

**CHAPTER 4****CONDUCTING INVESTIGATIONS**0401 PURPOSE OF AN INVESTIGATION

The purpose of an investigation of a potential violation of the Antideficiency Act is to determine what happened, the causes, who was responsible, what actions shall be taken to correct the current situation, and what actions shall be taken to ensure that a similar violation does not occur in the future. When an investigating officer is appointed, a formal investigation shall begin.

040101. Checklists. The “Checklist for Investigating Officers” Figure 4-1, below, shall be used during an investigation to document the results. The “Checklist for Appointing Officers” at Figure 4-2, below, shall be used by the appointing officer in the review of the investigating officer’s report of violation.

040102. Research Effort. An investigating officer shall review all specific documentation in the functional area involved related to the possible violation, including, but not limited to, such items as the report of the preliminary review, purchase requests, contracts, work orders, vouchers and supporting materials. In addition, the investigating officer shall take testimony from witnesses whenever possible.

0402 TIMEFRAMES

040201. Timeframes for Investigation. Investigations of potential violations of the Antideficiency Act, including the submission of the final summary reports to the NASA Chief Financial Officer (CFO), shall be completed within 3 months of the date of discovery.

A. All appointing officials shall stipulate in the appointing letter a due date for the investigative report. Such due date shall conform to the 3-month timeframe regardless of the scope of the event or amount of the potential violation.

B. The total process for investigating and reporting potential violations of the Antideficiency Act shall not take more than 6 months from date of discovery through the preparation and transmission of an investigator’s report (see 0405 CHECKLIST FOR INVESTIGATING OFFICERS) to OCFO or the Deputy Administrator as appropriate. Such report shall include draft transmittal letters to the President, the Director of the Office of Management and Budget, and the leaders of both Houses of the Congress.

C. Exceptions to this schedule must be approved by the Agency CFO.

040202. Approving Exceptions to Timeframes. The appointing official (e.g. Center CFO for the Centers and Deputy Administrator or the Chief Financial Officer for

Headquarters) may approve an exception to the above timeframe on a case-by-case basis. The granted extension shall not exceed 1 year from the day the investigation began.

#### 0403 DEVELOPING CONCLUSIONS

During the investigative process, the investigating officer shall use extreme care in obtaining and documenting all the relevant and specific facts of the case. The conclusions in the Investigating Officer's Report, including the identification of the person or persons as responsible for the violation, shall be supported by the facts presented in the report.

040301. Identifying Circumstances and Fixing Responsibility. The investigating officer shall consider carefully the facts and circumstances of the situation before fixing responsibility for a violation. Generally the responsible party will be the highest ranking official in the decision making process who had either actual or constructive knowledge of precisely what actions were taken and the impropriety or questionable nature of such actions. The person in the best position to prevent the ultimate error, however, is the highest ranking official who was aware of both factors. The investigating officer shall document clearly what each person did, or failed to do, that caused or contributed to the violation.

A. A report of violation shall include assignment of responsibility to one or more individuals for a violation so that appropriate administrative or disciplinary action, if any, may be imposed as required by Title 31, United States Code, sections 1349, 1350, 1518, and 1519.

B. All relevant aspects of the case, including all persons with knowledge relevant to the investigation shall be interviewed and records, shall be investigated fully. The key personnel involved in a violation shall be interviewed in coordination with the Office of Human Resources at Headquarters or the Center offices as appropriate.. If an employee to be interviewed is a member of a bargaining unit, then the investigating officer shall comply with appropriate statutory and collective bargaining agreement protections for such employee. Key facts associated with the events leading to the potential violation shall be examined and documented in the report and the investigating officer shall address any conflicts raised by the evidence. If a series of events at several levels led to the violation, then the report shall clearly identify what happened at each level and how the events contributed to the violation.

C. The investigating officer shall logically support a determination from the documented facts that one or more of the individuals involved are responsible for causing the violation.

D. The investigating officer shall clearly show what each person involved did, or failed to do, that caused the violation. The following questions shall be considered:

1. Did the violation occur because an individual carelessly disregarded instructions?

2. Did the violation occur because an individual was inadequately trained or lacked knowledge to properly perform his or her job? If so, was the individual or supervisor (or both) at fault?

3. Did the violation occur because of an error or mistake in judgment by an individual or a supervisor?

4. Did the violation occur because of lack of adequate procedures and controls? If so, then who was at fault?

5. Did the violation occur because of other reasons? If so, then who was at fault?

E If, at any time during an investigation, the investigating officer believes there may be a criminal issue(s) involved, then the investigation immediately shall be stopped. The investigating officer shall consult with legal counsel to determine if the issue shall be referred to appropriate criminal investigators for resolution.

#### 0404 CORRECTIVE ACTIONS

040401. Developing Corrective Actions. When the causes and the individual(s) responsible for the violation have been determined, NASA Directors, Center CFOs, Deputy CFOs or other appointed officials shall determine the corrective actions necessary to ensure a violation of a similar nature will not recur. Those actions shall be included in both the report of violation and the final summary report. In addition, officials of the NASA office under investigation, working with the investigating officer, shall develop a summary of lessons learned from the specific circumstances of the case.

040402. Recommending Disciplinary Action. At the conclusion of an investigation, appropriate disciplinary action, if any, shall be determined by the appropriate management official over the individual(s) named as responsible for the violation in conjunction with the agencies procedures for disciplinary action. That determination shall be based on consultations involving the individual's management and others with appropriate authority. The recommended disciplinary action, if any, shall be based on the severity of the violation, the degree of responsibility of the named individual and any mitigating circumstances.

0405 CHECKLIST FOR INVESTIGATING OFFICERS**Figure 4-1 CHECKLIST FOR INVESTIGATING OFFICERS**

The investigating officer shall ensure 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 or contracting 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 meeting minutes in which decisions concerning financial decisions were conducted.
  - d. If a regulation, funding document, or other administrative document was violated, then review the pertinent document. Determine specifically what administrative limitation was exceeded. Review the sections of Title 31 of the United States Code (U.S.C.) related to administrative violations: Sections 1511 through 1519. Determine specifically which section of Title 31 was violated. Seek legal assistance in making the determination
  - e. If a statutory limitation was exceeded, then review the pertinent statute. Title 31, United States Code, sections 1341 through 1348 contains general government-wide provisions dealing with statutory limitations. Voluntary services are covered by section 1342. NASA's statutory authority acceptance of unconditional gifts of services appears in 42 USC 2473(c)(4). Determine specifically which statute was violated. Seek legal assistance in making the determination
3. Interview the key players and document the results of the interviews. When interviewing NASA civilian employees, who also are bargaining unit members, ensure adherence to the

relevant sections of the United States Code and the collective bargaining agreement. All interviews with individuals who may be the subject of disciplinary action must be coordinated with the Office of Human Resources for Headquarters, or the Center offices, as appropriate.

- 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. Re-interview 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.

Figure 4-1 (continued)

**Figure 4-1 CHECKLIST FOR INVESTIGATING OFFICERS**

(continued)

5. Assemble and analyze the documented evidence.
  - a. First develop a list of all documents and evidence, including the statements of all witnesses. 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 support 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 complied 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, then interview the supervisors of the operating personnel to determine why the controls and procedures were deficient.
  - c. In consultation with the 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 affected organizational unit. Describe actions in detail so they may be evaluated for application at other locations.
  - d. Obtain from management officials of the office involved any lessons learned from this event for use by others in addressing similar circumstances. Include any recommended lessons learned in the report.

Figure 4-1 (continued)

**Figure 4-1 CHECKLIST FOR INVESTIGATING OFFICER**

(continued)

7. Determine to what degree each key player was responsible for the violation.
  - a. Generally the responsible party will be the highest ranking official in the decision making process who had either actual or constructive knowledge of precisely what actions were taken and the impropriety or questionable nature of such actions. The person in the best position to prevent the ultimate error, however, is the highest ranking official who was aware of both factors. The investigating officer shall document clearly what each person did, or failed to do, that caused or contributed to the violation
  - b. Identify in the report the individual(s) named responsible by name, grade, position title, job series, and organization.
  - c. Include in the report a brief, clear description of the causes and circumstances surrounding the violation.
    - (1) The description shall state clearly what the official(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 shall 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.
    - (4) Identify the name and position of the holder of the funds subdivision and an evaluation of the performance of his or her fund control responsibilities.
8. In conjunction with the Office of Human Resources for Headquarters, or the Center offices, as appropriate. the individual(s) named responsible shall be:
  - a. Advised that he/she may consult with legal counsel or, when applicable, a union representative.
  - b. Advised by a management official in his/her chain of command 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.

Figure 4-1 (continued)

**Figure 4-1 CHECKLIST FOR INVESTIGATING OFFICER**

(continued)

- 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, then the report shall so indicate.
  - d. Allowed to designate witnesses in his or her behalf.
9. Designated witnesses shall be interviewed for the record.
- a. In the report, the investigator shall address any new facts presented in the statement(s).
  - b. If a designated witness declines to make a statement, then the report will so indicate.
10. The investigator shall assess whether the individual(s) named responsible knowingly and willfully committed the violation.
11. In consultation with the investigating officer and legal counsel and Office of Human Resource, management shall determine appropriate disciplinary action against the individual(s) named responsible. The recommended disciplinary action, if any, shall be commensurate with the severity of the violation and the degree of responsibility of the individual.
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. In addition, 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.

Figure 4-1 (continued)

**Figure 4-1 CHECKLIST FOR INVESTIGATING OFFICER**

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- f. All relevant evidence has been included in the report.
- g. All circumstantial evidence has been labeled properly to distinguish it from the evidence in item 12.f., above.
- j. An individual(s) has been named responsible, disciplinary action has been recommended.
- k. 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, then the case shall have been referred to criminal investigators.
- l. Corrective actions have been taken or recommended and the report identifies any lessons learned.
- m. Any findings, conclusions, and recommendations that are based upon testimony are cross-referenced to the record of the testimony.
- n. The documentation includes all legal advice rendered during the conduct of the investigation and the legal review of the report submitted to the appointing official.
- o. The report includes the name and position of the fund holder and an evaluation of his/her performance.
- p. The investigator has signed and dated the report.

Figure 4-1, Checklist for Investigating Officers

0406 CHECKLIST FOR APPOINTING OFFICERS**Figure 4-2 CHECKLIST FOR APPOINTING OFFICERS**

The appointing officer shall ensure the following items are addressed in the investigating officer's report of violation:

1. Is a copy of the appointing officer's memorandum and the Preliminary Review Report included in the report?
2. Does the report include 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, the name and title of the investigating officer, the dates, place and scope of the investigation?
3. Is the evidence clearly documented in the report and is the evidence relevant to the case?
4. Does the evidence appear to be complete or are significant factors missing that should be considered? Do there appear to be relevant unanswered questions?
5. Are the findings clearly stated, logical, supported by the evidence, and relevant to the case?
6. Is each finding that is based upon an interview properly cross-referenced?
7. Are the findings and conclusions fully substantiated by the evidence and interviews?
8. Were all conflicts in the statements and documents addressed in the report?
9. Is there an explicit statement that a violation, in fact, occurred or that no violation occurred? If a violation occurred, does the report include a citation of the section of the Antideficiency Act that was violated?
10. Does the report name at least one individual as being responsible for the violation? Does the evidence support the determination of responsibility made by the investigating officer? Is the individual(s) named responsible identified by name, grade, position title, job series, and organization? Does the report identify the date of the potential violation and the amount?
11. Does the report include a clear description of the causes and circumstances surrounding the violation?
  - a. The description shall state clearly what the officer(s) or employee(s) responsible for the violation did, or failed to do, that caused the violation.

Figure 4-2 (continued)

**Figure 4-2 CHECKLIST FOR APPOINTING OFFICERS**

(continued)

- b. 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.
  - c. The report shall 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.
  - d. Identify the name and position of the holder of the funds subdivision and an evaluation of the performance of his or her fund control responsibilities.
12. Does the report indicate that each individual named responsible was:
- a. Accorded all rights to which they are entitled as an employee and/or member of a bargaining unit.
  - b. Advised that a violation has been determined to have occurred, 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 make a statement regarding the alleged violation after reviewing the report and evidence. The report should include any such statement made at the time of the investigation. Statements made after the report is signed and dated by the investigative officer should be included as an addendum to the report. If the individual declines to make a statement, then the report shall so indicate.
  - d. Allowed to designate witnesses to testify in his or her behalf?
13. Were the rights of the individual(s) named responsible protected? Are there indications in the report that suggest that their rights were not fully protected? If so, the case may have to be reinvestigated.
14. Were all witnesses--designated by the individual(s) named responsible--interviewed or does the report include valid reasons why they were not interviewed?
15. Was there any relevant new information furnished by the oral or written statements by the individual(s) named responsible, or their designated witnesses? If so, does the report address this new evidence and its bearing on the responsibility of the named individual(s)?

Figure 4-2 (continued)

**Figure 4-2 CHECKLIST FOR APPOINTING OFFICERS**

(continued)

16. Does the report explicitly state whether the violation was willfully and knowingly committed? If there are indications the violation willfully and knowingly was committed, the investigation shall have been referred to criminal investigators.
17. Has the investigating officer included a discussion of the following items in the report and have appropriate actions been taken to:
  - a. Human Resources as to whether disciplinary action is appropriate given the facts and circumstances of the case
  - b. Disciplinary recommendation if appropriate.
  - c. Actual disciplinary actions been taken to discipline the named individual if done before the issuance of the report.
  - d. Identify and install corrective actions to prevent similar violations in the future.
  - e.. Improve procedures and controls, if appropriate.
  - f. Identify lessons learned from this case.
  - g. Ascertain a legal review of the report.
18. Has the report been signed and dated by the investigator?

Figure 4-2, Checklist for Appointing Officers