

SECTION 22 -- REQUIREMENTS FOR REPORTING ANTIDEFICIENCY ACT VIOLATIONS

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22.1 Adverse personnel actions and penalties.

In accordance with 31 U.S.C. 1349 and 1518, an officer or employee violating 31 U.S.C. 1341(a) or 1517(a) 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 31 U.S.C. 1350 and 1519 an officer or employee convicted of willfully and knowingly violating 31 U.S.C. 1341(a), 1342, or 1517(a) shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

22.2 Requirements to report Antideficiency Act violations.

The agency head will furnish to the President, through the Director of OMB, and to Congress, information on Antideficiency Act violations of the following character:

(a) *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))

(b) *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 a purpose, unless such contract or obligation is authorized by law. (31 U.S.C. 1341(a))

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(c) 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))

(d) 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 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. (31 U.S.C. 1341(a))

(e) 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)

(f) Overobligation or overexpenditure of an apportionment or reappportionment.

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 reappportionment. This includes adjustments that cause obligations in expired accounts to exceed the apportionment for the year in which such obligations were incurred. (31 U.S.C. 1517(a))

(g) 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))

(h) Overobligation or overexpenditure of other administrative subdivisions of fund.

Generally, the overobligation of other administrative subdivisions of funds (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.

22.3 Requirements to report Antideficiency Act violations in credit programs.

The agency head will furnish to the President, through the Director of OMB, and to the Congress, information on Antideficiency Act violations for all direct loan and guaranteed loan program and financing accounts for violations of the following character:

(a) *Overobligation or overexpenditure of amounts appropriated for the subsidy cost.*

This is any case where an officer or employee of the United States has made or authorized a direct loan obligation or loan guarantee commitment that requires a subsidy cost obligation or expenditure in excess of amounts appropriated and apportioned for such purposes. Modifications of direct loans or loan guarantees (or of direct loan obligations or loan guarantee commitments), as defined in section 12.10, that result in obligations or expenditure in excess of apportioned unobligated balances of subsidy amounts are violations. (31 U.S.C. 1341(a), 31 U.S.C. 1517(a))

(b) *Overobligation or overexpenditure of the credit level supportable by the enacted subsidy.*

This is any case where an officer or employee of the United States has made or authorized a direct loan obligation or loan guarantee commitment, that is in excess of the level specified in law. This includes, for example, obligations or expenditures that are in excess of a limitation on direct loan obligations or guaranteed loan commitments. (31 U.S.C. 1341(a))

(c) *Overobligation or overexpenditure of the amount appropriated for administrative expenses.*

This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation that is in excess of the amount appropriated for administrative expenses. (31 U.S.C. 1341(a))

(d) *Obligation or expenditure of the expired unobligated balance of the subsidy, except to correct mathematical or data input errors in calculating subsidy amounts.*

This is any case where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, against unobligated subsidy balances after the period of obligational authority has expired. Correction of mathematical or data input errors up to the amount of the expired unobligated balance of the subsidy are specifically exempted. Corrections of these errors in excess of the amount of the expired unobligated balance of the subsidy are violations. (31 U.S.C. 1341(a))

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22.4 Requirements to report Antideficiency Act violations in revolving funds.

In accordance with the instructions in section 22.2, the incurring of obligations in excess of apportioned budgetary resources in a revolving fund is a violation of the Antideficiency Act, whether or not a fund has unapportioned budgetary resources or non-budgetary assets greater than the amount of the deficiency.

22.5 Requirements to report Antideficiency Act violations in closed and expired accounts.

Agencies are required to report violations of the Antideficiency Act when the following conditions occur in closed and expired accounts:

(a) *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. (31 U.S.C. 1341(a))

(b) *Obligations or any expenditures in closed 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. 1552-1557. (31 U.S.C. 1341(a))

(c) *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. (31 U.S.C. 1341(a))

22.6 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. A sample letter is provided in Exhibit 22.

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 officer 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 21.5.

(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.

22.7 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.

22.8 Report on GAO findings.

Reports to the President and the Congress should also be made on violations reported by 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 the Congress will explain the agency's position.

22.9 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 will 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

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Act has occurred, the agency head will report to the President and the Congress in accordance with sections 22.6 and 22.7, 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.

22.10 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.

Antideficiency Act Violation Sample Letter to the President

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

This letter is to report a violation of the Antideficiency Act, as required by section [1351 or 1517] of Title 31, United States Code.

A violation occurred in account [Treasury symbol and title]. The violation occurred on [date] in connection with [identify the affected program or activity] for FY XXXX. Mr./Ms. _____ (rank/grade/title) was [were] the officer(s) responsible for the violation(s).

[Describe the nature of the violation (see section 22.2). Then state the primary reason or cause. Include any statement from the responsible officer(s) or employee(s) as to any circumstances believed to be extenuating. Include any germane report by the agency's Inspector General.]

[State what, if any, administrative discipline was imposed as well as any further action(s) taken with respect to the officer(s) or employee(s) involved. (see section 22.1)]

[In the case where an officer or employee is suspected of willfully and knowingly violating the Antideficiency Act, confirm that all information has been submitted to the Department of Justice.]

[State whether the adequacy of the system of administrative control has been approved by OMB. (see section 21.5)]

[State whether any additional action need be taken to prevent recurrence of the same type of violation.]

[If another agency is involved, state what steps are being taken to coordinate the report with the other agency.]

[Identical reports will be submitted to the presiding officer of each House of Congress. If identical to the report to the President, so state. (see section 22.7)]

Respectfully,
Agency Head