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**FINANCIAL MANAGEMENT**

**ANTIDEFICIENCY ACT VIOLATIONS**

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This instruction implements AFD 65-6, *USAF Budget Policy*, May 1, 1998, and describes how the Air Force identifies, investigates, reports, and processes Antideficiency Act (ADA) Violations. This instruction carries out DoD Directive 7200.1, *Administrative Control of Appropriations*, May 4, 1995, and complements DoD 7000.14-R, *Department of Defense Financial Management Regulation*, Volume 14, *Administrative Control of Funds and Antideficiency Act Violations*, October 2002. This instruction applies to all activities that prepare, justify, and execute Air Force appropriations, including activity groups of the Air Force Working Capital Fund. Major command (MAJCOM), field operating agency (FOA), and direct reporting unit (DRU) organizations shall not supplement this instruction. The reporting requirements in this instruction, paragraph 2.4.4., are exempt from licensing in accordance with AFI 33-324, *The Information Collections and Reports Management Program; Controlling Internal, Public and Interagency Air Force Information Collections*. Suggested changes to this instruction should be sent through appropriate channels to SAF/FMPF, 1130 Air Force Pentagon, Washington DC 20330-1130. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 37-123, *Management of Records*, and disposed of in accordance with the *Air Force Records Disposition Schedule (RDS)*, located at <https://webrims.amc.af.mil/>.

**SUMMARY OF REVISIONS**

This is the first revision of AFI 65-608. It adds requirements for the Air Force Deputy General Counsel (Fiscal & Administrative Law) to review the results of each formal ADA investigation and to render a legal opinion within 90 days after receipt of the Preliminary Summary Report of Violation (SRV) from SAF/FMPF (**paragraph 2.7.5.**); for the MAJCOM, FOA, and DRU Financial Management organizations to appoint an ADA Focal Point (**paragraph 2.9.2.**); and for the Comptroller to research, analyze, and obtain a legal review of potential ADA violations before requesting a preliminary review control number (**paragraph 3.3.1.**). In addition, this revision provides guidance for notifying SAF/FMBMM of all upward obligation/accounting adjustments (**paragraph 3.8.3.7.**) and processing Inspector General hotline complaints (**paragraph 3.9.**); it rescinds the requirement for the investigating officer to recommend appropriate disciplinary actions against those individuals identified as responsible for the ADA violation

(**paragraph 4.1.**); and it adds requirements for the investigating officer to complete the formal ADA investigation within six months after the start date (**paragraph 4.1.7.**), to complete a checklist when the formal ADA investigation has been completed (**paragraph 4.1.8.**), to include/attach a copy of the ADA certificate of training to the Report of Violation (ROV) (**paragraph 4.3.3.**), and to notify SAF/FMPF when a Senior Official or Colonel (or Civilian equivalent) is identified as a responsible individual (**paragraph 4.8.3.**). Further, this revision implements new Office of the Under Secretary of Defense (Comptroller) policy guidance, which now requires the Preliminary SRV to be processed through the Department of Defense (DoD), Office of the General Counsel (Fiscal), before disciplinary actions have been administered. As a result of this new policy, we provided specific guidance for preparing and releasing the Draft ROV (**paragraph 4.9.**), processing the Draft ROV – Before Disciplinary Actions are Administered (**paragraph 4.10.**), administering disciplinary actions (**paragraph 4.11.**), and approving and submitting the Final ROV to SAF/FMPF (**paragraph 4.12.**). Finally, this revision includes guidance for processing determinations of no violation (**paragraph 4.13.**), provides instructions for releasing the Draft and Final ROV to internal or external agencies (**paragraph 4.14.**), requires MAJCOM ADA Focal Points to provide a monthly status update for all on-going formal ADA investigations (**paragraph 4.15.**), deletes **Attachment 2** (Sample Letter of Appointment for Antideficiency Act Investigations) from the original AFI, and adds the following attachments: Sample Preliminary Review Memorandum (**Attachment 2**), Sample Investigating Officer Appointment Memorandum (**Attachment 3**), Privacy Act Statement (**Attachment 4**), Sample Request for Draft ROV Review Memorandum (**Attachment 5**), Checklist for Final Summary Report of Violation (**Attachment 6**), Sample Comptroller Transmittal Memorandum (**Attachment 7**), Sample Comptroller Transmittal Memorandum To Disciplining Official (**Attachment 8**), Sample Disciplinary Actions Memorandum (**Attachment 9**), Sample Notification Memorandum (**Attachment 10**), and Sample Appointing Official Approval Memorandum (**Attachment 11**).

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## Chapter 1

### OVERVIEW

**1.1. The Antideficiency Act.** The Antideficiency Act (ADA) is codified in Title 31, United States Code (U.S.C.), Sections 1341(a), 1342, and 1517(a). Funds are available to support contract obligations only if previously authorized and appropriated by Congress. The legislative process of authorization and appropriation creates different types of funds, with resulting limits on their use as to the purpose, time, and amount. If those limitations are exceeded, corrective entries in the accounts are required upon discovery. An obligation or expenditure of funds in advance of an appropriation or in excess of an appropriation, apportionment, or formal subdivision of funds, whether occurring at the time the liability was incurred or at the time the obligation was properly recorded, may result in a reportable violation of the ADA. The receipt of additional funds, before the end of the accounting period, does not necessarily mitigate the violation or eliminate the reporting requirement. However, such over-obligations are not the only source of violations. ADA violations must be reported to the President, through the Office of Management and Budget (OMB), and the Congress.

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

#### **1.3. Violation Causes and Exemptions:**

1.3.1. Generally, ADA violations occur in the following ways:

1.3.1.1. Authorizing or incurring obligations in advance of an appropriation.

1.3.1.2. Authorizing or incurring obligations or expenditures in excess of a formal subdivision of funds (allocation, allotment, sub-allotment, or other formal designation of a limitation).

1.3.1.3. Exceeding a regulatory or statutory limitation or restriction on the amount of funds that may either be obligated or expended, or violating a regulatory or statutory limitation as to purpose.

1.3.1.4. Obligating or expending funds, which do not provide for a bona fide need of the period of availability of the fund or account, and corrective funding is not available.

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

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

1.3.2. Exemptions to provisions of the ADA include, but are not limited to, the following:

1.3.2.1. Certain appropriations exempted from apportionment by the Congress.

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

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

1.3.2.4. Meritorious contract claims under military construction contracts or family housing contracts under Title 10, U.S.C., Section 2863.

**1.4. Related Guidance.** See related guidance in DoD 7000.14-R, Department of Defense Financial Management Regulation, Volumes 2A & B, Budget Formulation and Presentation, June 2004, and Volume 14, Administrative Control of Funds and Antideficiency Act Violations, October 2002; DoD Directive 7200.1, Administrative Control of Appropriations, May 4, 1995; DoD Directive 5400.7, DoD Freedom of Information Act (FOIA) Program, June 17, 2002; AFI 33-332, Privacy Act Program, January 29, 2004; AFI 65-106, Appropriated Fund Support of Morale, Welfare, and Recreation and Nonappropriated Fund Instrumentalities, October 1, 2002; AFI 65-601, Budget Guidance and Procedures, Volume 1, December 24, 2002; AFI 90-301, Inspector General Complaints, January 30, 2001; AFMAN 37-123, Management of Records, August 31, 1994; and DFAS-DE, Interim Guidance on Accounting for Obligations, November 4, 2004.

## Chapter 2

### RESPONSIBILITIES

**2.1. Secretary of the Air Force.** Implements the policies in DoD Directive 7200.1, *Administrative Control of Appropriations*, May 4, 1995, and DoD 7000.14-R, *Department of Defense Financial Management Regulation, Volume 14, Administrative Control of Funds and Antideficiency Act Violations*, October 2002; and delegates the overall ADA program management responsibility to the Assistant Secretary of the Air Force (Financial Management and Comptroller).

**2.2. Assistant Secretary of the Air Force (Financial Management and Comptroller) (SAF/FM):**

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

2.2.2. Directs major command (MAJCOM), field operating agency (FOA), or direct reporting unit (DRU) and Secretariat and Air Staff organizations to perform a formal ADA investigation when the results of the preliminary ADA review determine that a potential ADA violation has occurred.

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

2.2.4. Appoints the IO when a potential ADA violation is of special interest to the Secretary of the Air Force, the investigation is requested by the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)), or is otherwise warranted under the circumstances. Special Interest Investigations are defined in DoD 7000.14-R, Volume 14, Chapter 5, paragraph 050203.

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

2.2.6. Ensures the results of each formal ADA investigation are reported to the OUSD(C) within nine months after the start of the formal ADA investigation.

2.2.7. Ensures a monthly ADA activity report, presenting the status of overdue cases, identifying new ADA cases during the period, and summarizing all of the Air Force's ADA cases presently under investigation, is prepared and submitted to the OUSD(C).

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

2.2.9. Delegates execution of the Air Force's ADA program to the Deputy Assistant Secretary, Financial Operations.

**2.3. Deputy Assistant Secretary, Financial Operations (SAF/FMP).** Executes the Air Force's program for identifying, investigating, reporting, and processing ADA violations; and delegates the day-to-day responsibility for monitoring and implementing the ADA program to the Director for Audit Liaison and Follow-up.

**2.4. Director for Audit Liaison and Follow-up (SAF/FMPF).** Oversees implementation of the Air Force's ADA program and assists MAJCOM, FOA, DRU, and Secretariat and Air Staff organizations in matters relating to actual or suspected ADA violations and in the investigation of such violations. SAF/FMPF is notified of all potential ADA violations and does the following:

2.4.1. Assigns case numbers and establishes completion dates for preliminary ADA reviews and formal ADA investigations.

2.4.2. Receives and approves all preliminary ADA reviews.

2.4.3. Receives and reviews the IO's Report of Violation (ROV) to ensure the following:

2.4.3.1. Adequacy of facts presented in support of the conclusions reached, including, but not limited to, identifying the individual(s) responsible for the violation, and naming the holder of the funds and evaluating the execution of their fund control performance.

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

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

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

2.4.4. Prepares a Preliminary Summary Report of Violation (SRV) after the IO completes all requirements pertaining to the formal ADA investigation, except for the administration of disciplinary actions.

2.4.4.1. Forwards the Preliminary SRV to the Air Force Deputy General Counsel (Fiscal & Administrative Law) (SAF/GCA) for their coordination and legal opinion. After SAF/GCA opines, SAF/FMPF forwards the Preliminary SRV to the OUSD(C), who reviews and transmits to the DoD, Office of the General Counsel (Fiscal) (DoD OGC(F)), for their concurrence that an ADA violation actually occurred.

2.4.4.2. Returns the Preliminary SRV to the MAJCOM, FOA, or DRU Financial Management organization (IO, at Secretariat and Air Staff) after the DoD OGC(F) renders its legal opinion. If the DoD OGC(F) agrees that an ADA violation occurred, the current Commander/Supervisor can administer or initiate disciplinary actions against the responsible individual(s), if deemed appropriate.

2.4.5. Prepares a Final SRV, after disciplinary actions have been administered and the ROV is complete, for SAF/GCA coordination, SAF/FM approval, and submission to the OUSD(C).

2.4.6. Prepares and submits a monthly ADA activity report to the OUSD(C). The activity report presents the status of overdue cases, identifies new ADA cases during the period, and summarizes all of the Air Force's ADA cases presently under investigation.

2.4.7. Conducts an annual evaluation of the Air Force's administrative funds control processes, as well as, the processing of ADA violations. This information is reported to the OUSD(C).

**2.5. Deputy Assistant Secretary, Budget (SAF/FMB).** Establishes Air Force budget policies and procedures for preparing, justifying, and executing budgets to include administrative control of appropria-

tions; provides guidance on organizational and appropriation funding responsibilities and use of funds (propriety) issues; and develops and maintains the budget structure and associated codes.

## **2.6. Air Force General Counsel (SAF/GC):**

2.6.1. Acts as the primary legal advisor to the Secretary of the Air Force and Air Staff on acquisition, contract, and fiscal law matters.

2.6.2. Issues legal opinions on acquisition, contract, and fiscal law matters for the Department of the Air Force.

## **2.7. Deputy General Counsel (Fiscal & Administrative Law) (SAF/GCA):**

2.7.1. Reviews, provides legal advice, and coordinates on the results of all formal ADA investigations.

2.7.2. Rules on the application of particular statutes or policy directives to specific funding situations.

2.7.3. Makes the final legal determination regarding the existence of a reportable ADA violation, unless the investigation was directed by the OUSD(C) or DoDIG.

2.7.4. Advises the Secretary and Air Staff as to whether the evidence presented in the ROV is sufficient to establish responsibility for an ADA violation and whether the disciplinary actions taken by the current Commander/Supervisor are consistent with regulatory guidelines.

2.7.5. Ensures the results of each formal ADA investigation are reviewed and a legal opinion is rendered within 90 days after receipt of the Preliminary SRV from SAF/FMPF.

2.7.6. Acts as the primary legal advisor to SAF/FM, when SAF/FM is the Appointing Official.

**2.8. MAJCOM, FOA, and DRU Commander, or SAF/FM.** The MAJCOM, FOA, and DRU Commander, or SAF/FM for the Secretariat and Air Staff (hereinafter, referred to as the “**Appointing Official**”), appoints a qualified IO, in a written letter of designation, and ensures the formal ADA investigation is the IO’s primary duty until completed. The Appointing Official also ensures the ROV is completed within six months after the investigation start date, the conclusions are fully supported by the documentation included in the ROV, and is legally sufficient. The Appointing Official, in consultation with his/her Staff Judge Advocate or servicing legal office (SAF/GCA, at the Secretariat and Air Staff), approves the ROV and makes the final determination as to whether an ADA violation has occurred.

## **2.9. MAJCOM, FOA, and DRU Financial Management Organization:**

2.9.1. The MAJCOM, FOA, and DRU Financial Management organization (hereinafter, referred to as the “**Comptroller**”) establishes an Integrated Process Team (IPT) consisting of senior representatives from Legal, Contracting, Civil Engineering, Services, and Operations support functions. The members will be familiar with fiscal law, understand the Air Force’s ADA investigation process, and have expertise in their respective functional areas. The Comptroller will be the team leader and individual members will be called together, as needed. The IPT does the following:

2.9.1.1. Develops and maintains a roster of trained and qualified IOs. The roster will be used to select individuals to investigate potential ADA violations. The roster will include current data, such as the date initial training was received, rank/grade, organization to which the IO is assigned,

functional specialty, number of investigations previously conducted, and when the investigations were conducted.

2.9.1.2. Ensures the IO is adequately trained, including an "in-brief" with the appropriate members of the IPT prior to commencing an investigation. The IO, or member(s) of the investigation team, must have successfully completed fiscal law training and have knowledge in financial management and any other applicable functional specialty. At a minimum, all IOs will successfully complete either the Distance Learning Fiscal Law Course of the Air Force Judge Advocate General's School, the in-residence Fiscal Law Course of the Army Judge Advocate General's School, the Fiscal Law portion of the Air Force Institute of Technology's Air Force Systems and Logistics Contracting Course, or a comparable program of instruction. The IPT will also ensure that a refresher course is available, as needed, but in no event will an individual be designated to serve as an IO more than five years after completing their last formal fiscal law training.

2.9.1.3. Updates the roster, periodically, to ensure a sufficient number of qualified IOs remain available in the appropriate rank/grade. If a sufficient number of previously qualified IOs are not available, the IPT may provide a nominee with in-house training, add their name to the Command roster, and recommend to the Appointing Official that the individual be appointed as a provisional IO, pending completion of formal training at one of the above referenced programs of instruction (**paragraph 2.9.1.2.**) at the earliest practical opportunity.

2.9.1.4. Ensures IO independence.

2.9.1.5. Provides expert technical assistance to IOs, as needed.

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

2.9.2. The Comptroller also appoints an ADA Focal Point, who manages all aspects of the Command's ADA program including, but not limited to, the proper completion, review, approval, and submission of ROVs to SAF/FMPF. SAF/FMPF acts as the ADA Focal Point at Secretariat and Air Staff.

**2.10. Holder of Funds.** The holder of funds authorizes the use of the funds, by the acquiring activity, and can usually be identified by referencing the addressee on the funding authorization document. The holder of funds does the following:

2.10.1. Ensures the funds are only used for the purpose prescribed and does not exceed funding authority, including any limitations on that authority.

2.10.2. Ensures compliance with all regulatory and statutory limitations on the use of Air Force funds or funds allocated to the Air Force from the OUSD(C).

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

2.10.4. Complies with funds control policies and procedures, including the full use of the capabilities of existing systems and control techniques. Provides any implementing guidance needed and emphasizes the requirement for strict control to preclude ADA violations.

2.10.5. Promptly reports all suspected ADA violations (through the appropriate Commander, Comptroller, and/or Staff Judge Advocate) to SAF/FMPF.

## **2.11. Current Commander/Supervisor of Responsible Individual(s):**

2.11.1. The current Commander/Supervisor reviews the ROV and, in consultation with their Staff Judge Advocate or servicing legal office (or Civilian Personnel Office, in the case of a civilian employee), administers or initiates the appropriate disciplinary action. The fact that a violation was not willfully and knowingly committed does not, by itself, justify the absence of disciplinary actions.

2.11.2. After the appropriate disciplinary action has been administered, the current Commander/Supervisor provides a copy of the Certification of Disciplinary Action Memorandum to both the responsible individual(s) and the ADA Focal Point, for later submission to SAF/FMPF. The Certificate of Disciplinary Action Memorandum should contain a signed statement, by the responsible individual(s) current Commander/Supervisor, acknowledging an understanding of certain key principles concerning ADA violations, and explaining why they believe the disciplinary action administered is commensurate with the severity of the violation, including a full explanation of any extenuating circumstances.

**2.12. Staff Judge Advocate (SJA).** The Appointing Official's SJA or servicing legal office (SAF/GCA, at the Secretariat and Air Staff) provides expert legal advice to the local attorney assigned to the case, disseminates information on current fiscal law issues, reviews the preliminary review reports (PRR) and ROV (as counsel to the Appointing Official), and advises the Appointing Official with a written opinion on the legal sufficiency of the PRR and ROV.

**2.13. Supporting Functional Experts (Including Local Legal Advisor).** The Appointing Official will assign a judge advocate or civilian attorney to advise the IO. The legal advisor must have completed at least one of the courses listed in paragraph 2.9.1.2. The legal advisor will be responsible for the identification and interpretation of statutes, regulations, and administrative guidance relevant to the issues, and they will work with the IO throughout the investigation. A written legal opinion will be prepared prior to finalizing the PRR or ROV. All other functional experts will be made available to support the IO, as needed.

**2.14. Air Force Military Members and Federal Employees.** All Air Force military members and Federal employees must maintain responsibility for administrative control of Air Force funds, and the actual obligation of these funds must be authorized or incurred by the Air Force military members or Federal employees who have the authority to do so. By law, a contractor is prohibited from controlling or obligating Air Force funds and, therefore, cannot be held responsible for violations of Title 31, U.S.C., Sections 1341(a), 1342, or 1517(a). Only Air Force military members and employees of the Federal Government can be held responsible for ADA violations and subjected to any associated disciplinary action. If a contractor makes an accounting error that causes the ADA violation, and the error is not discovered in the ordinary course of contract administration, the holder of funds should be considered as a potential responsible individual, due to their overall position and responsibility.

## Chapter 3

### PRELIMINARY ADA REVIEWS

**3.1. Background.** A preliminary ADA review is performed to gather basic facts and circumstances and determine whether a potential ADA violation has occurred. Specifically, when some evidence suggests that a potential ADA violation may have occurred, preliminary checks of the applicable transaction(s) and accounting records (i.e., to identify recording duplications or errors, to ensure commitments and obligations are valid and properly chargeable against the funds involved, to validate the actual fund status in the account affected at the time the questionable transaction occurred, etc.) must be made to determine whether a potential ADA violation actually exists. A preliminary ADA review does not attempt to identify the responsible individual(s), recommend corrective actions, or collect other information required during a formal ADA investigation. However, the preliminary ADA review does provide the IO with information that is vital to gaining a quick understanding of the facts and circumstances if a formal ADA investigation is necessary. Since the results of the preliminary ADA review forms the foundation for a formal ADA investigation, performing a thorough preliminary ADA review is extremely important because six months is the maximum time allowed to perform the formal ADA investigation.

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

**3.3. Reporting Suspected ADA Violations.** Once a potential ADA violation is suspected, it must be reported to the Comptroller within 10 working days.

3.3.1. The Comptroller must thoroughly research, analyze, and discuss the problem with the SJA or servicing legal office (SAF/GCA, at the Secretariat and Air Staff), to determine whether it really is a potential ADA violation, or just an accounting error.

3.3.2. Upon SJA, servicing legal office, or SAF/GCA confirmation that there is credible evidence of a suspected ADA violation, the ADA Focal Point will provide SAF/FMPF with a brief description of the basis for the suspected violation and request SAF/FMPF assign a preliminary review control number.

3.3.3. SAF/FMPF will assign the preliminary review control number and provide a memorandum (see [Attachment 2](#), for an example) to the ADA Focal Point, directing the Comptroller to appoint a preliminary review officer (PRO). SAF/FMPF will also provide (as an attachment to the memorandum) a “Reporting Information For Preliminary ADA Reviews” datasheet, which the PRO must complete and return to SAF/FMPF within 30 days after the preliminary ADA review has been started.

3.3.4. The ADA Focal Point will provide SAF/FMPF with a copy of the PRO’s appointment memorandum.

3.3.5. The PRO must complete the preliminary ADA review and report the results to SAF/FMPF no later than 90 days after the preliminary ADA review has been started.

**3.4. Selecting a Preliminary Review Officer (PRO).** When selecting a PRO, the Comptroller must consider the individual’s experience or expertise in financial management and understanding of fiscal law,

as well as, their ability to perform an independent review. To ensure independence, it is highly recommended that the Comptroller select the PRO from an organization external to the immediate organization being investigated (e.g., outside the program office where the potential ADA violation may have occurred). The appearance of a conflict of interest or bias should be the determining factor against selection. It is also desirable, but not mandatory, that the PRO's rank/grade be equal to, or greater than, the highest-ranking individual whose actions are under review. The Comptroller does not have to select the PRO from the roster of qualified ADA investigators.

**3.5. Local SJA Responsibilities.** The SJA or servicing legal office, for the installation where the preliminary ADA review is conducted, will assign a judge advocate or civilian attorney to advise the PRO. The financial management directorate for the installation will provide assistance, as required.

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

**3.7. PRO Responsibilities.** The PRO's role is that of fact-finder and advisor, to the Comptroller and SAF/FMPF, as to the likelihood that a potential ADA violation has occurred. The PRO's position is not one of advocate for or against a particular interpretation of the facts, but rather an impartial investigator. During the preliminary ADA review, the PRO and assigned legal advisor are encouraged to consult with the Appointing Official's SJA or servicing legal office who, in turn, will consult with SAF/GCA, as required.

**3.8. Preliminary Review Report (PRR) Requirements.** The results of the preliminary ADA review should be reported in a PRR. The following format should be used in preparing the PRR:

**3.8.1. Authority:**

3.8.1.1. Identifies the preliminary ADA review control number.

3.8.1.2. Identifies the PRO's name, rank/grade, title, and date of appointment.

**3.8.2. Matters Reviewed:**

3.8.2.1. Includes a list of individuals that were contacted or interviewed, or who provided information relevant to the review. For military members, include the name, rank, and position title; for Federal employees, include the name, grade and job series number (e.g., GS-1173-12), and position title; and for contractor personnel and others, include the name and position title.

3.8.2.2. Includes the date the potential violation occurred, the date of discovery, how the violation was discovered, the amount of the violation, and the Treasury symbol, year, and title of the appropriation (e.g., 5793400, Fiscal Year 1999, Air Force, Operation and Maintenance).

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

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

### 3.8.3. Facts and Discussion:

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

3.8.3.2. Discusses how the potential ADA violation was discovered. If it resulted from an audit report, the PRO must identify the audit report title, number, date, and issuing organization. In addition, if the audit recommendation is based on asserted conclusions of law, the PRO should request the assigned legal advisor provide an independent analysis of the auditor's legal conclusions. Conclusions of law are not facts. They are findings or conclusions based on the application of rules of law to the facts. If the facts recited by audit report are immaterial, irrelevant, or do not otherwise support the auditor's conclusions of law, the PRO should state so in the PRR.

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

3.8.3.4. Enunciates the basis of any potential ADA violation. The PRO will also include one of the following types of violations in the PRR: (a) charging an incorrect appropriation when funds are not available from the correct appropriation, (b) exceeding the recorded obligations for disbursements, (c) exceeding the appropriation or fund availability for obligations, (d) charging an incorrect fiscal year when funds are not available from the correct fiscal year, (e) exceeding the available obligation authority, (f) exceeding the minor construction limitation, (g) exceeding the maintenance and repair limitation for military family housing, (h) failing to record an obligation, (i) accepting voluntary services, or (j) other (explain).

3.8.3.5. Identifies the statutory law that was potentially violated (e.g., Title 31, U.S.C., Section 1341(a), 1342, or 1517(a)).

3.8.3.6. Identifies the level at which available funding was allegedly exceeded (i.e., program office, product or logistics center, MAJCOM, FOA, or DRU appropriation or limitation, etc.). The PRO can usually determine this by identifying the holder of funds at the time the liability was incurred. If budget authority was provided to a lower level of command or program responsibility, by means of a funding authorization document, the addressee is usually the holder of funds. If the funding authorization document is withdrawn, without obtaining written confirmation of availability for withdrawal from the lower subdivision of funds, the holder of funds will be at the higher or withdrawing subdivision level. If an over-obligation results from a failure of the lower subdivision to post a valid pre-existing obligation, prior to advising the withdrawing subdivision of the un-obligated balance available, the holder of funds will be at the lower subdivision.

3.8.3.7. Provides either the date that the funding correction was posted, or the date that it will be posted, and explains how the funding correction was accomplished (i.e., additional funds received, funds realigned, etc.).<sup>1</sup> A deferred posting of a corrective entry does not preclude the necessity to report a potential ADA violation.

3.8.4. **Other Areas of Discussion.** Discusses any other issues that may not have directly caused the potential ADA violation, but are essential in completing the PRR.

3.8.5. **Conclusion.** Based on the results of the preliminary ADA review, the PRO states whether a formal ADA investigation is necessary. The PRO must attach all documentation and support for the conclusion. In certain cases, a reasonable conclusion may be impossible without audit support. If an audit is considered necessary to properly develop the facts, the PRO must explain the reason(s) why in the conclusion.

3.8.6. **Legal Opinion.** The PRR is incomplete without an attached legal opinion. However, the legal opinion should not declare that an actual ADA violation occurred (this is the function of the formal ADA investigation). The legal opinion should identify, interpret, and apply relevant statutes, instructions, regulations, and precedent from Comptroller General Opinions or other sources. The legal opinion should also assess the PRO's adequacy of performing the preliminary ADA review and completing the PRR. For example, did the PRO adequately do the following:

3.8.6.1. Describe the roles of the individuals involved, or are follow-up questions necessary? If an apparent over-obligation resulted from the un-ratified actions of someone who lacked authority to bind the Government, an ADA violation (and need for a formal ADA investigation) may not exist.

3.8.6.2. Develop and explain the underlying basis for the choice of appropriation? If an exercise in professional judgment as to the choice of funds appears to be rationally based, properly documented, and not clearly outside the parameters of published funding guidance, at the time of the decision, then a formal ADA investigation may not be warranted.

3.8.6.3. Explain the impact of a funding correction to an un-obligated balance (e.g., was the un-obligated balance in the proper account sufficient to absorb the funding correction)?

3.8.6.4. Establish the context for the alleged funding error or omission (e.g., is this really a potential ADA violation, or was it simply an accounting error)? An accounting error is more likely to have occurred if the mistake is discovered shortly after it is made, and it can be easily corrected without the need for reprogramming actions or withdrawals from a higher-level subdivision of funds.

3.8.6.5. Describe whether the appropriation was exceeded (Title 31, U.S.C., Section 1341(a)), or whether the lowest administrative subdivision of funds was exceeded (Title 31, U.S.C., Section 1517(a))? If the latter occurred, an ADA violation is still possible, but the remedy will not require a supplemental appropriation. In fact, if funds are available for withdrawal from another program or account, at the lowest subdivision of funds, to cover the corrective entry, and no other regulatory or statutory limitation has been exceeded, then a formal ADA investigation may not be warranted.

**3.9. Inspector General (IG) Hotline Complaints.** If the need for a preliminary ADA review results from a DoDIG<sup>2</sup> or SAF/IG hotline complaint, SAF/FMPF will notify the ADA Focal Point (SAF/FM, at

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1. In accordance with AFI 65-601, Volume I, Chapter 6, paragraph 6.8.5, all upward obligation/accounting adjustments involving a potential ADA violation, whether during a preliminary ADA review or a formal ADA investigation, must be submitted to the Deputy Assistant Secretary, Budget, Budget Management and Execution, Policy and Fiscal Control (SAF/FMBMM) for approval, regardless of the dollar amount.

the Secretariat and Air Staff), and provide them with a preliminary ADA review control number. Although the preliminary ADA review will be performed and completed in the same manner as previously explained in this chapter, the PRO must be advised that the hotline complaint is privileged information. As a result, it will not be released, reproduced, or shared (in whole or in part) with any individual outside the Air Force without the approval of the Inspector General, USAF.

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2. For DoDIG Hotline Complaints: SAF/FMPF must submit a Hotline Completion Report (HCR) to the Secretary of the Air Force, Office of the Inspector General, Complaints Resolution Directorate (SAF/IGQ), as soon as the preliminary ADA review has been completed.

## Chapter 4

### FORMAL ADA INVESTIGATIONS

**4.1. Background.** Formal ADA investigations are performed within 15 working days after the preliminary ADA review determines that a potential ADA violation has occurred. A formal ADA investigation is also performed when specifically requested by OUSD(C) or SAF/FM. When appropriate, formal ADA investigations will be coordinated through the servicing Air Force Office of Special Investigations (AFOSI) detachment, where a determination will be made on whether to open an AFOSI investigation. The investigating officer does the following, when performing a formal ADA investigation:

- 4.1.1. Identifies and documents the relevant facts and circumstances surrounding the potential ADA violation, which consists largely of a validation of facts found in a preliminary ADA review.
- 4.1.2. States a conclusion as to the existence of an actual ADA violation, supported by the evidence and applicable legal precedent.
- 4.1.3. Identifies the events which caused the ADA violation.
- 4.1.4. Establishes whose action or inaction brought about the ADA violation, and the highest level of management that could have prevented the violation.
- 4.1.5. Identifies the required procedural and funding corrections and whether the corrections have already been made.
- 4.1.6. Recommends management actions taken or planned to prevent a recurrence of the ADA violation.
- 4.1.7. Completes the formal ADA investigation and provides the results to SAF/FMPF by the due date. Normally, the due date will be six months from the investigation start date. However, SAF/FM may allow less time, depending on the extent of the violation. Under no circumstances will the formal ADA investigation take longer than six months.
- 4.1.8. Completes the “Checklist for Final Summary Report of Violation” after the formal ADA investigation has been completed, but before submission to the ADA Focal Point, to ensure all of the necessary requirements have been met.

**4.2. Selecting an Investigating Officer (IO).** When selecting an IO, the Appointing Official must consider the individual’s experience or expertise in financial management and completion of fiscal law training, as well as, their ability to perform an independent review<sup>3</sup>. To ensure independence, it is highly recommended that the Appointing Official select the IO from an organization external to the immediate organization being investigated (e.g., outside the program office where the potential ADA violation may have occurred). The appearance of a conflict of interest or bias should be the determining factor in non-selection. It is also desirable, but not mandatory, that the IO’s rank/grade be equal to, or greater than, the highest-ranking individual whose actions are under review.

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3. If a potential violation appears to involve a complex situation or a multitude of functional areas, then a “team approach” may be necessary. The Appointing Official shall ensure the IO 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 may also be considered.

**4.3. Appointing an IO.** The Appointing Official selects the IO from a roster of certified individuals, maintained by the Comptroller. However, in extenuating circumstances, the Appointing Official may, first, direct the individual selected to receive the required training and, then, place the individual on the roster of certified individuals before appointment. The IO will be appointed in writing, within 15 working days after SAF/FMPF directs the formal ADA investigation, and the appointment memorandum must include the following (see [Attachment 3](#), for an example):

4.3.1. ADA case control number.

4.3.2. Specific time frames to be met (not to exceed four months for the investigation, and two months for the disciplinary actions phase of the investigation).

4.3.3. A statement noting that the IO is certified as properly trained and qualified. The IO must attach a copy of the ADA certificate of training to the Draft Report of Violation (ROV).

4.3.4. A statement noting that the investigation is the individual's primary duty until completion.

**4.4. IO Responsibilities.** The IO will prepare a Draft ROV that contains all of the evidence required to support a factually and legally sound determination that an ADA violation has or has not occurred. The IO will also accomplish the formal ADA investigation within the framework of DoD Financial Management Regulation 7000.14-R, Volume 14, with proper regard for the substantive and procedural rights of the potentially responsible individual(s), as explained within this guidance. The IO does the following, when a potential ADA violation is identified:

4.4.1. Obtains a legal sufficiency review from the Appointing Official's SJA or servicing legal office.

4.4.2. Identifies the responsible individual(s).

4.4.3. Notifies the responsible individual(s), in writing, of the tentative conclusions, and provides the responsible individual(s) an opportunity to comment on the facts and circumstances contained in the Draft ROV.

4.4.4. Identifies any remedial action taken or planned by the affected organization, to correct the accounts and properly fund the subject liability, and to prevent a recurrence.

**4.5. SJA Investigative Role.** The Appointing Official will assign a judge advocate or civilian attorney to advise the IO. The IO must consult with the legal advisor before beginning the investigation and periodically thereafter.

**4.6. Gathering and Reviewing Evidence.** The IO does the following, when gathering and reviewing evidence:

4.6.1. Reviews the Preliminary Review Report (PRR) and legal review(s) to ensure a full understanding of the facts and circumstances of the potential ADA violation.

4.6.2. Identifies by name, rank/grade, and duty title, the holder of the funds (e.g., Colonel J. J. Smith, 9999<sup>th</sup> Air Wing Commander) and obtains an evaluation of the performance of their funds control responsibilities. The level of command immediately above the holder of funds will, normally, furnish this evaluation.

4.6.3. Examines the documentary evidence associated with the potential ADA violation (i.e., transaction and funding documents, management's approval of the transaction and funding documents, regu-

latory or statutory limitations, etc.), lists each document, and includes a copy of each document in the Draft ROV.

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

4.6.5. Assembles and analyzes the documented evidence. Specifically,

4.6.5.1. Develops and documents a list of findings, based upon the evidence, and identifies the evidence that supports each finding.

4.6.5.2. Develops and documents a list of conclusions, including which specific act or failure to act caused the potential ADA violation, and identifies the evidence and findings that support each conclusion.

4.6.5.3. Determines and confirms whether an ADA violation actually occurred and, if so, documents the specific section of Title 31, U.S.C. (e.g., 1341(a), 1342, or 1517(a)) that was violated. This determination should be made in consultation with the assigned legal advisor.

4.6.5.4. Identifies the date the ADA violation occurred, the date the violation was discovered, the amount of the violation, and the Treasury symbol, year, and title of the appropriation (e.g., 5793400, Fiscal Year 1999, Air Force, Operation and Maintenance).

4.6.6. Determines if the acts that caused the ADA violation were in compliance with established internal controls or local operating procedures. If not, the IO determines why the internal controls or operating procedures were deficient and recommends the appropriate improvements necessary to prevent future violations.

4.6.7. Provides a list of “lessons learned,” for use by others in addressing similar circumstances, by consulting with the management officials involved.

**4.7. Obtaining Testimony.** The IO should obtain sworn testimony from all individuals having knowledge of the transactions and events surrounding the suspected ADA violation, including the individual(s) tentatively identified as responsible for the ADA violation. Sworn testimony (provided under oath) is desired because it has greater evidentiary value, puts the witness on notice that the interview is a serious matter, and will subject the witness to penalties for perjury or making a false statement. Although electronically recorded (verbatim) transcripts are not mandatory, they are desired. The IO must include the results of all testimonies obtained, including documentary evidence, in the Draft ROV. If testimony given by a witness conflicts with documentary or testimonial evidence, the IO must re-interview the witness and seek corroboration by interviewing additional witnesses, if appropriate. The IO may use the investigative procedures described in AFI 90-301, *Inspector General Complaints*, as a point of reference (but not as the authority) for obtaining testimony. Specifically, the IO does the following, when obtaining sworn testimony:

4.7.1. Interviews all of the individuals involved with the suspected transactions and documents their testimony. This includes individuals who either initiated the actions under investigation, or who provided input or advice to the individuals that made or approved the decisions. The IO must establish the role of all participants in the specific decisions or actions taken, as well as, their functional responsibilities in the organization.

4.7.2. Provides the individual(s) with a copy of the Privacy Act Statement (before the interview begins), asks the individual(s) to read the statement, and then asks, for the record, if they have read and understand the Privacy Act Statement. If so, the IO will have them sign and date the Privacy Act Statement, and include it in the Draft ROV.

4.7.3. Recognizes that an unqualified promise of confidentiality cannot be offered to a witness during a formal ADA investigation, due to the regulatory requirement that the responsible individual(s) must be provided with a copy of the Draft ROV, for comment and presentation of rebuttal evidence or additional witnesses. Only personal information protected under the Privacy Act, or qualifying for an exception to release under the Freedom of Information Act (FOIA), can be withheld from release.<sup>4</sup>

4.7.4. Elicits an explanation from the individual(s), who is potentially responsible for the suspected ADA violation, for their role or actions in the violation. However, if the IO has credible evidence that the individual(s) knowingly and willfully committed the ADA violation, or that the individual(s) made a conscious and deliberate attempt to circumvent fiscal law or established procedures, the individual(s) may be a "suspect" and entitled to a rights advisement. Before interviewing the individual(s), the IO should consult the assigned legal advisor and installation SJA or servicing legal office. Similarly, if during the interview an individual(s) becomes a suspect, the IO should immediately terminate the interview and consult the legal advisor and installation SJA or servicing legal office. The SJA or servicing legal office will then coordinate the matter with the AFOSI, to determine whether a separate criminal investigation should be initiated<sup>5</sup>.

4.7.5. Consults with the assigned legal advisor and installation SJA, if civilian employees (including nonappropriated fund employees) are members of a collective bargaining unit. Specifically, these employees have a right to union representation, if they reasonably believe that disciplinary actions will be taken against them, as a result of the interview, and they request representation. Similarly, contract employees might also be afforded certain rights under their respective contract.

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4. The identities of certain witnesses in IG investigations, performed pursuant to AFI 90-301, may be protected when essential information cannot otherwise be obtained without a guarantee of confidentiality. As such, a FOIA exemption may be available to permit the withholding of discrete portions of the full IG report of investigation from public release. DoD 7000.14-R, Vol. 14, Chapter 7, paragraph B.3, requires that the person(s) named responsible in a Draft ROV be given an opportunity to read the report of facts and circumstances leading to the violation. This includes transcripts of witness statements. However, a responsible individual's right to review a copy of the Draft ROV does not automatically create a corresponding right of access in third parties, and until the report is approved by OUSD(C) for transmittal to the President, through OMB, and to the Congress, it should be treated as a pre-decisional document. Pending approval by OUSD(C), the Draft ROV, summary report, and all interim drafts should be marked "For Official Use Only". See DoD Directive 5400.7 for a discussion of the proper application of the FOUO legend. See AFI 33-332 for a discussion of promises of confidentiality covered under the Privacy Act.

5. In accordance with Article 31, Uniform Code of Military Justice, and the 5th Amendment, United States Constitution, if there is credible evidence that an individual knowingly and willfully committed the ADA violation, they become a "suspect," and they must be read their rights before further questioning. The IO should consult the assigned legal advisor and installation SJA, or servicing legal office, whenever an individual becomes a suspect.

**4.8. Determining Responsibility.** A responsible individual is the person who authorized or created the distribution, obligation, or expenditure in question. A formal ADA investigation is considered incomplete until at least one individual has been named responsible for the ADA violation. The IO's conclusion that a responsible individual could not be identified is not acceptable. Identification of more than one responsible individual is expected, under certain circumstances. The IO does the following, when determining responsibility:

4.8.1. Analyzes all pertinent facts and circumstances before affixing responsibility for an ADA violation. The responsible individual(s) will, generally, be the highest-ranking official that had actual or constructive knowledge of precisely what actions were taken and the impropriety or questionable nature of such actions. Often, the responsible individual(s) will have knowledge of either factor. However, the person in the best position to prevent the ultimate error is the highest-ranking official who was aware of both factors. The IO will attempt to discover the specific act, or the failure to act, that caused the violation and who was responsible. The IO will clearly document what the individual(s) did, or failed to do, to cause or contribute to the ADA violation. The IO will also assess and document whether the responsible individual(s) committed the ADA violation knowingly and willfully.

4.8.2. Determines to what extent, and to what degree, the individual(s) was responsible for the ADA violation. Specifically,

4.8.2.1. If operating personnel failed to follow established internal controls or operating procedures, the IO will identify that individual(s) as bearing a significant responsibility for the ADA violation.

4.8.2.2. If a supervisor requested the employee(s) to disregard established internal controls or operating procedures, the IO will identify the supervisor as bearing a significant responsibility for the ADA violation.

4.8.2.3. If the established internal controls or operating procedures are deficient, and the deficiencies were a major contributing cause of the violation, the IO will identify the supervisor that was responsible for the controls or procedures as bearing a significant responsibility for the ADA violation.

4.8.2.4. The IO may identify a Commander, budget officer, or fiscal officer as responsible, due to their overall responsibility and position, or the fact that they are designated as the holder of funds, but only if they failed to properly exercise their responsibilities. If it is impossible to identify the individual(s) whose actions or inactions brought about the ADA violation, the IO must assign the holder of funds as the responsible individual.

4.8.2.5. If the violation involves a centrally managed allotment, the IO will identify the head of the operating agency, at the time the violation occurred, as responsible for the ADA violation. However, other individuals may also be identified as responsible for the ADA violation.

4.8.2.6. If an accounting error caused the ADA violation, the IO will identify the individual(s) who made the accounting error as responsible, assuming no other official should have detected the mistake.

4.8.3. Notifies the ADA Focal Point who, in turn, notifies SAF/FMPF if the individual(s) identified as responsible for the ADA violation is a Senior Official. SAF/FMPF will immediately do the following:

4.8.3.1. Notify the Secretary of the Air Force, Office of the Inspector General, Senior Official Inquiries Directorate (SAF/IGS) for allegations against an O-7 (Brigadier General) select and above; current or former Civilian above the grade of GS/GM-15, or equivalent grade in other civilian pay schedules; current or former members of the Senior Executive Service (SES); or current or former Air Force (Civilian) Presidential Appointees (AFI 90-301, paragraph 3.2.2).

4.8.3.2. Notify the Secretary of the Air Force, Office of the Inspector General, Complaints Resolution Directorate (SAF/IGQ) for allegations against an O-6 (Colonel) and/or GS/GM-15 or equivalent (AFI 90-301, paragraph 3.8.1).

**4.9. Preparing and Releasing the Draft Report of Violation (ROV) to the Responsible Individual(s).** At the conclusion of a formal ADA investigation, the IO will prepare a Draft ROV, which documents the results of the investigation, but excludes the actual administration of disciplinary actions. SAF/FMPF will then prepare a Preliminary Summary ROV (SRV), based on the IO's Draft ROV (see paragraph 4.10.2.), and the DoD, Office of the General Counsel (Fiscal) (DoD OGC(F)) will review the Preliminary SRV before disciplinary actions are considered. SAF/FMPF will direct the ADA Focal Point (IO, at the Secretariat and Air Staff) to proceed with the disciplinary actions phase of the investigation (see paragraph 4.11.) and complete the Final ROV. The IO does the following, when preparing and releasing the Draft ROV for review and comment:

**4.9.1. Draft ROV Format: Part I – Authority:**

4.9.1.1. Identifies the ADA case control number (e.g., F03-01).

4.9.1.2. Provides the name, rank/grade, and title of both the appointing official and the IO.

4.9.1.3. Includes a copy of the IO's appointment memorandum, which must include an overview of the issues to be investigated.

**4.9.2. Draft ROV Format: Part II – Matters Investigated:**

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

4.9.2.2. Provides the name, military rank or civilian grade and job series (e.g., GS-1173-12), and the position title, organization, and location (e.g., Chief, Housing Programs Branch, 1234<sup>th</sup> Civil Engineering Squadron, Nowhere AFB AK) of each individual that was interviewed or provided written statements. The IO does the following for each of the individuals interviewed:

4.9.2.2.1. Provides them with a copy of the Privacy Act Statement (see [Attachment 4](#), for an example), before the interview begins; asks them to read the statement; and then asks, for the record, if they have read and understand the statement.

4.9.2.2.2. Requests they sign and date the Privacy Act Statement.

4.9.2.2.3. Includes the signed/dated Privacy Act Statement in the Draft ROV.

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

**4.9.3. Draft ROV Format: Part III – Facts and Discussion:**

4.9.3.1. Identifies the Treasury symbol, year, and title of the appropriation or other fund account involved (e.g., 5793400, Fiscal Year 1999, Air Force, Operation and Maintenance).

4.9.3.2. Summarizes the relevant facts found in the PRR, if no additional facts beyond those identified in the PRR have been found, and specifically accepts or rejects those findings, as appropriate, for the purpose of the formal ADA investigation.

4.9.3.3. Identifies the amount of the ADA violation. The amount of the violation must correspond to the suggested amount of additional funds required to support a corrective entry in the accounts, or the amount of the regulatory or statutory limitation on funding authority that was exceeded. In the latter case, the amount of the ADA violation would be the total that exceeded the limitation.

4.9.3.4. States whether the ADA violation was an over-obligation of an appropriation, apportionment, allotment, or other formal subdivision of funds, and explains what effect, if any, this had on the next higher level of funding. Specifically,

4.9.3.4.1. If the violation involves an administrative subdivision of funds (which can be either an allotment, a centrally managed allotment, an operating budget authority, an allocation, a sub-allotment, or a sub-allocation), then state whether the administrative subdivision was over-obligated.

4.9.3.4.2. Exceeding an administrative subdivision of funds at the local level can lead to the next higher level exceeding its subdivision of funds and also could lead to the Air Force apportionment and appropriation being exceeded.

4.9.3.5. Identifies the location of the ADA violation.

4.9.3.6. Identifies the dates that the ADA violation occurred and was discovered.

4.9.3.7. Describes how the ADA violation was discovered. If the investigation was undertaken because of an audit report, identify the report by title, number, date, and issuing audit organization.

4.9.3.8. Identifies the name, rank/grade, and position of the holder of funds and provides an evaluation of the performance of their fund control responsibilities. This evaluation may be omitted if the holder of funds is named responsible for the violation.

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

**4.9.4. Draft ROV Format: Part IV – Other Areas of Discussion:**

4.9.4.1. Focuses attention on the events and circumstances that led to a determination of a potential violation, without the unnecessary re-statement of the facts.

4.9.4.2. Discusses the evolution of the issues under investigation, including a validation, clarification, or contradiction of the facts and conclusions drawn in prior reviews or audit reports.

4.9.4.3. Provides a perspective on the credibility or weight of conflicting documentary or testimonial evidence, if any. The IO characterizes the evidence and identifies any mitigating facts or extenuating circumstances surrounding the potential violation, including crucial facts that could or could not be satisfactorily established (based on the accumulated evidence), any technical issues

on which consensus could not be achieved (among the support team), and any other comments or findings that are pertinent to the investigation.

#### 4.9.5. **Draft ROV Format: Part V – Conclusions:**

4.9.5.1. Includes the results of all interviews and testimonies obtained from individuals having knowledge of the transactions and events surrounding the suspected ADA violation, including the individual(s) tentatively identified as being responsible for the ADA violation. Since conflicts may exist between the testimony of two or more witnesses, or between the testimony of a witness and a document prepared at the time of the events being recalled, the IO must reconcile conflicts, by weighing the conflicting evidence and drawing conclusions, based on the weight of the evidence.

4.9.5.2. Identifies the section or subsection of Title 31, U.S.C. (e.g., 1341(a)(1)(A), 1341(a)(1)(B), 1342, 1517(a)(1), or 1517(a)(2)), that was violated, through discussion with and confirmation from the assigned legal advisor.

4.9.5.3. Provides a detailed summary of what actually caused the violation and the associated circumstances.

4.9.5.4. Provides the name, current and past (at the time of the violation) military rank or civilian grade and job series (e.g., GS-1173-12), and the current and past position title, organization, and location (e.g., Chief, Housing Programs Branch, 1234<sup>th</sup> Civil Engineering Squadron, Nowhere AFB AK) of the responsible individual(s).

4.9.5.5. Explains the nature of the error or omission that caused the violation. The IO considers the following questions in describing the process failure or judgmental error:

4.9.5.5.1. Did the violation occur because the individual(s) carelessly disregarded instructions?

4.9.5.5.2. Did the violation occur because the individual(s) was inadequately trained or lacked knowledge to perform their job properly?

4.9.5.5.3. Did the violation occur because of an error or mistake in judgment by the individual(s) or supervisor?

4.9.5.5.4. Did the violation occur because of a lack of adequate internal controls or operating procedures?

4.9.5.6. Concludes, by a preponderance of the evidence, that the cause(s) of the ADA violation and the individual(s) responsible for the violation are properly supported. In other words, the evidence must show that the IO's conclusions *more likely than not* are correct.

#### 4.9.6. **Draft ROV Format: Part VI – Recommendations:**

4.9.6.1. Recommends the appropriate actions taken to prevent ADA violations of a similar type in the future (procedural corrections), as well as, specific corrections to accounts required as a result of the error or oversight (funding corrections). Specifically, the IO must include the following in the Draft ROV:

4.9.6.1.1. Actions taken to implement the recommended procedural corrections or improvements in internal controls or operating procedures. The IO must describe remedial actions, in detail, so they may be evaluated for possible Command-wide application. The IO must also

state what corrective actions were actually taken, or are being taken, to preclude similar violations in the future. Recommendations for future consideration of installation-level corrective actions are not acceptable.

4.9.6.1.2. Actions taken to make the appropriate funding corrections. The IO must include copies of the actual funding correction documents in the Draft ROV. The IO cannot simply state, "funds will be requested."

4.9.6.2. Recommends the "Lessons Learned." The IO will obtain, from the Air Force management officials involved, any lessons learned from the violation, for use by others in addressing similar circumstances.

4.9.6.3. Signs and dates the Draft ROV.

#### 4.9.7. **Releasing the Draft ROV to Responsible Individual(s) for Comment:**

4.9.7.1. Provides the responsible individual(s) an opportunity to read the Draft ROV (after Appointing Official's SJA or servicing legal office approval), excluding any written legal advice provided to the IO, and to comment or provide rebuttal evidence. The IO should prepare a Cover Memorandum, mail the Draft ROV to the responsible individual(s) (via registered mail, restricted delivery, return receipt requested), and allow 10 working days for a response. The IO should advise the responsible individual(s) of the following in the Draft ROV Cover Memorandum (see **Attachment 5**, for an example):

4.9.7.1.1. An ADA violation has occurred, they are named a responsible individual for the violation, and they are being allowed an opportunity to review the Draft ROV and examine evidence on which the determination was based.

4.9.7.1.2. Upon OUSD(C) approval of the Draft ROV, their name will be provided to the President, through OMB, and to the Congress.

4.9.7.1.3. They may consult with private legal counsel at their own expense or, when applicable, a union representative. Military members may also consult the Area Defense Counsel. In special interest investigations, the responsible individual(s) may be provided a government legal advisor.

4.9.7.1.4. A sworn or un-sworn statement, regarding the alleged violation, may be submitted after reviewing the Draft ROV and evidence. If the individual(s) declines to make a statement, the IO will indicate this in an addendum to the Draft ROV.

4.9.7.1.5. A witness may be designated to testify in their behalf. Designated witnesses will either be interviewed, or provided an opportunity to make a written statement for the record. If the designated witness declines to make a statement, the IO will indicate this in an addendum to the Draft ROV.

4.9.7.1.6. Statements or comments to the Draft ROV should acknowledge they have read the Draft ROV, understand they are being held responsible for the violation, and they may provide pertinent additional information, which was not addressed in the Draft ROV, including the names of additional witnesses. The responsible individual(s) may also refute statements made by others, through a sworn or un-sworn statement, or identify additional documentary evidence. If the responsible individual(s) refuses to give a statement, they should submit a signed statement of declination. If the responsible individual(s) refuses to sign a statement of declina-

tion, the IO should include a statement to that effect in an addendum to the Draft ROV. If the responsible individual(s) cannot be located, despite a due diligent effort, the IO should include a statement to that effect in an addendum to the Draft ROV.

4.9.7.2. Revises the Draft ROV, if substantial changes occur (due to new or conflicting facts and circumstances discovered or comments and rebuttal evidence received), and provides the responsible individual(s) an opportunity to read the revised Draft ROV and provide additional comments or rebuttal evidence to the revision.

4.9.7.3. Evaluates all comments and rebuttal evidence provided by the responsible individual(s), makes a final determination of who should be held responsible for the ADA violation and why, determines whether the individual(s) knowingly or willfully committed the violation, and includes all of this information in an addendum to the Draft ROV.

#### 4.9.8. **Draft ROV Checklist Completion:**

4.9.8.1. Completes the “Checklist for Final Summary Report of Violation” (see [Attachment 6](#), for an example), after all of the above steps (paragraph [4.9.1.](#) through [4.9.7.3.](#)) have been completed, to ensure that all of the necessary requirements have been met, except for the administration of disciplinary actions, if warranted (Section “P” on the checklist).

4.9.8.2. Includes a copy of the completed checklist in the Draft ROV.

4.9.8.3. Forwards the Draft ROV (including all attachments, addenda, and checklist) to the ADA Focal Point (SAF/FMPF, at the Secretariat and Air Staff).

#### 4.10. **Processing the Draft ROV – Before Disciplinary Actions are Administered:**

4.10.1. The ADA Focal Point will review the Draft ROV for accuracy and completeness and forward it to the Appointing Official’s SJA or servicing legal office for a legal sufficiency review. The ADA Focal Point does the following, upon completion of the legal sufficiency review:

4.10.1.1. Prepares a Comptroller Transmittal Memorandum (see [Attachment 7](#), for an example), and forwards the Draft ROV (including all attachments, addenda, checklist, and legal sufficiency review) to the Comptroller, for review and approval.

4.10.1.2. Mails **the original** Draft ROV (including all attachments, addenda, checklist, and legal sufficiency review) to SAF/FMPF, via overnight/express mail.

4.10.1.3. Retains **a copy** of the Draft ROV (including all attachments, addenda, checklist, and legal sufficiency review). If the DoD OGC(F), ultimately, determines that an ADA violation occurred, the ADA Focal Point will have to forward these documents, along with the Certification(s) of Disciplinary Action Memorandum, to the Appointing Official for approval.

4.10.2. SAF/FMPF will prepare a Preliminary Summary Report of Violation (SRV) and forward it to SAF/GCA for their legal opinion. After SAF/GCA renders their legal opinion, SAF/FMPF will forward the Preliminary SRV and SAF/GCA legal opinion to OUSD(C), who will review it for accuracy and completeness and forward it to the DoD OGC(F) for their legal opinion.

4.10.2.1. If the DoD OGC(F) determines that an ADA violation did not occur, OUSD(C) will forward their opinion to SAF/FMPF, who will notify the ADA Focal Point (IO, at the Secretariat and Air Staff). No disciplinary actions will be administered, and the case will be closed.

4.10.2.2. If the DoD OGC(F) determines that an ADA violation did occur, OUSD(C) will forward their opinion to SAF/FMPF, who will direct the ADA Focal Point (IO, at the Secretariat and Air Staff) to proceed with the disciplinary actions phase of the investigation and “finalizing” the ROV.

**4.11. Administering Disciplinary Actions.** The ADA Focal Point (IO, at the Secretariat and Air Staff) will forward the Draft ROV to the current Commander/Supervisor of the responsible individual(s), even if located at a different office, location, or Command (see [Attachment 8](#), for an example). The current Commander/Supervisor of the responsible individual(s) will review the ROV and administer or initiate the appropriate disciplinary actions, if any, provided he/she is not also implicated in the ADA violation.<sup>6</sup> However, if the responsible individual(s) is retired, or no longer employed by the Federal Government, the Appointing Official will consider and, if feasible, administer the appropriate disciplinary actions. Specifically,

4.11.1. If the responsible individual(s) is still on active duty, or employed by the Federal Government, the current Commander/Supervisor, in consultation with his/her SJA or servicing legal office, will do the following (or, if necessary, refer the matter to the appropriate person within the responsible individual’s chain-of-command):

4.11.1.1. Determines and administers the appropriate type or level of disciplinary action. The type or level of disciplinary action administered, if any, shall be commensurate with the nature and seriousness of the offense, as well as, the responsible individual’s performance record, level of experience, and level of responsibility. Any mitigating circumstances should also be considered. Examples of disciplinary actions for military members and Federal employees, from least to most severe, are as follows:

4.11.1.1.1. Military Members: (a) Administrative Counseling, (b) Oral Admonishment or Letter of Admonishment, (c) Oral Reprimand or Letter of Reprimand, (d) Non-judicial Punishment Under Article 15, Uniform Code of Military Justice, and (e) Court-Martial or Criminal Penalties.

4.11.1.1.2. Federal Employees: (a) Oral Admonishment, (b) Written Reprimand, (c) Suspension, (d) Reduction in Grade, (e) Removal, and (f) Criminal Penalties.

4.11.1.2. Prepares a Certification of Disciplinary Action Memorandum (see [Attachment 9](#), for an example) and provides it to the responsible individual(s). The Certification of Disciplinary Action Memorandum is required, whether disciplinary action is administered or not, and must include the following:

4.11.1.2.1. A full explanation/rationale for the disciplinary action or lack of disciplinary action administered.

4.11.1.2.2. A signed endorsement by the responsible individuals(s).

4.11.1.2.3. An acknowledgement that the current Commander/Supervisor (or the individual responsible for considering/administering the disciplinary action) understands that (a) an ADA violation is a violation of Federal Statute; (b) an ADA violation is a misuse of DoD funds, even though the misuse may not have been willful or knowing and/or harmful to the Air Force;

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6. If the current Commander/Supervisor is also implicated in the ADA violation, the Appointing Official will administer the appropriate disciplinary actions.

(c) the DoD is required to report the violation to the President, through OMB, and to the Congress; (d) even though a violation may not have been willful or knowing, that, by itself, does not justify the absence of disciplinary actions; and (e) disciplinary action commensurate with the severity of the violation should be taken against the individual(s) named responsible for a violation – including individuals that may have retired or are no longer working for the DoD.

4.11.1.3. Provides a copy of the Certification of Disciplinary Action Memorandum to the ADA Focal Point.

4.11.2. If the responsible individual(s) is no longer on active duty, or employed by the Federal Government, then the Appointing Official does the following:

4.11.2.1. Determines the appropriate type or level of disciplinary action to administer.

4.11.2.1.1. If retired military member was responsible for an ADA violation while on active duty, to the extent practical, the same disciplinary action should be taken as would have been taken if the retired member were still on active duty. In most cases, the Appointing Official will state, “you would have received a (level of disciplinary action), if you were still on active duty, which is considered appropriate, given the circumstances.” In the case of a particularly aggravated case, involving serious malfeasance, the retired military member may also be recalled to active duty, for the purpose of military justice action (although the Secretary of the Air Force is the only individual who can make this decision).

4.11.2.1.2. Actions taken against retired Federal employees may be limited, as well, because these individuals no longer have a continuing relationship with the Federal Government. In most cases, the Appointing Official will state, “you would have received a (level of disciplinary action), if you were still actively employed in the Federal Government, which is considered appropriate, given the circumstances.”

4.11.2.2. Prepares a Memorandum of Notification (see [Attachment 10](#), for an example). The Memorandum of Notification must include the following:

4.11.2.2.1. A full explanation/rationale for the disciplinary action or lack of disciplinary action administered. Even though the responsible individual(s) is no longer on active duty, or employed by the Federal Government, the Appointing Official should still pursue appropriate disciplinary action.

4.11.2.2.2. An acknowledgement that the Appointing Official understands that (a) an ADA violation is a violation of Federal Statute; (b) an ADA violation is a misuse of DoD funds, even though the misuse may not have been willful or knowing and/or harmful to the Air Force; (c) the DoD is required to report the violation to the President, through OMB, and to the Congress; (d) even though a violation may not have been committed willfully or knowingly, that, by itself, does not justify the absence of disciplinary actions; and (e) disciplinary action commensurate with the severity of the violation should be taken against the individual(s) named responsible for a violation – including individuals that may have retired or are no longer working for the DoD.

4.11.2.3. Provides the Memorandum of Notification to the ADA Focal Point (IO, at the Secretariat and Air Staff), who will mail it to the responsible individual(s) (via certified mail, restricted delivery, return receipt requested), allowing 10 working days for a response. The ADA Focal

Point (IO, at the Secretariat and Air Staff) will also make a copy of the Memorandum of Notification, for later submission to SAF/FMPF.

#### **4.12. Approving and Submitting the Final ROV to SAF/FMPF:**

4.12.1. The ADA Focal Point (IO, at the Secretariat and Air Staff) does the following:

4.12.1.1. “Finalizes” the Draft ROV, by completing Section “P” of the “Checklist for Final Summary Report of Violation,” that the IO previously submitted (see **paragraph 4.9.8.1**).

4.12.1.2. Prepares an Appointing Official Approval Memorandum (see **Attachment 11**, for an example).

4.12.1.3. Forwards the Approval Memorandum, Draft ROV, legal sufficiency review, Certification(s) of Disciplinary Action Memorandum, Memorandum of Notification(s) (if applicable), and “Checklist for Final Summary Report of Violation” to the Appointing Official, for review and approval.

4.12.2. The Appointing Official will review all of the documents, sign the Approval Memorandum, and return everything to the ADA Focal Point (IO, at the Secretariat and Air Staff).

4.12.3. The ADA Focal Point (IO, at the Secretariat and Air Staff) will mail the signed Approval Memorandum, Certification(s) of Disciplinary Action Memorandum, Memorandum of Notification(s) (if applicable), and “Checklist for Final Summary Report of Violation” to SAF/FMPF, via overnight/express mail, for preparation of the Final SRV and submission to OUSD(C) for closure.

#### **4.13. Determination of No Violation:**

4.13.1. If the formal ADA investigation results in a “no violation,” the IO will include this conclusion, supported by the appropriate justification, in the Draft ROV. The IO will sign the Draft ROV and forward it to the ADA Focal Point (Appointing Official, at the Secretariat and Air Staff). Specifically,

4.13.1.1. The ADA Focal Point will review the Draft ROV for accuracy and completeness and forward it to the Appointing Official’s SJA or servicing legal office for a legal sufficiency review. Upon completion of the legal sufficiency review, the ADA Focal Point will prepare an Appointing Official Approval Memorandum and forward the complete package to the Appointing Official, for review and approval. Upon approval, the ADA Focal Point will mail the Approval Memorandum, Draft ROV, and legal sufficiency review to SAF/FMPF, via overnight/express mail.

4.13.1.2. At Secretariat and Air Staff, the IO will prepare the Appointing Official Approval Memorandum and forward the Final ROV to the Appointing Official, for review and approval. Upon approval, the IO will mail the Approval Memorandum and Final ROV to SAF/FMPF, via overnight/express mail.

4.13.2. SAF/FMPF will forward the Approval Memorandum, Final ROV, and legal sufficiency review to SAF/GCA, for their legal opinion. If SAF/GCA agrees with the conclusion of no violation, SAF/FMPF will forward the results to OUSD(C) who, in turn, will forward it to the DoD OGC(F).

4.13.2.1. If the DoD OGC(F) agrees with the conclusion of no violation, SAF/FMPF will notify the ADA Focal Point (Appointing Official, at Secretariat and Air Staff), and the case will be closed.

4.13.2.2. If either SAF/GCA or the DoD OGC(F) does not agree with the conclusion of no violation, SAF/FMPF will notify the ADA Focal Point (Appointing Official, at the Secretariat and Air Staff), who will direct the IO to re-open and complete the case, including the identification of the responsible individual(s), appropriate disciplinary actions, and procedural and funding corrections.

#### **4.14. Releasing the Draft and Final ROV to Internal or External Agencies:**

4.14.1. The Appointing Official or Comptroller should not release the Draft ROV to anybody outside the immediate purview of the ADA investigation. The Draft ROV is an “unfinished product,” and neither SAF/GCA, nor the DoD OGC(F), has confirmed that an ADA violation occurred.

4.14.2. The Appointing Official or Comptroller should consult with the Appointing Official’s SJA or servicing legal office (SAF/GCA, at the Secretariat and Air Staff) before releasing the Final ROV to any internal or external agency. The Final ROV is extremely sensitive and must only be released to those agencies who have a valid “need-to-know.”

#### **4.15. Monthly Status Updates for On-Going Formal ADA Investigations:**

4.15.1. The MAJCOM ADA Focal Point will provide a monthly status update, to SAF/FMPF, for all on-going formal ADA investigations. The status update must include either specific dates, or estimated completion dates, for each case in progress.

4.15.1.1. If the investigation is proceeding, as planned, and the MAJCOM ADA Focal Point anticipates the Draft ROV (including the legal sufficiency review) will be mailed to SAF/FMPF on-time (before the required due date), then state this as the update and provide completion dates for each stage of the investigation (i.e., the date the Draft ROV was completed, the date the Draft ROV was provided to the Appointing Official’s SJA or legal servicing office, the date the legal sufficiency review was completed, the date that each responsible individual responded to the Draft ROV, the date the final package was mailed to SAF/FMPF, etc.).

4.15.1.2. If the Draft ROV is late in being completed, or if the MAJCOM ADA Focal Point does not think the Draft ROV will be mailed to SAF/FMPF before the due date, then state this as the update and provide the estimated completion dates for each stage of the investigation (i.e., the estimated date the Draft ROV will be completed, the estimated date the Draft ROV will be provided to the Appointing Official’s SJA or legal servicing office, the estimated date the legal sufficiency review will be completed, the estimated date that each responsible individual will respond to the Draft ROV, the estimated date the final package will be mailed to SAF/FMPF, etc.)

4.15.1.3. Since SAF/FMPF is required to submit a detailed, monthly ADA status report to the OUSD(C) each month, the MAJCOM ADA Focal Point must provide the monthly status update, via e-mail, no later than the second-to-last working day of each month.

MICHAEL MONTELONGO,  
Assistant Secretary of the Air Force  
(Financial Management and Comptroller)

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFI 33-332, *Privacy Act Program*

AFI 37-124, *The Information Collection and Interagency Air Force Information Collections*

AFI 65-106, *Appropriated Fund Support of Morale, Welfare, and Recreation and Nonappropriated Fund Instrumentalities*

AFI 65-601, Volume 1, *Budget Guidance and Procedures*

AFI 90-301, *Inspector General Complaints*

AFMAN 37-123, *Management of Records*

DFAS-DE, *Interim Guidance on Accounting for Obligations*

DoD Directive 5400.7, *DoD Freedom of Information Act (FOIA) Program*

DoD 7000.14-R, Volumes 2A, 2B, and 14, *Department of Defense Financial Management Regulation*

DoD Directive 7200.1, *Administrative Control of Appropriations*

***Abbreviations and Acronyms***

**ADA**— Antideficiency Act

**AFOSI**— Air Force Office of Special Investigations

**DOD**— Department of Defense

**DOD OGC(F)**— DoD, Office of the General Counsel (Fiscal)

**DRU**— Direct Reporting Unit

**FOA**— Field Operating Agency

**FOIA**— Freedom of Information Act

**IG**— Inspector General

**IO**— Investigating Officer

**MAJCOM**— Major Command

**OMB**— Office of Management and Budget

**OUSD(C)**— Office of the Under Secretary of Defense (Comptroller)

**PRO**— Preliminary Review Officer

**PRR**— Preliminary Review Report

**RDS**— Records Disposition Schedule

**ROV**— Report of Violation

**SAF/FM**— Assistant Secretary of the Air Force (Financial Management and Comptroller)

**SAF/FMB**— Deputy Assistant Secretary, Budget

**SAF/FMP**— Deputy Assistant Secretary, Financial Operations

**SAF/FMPF**— Director for Audit Liaison and Follow-up

**SAF/GC**— Air Force General Counsel

**SAF/GCA**— Deputy General Counsel (Fiscal & Administrative Law)

**SJA**— Staff Judge Advocate

**SRV**— Summary Report of Violation

**USC**— United States Code

**Attachment 2****SAMPLE PRELIMINARY REVIEW MEMORANDUM**

18 July 2002

MEMORANDUM FOR HQ PACAF/FM

FROM: SAF/FMPF

1130 Air Force Pentagon  
Washington DC 20330-1130

SUBJECT: Request for a Preliminary Review to Determine Whether a Potential Antideficiency Act (ADA) Violation Occurred

Your organization is requested to begin a preliminary review to determine whether a potential ADA violation has occurred and a formal investigation is necessary. The need for this preliminary review is based on the improper funding of maintenance and repair projects, at Nowhere Air Force Base, Alaska, completed during Fiscal Year (FY) 2001. Specifically, the maintenance and repair costs for three general officer quarters (GOQs) exceeded the \$35,000 Congressional maintenance and repair limitation, by approximately \$4,500 total, without prior authorization from Congress.

P02-10 is the preliminary review control number. Please complete the fact-finding phase and provide the preliminary review results to my office no later than 31 October 2002. Refer to Chapter 3, AFI 65-608, *Antideficiency Act Violations*, 1 May 1998, for instructions on performing a preliminary review. AFI 65-608 is available on-line at <http://afpubs.hq.af.mil> (under electronic publications, HQ USAF, Supplement "65," Financial Management). If the preliminary review results determine that no violation exists, and a legal review agrees, this case will be closed. Additional reporting requirements and milestones will be provided if a formal investigation is necessary.

Please complete and provide my office with the information requested in **Attachment 1** no later than 31 August 2002. Contact Mr. Bill Town, 695-0827 (DSN 225-0827), [townp@pentagon.af.mil](mailto:townp@pentagon.af.mil), if you have any questions or require additional information.

VAUGHN E. SCHLUNZ  
Director for Audit Liaison and Follow-up  
(Financial Management)

Attachment:

Preliminary ADA Information (P02-10)

**REPORTING INFORMATION FOR PRELIMINARY ADA REVIEWS.**

1. Preliminary Case Number	P02-10
2. Status	Under Investigation
3. Amount of Suspected Violation	\$4,500
4. Appropriation(s)	Family Housing Operation & Maintenance(5717045)
5. Organization	1234 <sup>th</sup> Civil Engineering Squadron
6. Location	Nowhere AFB Alaska
7. Nature of Violation	1517(a)(2) – Obligations authorized or incurred or expenditures made exceeded 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.
8. Date Suspected Violation Occurred	2 September 2001
9. Date Suspected Violation Discovered	2 July 2002
10. Date Investigation Began	29 July 2002
11. How Suspected Violation Was Discovered	Air Force Audit Agency
12. Brief Description of Potential Violation	The maintenance and repair costs for three general officer quarters (GOQs) exceeded the \$35,000 Congressional maintenance and repair limitation, by approximately \$4,500 total, without prior authorization from Congress.
13. Progress of Violation/Other Comments	
14. Name, Organization, and Phone Number of Investigating Officer	Mr. John Doe 1234 <sup>th</sup> FM/FMF DSN 111-1111

**Attachment 3****SAMPLE IO APPOINTMENT MEMORANDUM**

15 November 2002

MEMORANDUM FOR MR. JOHN DOE  
1234 FM/FMF  
9999 Moose Street  
Nowhere AFB AK 99414-0000

FROM: HQ PACAF/CV  
1111 Aloha Avenue  
Hickam AFB HI 96853-5420

SUBJECT: Case Number F03-01, Potential Antideficiency Act Violation, 1234<sup>th</sup> Civil Engineering Squadron, Nowhere AFB AK

You are appointed to conduct a formal investigation of a suspected violation of the Antideficiency Act (ADA) in accordance with Air Force Instruction (AFI) 65-608, Antideficiency Act Violations, 1 May 1998, and DoD 7000.14-R, Financial Management Regulation, Volume 14, 1 August 1995. The results of the preliminary review concluded a potential ADA violation, in the amount of \$4,500, occurred because the maintenance and repair costs for three general officer quarters (GOQs) exceeded the \$35,000 Congressional maintenance and repair limitation, without prior authorization from Congress. Your investigation is to be documented in a Draft Report of Violation (ROV). The format for this report can be found in AFI 65-608.

F03-01 is your formal investigation control number. The purpose of this investigation is to (1) identify and document the relevant facts and circumstances surrounding the suspected violation; (2) state a conclusion as to the existence of an actual violation, supported by the evidence and applicable legal precedent; (3) identify the events which caused the violation; (4) identify the required funding corrections and ensure that the corrections have already been made; (5) recommend management actions taken or planned (procedural corrections) to ensure that a similar violation does not occur in the future; and (6) establish whose action or inaction brought about the violation and at what level of management it might reasonably have been prevented.

As a part of your investigation, you are authorized to obtain testimony from individuals having knowledge of the transactions and events surrounding the suspected violation. The testimony should be sworn (provided under oath) and documented in the Draft ROV. Sworn testimony is desired because it has greater evidentiary value, puts the witness on notice that the interview is a serious matter, and subjects the witness to penalties for perjury or making a false statement.

You will be assigned a legal advisor, and you are encouraged to consult with him/her throughout your investigation, particularly, at the outset so any potential legal issues may be identified. In addition, you and your assigned legal advisor are encouraged to consult with HQ PACAF/FMP and HQ PACAF/JAQ whenever you require additional guidance or assistance during the investigation.

If you conclude that a violation has occurred, your Draft ROV must name a responsible party. The person(s) that you identify as responsible for the ADA violation must be provided an opportunity to read a draft copy of the Draft ROV (note that any written legal advice provided to you is not releasable) and offered the opportunity to suggest additional witnesses or evidence relevant to their own culpability in the

matter. In addition, the person(s) identified must also be notified that they are entitled to provide a written statement, which addresses any mitigating facts or extenuating circumstances surrounding the violation.

However, before the Draft ROV is provided to the current commander/supervisor of the responsible party, you will need to forward the Draft ROV and all supporting documentation (including 1234/JA legal review) to our ADA Focal Point (Ms. Jane Doe, HQ PACAF/FMP), so she can forward to SAF/FMPF. In accordance with revised Office of the Undersecretary of Defense (Comptroller) (OUSD(C)) policy guidance, disciplinary actions must not be administered until the Department of Defense, Office of the General Counsel (Fiscal) has reviewed the Draft ROV and confirmed that an ADA violation has, in fact, occurred. If so, SAF/FMPF will notify Ms. Doe, so she can proceed with the administration of disciplinary actions.

Your suspense for completing the Draft ROV (excluding disciplinary actions) is 15 March 2003. Upon DoD, Office of the General Counsel (Fiscal) confirmation that an ADA violation occurred, Ms. Doe will be allowed an additional 60 days to “finalize” the ROV, by completing the necessary disciplinary actions phase of the investigation.

This is to be your primary duty until the Draft ROV has been approved by OUSD(C). Due to strict OUSD(C) reporting requirements, SAF/FM will not approve any requests for extensions, so it is important that you complete the Draft ROV by the due date. Please complete and provide Ms. Doe with the information requested in the Attachment no later than 15 December 2002. Contact Mr. Bill Town, DSN 225-0827, if you have any questions or require additional information.

J. JAMES SMITH  
Lieutenant General, USAF  
Vice Commander

Attachment:

ADA Reporting Information (F03-01)

**ADA REPORTING INSTRUCTIONS**  
**And ADDITIONAL INFORMATION**

Key reporting dates for case F03-01:

- a. Investigation start date: **15 November 2002**
- b. Draft ROV (excluding disciplinary actions) due SAF/FMP: **15 March 2003**
- c. Final ROV (including disciplinary actions) due SAF/FMP: Upon DoD, Office of the General Counsel (Fiscal) confirmation that an ADA violation occurred, you will be allowed **60 days** to complete the disciplinary actions phase of the investigation.
- d. Final ROV due to OUSD(C): **15 August 2003**. Although this due date will most likely change, due to a “lag” in processing time associated with the DoD, Office of the General Counsel (Fiscal) legal review, the Air Force cannot exceed the nine-month (cumulative) time period. Since various headquarters reviews require three months for processing, Major Commands must complete the investigation (Draft ROV, MAJCOM legal review, and Final ROV) in six months, and transmit the results to SAF/FMPF.

A ROV is a requirement of the Congress when a limitation imposed by law is violated (31 U.S.C. 1341) or when a limitation imposed by regulation or administrative document is violated (31 U.S.C. 1517). A violation is reported through DoD channels to both houses of Congress and through the Office of Management and Budget to the President.

Volume 14 of the DoD Financial Management Regulation requires identifying the holder of funds. The holder of funds should be identified by name for all ROVs. The holder of funds information is included in the cover letter submitting the ROV from SAF/FM to OUSD(C).

Violations of 31 U.S.C. 1517 must be corrected with the proper funding or approved by the proper approval authority. Correction of a violation does not eliminate the fact the violation occurred and does not eliminate having to investigate and report the violation.

**ANTIDEFICIENCY ACT INVESTIGATOR TRAINING**

SAF/FM sponsored the development of an Antideficiency Act (ADA) Investigating Officer Training course that delivers “just-in-time” training to individuals designated as ADA investigating officers. The training focuses on (1) identifying and documenting the facts, circumstances, and causes surrounding the potential ADA violation, (2) taking testimony from individuals having knowledge of transactions and events surrounding the suspected violation, including the individual(s) identified as potentially responsible, and (3) reporting the investigation results in a ROV. This is a self-administered and certifying training course intended to improve the quality and timeliness of ADA investigations.

It is required that all appointed investigating officers administer and certify their completion of this training course, before they begin an investigation, **and include a copy of the certification as an attachment to their ROV.** The ADA Investigating Officer Training Course is located on the Air Force Portal. After Portal login, click “My Workspace” and “Financial Management.” The course can be located in the “Training Topics” section. The course is also available in CD format. Please contact SAF/FMPF, Mr. Bill Town, DSN 225-0827, to request a CD version.

If/when, during the course of your investigation, you identify that a Senior Official or Colonel (or Civilian Equivalent) is responsible for the ADA violation, please contact Mr. Town, DSN 225-0827, immediately, so he can coordinate this issue through SAF/IG!

SAF/FMP will process the ROV by preparing a summary report. Additional information will be requested, if necessary, in order to fully comprehend what occurred and to support the conclusions reached in the report. Disciplinary action administered to those responsible is an area of concern to the OUSD(C). Proper disciplinary action should be administered when public law has been violated.

However, before you forward the ROV to the responsible individual's current commander/supervisor, for the administration of disciplinary actions, you must provide your Draft ROV (including all supporting documentation and legal reviews, but excluding the actual administration of disciplinary actions) to your MAJCOM ADA Focal Point. Due to a revised OUSD(C) policy, the DoD, Office of the General Counsel (Fiscal) must review all ROVs and confirm that an ADA violation actually occurred, before disciplinary actions can be administered. Upon receipt of the DoD, Office of the General Counsel (Fiscal)'s confirmation, you will be notified to "finalize" the ROV, by completing the appropriate disciplinary actions, as required.

SAF/FMP will eventually forward the Draft/Final ROV for review and coordination to the various functional areas, the Air Force General Counsel, and SAF/FM for signature. The Air Force General Counsel is the final legal authority for all Air Force violations.

## REPORTING INFORMATION FOR NEW ADA CASE F03-01

1. Case Number	F03-01
2. Status	Under Investigation
3. Amount of Suspected Violation	\$4,500
4. Appropriation(s)	Family Housing Operation & Maintenance 5717045
5. Organization	1234 <sup>th</sup> Civil Engineering Squadron
6. Location	Nowhere AFB Alaska
7. Nature of Violation	1517(a)(2) – Obligations authorized or incurred or expenditures made exceeded 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.
8. Date Suspected Violation Occurred	2 September 2001
9. Date Suspected Violation Discovered	2 July 2002
10. Date Investigation Began	15 November 2002
11. How Suspected Violation Was Discovered	Air Force Audit Agency
12. Brief Description of Potential Violation	The maintenance and repair costs for three general officer quarters (GOQs) exceeded the \$35,000 Congressional maintenance and repair limitation, by approximately \$4,500 total, without prior authorization from Congress.
13. Progress of Violation/Other Comments	
14. Name, Organization, and Phone Number of Investigating Officer	Mr. John Doe 1234 <sup>th</sup> FM/FMF DSN 111-1111

## Attachment 4

**PRIVACY ACT STATEMENT FOR PERSONAL INFORMATION TAKEN  
DURING WITNESS TESTIMONY**

- Policy:** The Privacy Act statement is required to be read and acknowledged by each witness at the beginning of the interview process.
- Authority:** Title 10, United States Code, Sections 8013 and 8020, and Executive Order 9397.
- Principal Purpose:** Information is collected during an inquiry or investigation to aid in determining the facts and circumstances surrounding the allegations. The information is assembled in report format and presented to the Appointing Authority as a basis for DoD or Air Force decision-making.
- The information may be used as evidence in judicial or administrative proceedings or for other official purposes within the DoD. Disclosure of Social Security number, if requested, is used to further identify the individual providing the testimony.
- Routine Uses:** Routine uses include:
1. Forwarded to federal, state, or military and local law enforcement agencies for law enforcement purposes.
  2. Used as a basis for summaries, briefings, or responses to members of Congress or other agencies in the Executive Branch of the Federal Government.
  3. Provided to Congress or other Federal and state agencies when determined to be necessary by The Inspector General, USAF.
  4. For any of the blanket routine uses published by the Air Force (AFDIR 37-144, Privacy Act System of Records, formally AFB 4-36).
- Mandatory or Voluntary Disclosure:** **FOR MILITARY PERSONNEL:** Disclosing your Social Security number is Voluntary. Disclosing other personal information relating to your position responsibilities is mandatory and failure to do so may subject you to disciplinary action.
- FOR DEPARTMENT OF THE AIR FORCE CIVILIANS:** Disclosing your Social Security number is voluntary. However, failure to disclose other personal information in relation to your position responsibilities may subject you to adverse personnel action.
- FOR ALL OTHER PERSONNEL:** Disclosing your Social Security number and other personal information are voluntary. No adverse action can be taken against you for refusing to provide information about yourself.

Receipt Acknowledged \_\_\_\_\_, Date Signed \_\_\_\_\_

**Attachment 5****SAMPLE REQUEST FOR DRAFT ROV REVIEW MEMORANDUM**

15 May 2003

MEMORANDUM FOR MS. JANE SMITH  
1234 CES/CEFFROM: 1234 FM/FMF  
9999 Moose Street  
Nowhere AFB AK 99414-0000

SUBJECT: Antideficiency Act Violation, Maintenance &amp; Repair of General Officer Quarters, Case F03-01

On 15 November 2002, HQ PACAF/CV appointed me to conduct a formal investigation of a potential violation of the Antideficiency Act (ADA), pursuant to AFI 65-608 and DoD 7000.14-R, Volume 14. The results of this investigation concluded that a violation of the ADA, in the amount of \$4,500, occurred because the maintenance and repair costs for three general officer quarters (GOQs) exceeded the \$35,000 Congressional maintenance and repair limitation, without prior authorization from Congress. As a result, a violation of U.S.C. 1517(a)(2) occurred.

By law, it is mandatory that the party or parties responsible for this violation be identified, and that any extenuating circumstances be considered prior to a final determination regarding remedial and disciplinary action. This memorandum is to advise you that you have been identified as a responsible party, in light of your duties as a Housing Management Specialist. A copy of the Draft Report of Violation, which contains the facts and circumstances leading to the determination of your responsibility, is attached for your review.

You are entitled to comment on the evidence, which formed the basis for determining responsibility, and to identify any extenuating facts or mitigating circumstances believed to be relevant to your responsibility. You may also submit a sworn or un-sworn written statement, commenting on the matters set forth in the Draft Report of Violation, and designate the names of additional witnesses to testify on your behalf. Unless you have documentary evidence relevant to the matter of your own culpability, which is not contained in the attached report, please confine your comments to the matters of record in the Draft Report of Violation.

Please submit your written statement, or declination to comment in writing, within 10 working days of receipt of this memorandum. In your statement or declination, you are required to acknowledge that you have been informed of your identification as a responsible individual in this ADA case. You may consult with private legal counsel, at your own expense and, if applicable, a union representative. You are also hereby advised that upon OUSD(C) approval of this Draft Report of Violation, your name will be provided to the President, through OMB, and to the Congress of the United States, as a responsible individual in this ADA violation.

If you have any questions concerning this matter, please address them to the undersigned at 1234 FM/FMF, DSN 111-1111.

JOHN DOE  
Investigating Officer

Attachment:

Draft Report of Violation

## Attachment 6

### CHECKLIST FOR FINAL SUMMARY REPORT OF VIOLATION

This checklist is intended for the investigating officer, the appointing official, DoD managers, and commanders. During preparation of the final summary report of an Antideficiency Act violation, the following items should be considered. 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 (e.g., F02-01). Case control numbers are assigned by the DoD Component senior financial manager and given to the investigating officer through channels. The reports shall contain the case control number for control/monitoring requirements of the Department.

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

(Example: Air Force, Operation and Maintenance (O&M) funds)

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

(Example: 5793400, which stands for Fiscal Year 1999, Air Force, O&M funds)

\_\_\_ D. The amount of the violation.

The amount of the violation shall correspond to the amount of funds that will be requested to correct the violation or the amount for which approval shall be obtained to correct the violation. Provide the total, plus breakdown, if applicable.

\_\_\_ E. The date(s) the violation occurred.

\_\_\_ F. The date the violation was discovered.

\_\_\_ G. How the violation was discovered.

(Example: Was it discovered locally? Was it discovered by an audit agency?)

\_\_\_ H. The name and rank of the Service member(s); or the name, grade, and job series number (e.g., GS-1173-12) of the Civilian member(s) responsible for the violation. (Please provide the current rank/grade **and** the rank/grade at the time of the violation. This information is required by the Office of Management and Budget.)

1. If a violation involves a centrally managed allotment, then the head of the operating agency at the time the violation was incurred shall be named responsible.

2. In addition to the head of the operating agency, others may also be determined to be responsible for the violation.

\_\_\_ I. The position title of the officer(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 (e.g., Chief, Housing Programs Branch). Include enough detail so that an outsider shall 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 format 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 identify the organization.

     K. The section or subsection of Title 31, United States Code, that was violated (e.g., 1341(a)(1)(A), 1341(a)(1)(B), 1342, 1517(a)(1), or 1517(a)(2).

1. If a statutory limitation is exceeded, usually 31 U.S.C. 1341(a)(1)(A) was violated; however, refer to Volume 14, Chapter 2, of the DoD Financial Management Regulation, and subsection 1341(a)(1) of Title 31 for more specific guidance.

2. If a departmental or DoD Component administrative (regulatory) limitation was exceeded, usually 31 U.S.C. 1517(a)(2) was violated; however, refer to Volume 14, Chapter 2, of the DoD Financial Management Regulation, and subsection 1517(a) of Title 31 for more specific guidance.

3. Title 31, U.S.C. 1342 (acceptance of voluntary services) is very seldom violated; however, refer to Volume 14, Chapter 2, Figure 2-2, for an example.

     L. State whether the violation was an over-obligation of an appropriation, an apportionment, or an allotment.

If an administrative subdivision of funds is involved with the violation, then state whether the administrative subdivision of funds was over-obligated. An administrative subdivision of funds can be an allotment, centrally managed allotment, operating budget authority, allocation, sub-allotment, or sub-allocation.

     M. A statement about the effect, if any, on the next higher level of funding.

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

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 description of the causes and circumstances surrounding the violation.

The description shall state clearly what the individual 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; or due to other reasons.

The report of violation should not be so brief that it does not convey clearly 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 incurred knowingly or willfully.

     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 include a written statement 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 shall 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 of the DoD Financial Management Regulation, Volume 14, contains further guidance on these statements.) If no disciplinary action is deemed appropriate, then 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, of the DoD Financial Management Regulation, Volume 14.

If the official signing the report recommends changes to the DoD Financial Management Regulation, Volume 14, then he/she shall submit the proposed changes to the Office of the Under Secretary of Defense (Comptroller).

\_\_\_S. If another DoD Component or another federal agency is involved, make a statement concerning the steps taken to coordinate the report with the other component or agency.

The appointing official should coordinate the report with the applicable DoD Component senior financial manager or the appropriate official in other 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 shall be:

1. Allowed to consult with legal counsel.
2. Advised that a violation has occurred and that he or she is named a responsible individual for the violation and shall be allowed to review the report and examine evidence on which the determination was based.
3. Allowed to submit a sworn or un-sworn 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 (e.g., 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 hold of funds is named the responsible individual for the violation.

\_\_\_W. A statement of any additional action taken by, or at the direction of, the head of the DoD Component with respect to the over-allocation, over-allotment, authority, or directive to over-obligate, or

over-expend, and any procedural changes or new safeguards established to prevent recurrence of such violation. Also, include the actions taken to supply funds, if required, to cover the amount of the violation. See Item Q, above.

\_\_\_X. Lessons Learned. A statement summarizing lessons learned from the investigation results. 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. In the report of violation, include the following information:

1. A copy of the ADA certificate of training received by the IO.
2. Testimony from witnesses.
3. Other documentation such as photographs, drawings, or copies of appropriate pages of regulations that were gathered to support any conclusions(s) reached.
4. The review of such report by the appointing official.
5. Any other pertinent information generated as the result of the investigation. If the violation involved an appropriation with a negative balance, then 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 that appointed the investigating officer. Please ensure the report is tabbed so that information referenced in the report can be easily located.

**Attachment 7****SAMPLE COMPTROLLER TRANSMITTAL MEMORANDUM**

7 June 2003

MEMORANDUM FOR SAF/FMP

FROM: HQ PACAF/FM  
1111 Aloha Avenue  
Hickam AFB HI 96853-5420

SUBJECT: Transmittal, Antideficiency Act Draft Report of Violation and Legal Review, Case Number F03-01

1. This is to inform you that the subject Draft Report of Violation has been completed; and HQ PACAF/JA has, tentatively, confirmed that a violation of 31 U.S.C., Section 1517(a)(2), occurred.
2. In accordance with Office of the Under Secretary of Defense (Comptroller) policy, the Draft Report of Violation and legal review are forwarded for your review and, ultimate, transmittal to the Department of Defense, Office of the General Counsel (Fiscal) (DoD OGC(F)), for their final determination and/or confirmation that an ADA violation did, in fact, occur.
3. Please advise my office of the DoD OGC(F)'s final determination, so we can proceed with the appropriate disciplinary actions, if necessary.

B. B. BAKER  
Comptroller

Attachments:

1. Draft Report of Violation, 1 June 2003
2. HQ PACAF/JA Memo, 4 June 2003

**Attachment 8****SAMPLE COMPTROLLER TRANSMITTAL MEMORANDUM TO  
DISCIPLINING OFFICIAL**

30 June 2003

MEMORANDUM FOR 1234 CES/CE (MR. R. B. BROWN)

FROM: HQ PACAF/FM  
1111 Aloha Avenue  
Hickam AFB HI 96853-5420

SUBJECT: Request for Disciplinary Actions, Maintenance & Repair of General Officer Quarters, Antideficiency Act (ADA) Violation Case F03-01

1. Based on the results of the subject ADA investigation, the investigating officer determined that an ADA violation occurred and that Ms. Jane Smith was the individual responsible for this violation (attachment 1). On 20 June 2003, the Department of Defense, Office of the General Counsel (Fiscal) (DoD OGC(F)), confirmed that an ADA violation occurred (attachment 2), so this matter is now being returned to you for the appropriate disciplinary actions.

2. In accordance with DoD, Financial Management Regulation, DoD 7000.14-R, Volume 14, Administrative Control of Funds and Antideficiency Act Violations, you are required to prepare a Certification of Disciplinary Action Memorandum, whether disciplinary action is administered or not, and the Memorandum must include the following:

(a) A full explanation/rationale, for the disciplinary action taken, or not taken. The fact that a violation was not willfully and knowingly committed does not, by itself, justify the absence of disciplinary actions.

(b) A statement acknowledging that you understand: "(1) an ADA violation is a violation of Federal Statute; (2) an ADA violation is a misuse of DoD funds, even though the misuse may not have been willful or knowing and/or harmful to the Air Force; (3) the DoD is required to report the violation to the President, through OMB, and to the Congress; (4) even though a violation may not have been willful or knowing, that, by itself, does not justify the absence of disciplinary actions; and (5) disciplinary action commensurate with the severity of the violation should be taken against the individual(s) named responsible for a violation – including individuals that may have retired or are no longer working for the DoD."

(c) A signed endorsement by the responsible individual, Ms. Jane Smith.

3. We request your office complete the administration of disciplinary actions by 30 August 2003, and provide a copy of the Certification of Disciplinary Action Memorandum to my office, for inclusion in the Final Summary Report of Violation and submission to the OUSD(C). If you have any questions, please let me know.

B. B. BAKER  
Comptroller

Attachments:

1. Draft Report of Violation
2. DoD OGC(F) Memorandum, 20 Jun 03

**Attachment 9****SAMPLE DISCIPLINARY ACTIONS MEMORANDUM**

1 July 2003

MEMORANDUM FOR SAF/FMP

FROM: 1234 CES/CE  
1111 Brown Bear Boulevard  
Nowhere AFB AK 99414-0000

SUBJECT: Certification of Disciplinary Action for Antideficiency Act (ADA) Violation, Case F03-01  
– Ms. Jane Smith

1. I acknowledge receipt/request for disciplinary action for the subject ADA violation.
2. When this ADA violation occurred, Ms. Smith was working for the 1234 CES/CEP as a GS-1173-12, Housing Management Specialist. She is currently working for the 1234 CES/CEF as a GS-0801-13, Chief Facilities Branch.
3. Ms. Smith was found responsible for the ADA violation and, although she did not knowingly or willingly commit the violation, she received a Written Reprimand. As a Housing Management Specialist, responsible for monitoring GOQ maintenance and repair expenditures, she should have known that the \$35,000 Congressional limitation for GOQ expenditures could not be exceeded, and she should have notified her immediate supervisor as soon as the total costs for each GOQ was approaching the limitation.
4. I believe that the disciplinary action taken is appropriate, given the nature of the violation.
5. I understand that (a) an ADA violation is a violation of Federal Statute; (b) an ADA violation is a misuse of DoD funds, even though the misuse may not have been willful or knowing and/or harmful to the Air Force; (c) the DoD is required to report the violation to the President, through OMB, and to the Congress; (d) even though a violation may not have been willful or knowing, that, by itself, does not justify the absence of disciplinary actions; and (e) disciplinary action commensurate with the severity of the violation should be taken against the individual(s) named responsible for a violation – including individuals that may have retired or are no longer working for the DoD.

R. B. BROWN  
Civil Engineer

1<sup>st</sup> Ind. Ms. Jane Smith

Receipt Acknowledged \_\_\_\_\_, Date Signed \_\_\_\_\_

**Attachment 10****SAMPLE NOTIFICATION MEMORANDUM**

7 July 2003

MEMORANDUM FOR MS. JANE SMITH

FROM: HQ PACAF/CV  
1111 Aloha Avenue  
Hickam AFB HI 96853-5420

SUBJECT: Notification to Responsible Party, Antideficiency Act Draft Report of Violation, Case Number F03-01

1. This is to inform you that an Antideficiency Act Draft Report of Violation has been completed, and a violation of 31 U.S.C. 1517(a)(2) occurred. The Draft Report of Violation identified you as the person responsible for the violation.
2. Although you did not knowingly or willingly commit the violation, as a Housing Management Specialist, responsible for monitoring GOQ maintenance and repair expenditures, you should have known that the \$35,000 Congressional limitation for each of the three GOQs could not be exceeded, and you should have notified your immediate supervisor as soon as the total costs for each GOQ was approaching the limitation.
3. As a result of this violation, you would have received a Written Reprimand, if you were still actively employed in the Federal Government, which is considered appropriate, given the circumstances.
4. I understand that (a) an ADA violation is a violation of Federal Statute; (b) an ADA violation is a misuse of DoD funds, even though the misuse may not have been willful or knowing and/or harmful to the Air Force; (c) the DoD is required to report the violation to the President, through OMB, and to the Congress; (d) even though a violation may not have been willful or knowing, that, by itself, does not justify the absence of disciplinary actions; and (e) disciplinary action commensurate with the severity of the violation should be taken against the individual(s) named responsible for a violation – including individuals that may have retired or are no longer working for the DoD.

J. JAMES SMITH  
Lieutenant General, USAF  
Vice Commander

**Attachment 11****SAMPLE APPOINTING OFFICIAL APPROVAL MEMORANDUM**

7 July 2003

MEMORANDUM FOR SAF/FMP

FROM: HQ PACAF/CV  
1111 Aloha Avenue  
Hickam AFB HI 96853-5420

SUBJECT: Approval, Antideficiency Act Report of Violation, Case Number F03-01

1. I have reviewed the subject Antideficiency Act Report of Violation, and I find the report complies with the requirements of AFI 65-608, Chapter 4, and it meets my approval.
2. The 1234 CES Civil Engineer issued a Written Reprimand to Ms. Jane Smith, the responsible party. I agree that her violation was not knowingly or willingly committed; rather, it was the result of her inadequate accounting for GOQ maintenance and repair expenditures, as well as, her lack of foresight to notify her superiors when the "exceed threshold" occurred. I believe the Investigating Officer properly identified Ms. Smith as the person responsible for the violation, and the Civil Engineer's disciplinary action is appropriate.
3. To ensure that this type of violation does not recur, the Civil Engineer provided Ms. Smith, and the other three Housing Maintenance Specialists within the Facilities Branch, specific housing project training, as outlined in AFI 32-1032. In addition, he also instructed Ms. Smith to develop and publish an Operating Instruction, to outline specific steps to accurately monitor maintenance and repair costs and to notify proper superiors when a project comes within \$2,500 of a regulatory or statutory threshold. I am satisfied that this will prevent similar violations in the future.
4. Although funding corrections are not required, Congress must still be notified. I have been advised that AF/IL is in the process of making this notification.

J. JAMES SMITH  
Lieutenant General, USAF  
Vice Commander