

## CHECKLIST FOR INVESTIGATING OFFICERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Designated witnesses shall be interviewed for the record.

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

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

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

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

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

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

(1) A violation is a serious matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

o. The report has been signed by the investigator.