of the head of the agency to whom the head of the agency has delegated the authority to approve such an obligation).

(2) In the case of a fixed appropriation account with respect to which the period of availability for obligation has ended, if an obligation of funds from that account to provide funds for a program, project, or activity to cover amounts required for contract changes would cause the total amount obligated from that appropriation during a fiscal year for that program, project, or activity to exceed \$25,000,000, the obligation may not be made until--

(A) the head of the agency submits to the appropriate authorizing committees of Congress and the Committees on Appropriations of the Senate and the House of Representatives a notice in writing of the intent to obligate such funds, together with a description of the legal basis for the proposed obligation and the policy reasons for the proposed obligation; and

(B) a period of 30 days has elapsed after the notice is submitted.

(3) In this subsection, the term "contract change" means a change to a contract under which the contractor is required to perform additional work. Such term does not include adjustments to pay claims or increases under an escalation clause.

(d)(1) Obligations under this section may be paid without prior action of the Comptroller General.

(2) This subchapter does not--

(A) relieve the Comptroller General of the duty to make decisions requested under law; or

(B) affect the authority of the Comptroller General to settle claims and accounts.

### 31 UNITED STATES CODE 1555 CLOSING OF APPROPRIATION ACCOUNTS AVAILABLE FOR INDEFINITE PERIODS

§ 1555. Closing of appropriation accounts available for indefinite periods

An appropriation account available for obligation for an indefinite period shall be closed, and any remaining balance (whether obligated or unobligated) in that account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose, if--

(1) the head of the agency concerned or the President determines that the purposes for which the appropriation was made have been carried out; and

(2) no disbursement has been made against the appropriation for two consecutive fiscal years."

### 31 UNITED STATES CODE 1557 AUTHORITY FOR EXEMPTIONS IN APPROPRIATION LAWS

§ 1557. Authority for exemptions in appropriation laws

A provision of an appropriation law may exempt an appropriation from the provisions of this subchapter and fix the period for which the appropriation remains available for expenditure.

### EXCERPTS FROM CHAPTER 33, TITLE 31, UNITED STATES CODE

#### CHAPTER 33 - DEPOSITING, KEEPING, AND PAYING MONEY

### 31 UNITED STATES CODE 3324 ADVANCES

§ 3324. Advances

“(a) Except as provided in this section, a payment under a contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered.

(b) An advance of public money may be made only if it is authorized by--

(1) a specific appropriation or other law; or

(2) the President to be made to -

(A) a disbursing official if the President decides the advance is necessary to carry out -

(i) the duties of the official promptly and faithfully; and

(ii) an obligation of the Government; or

(B) an individual serving in the armed forces at a distant station if the President decides the advance is necessary to disburse regularly pay and allowances.

(c) Before the Secretary of the Treasury acts on a requisition for an advance, the Comptroller General shall act on the requisition under section 3522 of this title. The Comptroller General does not countersign a requisition for an advance.

(d) The head of an agency may pay in advance from appropriations available for the purpose--

(1) to the Secretary of the Army, charges for messages sent by the Secretary of the Army for the head of the agency, including charges for--

(A) payment of tolls of commercial carriers;

(B) leasing facilities for sending messages; and

(C) installing and maintaining facilities for sending messages; and

(2) charges for a publication printed or recorded in any way for auditory or visual use of the agency.

## CHAPTER 35 -- ACCOUNTING AND COLLECTION

### SUBCHAPTER II -- ACCOUNTING REQUIREMENTS, SYSTEMS, AND INFORMATION

#### 31 UNITED STATES CODE 3511 PRESCRIBING ACCOUNTING REQUIREMENTS AND DEVELOPING ACCOUNTING SYSTEMS

§ 3511. Prescribing accounting requirements and developing accounting systems

“(a) The Comptroller General shall prescribe the accounting principles, standards, and requirements that the head of each executive agency shall observe. Before prescribing the principles, standards, and requirements, the Comptroller General shall consult with the Secretary of the Treasury and the President on their accounting, financial reporting, and budgetary needs, and shall consider the needs of the heads of the other executive agencies.

(b) Requirements prescribed under subsection (a) of this section shall--

(1) provide for suitable integration between the accounting process of each executive agency and the accounting of the Department of the Treasury:

(2) allow the head of each agency to carry out section 3512 of this title; and

(3) provide a method of--

(A) integrated accounting for the United States Government;

(B) complete disclosure of the results of the financial operations of each agency and the Government; and

(C) financial information and control the President and Congress require to carry out their responsibilities.

(c) Consistent with subsections (a) and (b) of this section--

(1) the authority of the Comptroller General continues under section 205(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(b)); and

(2) the Comptroller General may prescribe the forms, systems, and procedures that the judicial branch of the Government (except the Supreme Court) shall observe.

(d) The Comptroller General, the Secretary, and the President shall conduct a continuous program for improving accounting and financial reporting in the Government.

**31 UNITED STATES CODE 3512 EXECUTIVE AGENCY ACCOUNTING AND OTHER FINANCIAL MANAGEMENT REPORTS AND PLANS**

§ 3512. Executive agency accounting and other financial management reports and plans

“(a)(1) the Director of OMB shall prepare and submit to the appropriate committees of the Congress a financial management status report and a government-wide 5-year financial management plan.



- (2) A financial management status report under this subsection shall include--
- (A) a description and analysis of the status of financial management in the executive branch;
  - (B) a summary of the most recently completed financial statements--
    - (i) of Federal agencies under section 3515 of this title; and
    - (ii) of Government Corporations;
  - (C) a summary of the most recently completed financial statement audits and reports--
    - (i) of Federal agencies under section 3521(e) and (f) of this title; and
    - (ii) of Government corporations;
  - (D) a summary of reports on internal accounting and administrative control systems submitted to the President and Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255); and
  - (E) any other information the Director considers appropriate to fully inform the Congress regarding the financial management of the Federal Government.
- (3)(A) A government-wide 5-year financial management plan under this subsection shall describe the activities the Director, the Deputy Director for Management, the Controller of the Office of Federal Financial Management, and agency Chief Financial Officers shall conduct over the next 5 fiscal years to improve the financial management of the Federal Government.
- (B) Each government-wide 5-year financial management plan prepared under this subsection shall--
- (i) describe the existing financial management structure and any changes needed to establish an integrated financial management system;
  - (ii) be consistent with applicable accounting principles, standards, and requirements;
  - (iii) provide a strategy for developing and integrating individual agency accounting, financial information, and other financial management systems to ensure adequacy, consistency, and timeliness of financial information;

(iv) identify and make proposals to eliminate duplicative and unnecessary systems, including encouraging agencies to share systems which have sufficient capacity to perform the function needed;

(v) identify projects to bring existing systems into compliance with the applicable standards and requirements;

(vi) contain milestones for equipment acquisitions and other actions necessary to implement the 5-year plan consistent with the requirements of this section;

(vii) identify financial management personnel needs and actions to ensure those needs are met;

(viii) include a plan for ensuring the annual audit of financial statements of executive agencies pursuant to section 3521(h) of this title; and

(ix) estimate the costs of implementing the government-wide 5-year plan.

(4)(A) Not later than 15 months after the date of the enactment of this subsection, the Director of OMB shall submit the first financial management status report and government-wide 5-year financial management plan under this subsection, to the appropriate committees of Congress.

(B)(i) Not later than January 31 of each year thereafter, the Director of OMB shall submit to the appropriate committees of Congress, a financial management status report and a revised government-wide 5-year financial management plan to cover the succeeding 5 fiscal years, including a report on the accomplishments of the executive branch in implementing the plan during the preceding fiscal year.

(ii) The Director shall include with each revised government-wide 5-year financial management plan a description of any substantive changes in the financial statement audit plan required by paragraph (3)(B)(viii), progress made by executive agencies in implementing the audit plan, and any improvements in Federal Government financial management related to preparation and audit of financial statements of executive agencies.

(5) Not later than 30 days after receiving each annual report under section 902(a)(6) of this title, the Director shall transmit to the Chairman of the Committee on Governmental Operations of the House of Representatives and the Chairman of the Committee on Governmental Affairs of the Senate a final copy of that report and any comments on the report by the Director.

(b) The head of each executive agency shall establish and maintain systems of accounting and internal controls that provide--

(1) complete disclosure of the financial results of the activities of the agency,

- (2) adequate financial information the agency needs for management purposes;
  - (3) effective control over, and accountability for, assets for which the agency is responsible, including internal audit;
  - (4) reliable accounting results that will be the basis for--
    - (A) preparing and supporting the budget requests of the agency;
    - (B) controlling the carrying out of the agency budget; and
    - (C) providing financial information the President requires under section 1104(e) of this title; and
  - (5) suitable integration of the accounting of the agency with the central accounting and reporting responsibilities of the Secretary of the Treasury under section 3513 of this title.
- (c)(1) To ensure compliance with subsection (a)(3) of this section and consistent with standards the Comptroller General prescribes, the head of each executive agency shall establish internal accounting and administrative controls that reasonably ensure that--
- (A) obligations and costs comply with applicable law;
  - (B) all assets are safeguarded against waste, loss, unauthorized use, and misappropriation; and
  - (C) revenues and expenditures applicable to agency operations are recorded and accounted for properly so that accounts and reliable financial and statistical reports may be prepared and accountability of the assets may be maintained.
- (2) Standards the Controller General prescribes under this subsection shall include standards to ensure the prompt resolution of all audit findings.
- (d)(1) In consultation with the Comptroller General, the Director of OMB--
- (A) shall establish by December 31, 1982, guidelines that the head of each executive agency shall follow in evaluating the internal accounting and administrative control systems of the agency to decide whether the systems comply with subsection (b) of this section; and
  - (B) may change a guideline when considered necessary.
- (2) By December 31 of each year (beginning in 1983), the head of each executive agency, based on an evaluation conducted according to the guidelines prescribed under paragraph (1) of this subsection, shall prepare a statement on whether the systems of the agency comply with subsection (b) of this section, including--

(A) if the head of an executive agency decides the systems do not comply with subsection (b) of this section, a report identifying any material weakness in the systems and describing the plans and schedule for correcting the weakness; and

(B) a separate report on whether the accounting system of the agency conforms to the principles, standards, and requirements the Comptroller General prescribes under section 3511(a) of this title.

(3) The head of each executive agency shall sign the statement and reports required by this subsection and submit them to the President and Congress. The statement and reports are available to the public, except that information shall be deleted from a statement or report before it is made available if the information specifically is--

(A) prohibited from disclosure by law; or

(B) required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e) To assist in preparing a cost-based budget under section 1108(b) of this title and consistent with principles and standards the Comptroller General prescribes, the head of each executive agency shall maintain the accounts of the agency on an accrual basis to show the resources, liabilities, and costs of operations of the agency. An accounting system under this subsection shall include monetary property accounting records.

(f) The Comptroller General shall--

(1) cooperate with the head of each executive agency in developing an accounting system for the agency; and

(2) approve the system when the Comptroller General considers it to be adequate and in conformity with the principles, standards, and requirements prescribed under section 3511 of this title.

(g) The Comptroller General shall review the accounting systems of each executive agency. The results of a review shall be available to the head of the executive agency, the Secretary, and the President. The Comptroller General shall report to Congress on a review when the Comptroller General considers it proper.”

31 UNITED STATES CODE 3524 AUDITING EXPENDITURES APPROVED WITHOUT VOUCHERS

§ 3524. Auditing expenditures approved without vouchers

“(a)(1) The Comptroller General may audit expenditures, accounted for only on the approval, authorization, or certificate of the President or an official of an executive agency, to decide if the expenditure was authorized by law and made. Records and related information shall be made available to the Comptroller General in conducting the audit.

(2) The Comptroller General may release the results of the audit or disclose related information only to the President or head of the agency, or, if there is an unresolved discrepancy, to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the committees of Congress having legislative or appropriation oversight of the expenditure.

(b) Before December 1 of each year, the Director of OMB shall submit a report listing each account that may be subject to this section to the committees on the Budget and Appropriations of both Houses of Congress, the Committee on Governmental Affairs, and to the Committee on Government Operations, and to the Comptroller General.

(c) The President may exempt from this section a financial transaction about sensitive foreign intelligence or foreign counter-intelligence activities or sensitive law enforcement investigations if an audit would expose the identifying details of an active investigation or endanger investigative or domestic intelligence sources involved in the investigation. The exemption may apply to a class or category of financial transactions.

(d) This section does not--

(1) apply to expenditures under section 102, 103, 105(d)(1),(3), or (5), or 106(b)(2) or (3) of title 3; or

(2) affect authority under section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(b)).

(e) Information about a financial transaction exempt under subsection (c) of this section or a financial transaction under section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(b)) may be reviewed by the Permanent Select Committee on Intelligence of the House and the Select Committee on Intelligence of the Senate.

(f) Subsections (a)(1) and (d)(1) of this section may be superseded only by a law enacted after April 3, 1980, specifically repealing or amending this section.”

## APPENDIX C--EXCERPTS FROM TITLE 10, UNITED STATES CODE

## 10 UNITED STATES CODE 2201 APPORTIONMENT OF FUNDS; AUTHORITY FOR EXEMPTION; EXCEPTED EXPENSES

## § 2201. Apportionment of funds; authority for exemption; excepted expenses

“(a) Exemption from apportionment requirement. If the President determines such action to be necessary in the interest of national defense, the President may exempt from the provisions of section 1512 of title 31 appropriations, funds, and contract authorizations available for military functions of the Department of Defense.

(b) Airborne alerts. Upon a determination by the President that such action is necessary, the Secretary of Defense may provide for the cost of an airborne alert as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(c) Members on Active Duty. Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(d) Notification to Congress. The Secretary of Defense--

(1) shall immediately notify Congress of the use of any authority under this section; and

(2) shall submit monthly reports to Congress on the estimated obligations incurred pursuant to subsection (b) and (c).”

## 10 UNITED STATES CODE 2204 OBLIGATION OF APPROPRIATIONS

## § 2204. Obligation of appropriations

“To prevent overdrafts and deficiencies in the fiscal year for which appropriations are made, appropriations made to the Department of Defense or to a military department, and reimbursements thereto, are available for obligation and expenditure only under scheduled rates of obligation, or changes thereto, that have been approved by the Secretary of Defense. This section does not prohibit the Department of Defense from incurring a deficiency that it has been authorized by law to incur.”

## 10 UNITED STATES CODE 2208 WORKING-CAPITAL FUNDS

## § 2208. Working-capital funds

“(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working capital funds in the Department of Defense to--

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of--

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used; and

(2) services or work performed; including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working-capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.

(1) Regulations under subsection (h) shall authorize a working-capital funded Army industrial facility (including a Department of the Army Arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof to sell manufactured articles or services to a person outside the Department of Defense if--

(A) in the case of an article, the article is sold to a United States manufacturer, assembler, developer, or other concern--

(i) for use in developing new products;

(ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States;

(iii) for incorporation into items to be sold to, or to be used in a contract with, or to be used for purposes of soliciting a contract with a friendly foreign government; or

(iv) for use in commercial products;

(B) in the case of an article, the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(C) the article or service is not readily available to the purchaser from a commercial source in the United States in a timely manner that meets the requirements of the purchaser;

(D) the sale is to be made on a basis that does not interfere with performance of work by the facility for the Department of Defense or for a contractor of the Department of Defense; and

(E) in the case of services, the services are related to an article authorized to be sold under this subsection and are to be performed in the United States for the purchaser.



(2) Nothing in this subsection shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this subsection.

(j) The Secretary of the Army may authorize a working-capital funded Army industrial facility to manufacture or remanufacture articles and sell these articles, as well as manufacturing or remanufacturing services provided by such facilities, to persons outside the Department of Defense if--

(1) the person purchasing the article or service is fulfilling a Department of Defense contract; and

(2) the Department of Defense solicitation for such contract is open to competition between Department of Defense activities and private firms.

(k) the Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.”

#### 10 UNITED STATES CODE 2410(a) APPROPRIATED FUNDS; AVAILABILITY FOR CERTAIN CONTRACTS FOR 12 MONTHS

§ 2410(a). Appropriated funds; availability for certain contracts for 12 months

Funds appropriated to the Department of Defense for a fiscal year shall be available for payments under contracts for any of the following purposes for 12 months beginning at any time during the fiscal year:

(1) The maintenance of tools, equipment, and facilities.

(2) The lease of real or personal property, including the maintenance of such property when contracted for as part of a lease agreement.

(3) Depot maintenance.

(4) The operation of equipment.

#### 10 UNITED STATES CODE 2805 UNSPECIFIED MINOR CONSTRUCTION

§ 2805. Unspecified minor construction

“(a)(1) Except as provided in paragraph (2), within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out minor military construction projects not otherwise authorized by law. A minor military construction project is a military construction project (1) that is for a single undertaking at a military installation, and (2) that has an approved cost equal to or less than \$1,500,000.

(2) A Secretary may not use more than \$5,000,000 for exercise-related unspecified minor military construction projects coordinated or directed by the Joint Chief of Staff outside the United States during any fiscal year.

(b)(1) A minor military construction project costing more than \$500,000 may not be carried out under this section unless approved in advance by the Secretary concerned.

(2) When a decision is made to carry out a minor military construction project to which paragraph (1) is applicable, the Secretary concerned shall notify in writing the appropriate committees in Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees.

[(3) Repealed. Pub. L. 101-510, Div. A, Title XIII, § 1301(16), November 5, 1990, 104 Stat. 1668]

(c)(1) Except as provided in paragraph (2), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified military construction project costing not more than \$300,000.

(2) The authority provided in paragraph (1) may not be used with respect to any exercise-related unspecified military construction project coordinated or directed by the Joint Chiefs of Staff outside the United States.

(d) Military family housing projects for construction of new housing units may not be carried out under the authority of this section.”

## APPENDIX D--EXCERPTS FROM OTHER TITLES; INCLUDING TITLE 2, UNITED STATES CODE

## EXCERPTS FROM TITLE 2--THE CONGRESS

## CHAPTER 17B--IMPOUNDMENT CONTROL--Sections 681-688

## 2 UNITED STATES CODE 681 DISCLAIMER

## § 681. Disclaimer

“Nothing contained in this Act, or in any amendments made by this Act, shall be construed as--

(1) asserting or conceding the constitutional powers or limitations of either the Congress or the President;

(2) ratifying or approving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authorization then in effect;

(3) affecting in any way the claims or defenses of any party to litigation concerning any impoundment; or

(4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder.”

## 2 UNITED STATES CODE 682 DEFINITIONS

## § 682. Definitions

“For purposes of sections 682 to 688 of this title--

(1) “deferral of budget authority” includes--

(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority, including authority to obligate by contract in advance of appropriations as specifically authorized by law;

(2) “Comptroller General” means the Comptroller General of the United States;

(3) "rescission bill" means a bill or joint resolution which only rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President under section 683 of this title, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress;

(4) "impoundment resolution" means a resolution of the House of Representatives or the Senate which only expresses its disapproval of a proposed deferral of budget authority set forth in a special message transmitted by the President under section 684 of this title; and

(5) continuity of a session of Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in paragraph (3) of this section and in section 683 of this title, and the 25-day periods referred to in sections 687 and 688(b)(1) of this title. If a special message is transmitted under section 683 of this title during any Congress and the last session of such Congress adjourns sine die before the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in paragraph (3) of this section and in section 683 of this title (with respect to such message) shall commence on the day after such first day."

## 2 UNITED STATES CODE 683 RESCISSION OF BUDGET AUTHORITY

### § 683. Rescission of budget authority

#### "(a) Transmittal of special message

Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying--

(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

(3) the reasons why the budget authority should be rescinded or is to be so reserved;

(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

(b) Requirement to make available for obligation

Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved. Funds made available for obligation under this procedure may not be proposed for rescission again."

## 2 UNITED STATES CODE 684 PROPOSED DEFERRALS OF BUDGET AUTHORITY

### § 684. Proposed Deferrals of budget authority

"(a) Transmittal of special message. Whenever the President, the Director of OMB, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying--

- (1) the amount of the budget authority proposed to be deferred;
- (2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;
- (3) the period of time during which the budget authority is proposed to be deferred;
- (4) the reasons for the proposed deferral, including any legal authority invoked to justify the proposed deferral;
- (5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and
- (6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority, including specific elements of legal authority, invoked to justify such proposed deferral, and to the

maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided.

A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

(b) Consistency with legislative policy

Deferrals shall be permissible only--

(1) to provide for contingencies;

(2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or

(3) as specifically provided by law.

No officer or employee of the United States may defer any budget authority for any other purpose.

(c) Exception

The provisions of this section do not apply to any budget authority proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 683 of this title.”

## 2 UNITED STATES CODE 685 TRANSMISSION OF MESSAGES; PUBLICATION

### § 685. Transmission of messages; publication

“(a) Delivery to House and Senate. (Text omitted here; for detail refer to U.S.C. title 2)

(b) Delivery to Comptroller General. (Text omitted here, for detail refer to U.S.C. title 2)

(c) Transmission of supplementary messages. (Text omitted here, for detail refer to U.S.C. title 2)

(d) Printing in Federal Register. (Text omitted here, for detail refer to U.S.C. title 2)

(e) Cumulative reports of proposed rescissions, reservations, and deferrals of budget authority. (Text omitted here, for detail refer to U.S.C. title 2).”

**2 UNITED STATES CODE 686 REPORTS BY COMPTROLLER GENERAL****§ 686. Reports by Comptroller General**

- “(a) Failure to transmit special message. (Text omitted here, for detail refer to U.S.C. title 2)
- (b) Incorrect classification of special message. (Text omitted here, for detail refer to U.S.C. title 2)

**2 UNITED STATES CODE 687 SUITS BY COMPTROLLER GENERAL****§ 687. Suits by Comptroller General**

“If, under this chapter, budget authority is required to be made available for obligation and such budget authority is not made available for obligation, the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such budget authority to be made available for obligation, and such court is hereby expressly empowered to enter in such civil action, against any department, agency, officer or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation. No civil action shall be brought by the Comptroller General under this section until the expiration of 25 calendar days of continuous session of the Congress following the date on which an explanatory statement by the Comptroller General of the circumstances giving rise to the action contemplated has been filed with the Speaker of the House of Representatives and the President of the Senate.”

**2 UNITED STATES CODE 688 PROCEDURE IN HOUSE OF REPRESENTATIVES AND SENATE****§ 688. Procedure in House of Representatives and Senate**

- “(a) Referral. (Text omitted, for detail refer to United States Code, Title 2.)
- (b) Discharge of committee. (Text omitted, for detail refer to United States Code, Title 2)
- (c) Floor consideration in the House. (Text omitted, for detail refer to United States Code, Title 2)
- (d) Floor consideration in the Senate. (Text omitted, for detail refer to United States Code, Title 2).”

## EXCERPTS FROM SELECTED TITLES AND SECTIONS OF UNITED STATES CODE

## TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

5 UNITED STATES CODE 1304 LOYALTY INVESTIGATIONS; REPORTS;  
REVOLVING FUND

## § 1304(e). Loyalty investigations; reports; revolving fund

“(1) A revolving fund is available, to the Office (i.e. Office of Personnel Management) without fiscal year limitation, for financing investigations, training, and such other functions as the Office is authorized or required to perform on a reimbursable basis. However, the functions which may be financed in any fiscal year by the fund are restricted to those functions which are covered by the budget estimates submitted to the Congress for that fiscal year. To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.

(2) The capital of the fund consists of the aggregate of--

(A) appropriations made to provide capital for the fund, which appropriations are hereby authorized, and

(B) the sum of the fair and reasonable value of such supplies, equipment, and other assets as the Office from time to time transfers to the fund (including the amount of the unexpended balances of appropriations or funds relating to activities the financing of which is transferred to the fund) less the amount of related liabilities, the amount of unpaid obligations, and the value of accrued annual leave of employees, which are attributable to the activities the financing of which is transferred to the fund.

(3) The fund shall be credited with--

(A) advances and reimbursements from available funds of the Office or other agencies, or from other sources, for those services and supplies provided at rates estimated by the Office as adequate to recover expenses of operation (including provision for accrued annual leave of employees and depreciation of equipment); and

(B) receipts from sales or exchanges of property, and payments for loss of or damage to property, accounted for under the fund.

(4) Any unobligated and unexpended balances in the fund which the Office determines to be in excess of amounts needed for activities financed by the fund shall be deposited in the Treasury of the United States as miscellaneous receipts .



(5) The Office shall prepare a business-type budget providing full disclosure of the results of operations for each of the functions performed by the Office and financed by the fund, and such budget shall be transmitted to the Congress and considered, in the manner prescribed by law for wholly owned Government corporations.

(6) The Comptroller General of the U.S. shall, as a result of his periodic reviews of the activities financed by the fund, report and make such recommendations as he deems appropriate to the committees on Post Office and Civil Service of the Senate and House at least every three years."

## TITLE 18--CRIMES AND CRIMINAL PROCEDURE

### 18 UNITED STATES CODE 4124 PURCHASE OF PRISON-MADE PRODUCTS BY FEDERAL DEPARTMENTS

#### § 4124. Purchase of Prison-made Products by Federal Departments

"(a) The several Federal departments and agencies and all other Government institutions of the United States shall purchase at not to exceed current market prices, such products of the industries authorized by this chapter as meet their requirements and may be available.

(b) Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives. Their decision shall be final and binding upon all parties.

(c) Each Federal department, agency, and institution subject to the requirements of subsection (a) shall separately report to the General Services Administration all of its acquisitions of products and services from Federal Prison Industries, and that reported information shall be entered in the Federal Procurement Data System referred to in section 6(d)(4) of the Office of Federal Procurement Policy Act. Each report published by the Federal Procurement Data System that contains the information collected by the System shall include a statement to accompany the information reported by the department, agency, or institution under the preceding sentence as follows: "Under current law, sales by Federal Prison Industries are considered intragovernmental transfers. The purpose of reporting sales by Federal Prison Industries is to provide a complete overview of acquisitions by the Federal Government during the reporting period."

(d) Within 90 days after the date of enactment of this subsection, Federal Prison Industries shall publish a catalog of all products and services which it offers for sale. This catalog shall be updated periodically to the extent necessary to ensure that the information in the catalog is complete and accurate."

## TITLE 33--NAVIGATION AND NAVIGABLE WATERS

33 UNITED STATES CODE 576 REVOLVING FUND; ESTABLISHMENT;  
AVAILABILITY; REIMBURSEMENT; TRANSFER OF FUNDS; LIMITATION

§ 576. Revolving fund; establishment; availability; reimbursement; transfer of funds; limitation

“There is established a revolving fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of the plant and equipment of the Corps of Engineers used in civil works functions, including acquisition of plant and equipment, maintenance, repair, and purchase, operation, and maintenance of not to exceed four aircraft at any one time, temporary financing of services finally chargeable to appropriations for civil works functions, and the furnishing of facilities and services for military functions of the Department of the Army and other Government agencies and private persons, as authorized by law. In addition, the Secretary of the Army is authorized to provide capital for the fund by capitalizing the present inventories, plant and equipment of the civil works functions of the Corps of Engineers. The fund shall be credited with reimbursements or advances for the cost of equipment, facilities, and services furnished, at rates which shall include charges for overhead and related expenses, depreciation of plant and equipment, and accrued leave: Provided, that on July 1, 1953, (1) the fund shall assume the assets, liabilities, and obligations of the Plant accounts, as carried on the records of the Corps of Engineers as of June 30, 1953, under the appropriations for “Maintenance and improvement of existing river and harbor works,” “Flood control, general,” and “Flood control, Mississippi River and tributaries,” and (2) there shall be transferred from said appropriations to the fund amounts equivalent to the unexpended cash balances of the Plant accounts on June 30, 1953: Provided further, That the total capital of said fund shall not exceed \$140,000,000.”

## TITLE 41--PUBLIC CONTRACTS

41 UNITED STATES CODE 11 NO CONTRACTS OR PURCHASES UNLESS  
AUTHORIZED OR UNDER ADEQUATE APPROPRIATION; REPORT TO CONGRESS

§ 11. No contracts or purchases unless authorized or under adequate appropriation; report to Congress

“(a) No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the Department of Defense and in the Department of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.

(b) The Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy shall immediately advise the Congress of the exercise of the authority granted in subsection (a) of this section, and shall report quarterly on

the estimated obligations incurred pursuant to the authority granted in subsection (a) of this section.”

#### TITLE 44--PUBLIC PRINTING AND DOCUMENTS

#### 44 UNITED STATES CODE 501 GOVERNMENT PRINTING, BINDING, AND BLANK BOOK WORK TO BE DONE AT GOVERNMENT PRINTING OFFICE

§ 501. Government Printing, binding, and blank book-work to be done at Government Printing Office

“All printing, binding, and blank-book work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office and establishment of the Government, shall be done at the Government Printing Office, except--

(1) classes of work the joint committee on Printing considers to be urgent or necessary to have done elsewhere; and

(2) printing in field printing plants operated by an executive department, independent office or establishment, and the procurement of printing by an executive department, independent office or establishment from allotments for contract field printing, if approved by the Joint Committee on Printing.

“Printing or binding may be done at the Government Printing Office only when authorized by law.”

## APPENDIX E--EXCERPTS FROM OMB CIRCULAR A-34

## FROM PART III, OMB CIRCULAR A-34

## REQUIREMENTS FOR REPORTING ANTIDEFICIENCY ACT VIOLATIONS

## 32.1 Adverse personnel actions and penalties

"In accordance with sections 1349 and 1518 of Title 31 of the U.S. Code, an officer or employee violating sections 1341(a), 1342, or 1517(a) of Title 31 shall be subject to appropriate administrative discipline, including--when circumstances warrant--a written reprimand, suspension from duty without pay, or removal from office.

"In addition, in accordance with sections 1350 and 1519 of Title 31 of the U.S. Code, an officer or employee convicted of willfully and knowingly violating sections 1341(a), 1342, or 1517(a) of Title 31 shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

## 32.2 Requirements to report Antideficiency Act violations.

"The agency head will furnish to the President, through the Director of OMB, and to the Congress, information on Antideficiency Act violations of the following character:

"(1) Overobligation or overexpenditure of an appropriation or fund. This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund in excess of the amount available in the account. (31 U.S.C. 1341(a)).

"(2) Contract or obligation in advance of an appropriation. This is any case where an officer or employee of the United States has involved the Government in a contract or other obligation for the payment of money for any purpose in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law. (31 U.S.C. 1341(a))

"(3) Obligation and expenditure of funds required to be sequestered. This is any case where an officer or employee of the United States has made or authorized an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. (31 U.S.C. 1341(a))

"(4) Contract or obligation of funds required to be sequestered. This is any case where an officer or employee has involved the Government in a contract or other obligation for the payment of money required to be sequestered under section 2521 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. (31 U.S.C. 1341(a))

“(5) Acceptance of voluntary service. This is any case where an officer or employee of the United States has accepted voluntary service for the United States or employed personal services in excess of that authorized by law, except in cases of an emergency involving the safety of human life or the protection of property. As used above, the term “emergencies involving the safety of human life or the protection of property” does not include ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property. (31 U.S.C. 1342).

“(6) Overobligation or overexpenditure of an apportionment or reapportionment. This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of an apportionment or reapportionment. This includes adjustments that cause obligations in expired accounts that have not been merged to exceed the apportionment for the year in which such obligations were incurred. (31 U.S.C. 1517(a)).

“(7) Overobligation or overexpenditure of an allotment or suballotment. This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of the amount permitted by the prescribed and approved agency fund control system. (31 U.S.C. 1517(a)).

“(8) Overobligation or overexpenditure of other administrative subdivisions of funds. Generally the overobligation of other administrative subdivisions of fund, e.g., operating budgets, allowances, financial plans, statutory limitations other than those found in the appropriation act, and other than those defined as a statutory limitation in this Circular, are violations of the Antideficiency Act only when it causes an overobligation or overexpenditure of an allotment, apportionment or appropriation unless the apportionment or agency's fund control regulations specify otherwise. (31 U.S.C. 1517(a)).

“Overobligation or overexpenditure of the following administrative divisions of funds are always violations of the Antideficiency Act: apportionments, allotments, and suballotments. Overobligation or overexpenditure of other administrative divisions of funds are violations of the Act only when so specified in the agency’s fund control regulations or when the overobligation results in the overobligation of an apportionment allotment, or suballotment.

“The overobligation of an allocation does not necessarily result in a violation of the Antideficiency Act unless either the allocation is separately apportioned, e.g., as a category B or in an attachment to the SF 132 (unless otherwise specified on the SF 132), or the agency fund control regulations specifies that an overobligation of the allocation automatically results in a violation of the Antideficiency Act.

“Violations involving subapportionments relating to allocation accounts will be reported through OMB to the President by the agency that administers the allocation account through the agency administering the parent account.

### 32.3 Contents of report to the President.

“The agency report to the President on an Antideficiency Act violation will be in the form of a letter (original and three copies), forwarded through the Director of OMB . . . .

“The letter will set forth the following data, in the sequence outlined:

“(1) The title and Treasury symbol (including the fiscal year) of the appropriation or fund account, the amount involved for each violation, and the date on which the violation occurred.

“(2) The name and position of the officer(s) or employee(s) responsible for the violation.

“(3) All facts pertaining to the violation, including the type of violation (e.g., overobligation of an appropriation, overobligation of an apportionment, overobligation of an allotment or suballotment), the primary reason or cause, any statement from the responsible officer(s) or employee(s) with respect to any circumstances believed to be extenuating, and any germane report by the agency's Inspector General and/or the agency's counsel.

“(4) A statement of the administrative discipline imposed and any further action(s) taken with respect to the officer(s) or employee(s) involved in the violation.

“(5) In the case where an office[r] or employee is suspected of willfully and knowingly violating the Antideficiency Act, confirm that all information has been submitted to the Department of Justice for determination of whether further action is needed.

“(6) A statement regarding the adequacy of the system of administrative control prescribed by the head of the agency and approved by OMB, if such approval has been given. If the head of the agency determines a need for changes in the regulations, such proposals will be submitted as provided in section 31.5.

“(7) A statement of any additional action taken by, or at the direction of the head of the agency, including any new safeguards provided to prevent recurrence of the same type of violation.

“(8) If another agency is involved, a statement concerning the steps taken to coordinate the report with the other agency.

### 32.4 Report to the Congress.

“The report to the Congress will be in the form of identical reports to the Speaker of the House of Representatives and the President of the Senate.”

“If it is identical to the report to the President, a statement to this effect will be included in the report to the President. If it is not identical, one copy of the report to the Congress will be submitted to OMB with the report to the President.

### 32.5 Report on GAO Findings

“Reports to the President and the Congress should also be made on violations not previously reported by the agency that are included in findings of the General Accounting Office in connection with audits and investigations.

“In these cases, the report to the President will indicate whether the agency agrees that a violation occurred, and if so, it will contain an explanation as to why the violation was not discovered and previously reported by the agency. If the agency does not agree that a violation has occurred, the report to the President and to the Congress will explain the agency's position.

### 32.6 OMB-requested investigations and audits

“Whenever OMB determines that a violation of the Antideficiency Act may have occurred, OMB may request that an investigation or audit be undertaken or conducted by the agency. In such cases, a report describing the results of the investigation or audit should be submitted to OMB through the head of the agency. If the report indicates that no violation of the Antideficiency Act has occurred, the agency head will so inform OMB and forward to OMB a copy of the report. If the report indicates that a violation of the Antideficiency Act has occurred, the agency head will report to the President and the Congress in accordance with sections 32.3 and 32.4 respectively, as soon as possible. If the agency head does not agree that a violation has occurred, the report to the President and to the Congress will explain the agency's position.

### 32.7 Timing of Reports by Agency Heads

“The required reports to the President and to the Congress, signed by the head of the agency, will be made immediately after a violation becomes known.

## EXCERPTS FROM PART III, OMB CIRCULAR A-34

### 111.12 Antideficiency Act violations

“Agencies are required to report violations of the Antideficiency Act when the following conditions occur. (Note: See section 32 of this Circular for instructions on reporting Antideficiency Act violations.)

“(a) New obligations and expenditures or adjustments to obligations and expenditures exceed the original appropriations. This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount available in the original appropriation or fund account.

“(b) New obligations or any expenditures in canceled accounts. This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against an account that was closed pursuant to 31 U.S.C. 1551-1557.

“(c) New obligations and expenditures or adjustments to obligations and expenditures that exceed the amount apportioned or allotted. This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount apportioned or allotted to the original appropriation or fund account.”