



DEPARTMENT OF THE NAVY
COMMANDER, NAVY INSTALLATIONS COMMAND
2713 MITSCHER ROAD, SW
ANACOSTIA ANNEX, DC 20373-5802

CNICINST 7000.2
N8
15 Sep 2006

CNIC INSTRUCTION 7000.2

From: Commander, Navy Installations Command

Subj: COMPLIANCE WITH ANTIDEFICIENCY ACT

Ref: (a) ASN(FM&C) memo of 1 Mar 2006
(b) DoD FMR 7000.14-R, Vol. 14
(c) ASN(FM&C) memo of 14 Dec 2005

Encl: (1) Antideficiency Act Statutes - Relevant Excerpts
(2) Major Causes of Antideficiency Act Violations
(3) ADA Investigative Process (excerpts from reference (c))
(4) CNIC Internal ADA Process
(5) Guide to Disciplinary Actions

1. Purpose. To establish Commander, Navy Installations Command (CNIC) policy regarding the Antideficiency Act (ADA), implement processes and procedures to ensure that CNIC personnel understand its causes and consequences and do not violate the provisions of the act.

2. Applicability and Scope. This instruction is applicable to all CNIC Headquarters and regional personnel.

3. Background. The Antideficiency Act is a series of Federal statutes which make it unlawful for government officials to obligate or expend money in excess of an appropriation or apportionment of funds. In addition, related statutes which govern appropriate use of funds and proper fiscal year chargeable can lead to violations of the ADA. These laws are summarized in enclosure (1). In reference (a), the Assistant Secretary of the Navy, Financial Management and Comptroller (ASN(FM&C)) stressed the serious nature of violations, their negative impact on DoN mission accomplishment, and the need to ensure that personnel violating the ADA are held personally accountable and are subject to appropriate disciplinary action. As stewards of federal appropriated funds for the operation of Navy bases supporting all Navy customers, the impact of

SEP 15 2006

violations by CNIC will not be limited to CNIC alone but will affect our customers throughout the Navy and DoD. Therefore, CNIC must take an especially serious view of the ADA and work to ensure that violations are avoided and that responsible parties are held accountable.

4. Policy

a. Avoidance of ADA Violations

(1) The ADA has a number of major causes, summarized in enclosure (2). All addressees must familiarize themselves with these causes and take steps necessary to ensure that management controls are in place which ensure that violations do not occur. Suggested management controls are also included in enclosure (2).

(2) In order to ensure that all persons delegated signature authority under 31 USC 1517(a provision of the ADA), have a full understanding of the law and can act responsibly to ensure that they do not sign any document which would cause a violation. Any CNIC employee delegated signature authority under 31 USC 1517, must complete an annual 2-hour mandatory course on ADA training. This training will be made available to participate in either a 'live', or on-line version of this course. Personnel with signature authority will be required to certify annually prior to the beginning of the fiscal year that they have completed this training. Those who have not completed the training will have their signature authority suspended until the training is successfully completed.

b. Responsibility for Violations

(1) Under the principal of 'fiduciary responsibility', CNIC financial managers are charged with executing funds on behalf of the command, the Navy, and the public in a responsible manner that complies with fiscal law and regulation. As stated in reference (a), ADA violations constitute a "breach of our fiscal responsibility" and "undermine the credibility of the Navy and Marine Corps." It is therefore incumbent on CNIC to establish guidelines concerning the responsibility for violations.

(2) Under the 'single comptroller' concept, the CNIC Headquarters Comptroller serves as the Program Director for all personnel performing financial functions. 31 USC 1517 responsibility for each appropriation is held by the CNIC

SEP 15 2006

Comptroller. Regional financial officers will be issued an Operating Target (OPTAR), or 'checkbook', for funds execution.

(3) While ultimate responsibility under 31 USC 1517 is thus maintained at the CNIC headquarters level, it is important to note that 'primary responsibility' for individual violations lies with the person(s) who committed the act which caused the violation. As stated by reference (b), "The investigation...shall attempt to discover the specific act--or the failure to take an action--that caused the violation and who was responsible for that act..." The personnel who made that act could be at any level of the organization involved in acquisition, program management, or obligation of funds. In short, if you had any part in the decision that resulted in the misuse of funds, you could be held responsible.

(4) The investigator will include, as part of their ADA investigative report, an evaluation of the CNIC Comptroller's responsibility as, as holder of the authorization of funds under 31 USC 1517.

(5) Organizations executing funds may accept funding from other governmental organizations to do specific tasks on reimbursable funding documents such as Economy Act Orders, Project Orders and Military Interdepartmental Purchase Requests (MIPRs). If these documents include a statement indicating that the document is subject to the limitations of 31 USC 1517, then the document constitutes a legal apportionment of funds under the ADA (31 USC 1517). The executing organization assumes legal responsibility under 31 USC 1517 for ensuring that billings against the document do not exceed the amount specified, without first having the document amended to include the increased amount. In addition, personnel accepting funds on these documents must ensure that funds are used properly, in accordance with all fiscal laws and regulations. Misuse can result in an ADA violation (see enclosure (2)).

c. ADA Investigative Process

(1) The basic process for investigation of violations is outlined in reference (b). Reference (c) provided revised Navy level policies to implement this process and was issued to streamline the Navy's process for carrying out investigations.

(2) Enclosure (3) provides excerpts from reference (c) outlining the investigative process. Enclosure (4) shows the internal CNIC process. Following this process, when a possible

SEP 15 2006

ADA violation is discovered, a preliminary investigation will be conducted internally to determine whether there are grounds for a full investigation. If a full investigation is deemed necessary, it will be conducted by an appointed investigator from outside the organization being investigated.

(3) 31 USC 1351 requires that reports of violations be sent to the President and Congress. All CNIC financial managers and program directors should be aware of the negative consequences that violations have, not only in the demonstration of improper execution of funds, but also the publicity given to ADA reports that "undermine the credibility of the Navy and Marine Corps", as pointed out in reference (a). This makes it more likely that Congress will levy funding reductions and restrictions on use of funds they do appropriate.

(4) All CNIC financial managers should read and be familiar with enclosure (3) and be prepared to conduct a preliminary investigation if called upon, and to cooperate fully with any outside investigator who may be appointed to conduct an ADA investigation at your office.

d. Disciplinary Action

(1) Once the ADA investigator completes the draft ADA report, FMB-5, OASN(FM&C) Office of Counsel and USD(C) Counsel will work together to determine if a violation occurred, as specified in enclosure (3).

(2) If it is determined that a violation did occur, FMB will request discipline be administered to the person(s) named responsible for the violation.

(3) Discipline will be administered through the established personnel chain of command. This means that if a CNIC employee is determined to have some responsibility for an ADA violation, the supervisor who normally is responsible for that employee's disciplinary actions will be tasked to provide discipline.

(4) As stated in enclosure (3), "ADA violations are violations of federal statute and are a very serious offense and should be treated accordingly". Per reference (b), disciplinary action may take a variety of forms and supervisors should consider such factors as the nature and seriousness of the offense, the record of the person responsible, the degree and level of responsibility of individual, and any mitigating

SEP 15 2006

circumstances. Enclosure (4) provides a guide listing suggested disciplinary actions that may be appropriate under various circumstances, based on the range of actions that have historically been considered appropriate. The disciplining official should take the range of actions listed in enclosure (5) into account when determining the appropriate disciplinary action.

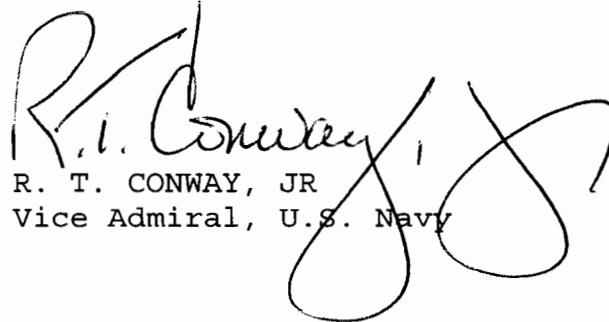
(5) Mandatory disciplinary actions must be administered to any CNIC personnel found responsible for an ADA violation if the conditions specified below apply:

(a) Discipline for personnel delegated signature authority under 31 USC 1517: Since a violation of the ADA constitutes a breach of fiduciary responsibility, it is therefore the policy of CNIC that if a person who has been granted signature authority under 31 USC 1517 is found to have primary responsibility for a violation of the ADA, then that person will have their signature authority suspended for a period of at least one year, as one element of their discipline, subject to any applicable union agreements and consultation.

(b) Discipline for cases involving spending in excess of specific legislative provisions: In cases where legislation specifically states that spending in violation of those legislative provisions will be considered a violation of the ADA, special care must be taken to avoid violations. Under Sec. 332, PL 108-375, FY 2005 Defense Authorization Act, effective 1 October 2005, all defense business system modernization projects in excess of \$1 million must be certified to the Defense Business Systems Modernization Committee. Sec. 322 specifically spells out that "the obligation of Department of Defense funds for a business system modernization in excess of the amount specified in subsection (a) that has not been certified and approved in accordance with such subsection is a violation of section 1341(a)(1)(A) of title 31 [Antideficiency Act]". A higher standard of responsibility and disciplinary action will be applied in these cases. This is because a person who takes an action in the face of clear legislative language that an ADA will result cannot be excused on the basis of ignorance, inexperience or other mitigating circumstances. In such cases, discipline must take the form of at least a letter of warning and requirement to complete fiscal law training. In addition, if the person has been delegated signature authority under 31 USC 1517, signature authority will be suspended for at least two years, subject to any applicable union agreements and consultation.

SEP 15 2006

5. Effective Date and Implementation. This instruction is effective immediately.



R. T. CONWAY, JR
Vice Admiral, U.S. Navy

Distribution:
CNIC HQ Program Directors
CNIC Regional Commanders
CNIC Comptroller Offices

SEP 15 2006

Antideficiency Act Statutes
Relevant Excerpts

Sec. 1341. Limitations on expending and obligating amounts

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

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

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

Sec. 1342. Limitation on voluntary services

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.

Sec. 1349. Adverse personnel actions

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

Sec. 1350. Criminal penalty

An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

Sec. 1351. Reports on violations

If an officer or employee of an executive agency or an officer or employee of the District of Columbia government violates section 1341(a) or 1342 of this title, the head of

SEP 15 2006

the agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

Sec. 1512. Apportionment and reserves

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

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

(A) months, calendar quarters, operating seasons, or other time periods;

(B) activities, functions, projects, or objects; or

(C) a combination of the ways referred to in clauses (A) and (B) of this paragraph.

Sec. 1514. Administrative division of apportionments

(a) The official having administrative control of an appropriation...shall prescribe by regulation a system of administrative control not inconsistent with accounting procedures prescribed under law. The system shall be designed to -

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

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

Sec. 1517. Prohibited obligations and expenditures

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

SEP 15 2006

- (1) an apportionment; or
- (2) the amount permitted by regulations prescribed under section 1514(a) of this title.

Sec. 1518. Adverse personnel actions

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

Sec. 1519. Criminal penalty

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

SEP 15 2006

Major Causes of Antideficiency Act Violations

The following major causes of violations are largely derived from DoD FMR Vol 14, Chapter 10. For further detail and discussion of how to avoid these violations see this reference, available on-line at http://www.dod.mil/comptroller/fmr/14/14_10.pdf .

1. Exceeding limits on the use of Operation and Maintenance (O&M) funds for minor construction projects. This applies to any operating funds, including O&MN, Working Capital Funds, and Research and Development (R&D) funds for R&D funded activities. 10 USC 2805 authorizes use of O&M funds for projects costing up to specified dollar thresholds; over that amount Military Construction, Navy (MILCON) funds must be used. When discovered, the obligation is moved from the O&M account to the MILCON account. If sufficient MILCON funds were not continuously available from the time of the violation to the present time to cover the obligation, an ADA violation occurs.

a. Examples:

- i. Improper incrementation of construction projects. For example if two adjacent sections of a facility are being converted from warehouse space to office space, that should be classified as one project. Also, a single project should not be divided into two 'phases', one to be done this year and one to be done in a later year, if the first phase does not deliver a complete and useable facility.
- ii. Incorrect costing of projects. If an O&M funded minor construction project that is close to the MILCON threshold experiences overruns which cause the cost to exceed the threshold, all O&M funds obligated to date need to be replaced by MILCON funds.
- iii. Misclassification of construction costs as maintenance or repair.

b. How to avoid:

- i. Ensure familiarity with all applicable legislative limitations. These change from time to time so ensure you have the latest information.

SEP 15 2006

- ii. Engineering personnel frequently are determined to be responsible for violations involving construction projects exceeding statutory construction limitations. Ensure personnel executing facility projects are familiar with all facility regulations, including the latest issuance of the Facility Project Manual (OPNAINST 11010.20 series).
- iii. Ensure that personnel executing facility projects have received cautions to avoid improper incrementation of facility projects.
- iv. Any facility construction project which is close to the current threshold should be scrutinized very carefully to ensure that cost estimates are accurate. Should any overruns occur, it should be understood that the project may need to be downscoped to stay within the minor construction limitation.

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

a. Examples:

- i. Problems with accounting systems and management information systems lead to inaccurate reporting of the amount of funds available for obligation. In one case a new financial system was installed and processing errors resulted in an understatement of obligations and not enough funding continuously available to correct it.
- ii. Obligations either not recorded or improperly recorded, leading to an unmatched disbursement. Since personnel use those records to certify funds availability for other obligations, a violation easily can occur because the records do not reflect the correct amount of funds available for obligation.

b. How to avoid:

- i. Ensure that all funds control systems ensure that all obligations are reconciled properly against available funds, and authorized by means a commitment before they are incurred. Ensure that all funds control systems are accurate and reconciled with official accounting and disbursement records.

SEP 15 2006

- ii. To help prevent violations caused by obligations either not recorded or improperly recorded, DoD funds managers (e.g. comptrollers) should maintain strict and absolute positive controls over obligating documents to ensure that all transactions are recorded accurately and in a timely manner.

3. Using O&M funds to acquire equipment items that exceed the designated amount for the mandatory use of procurement funds (expense versus investment threshold rule). The expense/investment rules are provided in DoD FMR Vol 2A, par. 010201. When discovered, the obligation is moved from the O&M account to the applicable procurement account. If sufficient funds were not continuously available from the time of the violation to the present time to cover the obligation in the procurement account, an ADA violation occurs.

a. Examples:

- i. Using O&M funds to purchase an information technology system costing over the current threshold amount.
- ii. In addition, some items are specifically designated as investment items by the expense/investment rules in DoD FMR Vol 2A, par. 010201 even though they may not exceed the dollar threshold. For example, in one case, O&M funds were used to purchase trucks, designated as an investment items because they are "centrally managed" (i.e. purchased by a single inventory control point for all service users). Thus the trucks were a capital asset, which should have been purchased with Other Procurement, Navy funds, even though their unit cost did not exceed the threshold.
- iii. Several cases have involved the improper funding of "capital leases" using O&M rather than investment funding. As defined in the Navy Financial Management Policy Manual (NAVSO P-1000), par. 075001, a lease which conveys any sort of ownership equity, or meets other criteria which set them apart from straight 'operating' leases is classified as an investment.

b. How to avoid:

SEP 15 2006

- i. DoD personnel involved in any aspect of the financial or acquisition process, should be knowledgeable of the expense versus investment rules to prevent this type of violation. Program managers and information systems, contracting and comptroller personnel shall be trained on this issue.
 - ii. Personnel delegated authority to sign funding documents should question any document which does not appear to correctly apply the expense/investment rules.
4. Obligating in advance of funds being made available.
 - a. Examples:
 - i. The signing of a lease for a facility or equipment and agreeing to pay, or simply obligating, for 2 years of lease costs during the first year would constitute an obligation in advance of the availability of the funds for the second year.
 - ii. Entering into a maintenance agreement for equipment for 2 years would constitute a violation of the Antideficiency Act. By law such agreements can run for a period only up to 12 months.
 - b. How to prevent:
 - i. Training programs should include specific focus on the importance of ensuring that funds are authorized and available before obligating the government to contracts for future fiscal years expenses.
 - ii. Comptrollers should reject any funding document which appears to obligate the government for a future year's needs.
5. Purchases of items for which funds are not legally available. If appropriated funds in any amount are spent for purposes prohibited by law, this constitutes an ADA violation, since the law prohibits spending any money for these purposes.
 - a. Examples:
 - i. In several cases appropriated funds were used to purchase bottled drinking water. It is a well-established principal of appropriation law

SEP 15 2006

that personal expenses such as purchase of bottled water are in most circumstances prohibited.

- ii. Government appropriation acts generally contain a legal prohibition on spending any funds for lobbying. Some agencies found to have used agency resources to lobby Congress were cited for ADA violations.

b. How to prevent:

- i. Maintain awareness of improper uses of appropriated funds. This includes familiarity with both existing regulations and any prohibitions Congress may impose in annual appropriation acts and other legislation.
- ii. Ensure that purchase card holders are trained in financial policies and are cautioned not to use the purchase card to buy 'personal' type items without first confirming that such purchases are allowable. Comptroller should be asked for confirmation.
- iii. Employees who purchase unallowable personal items using personal funds and then ask for government reimbursement should not be reimbursed. These employees are 'voluntary creditors'. The government is under no obligation to reimburse voluntary creditors and should never do so if the cost is an unallowable charge to appropriated funds.

6. Obligation of funds in excess of a limitation imposed by law. Since these limitations carry the force of law, overspending constitutes an ADA violation even if the overall appropriation provides enough money to make the payment.

a. Examples:

- i. The Military Quality of Life and Veterans Affairs Appropriations Act annually includes a provision that "not more than \$35,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days prior [Congressional] notification." Spending more than \$35,000 on any unit without notification is an ADA violation, even though the appropriation as a whole contains much more than that amount.

SEP 15 2006

b. How to prevent:

- i. Be familiar with any and all legislation affecting your program. Understand the fiscal implications of that legislation.
- ii. Comptroller should include footnotes on fund authorization documents specifying these limits.

7. Unauthorized augmentation of appropriations. The acceptance of reimbursable customer funding for unauthorized purposes can cause a violation of 31 USC 1301a (purpose statute). The augmentation must be corrected and if sufficient funds in the proper appropriation are not available, this would result in an ADA (31 USC 1341a) violation as well.

a. Examples:

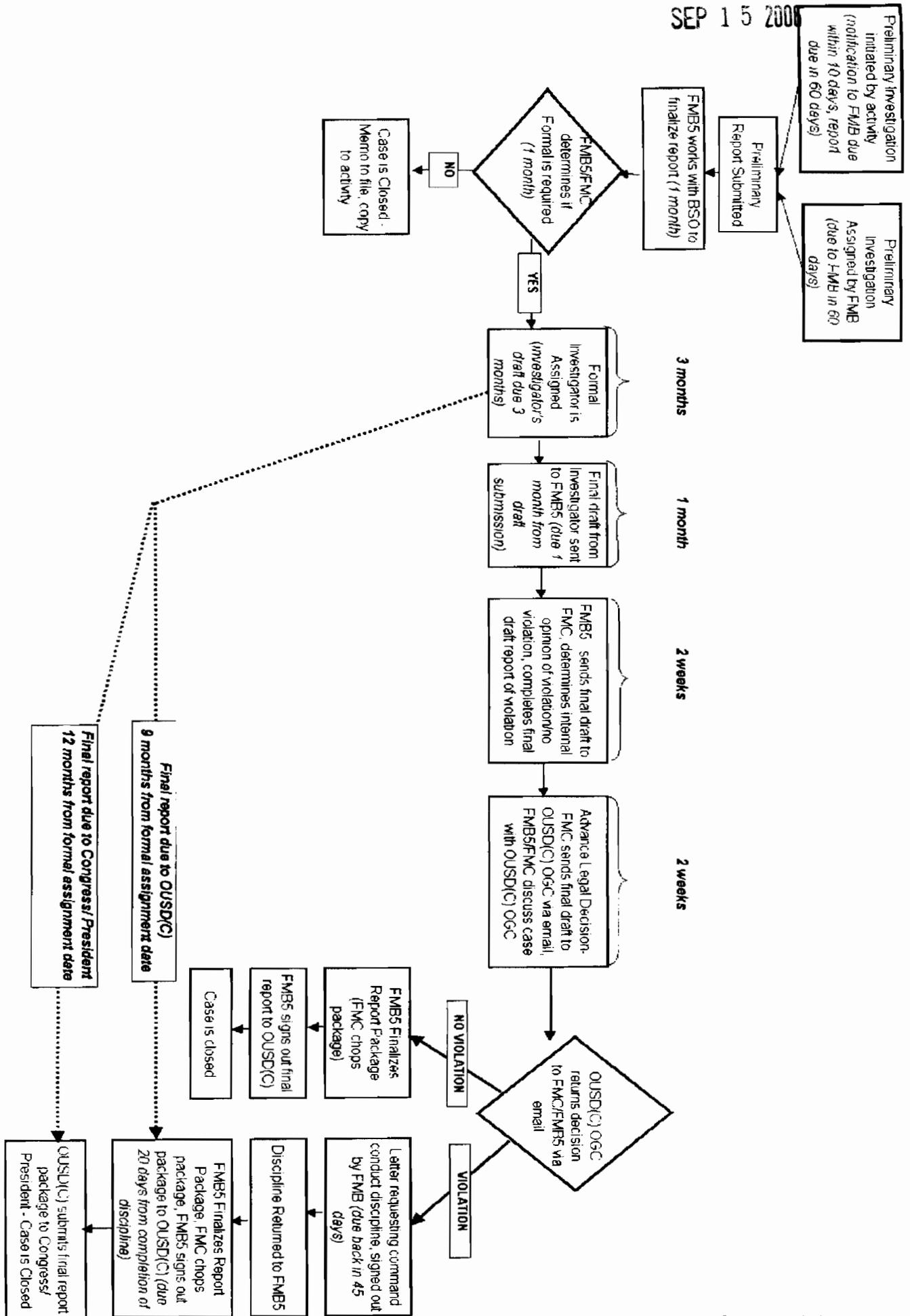
- i. A CNIC region receives funding from an Army tenant, whose operations are funded by Operation and Maintenance, Army (O&M,A) funds, to pay for a service. Based on an audit, the service is determined to actually be a base support mission function, which should have been funded by CNIC with O&M,N funds. This means the region has improperly augmented their O&M,N funding with O&M,A funds, a 31 USC 1301a violation. If sufficient funds were not continuously available in the O&M,N account, an ADA violation occurs.

b. How to prevent:

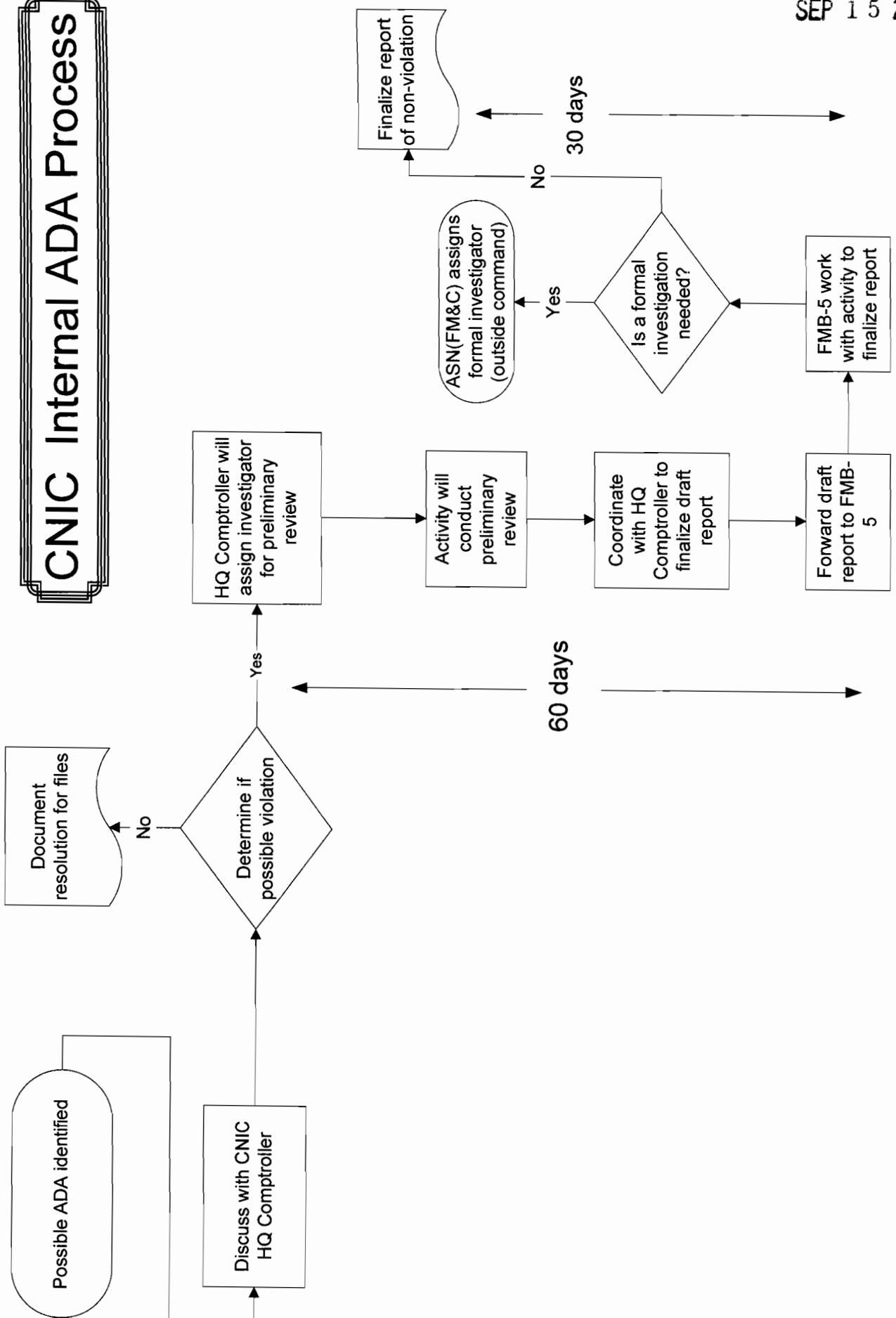
- i. Ensure all personnel are familiar with the IMAP model and the concepts underlying the CNIC base support mission. Reject any funding document that appears to provide funding for base support from outside sources.
- ii. Ensure an understanding of the proper purposes for each DoD appropriation and the importance of ensuring that funding is applied to the proper purposes only.

ADA PROCESS FLOW CHART

SEP 15 2000



CNIC Internal ADA Process



PRELIMINARY ANTIDEFICIENCY ACT (ADA) REVIEW PROCESS

Preliminary Antideficiency Act (ADA) investigations are initiated in two basic ways; they can be assigned internally within a command/activity, or they are assigned by an outside organization (typically ASN (FM&C)). If a preliminary investigation is not assigned by OASN(FM&C)(FMB-5), the initiating organization must notify FMB-5 within 10 days of initiation. A separate notification letter is not necessarily required; FMB-5 can receive notification by copy on the organization's preliminary investigation assignment memo.

The activity performing the preliminary ADA investigation has sixty (60) days from the date of the preliminary assignment to completion of the investigation and submission of a draft report to FMB-5. It is important to note that preliminary reports should include a recommendation based on law and backup documentation in order to support opinions on the nature of the violation or findings discussed in the report. **If the activity does not provide enough information in their preliminary review, a formal ADA investigation will be assigned. Therefore, it is in the best interest of the submitting command to make these preliminary reports as robust as possible.**

Once the preliminary ADA investigative report is submitted, FMB-5 will work with the submitting activity to ensure sufficient information exists and, if required, request additional back-up information or documentation. This process will take no more than 30 days and the submitting activity will submit a final report at the end of the FMB-5 review. It is imperative that the organization work closely with FMB-5 during this part of the process. The format for the preliminary ADA review is attached.

Once the final preliminary report is submitted, FMB-5 and OASN(FM&C) Office of Counsel (FMC) will review the report and determine whether a formal is required. If a formal is required, an investigator will be assigned to conduct a formal ADA investigation. Procedures regarding formal ADA investigator requirements and the investigator roster are provided separately.

SEP 15 2006

FORMAL ANTIDEFICIENCY ACT (ADA) REVIEW PROCESS

The Department of Defense Financial Management Regulation (DoD FMR) prescribes that formal ADA investigations take no longer than 12 months from the date of assignment of the formal investigation to the submission of the final report to Congress. More specifically, the Military Departments (MILDEPs) have 9 months to complete an investigation and submit a report to OUSD(C), who then has 3 months to submit the report to Congress and the President. A review of the Department of the Navy's (DoN) FY 2002 ADA cases revealed that on average, 17 months is spent investigating, reporting, and monitoring ADA violations. The below changes to the process should enable compliance with the existing FMR timeline.

As a result of the DoN's effort to reduce ADA investigation cycle time, an investigator will **now have three months (90 days) to conduct an investigation** and submit a draft Report of Violation to OASN(FM&C)(FMB-5) in accordance with the investigation guidelines in the DoD FMR and this memorandum. FMB-5 will review the draft report and determine if additional information is required. If needed, the investigator will have one additional month to finalize the report.

Major Commands/BSOs are reminded that investigators should be temporarily relieved of as many day-to-day mission duties and responsibilities as practicable in order to focus on the investigative process. This is critical to ensure the investigator completes the investigation within the timeframe specified so that DoN can comply with DoD mandated timelines. When an investigator is assigned to a case, service will be required unless a waiver to an assignment is submitted to FMB-5. Waiver requests must be submitted within five working days of notification. In assigning investigators, FMB-5 will be mindful of recent assignments and spread the workload across commands.

Prior to conducting an ADA investigation, an ADA investigator should become familiar with the ADA report format and have a plan and/or strategy for conducting the investigation. The investigator should also understand the structure of the Command/BSO under investigation. Specifically, what is their mission? Who's in charge? Who reports to whom? Who signs funding documents? Understand the funds flow of the organization. The ADA investigator may be required to travel during an investigation. This travel will be financed by the command being investigated. FMB-5 will be available throughout the investigation period to provide guidance and assistance to the investigator. In addition, an investigator will need to:

- review the Preliminary ADA report
- collect data and relevant documents (to include funding documents, contracts, work orders, purchase orders, and other supporting materials)
- conduct interviews with key players and document the results
- determine what actions caused the violation and recommend finding(s) (violation/no violation)
- analyze the information obtained from documents and interviews
- identify the individual(s) responsible for the violation and determine the degree of responsibility of each person.

SEP 15 2006

- include the specific act or failure to act that caused the violation
- identify relevant management controls or lack thereof
- identify legal and financial policy issues requiring resolution
- prepare draft report
- notify and obtain official statements from person(s) named responsible
- perform additional investigative work and interview addition people as needed

The format to be used to report a formal ADA violation is attached. This format provides specific guidance and information required to prepare a draft report. Once FMB-5 receives the investigator's draft Report of Violation, they will work with the investigator to finalize the report and clarify information. When the draft report is finalized, the investigator will provide the draft report to the person(s) named responsible and obtain official statements. No discipline will be conducted at this time. The investigator should remain available to answer questions and revise the report if necessary.

Using the investigator's report, FMB-5, OASN(FM&C) Office of Counsel (FMC), and the USD(C) Counsel will then work together to determine if a violation occurred. If USD(C) Counsel concurs that a violation has occurred, FMB will request discipline be administered to the person(s) named responsible for the violation. ADA violations are violations of federal statute and are a very serious offense and should be treated accordingly. Once discipline is complete, FMB-5 will submit the final Report of Violation to OUSD(C). If USD(C) Counsel determines that an ADA violation did not occur, FMB-5 will prepare the final report to close out the case.

SEP 15 2006

Guide to Disciplinary Actions

The following are suggestions based on types of disciplinary actions taken in previous DoD cases. They are meant to illustrate the range of disciplinary actions available. They are not meant to be mandatory and in all cases discipline should be determined on a case-by-case basis based on the facts of the individual case.

Range of violation types	Suggested disciplinary actions
<ul style="list-style-type: none"> • Lower \$ value • Lesser level of responsibility • First time violation • Significant mitigating circumstances 	<ul style="list-style-type: none"> • Verbal counseling • Letter of caution • Letter of counseling • Requirement to complete training in area of violation
<ul style="list-style-type: none"> • Medium \$ value • Medium level of responsibility • May not be first time cited for funds misuse • May be some mitigating circumstances 	<ul style="list-style-type: none"> • Verbal reprimand or admonishment • Letter of reprimand • Suspension of contracting officer's warrant • Requirement to complete training in area of violation
<ul style="list-style-type: none"> • High \$ value • High level of responsibility • May not be first time cited for funds misuse • Egregious misuse of funds 	<ul style="list-style-type: none"> • Letter of reprimand • Reassignment to position of non-acquisition or financial responsibility • Suspension from duty • Removal from office • Termination of contracting officer's warrant • Requirement to complete training in area of violation