ANTIDEFICIENCY ACT VIOLATIONS AND YOU...

A primer for Army personnel

MAY 1996

INTRODUCTION

The document that follows is provided for your use in learning more about the Antideficiency Act (ADA) and how it can affect you and your organization. This information is broken out by topic, i.e., prevention, consequences, reporting, and advice from previous investigating officers. This document is not intended to be all inclusive as "everything you wanted to know about the ADA, but were afraid to ask;" however, it is a handy reference to review and guide you toward further detail, as required.

Thanks to all of you who have been involved in processing potential ADA violations over the last two years. In my opinion, Army has scored an "A" on its report card. Awareness is up and the number of cases is down, as well as the time it takes to report, process, and close a case. We have closed out our old cases and have taken significant steps to demonstrate fiscal stewardship in the area of ADA violations. One of the most important steps is education.

You and your staffs are doing a good job of educating personnel about the ADA -- what constitutes a violation, common types of violations, and how to prevent violations. Fiscal law training is integral to the education and training process and as many functional and resource management personnel as possible should continue to attend. As you might know, training is now a prerequisite to conducting investigations, but, more importantly, training is the key to prevention of violations in the first place.

We're doing better, but we must not become complacent. Improving our fiscal stewardship provides an added benefit of improving public perception. New OSD guidance issued within the past year was precipitated by a Congressional interest and impression that ADA violations were not being taken seriously by DoD. Remember, an ADA violation is a violation of Federal Law. I cannot overemphasize this fact -- ADA violations break the law. We must all do our part to prevent ADA violations, which will benefit the Army not only in the execution of current resources, but also with acquisition of future resources. Negative public and Congressional perception jeopardizes Army funding. As responsible stewards of taxpayer dollars, we must strive to obtain the optimum use of our available resources, within the limits of the law.

Stewardship of resources is everyone's business, and if we all do our part, potential violations will decline. On those occasions when a violation does occur, I urge you to continue to report and process these cases in an expeditious manner, correct the mistakes that contributed to the error, and share your lessons learned with others.

Over the last few years, Army has continued to report violations in the following areas:

- Funds used for a purpose other than the authorized purpose.
- Erroneous charges / accounting errors to closed appropriations.
- Procurement of end items that exceeded OMA fund expense / investment threshold.
- Minor construction limitation exceeded.

These are problem areas that require special attention. Please note Section One on "Lessons Learned" for examples on how and why these situations occur, so you can avoid them in your daily operations.

If you have any questions regarding the following material, please contact us by phone at 703-697-0757 (DSN 227), by mail at SAFM-FO, 109 Army Pentagon, Washington, DC 20310-0109, or by e-mail to Adelsber@Pentagon-asafm.army.mil.

/ original signed /
Ernest J. Gregory
Deputy Assistant Secretary of the Army
(Financial Operations)

ANTIDEFICIENCY ACT VIOLATIONS AND YOU

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SECTION I - AWARENESS AND PREVENTION

LESSONS LEARNED FROM PAST ARMY ANTIDEFICIENCY ACT VIOLATIONS

An ounce of prevention is worth a pound of cure - a wise adage to follow with regard to many things, especially when it comes to Antideficiency Act violations. In that spirit, the following information is provided for your use, to spread the word on common types of alleged violations and to foster awareness of trouble spots. Hopefully, we can all learn from each others mistakes, and not let the same stories be repeated in our organization.

Although not all alleged violations unfold as actual violations of the ADA statutes, the *alleged* violations nevertheless represent trouble areas or pitfalls to be avoided. You might notice that the outcome of some of these situations is too close to call and depends on the circumstances surrounding a particular case. The best advice is to approach these situations with the greatest caution. The following list includes the different types of alleged ADA violations from investigations completed during Fiscal Year 1995.

- Funds used for a purpose other than the authorized purpose.
- Failure to accurately record expenditures, causing an over-expenditure of project funds.
- Exceeding funding allotment/suballotment.
- Erroneous charges/accounting errors to closed appropriations.
- Procurement of end items that exceeded OMA fund expense / investment threshold.
- Expenditures that were not authorized or were prohibited by law.
- Expenditures that exceeded the amount available in an appropriation.
- Acceptance of voluntary services.
- Current year funds were used to procure future years' needs.
- Contractor claims exceeded available construction or project funds.
- Severable contracts were funded improperly when crossing fiscal years.

These alleged ADA violations were discovered by a variety of means. Often, audit agencies, whether external auditors or internal review, revealed violations during the course of routine work. In other situations, internal management, both financial and non-financial, uncovered alleged violations during regular operations. It really doesn't matter who finds them -- although we would probably rather find them ourselves than as a result of an audit! What is important is to correct the situation and do our best to prevent recurrence.

As stated previously, not all alleged ADA violations are determined to be actual violations. Approximately 60 percent of alleged ADA violations investigated during FY 95 and the first quarter of FY 96 were determined to be actual violations. All alleged violations must be corrected if improper funds were used or there was an another type of funding error. During the adjustment process, you might find that some of the alleged violations are "correctable" and can be averted. To illustrate this point, while some of the alleged violations

listed above are direct violations of the ADA statutes, others can only lead indirectly to a violation. Whether or not a violation occurred will be determined during the correction of the error. For example, in the first situation, "funds used for a purpose other than the authorized purpose," is not a violation. However, a violation will be triggered if the proper funds are unavailable to make the necessary correction, because the correct appropriation is now over-obligated. Similarly, in the second situation listed above, we have a basic accounting error, which in this case led to the over-obligation of an account.

The three basic ADA statutes most frequently cited are contained in Title 31 of the United States Code (USC), sections 1341, 1342, and 1517. (See DFAS Regulation 37-1, chapter 7 for more details on what constitutes an ADA violation.) Section 1341 prohibits a government employee from making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund -- basically an over-obligation or over-expenditure of available funds. Section 1342 prohibits a government employee from accepting voluntary services except for emergencies involving the safety of human life or the protection of property. Similar to section 1341, section 1517 prohibits government employees from making or authorizing an expenditure or obligation exceeding an apportionment or formal administrative subdivision of funds.

The following scenarios represent specific examples of alleged violations that occurred during FY 94 and 95 and, in the cases of actual violations, the statute(s) violated.

EXAMPLE	STATUTE VIOLATED
Contract was funded over several years with several appropriations. An accounting error resulted in charging the wrong year, thereby, placing the appropriation in an over-disbursed position.	Violation averted.
U.S. funds used to support host nation personnel during exercises without appropriate reimbursement agreements.	31 USC Section 1341
NGB personnel were placed in an active duty status and federal funds were used to support a State public affair function.	31 USC Section 1341
Appropriated funds were used to procure food and beverages for holiday receptions.	31 USC Section 1341
MACOM Voluntary Services Program extended to supplement appropriated funded work force. Controls and reviews not established. Resulted in acceptance of unauthorized voluntary services.	31 USC Section 1342 Accepted voluntary services.
Efforts were increased to complete a project in order to balance a schedule shortfall, which resulted in increased labor costs. Expenditures were not adequately monitored in light of increased activity.	31 USC Section 1517 Exceeded allotment.

Corrective actions must be taken to address these errors, regardless of whether the ADA violation is averted. Some of the actual corrective actions taken in these real life examples were that organizations .....

- Required Fiscal Law training for all types of command personnel

- Provided additional command emphasis, to include memoranda and bulletins to generating awareness on: lessons learned, statutory limitations, and emphasizing accountability for compliance with statutory requirements.

- Developed procurement checklists, ensuring the appropriate review of contract execution and funding.

- Revised performance standards to include fiscal integrity and fund management for project and technical managers.

- Requested DFAS assistance in evaluating the financial operations.

- Requested Army Audit Agency to evaluate specific internal controls.

- Clarified responsibilities between functional experts responsible for contract execution and individuals responsible for fund management.

Although the alleged violation is a problem that must be addressed and corrected, we should dig further to the root of the alleged violation, to discover what caused the situation in the first place. This is integral to preventing future occurrences of the same type violation. The causes leading to ADA violations over the last two years appear to be varied. Below is a list of some of the major reasons why these alleged violations happened.

- Lack of understanding of obligation rules with respect to contracts crossing fiscal years.
- Failure to monitor project costs.
- Lack of understanding of legal limitations on project expenditures.
- Failure to reconcile disbursements to obligations.
- Failure to accurately report and record costs.
- Lack of knowledge of the appropriate use of funds and the purpose for which funds are available.
- Adequate controls were not established to monitor disbursements against an open allotment.
- Failure to follow established procedures.
- Doing business as always without determining if the rules had changed.
- Failure to follow existing rules and procedures for funding and contract administration.
- Required manual reconciliation of accounting reports and systems was not performed due to the absence of key personnel.
- Personnel were unaware of legal prohibitions.

- Fund certification was made based on limited explanation on the use of funds. Based on the explanation on the PR&C, funds cited appeared appropriate.
- Negative unliquidated obligations.
- Appropriated funds were used to demilitarize, prepare and transport obsolete war material identified for donation, which was strictly prohibited by law at that time.

In closing, let us point out that no one is immune from these situations. ADA violations do not just occur within the resource management community - they can happen to anyone in any functional area. The best prevention is education and awareness. The Army Fiscal Law Course taught at the U.S. Army Judge Advocate General School is an extremely valuable course and a plus for personnel in all specialties. Share your lessons learned with one another, and let's prevent violations before they occur.

SECTION II - CONSEQUENCES

DISCIPLINARY ACTIONS
FOR COMMITTING ANTIDEFICIENCY ACT VIOLATIONS

Expanding on the "Lessons Learned" section, the information contained here describes the consequences of being named responsible for violating the Antideficiency Act (ADA) statutes and provides examples of disciplinary actions taken during the past two years.

Administrative disciplinary actions were not always taken when ADA violations occurred. Conversely, commanders took disciplinary actions in three cases where no ADA violation was determined to have occurred. Although the commands were able to avert an ADA violation, disciplinary actions were taken due to individuals' failure to adequately do their job.

Title 31 of the United States Code (USC), sections 1349 and 1518 provide for adverse personnel actions. Section 1349 states, in part, that a government employee committing an ADA violation "shall be subject to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office."

When ADA violations occur, commanders' or immediate supervisors are responsible for administrative discipline. Disciplinary actions are administered on a case-by-case basis, stemming from the results of the AR 15-6, Procedure for Investigating Officers and Boards of Investigating Officers, investigation and other mitigating circumstances. In a small number of cases during the last two years, no disciplinary actions were taken. This was because responsible individuals had either retired or no actions were considered warranted due to the circumstances. The USD(C) takes special interest in the disciplinary action, or lack of disciplinary action taken, and requires the disciplining official to --

1. Acknowledge in writing that he or she understands that (a) a violation of the ADA is a violation of a Federal statute; (b) the Department is required to report the violation to the President and the Congress of the US; (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 the 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.

Disciplinary actions taken within the Army over the last two years ranged from oral admonishment to suspension.

- *Letters of Reprimand*
- *Orally Admonished*
- *Performance Counseling*
- *Letters of Warning*
- *Termination of Contracting Officer's Warrant*
- *Reassignment*
- *Suspension*

Reported disciplinary actions have varied, ranging from no action to suspensions. Also, individuals have been removed from supervisory positions and their professional career progression ended -- for example, revoking an individual's contracting warrant. There were a total of 33 individuals named responsible in 22 cases that were either closed in FY 95 or the investigation completed during the first quarter FY 96. Following is a summary of the actions taken against the named responsible individuals.

* No Action	-	6
* Oral Reprimand / Admonishment	-	5
* Written Reprimand / Admonishment	-	15
* Suspension / Reassignment	-	7

No one is immune from mistakes, and some mistakes lead inadvertently to ADA violations. Personnel in a wide range of specialties have been named responsible for ADA violations. The positions of those named responsible during FY 94 and 95 are listed here:

- Program / Project Manager
- Resource Manager
- Commander(s)
- Project Engineer
- Comptroller
- Director, Personnel and Community Activities
- Contract Specialist
- Contracting Officer
- Supervisory Accountant
- Director of Logistics

Most people are not aware that an alleged ADA violation is happening until it is already too late. Almost all of the alleged ADA violations are inadvertent. The exception is an individual who knowingly and willfully violates the ADA statutes. In these rare instances, the case is turned over to the Criminal Investigating Command. Stiff criminal penalties can be imposed as provided by 31 USC sections 1350 and 1519, which carry a fine of not more than $5000, imprisonment for not more than two years, or both.

Summary of recent cases where disciplinary actions were taken:

BRIEF DESCRIPTION OF THE ALLEGED ADA VIOLATION	DISCIPLINARY ACTION IMPOSED
Issued about $2.5 million in expiring OMA funds for OPA requirements.	Four individuals were named responsible. Three were given 5 day suspensions and the other was given a written reprimand.
Improper use of funds issued on reimbursable orders totaling about $223,000.	The named responsible individual was given a 14 day suspension and removed from any contracting activity responsibilities.
Activity exceeded established funding ceiling by about $2.1 million.	The named responsible individual was given a letter of reprimand.
Used OMA funds (about $74,000) to procure training device. OPA funds required.	Two individuals were named responsible. Both individuals were orally admonished.
Unauthorized subsistence (about $6,000) support provided to host nation.	The named responsible individual was give a letter of reprimand.
Federal funds (about $5,000) were used to support an exhibition to lobby state legislators.	The named responsible individual had retired from active duty, but, was given a letter of reprimand.
Activity exceeded established funding ceiling by about $200,000.	Two named responsible individuals were given letters of warning.
An Army appropriation was over obligated and over disbursed by about $29 million.	The named responsible individual was given a letter of admonition due to the mitigating circumstances surrounding the violation.
Appropriated funds (about $44,000) were used to purchase food for holiday receptions, pay dues for employee professional organizations, and to purchase foot orthotics for employees.	Two individuals were named responsible and received written reprimands.
About $230,000 in OMA funds were used to procure telecommunications equipment. OPA funds were required.	Two individuals were named responsible. One individual had retired, therefore, no actions were taken. A letter of concern was sent to the other individual's commander.
The activity improperly accepted voluntary services and used these personnel to occupy appropriated funded positions. The value of the services accepted totaled about $48,000	The named responsible individual was counseled.
About $225,000 in OPA funds were used to finance contractor's efforts. OMA funds were required.	Two individuals were named responsible. One received a letter of admonition. No disciplinary action was taken against the other.

BRIEF DESCRIPTION OF THE ALLEGED ADA VIOLATION	DISCIPLINARY ACTION IMPOSED
An activity accepted a reimbursable order which obligated current year funds for future needs. The order totaled about $1.5 million.	The named responsible individual received an oral reprimand.
Appropriated funds (about $173,000) were used to support Nonappropriated Fund (NAF) activities (not eligible for appropriated fund support).	The named responsible individual was verbally counseled.
Current year funds (totaling about $4.1 million) were issued against future year requirements.	The named responsible individual was reassigned to a noncontracting position, his/her warrant was terminated, and the individual was given a verbal admonishment.
OMA funds were used to construct 4 facilities costing about $2.1 million.	Three individuals were named responsible. Two received letters of admonition. The other individual was removed from supervisory responsibility over contracting activities. This individual's contracting warrant was also revoked .
Expired (not available for obligation) funds totaling about $1.5 million were issued for future needs.	The named responsible individual had retired, therefore, no disciplinary actions were taken.
Activity exceeded established funding ceiling by about $1.5 million.	One individual was named responsible, however, no disciplinary action was considered warranted considering the circumstances surrounding the case..
Army activity contracted for security guard services (costs totaled about $58,000). This is prohibited by law.	Two individuals were named responsible. and given letters of admonishment.
Appropriated funds (about $178,000) were used to support Nonappropriated Fund (NAF) activities (not eligible for appropriated fund support).	One individual was named responsible, however, no disciplinary action was considered warranted.
Army activity contracted for security guard services (costs totaled about $58,000). This is prohibited by law.	Two individuals were named responsible. and given letters of admonishment.
Appropriated funds (about $178,000) were used to support Nonappropriated Fund (NAF) activities (not eligible for appropriated fund support).	One individual was named responsible, however, no disciplinary action was considered warranted.
Federal funds (About $7,000) were used to demilitarize a tank given as a gift to the VFW. This was prohibited by law.	The named responsible individual had retired, therefore, no disciplinary action was taken.

Federal funds (totaling about $2.3 million) were used to fund an educational program without statutory authority.	The named responsible individual received a written reprimand.

SECTION III - REPORTING REQUIREMENTS

THE ANTIDEFICIENCY ACT
NEW REPORTING PROCESS

Think the new guidance on processing Antideficiency Act violations is overwhelming? You're not alone. But, hopefully the following information will help you sort out what you need to know about the current environment.

After years in the making, OSD issued a new DOD Directive 7200.1, Administrative Control of Appropriations, dated May 4, 1995. For more than 10 years the Department operated under the May 7, 1984 version of the directive to process ADA violations. Close on the heels of the new directive was the issuance of DoD Financial Management Regulation (FMR) Volume 14, Administrative Control of Funds and Antideficiency Act Violations, dated August 1, 1995. These two documents drastically alter the way Army and the other services have processed ADA violations in the past.

The impetus for this change was Congressional interest and a perception that these violations of law were not being taken seriously by the DoD. It often took several years for alleged violations to be investigated and brought to closure. Cases were completed in many instances after the individuals named responsible had retired.

In an effort to expedite disclosure and investigation of potential violations, and to demonstrate to Congress the importance of the issue, OSD developed the new guidance.

Just what is required by the new guidance? Army continues to require that immediately upon discovery of a potential violation, a flash report be sent to the Assistant Secretary of the Army (Financial Management and Comptroller) (ASA(FM&C)). This requirement remains unchanged. However, instead of the flash report being required by priority message, it may now be sent in letter or memorandum format and faxed. Upon receipt of the flash report, HQDA will assign a case number to be used on all future correspondence.

As for OSD prescribed changes, in accordance with the new guidance, there will now be two phases to an investigation. First, upon discovery of a potential violation, the commander will conduct a preliminary review to gather basic facts to validate that a potential violation exists. Legal counsel should examine the results of the preliminary review. The Army has established a 90-day suspense from the date of discovery to complete this review.

The ASA(FM&C) will concur or nonconcur with the results of the preliminary review - whether a potential violation did or did not occur. If no violation occurred, the process ends here and no further action is required. However, if the ASA(FM&C) determines that a potential violation did occur, the OASA(FM&C) will notify the command, which then has 15 days from notification to appoint an investigating officer to conduct a formal investigation into

the matter. Army personnel will use Army Regulation (AR) 15-6, Procedure for Investigating Officers and Boards of Officers, as the cornerstone for this investigation.

The new DOD guidance also includes detailed checklists for investigating officers and the appointing officer/reviewing authority. These checklists were attached to Army's Supplemental Guidance to AR 37-1 for Reporting and Processing Reports of Potential Violations of Antideficiency Act, dated August 17, 1995, and will be attached to Army implementing instructions to DOD FMR Vol 14 (not yet published). The checklists were provided by OSD in an effort to reduce time spent answering follow-up questions from the ADA summary reports. Under the previous guidance, many cases were being returned by OSD to the services with requests for additional information.

The formal investigation is conducted pretty much the same as before, except that completion dates have changed. The final summary report of investigation is due to HQDA within 150 days from the date of initial discovery of the violation. This is only 60 days past the due date of the preliminary review. However, this second phase of the process capitalizes on the results of the preliminary review, and is essentially a finalizing of the earlier report -- drawing conclusions, fixing responsibility, developing corrective actions, and making recommendations to preclude recurrence of a this or a similar situation. Counsel should render a legal opinion before forwarding the case to HQDA. Consult the local and/or MACOM Staff Judge Advocate General office for fiscal law advice.

The new guidance specifies qualifications for investigating officers -- the most stringent of which is training. Investigating officers (IOs) must have attended a training course sanctioned by the Defense Business Management University (DBMU). DBMU is currently developing a "how to" course for investigating officers. Certification is valid for five years upon completion of the course, at which time refresher training will be required. Certification is renewable by completing training in the form of videos, workbooks, etc. Army is in the process of developing ADA training to be available on CD ROM. Commands should nominate at least one person per projected investigation to attend training per year. Since the course is not yet available, there is a waiver provision if an IO has previously conducted an ADA investigation between January 1, 1991 and October 1, 1995. Additionally, the Army Fiscal Law course satisfies the current training requirement. Not only potential IOs, but also financial and program mangers should attend Fiscal Law training which addresses the types of violations that can occur and methods for their prevention.

Another change in the new DoD guidance allows civilians to serve as Investigating Officers for ADA investigations. A change to AR 15-6 will be issued shortly that authorizes civilians to conduct investigations. Until that time, the DOD FMR Vol 14 can be cited as authority to use civilians to conduct ADA investigations. AR 15-6 also states that other directives providing specific investigation instructions take precedence over AR 15-6 when the two are conflict.

Appointing officers should select qualified investigating officers and ensure they are provided support from the legal community, the financial management community, and the functional community in which the potential violation occurred. Investigators should be external to the activity in question to avoid conflict of interest. The appointing officer may request Internal Review or Army Audit Agency auditors perform the investigation.

The new DoD guidance requires that the services establish and maintain a roster of individuals who are qualified to conduct ADA investigations. This roster is to be used by the appointing officials when selecting investigating officers.

As with current practice, the ASA(FM&C), after consultation with Army General Counsel, will determine whether a reportable violation occurred. The command will be notified of the decision. Violations are reported by DoD to the President, the Congress, and the OMB. Records and workpapers of violations should be maintained for six years and three months. Because ADA violations are a violation of law and, as such, a very serious matter, DOD now requires a written statement from disciplining officials acknowledging that a violation is a serious offense, not to be taken lightly, and justifying the type of action (or lack of action) taken.

As you can see, there have been a number of changes in the processing of potential ADA violations. Let's hope that the new policy and procedures will help resource managers police these violations, first by prevention, and second, when violations do occur, by swift reporting and closure of the case. Quick resolution of these violations will lend credibility to the perception of Army's stewardship of resources.

Send a flash report to SAFM-FO within 15 days of discovery.

Conduct a preliminary review to establish the existence of a potential violation. Document the results of the preliminary review after consultation with legal counsel.

Send the report through command channels to SAFM-FO for approval and determination of whether or not a potential violation occurred, due 90 days from date of discovery.

SAFM-FO will coordinate with Army General Counsel. ASA(FM&C) will make the final determination. SAFM-FO will notify the MACOM of decision.

If no violation occurred,
no further action required.

If a violation occurred,
a formal investigation IAW AR 15-6 must be initiated within 15 business days, the purpose of which is to determine the relevant facts and circumstances of the violation.

The appointing official will
select a qualified investigator external to the organization where the alleged violation occurred and provide for legal and technical support.

Monthly status reports are required of all ongoing investigations from the beginning of the formal investigation through submission of the final report.

Final reports of investigation are due to SAFM within 150 days from the date of discovery of the violation.

Three checklists are provided to be used during the process

1) investigating officer checklist to document results

2) appointing officer checklist during review of the investigator's report of violation

3) checklist for preparation of the final summary report of violation.

SECTION IV - HOW TO GET STARTED

THE BASICS --
HERE'S HOW TO GET STARTED...

You have just been appointed as an investigating officer for an alleged Antideficiency Act (ADA) violation. What do you do now? Hopefully, your MACOM/Installation POC has prepared a reference packet for you and provided an informal in-brief. In any case, what follows is a little advice on how to get started as you prepare to conduct the investigation.

Most investigating officers conduct these investigations as an additional duty, so time is a precious commodity. An ADA investigation should receive the highest priority in one's duties, because of the reporting time table and suspense dates through OSD, to the President and Congress. HQDA recently instituted a team approach to conducting violations that should help alleviate some of the time requirement for any one individual. The team should be comprised of legal counsel, a resource/financial manager, and someone with functional expertise in the area of the alleged violation (i.e. logistics, contracting.) If these representatives have not been appointed along with you, immediately seek assistance from the appointing officer to obtain your supporting team members.

Although your legal representative will be able to guide you through the fine points of the investigation, AR 15-6, Procedures for Investigating Officers and Boards of Investigating Officers, is an excellent place to start. Other technical references you will need are:

U.S. Code, Title 31, Money and Finance
(Sections 1341, 1342, 1349-1351, 1517-1519)

DFAS Reg 37-1
(Chapters 7 and 29)

DoD Directive 7000.14-R (FMR) Vol. 14, Administrative Control of Funds and Antideficiency Act Violations

and DA Form 1574.

These references will serve as your basic foundation for the investigation. The U.S. Code sections cited are the actual statutes commonly known as the "Antideficiency Act," plus a few other related sections on reporting and penalties. Review these sections, as well as chapters 7 and 29 of DFAS Reg 37-1, before you get started. Keep DoD FMR Vol 14 in reserve as you conduct the investigation. You should be able to find everything you need in the 37-1, including detailed checklists for investigating officers, appointing officers, and the final report of violation. You'll need DA Form 1574 to accompany AR 15-6 and to use in your report of investigation.

Now that you are familiar with the basics, meet with your team and divide responsibilities. You will also need to meet with the director or chief of the activity you are investigating to let him/her know who you are, by what authority you are there, and what cooperation you will need from the staff during the course of the investigation. If possible, talk to the person who reported the alleged violation and the holder of funds at that organization as you gather background information.

There are two phases to an ADA investigation. The first one is the preliminary review, the purpose of which is to determine the existence of the alleged violation. Did an ADA violation occur? If the answer is no, the process will stop once you have reported to Headquarters, Department of the Army, and the Assistant Secretary of the Army (Financial Management and Comptroller) concurs. If the answer is yes, you will enter the second phase of the investigation, where you will determine responsibility for the violation and recommend corrective action to address the violation and prevent recurrence of similar situations.

That's all there is to it!! All kidding aside, conducting an investigation is serious business and deals with government employees potentially breaking the law, whether knowingly or unknowingly. What has been provided here are the basics to get you started. Each case is different, and many are complex. Keep in mind that the results of your efforts will resolve not only the situation at hand, but also might help others to prevent this type of violation from occurring in their activity. Proper use of the public funds entrusted to us as stewards of Army resources benefits everyone.

SECTION V - ADVICE FROM PREVIOUS INVESTIGATING OFFICERS

The Office of the Deputy Assistant Secretary for Financial Operations recently conducted a survey of previous ADA investigating officers. The following comments were provided in response to the question -

WHAT ADVICE WOULD YOU OFFER TO FUTURE INVESTIGATING OFFICERS?

Restrict your investigation to exactly what you are tasked to investigate (and perform those duties quickly.)

The documentation and memorandums, statements, etc. is labor intensive; the duties should be divided equally among the ADA preliminary investigation team.

Get as much current training as possible.

Have all applicable regulations and laws on hand.

Seek legal advice.

Meet with appropriate staff requesting the investigation to ensure all documentation is provided and discuss the violation so there is a clear understanding.

After you receive your initial guidance you must sit down with all of the applicable regulations and continue to read over and over again until you are certain that you really understand what an Antideficiency violation is. If you do this, then during your investigation you have a better understanding of what you are looking for.

Take time to get complete briefing from legal and request assistance on a weekly basis.

Ensure you are qualified to conduct the investigation for which you are appointed (i.e., the investigation is not the time to become familiar with public law, regs, etc.)

Work closely and continually with legal and technical staffs.

You must determine the specific details of timing of decisions and events and the understanding of the parties involved <u>at the time of the action</u>, not in hindsight.

You must have access to decisions on similar cases to understand precedents.
HQDA Response: Consult legal counsel to assist in this area.

If you do not have full time to devote to investigation, nor the expertise in the area of investigation -- tell the commander!

Get advice from other investigating officers with experience.

Investigating officer should use the team approach and involve counsel, resource management, and internal review.

Study AR 37-1, AR 15-6, and applicable statutes prior to beginning the investigation. Consult with technical and legal experts throughout the investigation.

Based on the results of my investigation, I would recommend that future investigating officers thoroughly familiarize themselves with the Army and DoD fiscal law and appropriation law rules. This includes familiarization with the ADA language. The investigating officer should never assume a level of competency of the personnel he interviews or receives statements from, regardless of their position or level of command.

SECTION VI - LESSONS LEARNED FROM PREVIOUS INVESTIGATING OFFICERS

The Office of the Deputy Assistant Secretary for Financial Operations recently conducted a survey of previous ADA investigating officers. The comments that follow were provided by the investigating officers when asked about:

LESSONS LEARNED FROM YOUR EXPERIENCE & WAYS TO MAKE YOUR JOB EASIER

Available time to complete the investigation is critical. Since this is an additional duty, time required to do an investigation is a problem.
HQDA Response: Hopefully, the team approach will help to alleviate the burden on any one person. In addition, requesting an in-brief and reference packet at the beginning of the investigation should help save time later.

Locating all the individuals involved is a problem. Request assistance from appointing official to locate and ensure these individuals are available.
HQDA Response: Seek assistance from the MACOM and HQDA when needed.

I believe the appointing official should provide an in-depth in-brief and have appropriate staff available to provide guidance before investigation begins.

It is important for the appointing authority to provide detailed guidance to include the reference regulations, etc. as part of the appointment packet. [MACOM] provided me everything I needed to get started. I only had to round up forms and one additional regulation to complete my investigation which helped speed up the process. [MACOM] also provided a Point of Contact which again helped speed up the process.
HQDA Response: Excellent ideas! See related section, "The Basics - How to Get Started..." to help save time.

Insure that the regulations, statutes and guidance are available to the IO at the onset of the investigation. Complete an initial briefing to the IO with legal and technical representatives participating as early as possible.
HQDA Response: Same as above.

If necessary, seek help in putting report together. Seek assistance from Internal Review auditor to do work on complicated issues.
HQDA Response: Seek assistance when required from legal, your MACOM POC, and/or HQDA.

Would like to see either a checklist or event tree. I was always asking, "So what do we do next?"
HQDA Response: New guidance contains detailed checklists for investigating officer, appointing officer, and final report preparation.

Include report formats - it's in AR 37-1, but I could have used an "ADA for Dummies" primer.
HQDA Response: Detailed reporting format will be contained in DFAS (formerly AR 37-1), as well as sample reports.

I believe it is inappropriate for the IO to be tasked with coming up with the appointing authority's corrective action regarding discipline.
HQDA Response: At a minimum, the IO should discuss the results of the investigation with the commander/supervisor of the person(s) named responsible. The commander/supervisor will determine the appropriate disciplinary action based on the individual circumstances of the case.

ADA investigations are not dissimilar from any investigation. The most important skill is the ability to gather facts and use good judgment analyzing those facts. It is not magic. Fiscal law training isn't necessary so long as good advice about it is available.
HQDA Response: Most military personnel have experience in conducting investigations, but many civilians do not. Fiscal law training is a plus for personnel in any specialty. Stewardship of resources is everyone's business.

A level of professional competency does not automatically come with the position the person fills. Specifically, the investigation I conducted was not required since [proper] funds were available at HQDA at the time of the alleged violation and continued to be available until the date of the investigation findings (four years later.) The proper wording of a memorandum requesting [the correct] funds to the proper HQDA staff element would have resolved the alleged ADA.
HQDA Response: The purpose of the preliminary investigation is to first determine if a violation exists. In this case, up-front research would quickly resolve the situation.

I would recommend that the Army Fiscal Law Course and Appropriation Law class should be required for personnel assigned to installation and MACOM resource management positions. This requirement could be part of a professional development program which must be accomplished prior to promotion to a specific grade or Job Series.
HQDA Response: As mentioned previously, Fiscal Law instruction is a plus for everyone, especially those in resource management positions. The course is currently offered by the Judge Advocate General School in Charlottesville, Virginia. Special on-site classes can be arranged through the Deputy General Counsel for Ethics and Fiscal. Once DBMU completes development of their Fiscal Law class, it will be available on CD ROM for use at installation training facilities.

The technical and legal reviews are an important part of the process. The technical and legal assistance required throughout the investigatory process is in many cases ignored until the draft findings and recommendations are presented. My experience as the subject matter expert has been that investigations must be redone or substantially modified if consultation and coordination are [not] effected throughout the investigation. I expect that the interactions that will be the essence of the Working Group approach will improve the timeliness and accuracy of findings and recommendations.
HQDA Response: Legal assistance is integral to the process and should be sought as soon as possible upon discovery of an alleged violation.

SECTION VII - SAMPLE REPORT

The following is a sample Antideficiency Act final report of violation as transmitted from Army to the Under Secretary of Defense Comptroller. Reports are aggregated at OSD level and forwarded to the President, both houses of Congress, and OMB.

Date

MEMORANDUM FOR DEPUTY CHIEF FINANCIAL OFFICER, OFFICE OF THE UNDER SECRETARY OF DEFENSE, (COMPTROLLER)

SUBJECT: Report of Antideficiency Act Violation Case #9X-XX

An Antideficiency Act violation occurred at XXXX. The investigation found that Operation and Maintenance, Army funds were used to purchase a firearms training simulator, costing about $73,900. The purchase exceeded the expense investment threshold for Operations and Maintenance, Army established in the FY 92 Appropriation Act. Therefore, Other Procurement, Army funds should have been used. A violation of 31 USC 1341 occurred because the XXXX did not have the appropriate procurement funds to replace the operation and maintenance funds used.

Our report on this case has been prepared in accordance with DOD Directive 7200.1, Administrative Control of Appropriations, and is attached. The corrective actions taken by the XXXX are considered adequate to preclude potential funding violations. These actions are addressed in the attached report.

The investigating officer found no indication of criminal intent, nor is there any indication that any individual connected with the violation was not acting in good faith.

My point of contact for this report is Mr. Dennis Joe. He can be reached at (703)697-0757.

/signed/
Ernest J. Gregory
Deputy Assistant Secretary of the Army
(Financial Operations)

Attachment

Department of the Army
Report of Antideficiency Act Violation
Case Number 9X-XX

1. Funds Involved: Apportioned, FY 92, Operation and Maintenance, Army funds (2122020)

2. Where the Violation Occurred: XXXX

3. Amount of Violation: $73,893

4. Date of Violation:

Date Violation Occurred:	September 1992
Date Violation Discovered:	August 1994

5. Type Of Violation:

31 USC 1341 (a)(1)(A), expenditure or obligation exceeding the amount available in an appropriation or fund for the expenditure or obligation.

6. Effect of Violation on the Next Higher Level Of Funding:

There was no effect on funding on the next higher level of command. Incorrect funds were used to acquire a firearm training simulator. The proper, Other Procurement, Army funds were requested and obtained from the YYYY, the next higher level of command. The YYYY was not placed in a deficit status as a result of the reprogramming action.

7. Name and Position of the Responsible Individual(s):

LTC John Doe
ZZZZ

MAJ Joe Smith
XXXX

8. Cause and Circumstances Surrounding the Violation:

The funding violation occurred at the XXXX when Operation and Maintenance, Army (OMA) funds were used to procure a firearm training simulator costing about $73,900. This exceeded the $15,000 expense investment threshold for use of operation and maintenance funds established in the FY 92 Appropriation Act.

The purchase request for the training simulator was coordinated within the XXXX and YYYY. Personnel within these offices recognized the requirement for the simulator and approved the purchase request. Personnel within the XXXX acted based upon the

approval of the YYYY Operation Directorate. The potential Antideficiency Act violation resulted because personnel, both XXXX and YYYY, were not aware of the $15,000 OMA limitation for expense investments and used operation and maintenance funds for the procurement.

The investigation into this matter concluded that the alleged violation resulted because of the lack of due professional care. This conclusion was reached because the purchase request was approved at the YYYY level, and subsequent staff actions did not question the appropriateness of funds used. The investigating officer concluded that the violation was not a result of a knowing and willful act or careless disregard of instructions.

9. Disciplinary Actions Taken: Both individuals named responsible were orally admonished. LTC Doe was named responsible because of his approval of the purchase request without providing additional guidance on the proper funds to be used. MAJ Smith was named responsible for his failure to adequately identify the appropriate funds and reliance on the YYYY's approval as guidance on the proper use of funds.

10. Corrective Actions Taken:

The Director YYYY took actions to increase awareness concerning fund controls. The YYYY addressed his concerns about the improper use of federal funds in a memorandum, dated 7 November 1994, to all subordinate directors. The memorandum emphasized the need for extra attention and the proper stewardship of funds.

The DCSRM YYYY emphasized fiscal concerns in a memorandum dated 14 November 1994. The memorandum was sent to all subordinate offices. The memorandum provided guidance and policy on regulations, ceilings and limitations concerning the use of federal funds.

The appropriate funding adjustments were made. The XXXX requested and received Other Procurement, Army funds from their higher headquarters. The required funding adjustments were made to deobligate Operation and Maintenance, Army funds and obligate Other Procurement, Army funds.

Program managers within the YYYY attended the YYYY sponsored Fiscal Law training course. The training course addressed laws and regulations governing the use of federal funds.

The XXXX took action to prevent future occurrences of the improper use of funds. The XXXX provided training to all program and assistant program managers. This training addressed the use of funds and provided the necessary foundation for fund management.

11. System Adequacy: The system of administrative controls prescribed by the Office of the Under Secretary of Defense (Comptroller) are considered adequate. The corrective actions taken by XXXX and YYYY in providing training should increase the effectiveness of administrative controls currently in place. These actions should

preclude future occurrences of this type and ensure compliance with statutory and regulatory requirements.

12. Name of the Holder of the Fund:

COL John Jones
XXXX

The fund control performance of the above was considered adequate; controls were in place to preclude an Antideficiency Act violation. However, as discussed, the controls were not effective due to the individuals' lack of knowledge of fiscal funding limitations. This incident is not indicative of overall fund controls within the XXXX.

13. Signed Statement of the Responsible Individual: The individuals named responsible for the alleged violation were advised of their rights and given the opportunity to provide a sworn statement concerning the results of the investigation. The statements of LTC John Doe and MAJ Joe Smith were evaluated and determined not to alter the conclusion of the final report. Their statements are attached.

/signed/
Helen T. McCoy
Assistant Secretary of the Army
(Financial Management and Comptroller)

Attachment (not provided)