

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 65-608

29 DECEMBER 2015

Financial Management

ANTIDEFICIENCY ACT VIOLATIONS



COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements Department of Defense Financial Management Regulation (DoD FMR) 7000.14-R, *Department of Defense Financial Management Regulation, Volume 14, Administrative Control of Funds and Antideficiency Act Violations* and Air Force Policy Directive (AFPD) 65-6, *USAF Budget Policy*. This Air Force Instruction (AFI) provides guidance to Air Force personnel on how the Air Force identifies, investigates, reports, and processes Antideficiency Act (ADA) Violations. This instruction complements AFPD 16-5, *Planning, Programming, Budgeting and Execution Process*, AFPD 20-1, *Acquisition and Sustainment Life Cycle Management*, AFPD 33-1, *Information Resources Management* and AFPD 34-2, *Managing Nonappropriated Funds*. This instruction applies to all activities that prepare, justify, and execute Air Force appropriations, including activity groups of the Air Force Working Capital Fund. This instruction also applies to the Air Force Reserve (AFR) Units and the Air National Guard (ANG) Units. Major Command (MAJCOM), Field Operating Agency (FOA), and Direct Reporting Unit (DRU) organizations cannot supplement this instruction.

The authorities to waive requirements in this publication are identified with a Tier (T-0 & T-1) number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, Table 1.1 for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the Publication OPR for non-tiered compliance items.

The reporting requirements in this instruction 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*. The authority to collect and maintain Privacy Act record information required by this publication is set forth in Privacy Act System of Records Notices F051 AFJA K, *Commander Directed Inquiries* and F090 AF IG B *Inspector*

General Records. Recommended changes to this publication should be sent through appropriate channels to the Office of Primary Responsibility (OPR), SAF/FMFA, Attn: ADA Team, 1500 West Perimeter Road, Suite 3100, Joint Base Andrews, MD, 20762 using the AF Form 847, *Recommendation for Change of Publication.*

Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of in accordance with Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS) located at <https://www.my.af.mil/afirms/afirms/afirms/rims.cfm>.

SUMMARY OF CHANGES

This document has been substantially revised and requires a complete review. Major changes include revised roles and responsibilities for the organizations involved in ADA violation investigations. This revision of AFI 65-608 is in response to the revised DoD FMR 7000.14-R, Volume 14, *Administrative Control of Funds and Antideficiency Act Violations*, November 2010.

This revision of AFI 65-608 adds requirements for the MAJCOM, FOA, and DRU Financial Management organizations to appoint an ADA Focal Point; and for the appropriate MAJCOM equivalent Appointing Official to appoint a Preliminary Review Officer (PRO) within 2 weeks after SAF/FMFA directs the ADA investigation.

This revision provides guidance for requesting approval from SAF/FMB for all upward obligation/accounting adjustments. This revision also provides guidance on processing Inspector General hotline complaints, rescinds the requirement for the Investigating Officer (IO) to recommend appropriate disciplinary actions against the individual (s) identified as responsible for the ADA violation, rescinds the requirement for persons named responsible to sign the acknowledgement of having been identified as a responsible individual, and includes guidelines for selecting an investigator. The revision adds requirements for the IO to complete the formal ADA investigation within four months after the start date, to complete a checklist when the formal ADA investigation has been completed, to attach a copy of the ADA certificate of training to the ADA Report, and to notify SAF/FMFA when a Senior Officer (Colonel, or civilian O-6 equivalent or higher) is identified as a responsible individual.

Finally, this revision includes guidance for processing determinations of no violation, provides instructions for releasing the ADA Report to internal or external agencies, requires MAJCOM ADA Focal Points to provide, at a minimum, monthly status updates to SAF/FMFA for all on-going formal ADA investigations, and replaces the attachments from the original AFI.

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Chapter 1

OVERVIEW

1.1. Purpose. The purpose of this instruction is to identify Air Force roles and responsibilities and provide Air Force specific procedures for the identification, investigation, reporting, and remediation of potential ADA violations in compliance with DoD FMR 7000.14-R, Volume. 14, Administrative Control of Funds and Antideficiency Act Violations.

1.2. The Antideficiency Act. The ADA is codified in Title 31, United States Code (USC), §§ 1341(a), 1342, and 1517(a). The ADA prohibits the obligating or expenditure of funds in excess or in advance of a Congressional appropriation or an agency's apportionment or formal administrative subdivision. ADA violations may be caused by violating statutory limitations in the use of funds as it relates to an appropriation's purpose, period of availability, or amount.

1.3. Administrative Controls Over Funds. The Department of Defense (DoD) is required to establish and operate a system of administrative controls over appropriated and non-appropriated funds (31 USC § 1514(a)). DoD controls are codified in the DoD FMR. 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. See the DoD FMR Volume. 14, Chapter 1, Administrative Control of Funds.

1.4. Violation Causes. ADA violations can be caused and result from a variety of actions or omissions. See the DoD FMR Volume. 14, Chapter 2, *Antideficiency Act (ADA) violations* for detailed information and examples.

1.5. Reporting Suspected/Potential ADA Violations. Military members or civilian employees who identify possible improper uses of appropriated Air Force funds that may constitute potential ADA violations must promptly report their concerns to their organization's comptroller. Local comptrollers will then perform an initial review of the matter as discussed in Chapter 4. (T-1). Where circumstances dictate, individuals may report potential violations to their Major Command (MAJCOM) comptrollers or SAF/FMFA. Special Access Programs (SAPs) are handled on a case by case basis often in conjunction with SAF/ FMF, SAF/FMBIB and the Security Assistance Policy Coordinating Office (SAPCO), see paragraph 2.5.1. In addition, individuals may contact the DoD or Air Force Offices of the Inspector General.

Chapter 2

RESPONSIBILITIES

2.1. Secretary of the Air Force. Implements the policies in DoD FMR 7000.14-R, , *Volume 14, Administrative Control of Funds and Antideficiency Act Violations*, and delegates the overall ADA program management responsibility to the Assistant Secretary of the Air Force (Financial Management and Comptroller) (SAF/FM). The HAF Mission Directive for SAF/FM can be found at <http://www.e-publishing.af.mil>

2.2. Assistant Secretary of the Air Force (Financial Management and Comptroller) (SAF/FM): Responsible for overall ADA program management. Delegates execution of the Air Force's ADA program to the Deputy Assistant Secretary, Financial Operations (SAF/FMF).

2.3. Deputy Assistant Secretary of the Air Force, Financial Operations (SAF/FMF). 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 Financial Reporting (SAF/FMFA).

2.3.1. Dictates the investigation of all suspected ADA violations not otherwise referred to the DoD Inspector General (DoD IG).

2.3.2. Dictates 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.

2.3.3. 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 OUSD(C), or is otherwise warranted under the circumstances. Special Interest Investigations are defined in DoD FMR 7000.14-R, Volume 14, Chapter 5, paragraph 050203.

2.3.4. 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.

2.3.5. Consults with MAJCOM, FOA, and DRUs in drafting or revising Air Force policy and regulations in response to an ADA report.

2.4. Director, Financial Reporting (SAF/FMFA). 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.

2.4.1. Provides monthly updates of ADA activity to OUSD(C), including the status of overdue cases, new ADA cases opened during the period, and ADA cases presently under investigation.

2.4.2. 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).

2.4.3. Provides assistance in the coordination of disciplinary action across Commands.

2.4.4. Notifies SAF/IGQ per section 5.4. if a Senior Officer (O-6 equivalent or above) is identified as a responsible party or SAF/IGS per section 5.5. if a Senior Official (O-7 equivalent or above) is identified as a responsible party.

2.4.5. Receives and reviews the PROs Preliminary Review Report (PRR) and the IOs Formal Report to ensure compliance with DoD and Air Force requirements, and completion of the Preliminary Review/ and the Formal Investigating Officer's Checklists.

2.4.6. Prepares the closure notification for SAF/FMF approval which is sent to the MAJCOM with a courtesy copy to OUSD(C), when a preliminary review is closed and a formal investigation is not recommended.

2.5. Deputy Assistant Secretary of the Air Force, Budget (SAF/FMB). Establishes Air Force budget policies and procedures for preparing, justifying, and executing budgets to include administrative control of appropriations; provides guidance on organizational and appropriation funding responsibilities and use of funds (propriety) issues; develops and maintains the budget structure and associated codes; and provides coordination in the approval of funding adjustments/transactions to correct ADA violations.

2.5.1. Special Access Programs (SAPs). SAF/FMBIB and SAF/FMBI are the respective ADA focal points for SAPs, with SAF/FMBIB as prime. Once a violation is suspected, SAF/FMBIB along with the special assistant to the MAJCOM Commander for SAPs must be notified. Prior to any investigation, SAF/FMBIB in concert with SAF/FMF will render a decision about proceeding with an investigation. The special assistant to the MAJCOM Commander for SAPs may, at the discretion and advice from SAF/FMBIB, appoint an impartial and appropriately cleared investigating official. Regular progress reports are directed to SAF/FMBIB from the special assistant for SAPs.

2.5.2. SAF/FMBIB will coordinate and inform SAF/AQL, SAF/AAZ and the DoD SAPCO of all potential and on-going ADA investigations as applicable. Details of SAP on-going investigations will also be rendered to the appropriately cleared SAF/FM officials.

2.6. Air Force General Counsel (SAF/GC). SAF/GC is the primary legal advisor to the Secretary of the Air Force and Air Staff on fiscal law matters.

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

2.7.1. Advises the Secretariat and Air Staff on fiscal law matters.

2.7.2. Reviews, provides a legal opinion, and coordinates on the results of preliminary ADA investigations, when requested by SAF/FMFA.

2.7.3. Reviews, provides a legal opinion, and coordinates on all formal ADA investigations.

2.8. Appointing Officials. MAJCOM, FOA, and DRU Commanders, or SAF/FMF for the Secretariat and Air Staff, serve as ADA Appointing Officials. Appointing Officials are responsible for the designation and appointment of qualified PROs to conduct all preliminary ADA reviews and qualified IOs to conduct formal ADA investigations. The Appointing Official may delegate appointing authority to a member of their staff (e.g. Comptroller). The Appointing Official is responsible for the execution of all preliminary and formal ADA investigations directed by SAF/FMF within their organization. This includes ensuring each PRO and IO is provided the proper provision of time and resources for timely completion of the investigation.

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 is the team leader and individual members are called together, as needed. The IPT ensures that subject matter experts from their respective functional areas are made available to provide expert technical assistance to PROs and IOs, as needed.

2.9.2. The Comptroller ensures 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.

2.9.3. Ensures the PRO and IO are adequately trained, including an "in-brief" with the appropriate members of the IPT prior to commencing an investigation.

2.10. ADA Focal Point:

2.10.1. The Comptroller appoints the 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 PRRs and Formal Reports to SAF/FMFA. SAF/FMFA acts as the ADA Focal Point at Secretariat and Air Staff.

2.10.2. The ADA Focal Point develops and maintains an updated roster of trained and qualified PROs and IOs. The roster is used to select individuals to investigate potential ADA violations. Chapter 3 of this instruction includes guidelines for selecting an IO.

2.10.3. The ADA Focal Point is responsible for initiating and/or monitoring the coordination to completion of any upward obligation/accounting adjustments initiated to remedy potential ADA violations. Upon SAF/FMFA review and determination of the existence of a potential ADA violation, accounting corrections/adjustments must be submitted to the Deputy Assistant Secretary, Budget, Budget Management and Execution, Policy and Fiscal Control (SAF/ FMB) in the Obligation Accounting and Reporting System (OARS) for review and final approval, regardless of dollar amount, in accordance with AFI 65-601, Volume I, Chapter 6.

2.11. Holder of Funds. The DoD FMR defines Fund Holder in Volume 3, Chapter 11 as an individual holding an administrative subdivision of funds or an operating target, who is responsible for incurring obligations against the administrative subdivision or target and for managing the use of such funds. The holder of funds does the following:

2.11.1. Ensures the funds are only used for the purpose prescribed and does not exceed funding authority, including any limitations on that authority. (T-1)

2.11.2. 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). (T-1)

2.11.3. Ensures all obligations are promptly recorded against the proper administrative subdivision and all recorded obligations meet fiscal law requirements. (T-1)

2.11.4. Complies with funds control policies and procedures, including the full use of the capabilities of existing systems and control techniques. (T-1) Provides any implementing guidance needed and emphasizes the requirement for strict control to preclude ADA violations.

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

2.11.6. Works with the ADA Focal Point to execute upward obligation/accounting adjustments to remedy potential ADA violations. (T-1)

2.12. Disciplinary Official. Disciplinary official(s) are military or civilian personnel designated to consider appropriate disciplinary action against individual(s) found to be responsible for an ADA violation. The disciplinary official's decision to administer a given level of discipline shall be in accordance with applicable laws and negotiated agreements applicable to the responsible individual. In considering appropriate disciplinary action, the disciplinary official will review applicable and relevant evidence (which generally includes the ADA Report, underlying documentary and testimonial evidence, and the SAF/FMF determination of an ADA violation). (T-1). Disciplinary officials will consider appropriate disciplinary action in consultation with their Staff Judge Advocate or servicing legal office (as well as the Civilian Personnel Office, in the case of a civilian employee). Any disciplinary action considered appropriate, because of facts disclosed in the ADA investigation, must be accomplished in a timely manner.

2.13. Legal Advisor. Generally, the PRO or IO's local Staff Judge Advocate will assign a legal advisor to support the IO. (T-1) This local legal advisor should have fiscal law experience or training. The legal advisor will interpret statutes, regulations, and administrative guidance relevant to the ADA investigation and will work with the PRO and IO throughout the investigation. The local legal advisor may prepare a written legal opinion before the Appointing Official's SJA renders its legal opinion, on request of the Appointing Official's SJA.

2.14. MAJCOM, FOA, or DRU Staff Judge Advocates (SJA). MAJCOM, FOA, and DRU SJAs are responsible for reviewing all preliminary reviews and formal investigations and providing a legal opinion to the appointing official prior to a report's submission to SAF/FMF.

2.15. Supporting Functional Experts. Additional functional experts are made available through the Comptroller or ADA focal point to support the PRO or IO, as needed. All functional experts that support the PRO or IO in completing their report must complete a Statement of Independence before advising the PRO or IO. (T-1)

2.16. Air Force Military Members and Federal Employees. All Air Force military members and federal employees must follow requirements for administrative control of Air Force funds when involved in authorizing, incurring or expending Air Force funds. (T-1) Only authorized military members or federal employees may obligate Air Force funding.

Chapter 3

SELECTING THE ADA INVESTIGATOR

3.1. Background. Both Preliminary Reviews (Chapter 4) and Formal Investigations (Chapter 5) require the appointment of a qualified investigator or investigation team. The general qualifications, selection, and responsibilities of these investigators are set forth in DoD FMR Volume 14, Chapter 3 and Chapter 4.

3.2. Investigator Selection. All Formal IOs and PROs are appointed by the Appointing Official. An Appointing Official shall initiate a preliminary review or formal ADA investigation upon receipt of written notification by SAF/FMF. (T-0) The appointing official shall select and appoint the PRO or IO in writing no later than 2 weeks after SAF/FMFA directs the ADA investigation. (T-0) The Appointing Official selects the investigator from a roster of qualified individuals. The Appointing Official is responsible for ensuring that the individuals selected are qualified and independent/impartial. If a decision of the appointing official is the subject of an investigation or the Appointing Official otherwise has a personal interest in the subject or outcome of an investigation, he or she must recuse themselves from the appointment process. (T-0) SAF/FMFA shall serve as the Appointing Official in such cases.

3.3. Qualified ADA Investigator Roster. The ADA Focal Point develops and maintains an updated roster of trained and qualified PROs and IOs. The roster is to be used to select individuals to investigate potential ADA violations. The Focal Point maintains a roster of current data including: the date of last fiscal law training, rank/grade, organization to which the PRO/IO is assigned, functional specialty, number of investigations previously conducted, and when the investigations were conducted.

3.3.1. The PRO, or IO, must have successfully completed fiscal law training and have knowledge in financial management and the functional area that is involved in the potential violation. (T-0) The following is a suggested list of courses: 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 the Fiscal Law Course offered through the FM Distributed Learning Center. The ADA Focal Point ensures that a refresher course is available, as needed, but in no event is an individual designated to serve as an IO more than three years after completing their last fiscal law training course.

3.3.2. ADA Focal Point updates the roster on the 15th of January and the 15th of July of every year to ensure a sufficient number of qualified PROs and IOs remain available in the appropriate rank/grade. The updated roster should be submitted to SAF/FMFA. If a sufficient number of previously qualified PROs or IOs are not available to complete an investigation, the ADA Focal Point may provide a nominee with training, add his/her name to the Command roster, and recommend to the Appointing Official that the individual be appointed as a provisional PRO or IO, pending completion of fiscal law training at the earliest practical opportunity.

3.4. Investigator Independence. In all matters associated with the ADA work, the investigator and/or the investigation team are free in both fact and appearance from personal, external, and

organization impairments to independence. The Appointing Official considers the following when appointing a PRO or an IO.

3.4.1. PROs and IOs may have no vested interest in the outcome of an investigation to which they are assigned.

3.4.2. PROs and IOs must be capable of conducting a complete, impartial and unbiased investigation.

3.4.3. To ensure independence, the Appointing Official will select the IO or PRO from an organization external to the immediate organization being investigated (e.g., outside the program office or squadron where the potential ADA violation may have occurred). (T-1)

3.4.4. While not mandatory, it is suggested that the IO's rank/grade be equal to, or greater than, the highest-ranking individual whose actions/decisions are under review.

3.4.5. The Appointing Official should contact his or her servicing SJA concerning any independence/conflict of interest issues or questions.

3.4.6. If no independent PROs or IOs are available, contact SAF/FMFA for assistance.

3.4.7. Maintaining independence is a continuing responsibility. Investigators at all levels have a responsibility to maintain independence so that their opinions, conclusions, judgments, and recommendations are impartial and viewed as impartial by knowledgeable third parties and those named responsible for the ADA violation. An investigator avoids situations that could lead reasonable persons with knowledge of the relevant facts and circumstances to conclude the investigator is not capable of exercising objective and impartial judgment on all issues associated with conducting and reporting on the ADA work.

3.5. Independence Statement. The appointing official is required to certify the investigator's independence in the formal appointment letter. (T-1) Before performing or assisting an ADA investigation, investigators and supervisors must complete an independence statement (Attachment 15) certifying they have no relationships and/or beliefs that might cause them to limit the extent of the investigation, limit disclosure, or slant investigative findings in any way. (T-1) Copies of the independence statement are retained in the ADA case file. The required independence statement extends to all investigators and specialists (e.g. civil engineering, contracting, and legal) associated with the investigation.

3.6. Investigator Qualifications. When selecting an IO/PRO, the Appointing Official considers the individual's experience or expertise in financial management, their knowledge of financial management policies and procedures and the ADA, and their ability to perform an independent investigation. Additionally, the appointing official considers:

3.6.1. Completion of Fiscal Law Training. At a minimum, all PROs and 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. (T-0) An IO must have completed their last fiscal law training within 3 years of their appointment for a formal ADA investigation. (T-0) However, in extenuating circumstances, the Appointing Official may direct the individual selected to receive the required training and place the individual on the roster of qualified individuals before appointment.

3.6.2. Completion of Investigator Training. The IO must have completed the Investigation Officer training within 3 years of their appointment for a formal ADA investigation. (T-0)

3.6.3. Time and Availability. The Appointing Official should select an IO that is available for the full 12 months required to complete all phases of an ADA investigation.

3.6.4. Functional Area Knowledge. An IO or PRO has adequate experience in the functional area that is involved in the apparent violation.

3.6.5. Rank and Grade. It is also desirable, but not mandatory, that the investigator's rank/grade be equal to, or greater than, the highest-ranking individual whose actions are under review.

3.7. The Appointment Memorandum. The formal appointment memorandum includes the following (see Attachment 5 for an example):

3.7.1. ADA case control number.

3.7.2. Specific time frames to be met (17 weeks for the investigation).

3.7.3. A statement noting that the IO is certified as properly trained and qualified. The IO must attach a copy of their latest fiscal law and ADA Investigator training certificates to the ADA Report. (T-0)

3.7.4. A statement noting that the IO is free of personal, external and organizational impairments. The IO must attach a signed copy of the ADA Reviewer/Investigator Independence Statement to the ADA Report. (T-0)

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

Chapter 4

PRELIMINARY ADA REVIEWS

4.1. Background. A preliminary ADA review is performed to gather basic facts and circumstances, determine whether a potential ADA violation has occurred, and provide the information necessary to decide whether a formal ADA investigation is needed. A preliminary review does not attempt to identify the responsible individual(s), recommend corrective actions, or collect other information required during a formal ADA investigation.

4.2. Sources of Potential ADA Violations. Potential ADA violations are often identified through internal reviews or 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.

4.3. Inspector General (IG) Hotline Complaints. If the need for a preliminary ADA review results from a DoD IG or SAF/IG hotline complaint, SAF/FMFA will notify the appropriate ADA Focal Point (SAF/FMF at the Secretariat and Air Staff), and provide them with a preliminary ADA review control number. The PRO is advised that the hotline complaint is protected communication. As a result, it is not released, reproduced, or shared (in whole or in part) with any individual outside the Air Force without the approval of the Inspector General who received the complaint.

4.4. Initial Review. When a suspected violation is discovered or reported, the Comptroller thoroughly researches, analyzes, and discusses the problem with the ADA Focal Point and SJA or servicing legal office, to determine whether it is in fact a potential ADA violation, or just an accounting error. For accounting errors, the Comptroller takes appropriate corrective actions to correct the errors and report the intended corrective actions to SAF/FMFA for review.

4.4.1. 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.) occurs prior to the reporting of a potential violation and the initiation of a preliminary or formal investigation.

4.4.2. The initial review may find that there is no potential ADA to report, finding that any discrepancy was the result of a reporting error. In such cases, no report is needed.

4.4.3. The initial review may find that an improper appropriation was obligated for an expense, but that a potential ADA may be avoided by an accounting adjustment. In such cases, sufficient funds are clearly available for the activity at issue at the applicable subdivision, both at the time the relevant obligation was incurred and when the obligation adjustment is properly recorded in the proper appropriation. If such adjustments may be made, no report is needed. Accounting adjustments should be completed in coordination with the servicing legal office.

4.4.4. If the initial review determines that there is credible evidence of a potential ADA violation, the suspected violation is reported to SAF/FMFA.

4.5. Identifying and Reporting Potential ADA Violations. If, after initial review, a potential ADA violation is suspected, it is reported through the appropriate MAJCOM, FOA, DRU Comptroller organization to SAF/FMF. The reporting comptroller shall provide SAF/FMF the results of the initial review and sufficient information about the funds involved and the nature of the violation to support its conclusion. (T-1)

4.6. Preliminary Review. If SAF/FMFA agrees that a potential ADA violation has been identified and the potential violation cannot be avoided with accounting corrections SAF/FMF will request a Preliminary ADA Review and assign a Preliminary Review case number. (Attachment 3) This preliminary case number is included in the PRR and any subsequent correspondence regarding the preliminary review.

4.6.1. The MAJCOM will appoint a PRO in writing, (Attachment 4) to investigate the potential ADA violation within two weeks of SAF/FMFA assignment of a Preliminary Review case number. PROs are selected consistent with DoD FMR Volume 14, Chapter 3, Para 030202B and Chapter 3 of this instruction. The suspense date for submitting the completed PRR to SAF/FMFA is 90 days from the date of the SAF/FMFA Request for the Preliminary Review.

4.6.2. The PRO will complete the potential ADA information sheet and provide the information sheet to the ADA Focal Point who will forward the information sheet to SAF/FMFA within 4 weeks of the date of the SAF/FMF request for a preliminary ADA review. An example is provided at Attachment 2. (T-0)

4.6.3. The information sheet includes the following information:

4.6.3.1. Accounting classification of funds involved, and the associated line of accounting (LOA)

4.6.3.2. Name and location of the activity where the alleged violation occurred

4.6.3.3. Name and location of the activity issuing the fund authorization

4.6.3.4. Amount of the alleged violation

4.6.3.5. Nature of the alleged violation

4.6.3.6. Date the alleged violation occurred and date discovered

4.6.3.7. Means of discovery

4.6.3.8. Description of how the potential violation occurred

4.6.3.9. Copies of any reports, investigations, or legal opinions already completed in relation to the potential ADA violation

4.6.3.10. Expected completion date for the PRR

4.6.3.11. The name(s) and contact information (email and telephone numbers) of the PRO and any supporting functional experts that advised the PRO.

4.6.3.12. A copy of the PRO appointment memorandum.

4.7. Preliminary ADA Review Timeline. The DoD FMR, 7000.14-R, Volume 14, Chapter 3, paragraph 030202, November 2010, requires preliminary review completion within 14 weeks of MAJCOM, FOA or DRU Comptroller notification of a potential ADA violation. The PRO must

complete the ADA PRR and provide the PRR to the ADA Focal Point within 9 weeks of notification to the MAJCOM Comptroller of the potential ADA violation. (T-1) The ADA Focal Point will review the PRR within two weeks and then coordinate with the SJA or servicing legal office to obtain a legal review of the PRR within two weeks. The ADA Focal Point will provide a legally sufficient PRR to SAF/FMFA no later than 13 weeks after notification to the MAJCOM Comptroller of the potential ADA violation.

4.8. Legal Advisor. Once a PRO has been identified, the Appointing Official's SJA will assign a judge advocate or civilian attorney to advise the PRO. (T-0)

4.9. Assignment of Functional Expert. Functional expertise will be provided to the PRO through the ADA focal point, as needed. Areas of expertise may include civil engineering, contract management, and financial management. The financial management directorate for the installation will provide assistance, as required.

4.10. PRR Requirements. The results of the preliminary ADA review are reported in a PRR. Assertions and conclusions presented in the PRR are supported by documents attached to the PRR and referenced in the body of the PRR. The PRR should discuss the issues, procedures, processes and the areas or functions that were reviewed, evaluated, and investigated.

4.10.1. The PRR should discuss the evolution of the issues investigated, mitigating circumstances surrounding the violation, issues that could or could not be proven during the investigation and the supporting rationale, any issues that cannot be agreed upon by those individuals involved, and any other comments that are pertinent to the investigation.

The preliminary review should include results of interviews of individuals involved in the violation, the names, ranks, and titles of the individuals that were interviewed. Testimonies are sworn testimonies.

4.10.2. The PRR should summarize relevant testimony and state any presumptions that were sustained or rebutted through facts established by the review, any questions of fact that cannot be resolved without a formal ADA investigation and any other comments or findings that are pertinent to the subject of the review. An ADA violation may be avoided if fund control personnel are able to properly certify that the proper funds were available at the time of the initial obligation and proper funds are available at the time of the correction or fund substitution. The potential violation may be corrected when the proper accounting corrections are complete. If fund control personnel do not provide the certification, then the preliminary review report includes evidence to support a determination that there is a violation of 31 USC § 1341 31 USC § 1517.

4.10.3. The PRR should describe the roles of the individuals involved, or provide follow-up questions if necessary.

4.10.4. The PRR should 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.

4.10.5. The PRR should provide 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).

4.10.6. The PRR should 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.

4.10.7. The PRR should describe whether the appropriation was exceeded (31 USC § 1341), or whether the lowest administrative subdivision of funds was exceeded (31 USC § 1517). If the latter occurred, an ADA violation is still possible, but the remedy does not require a supplemental appropriation. 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.

4.10.8. The information required for a complete PRR is presented in Attachment 9, Preliminary ADA Review Report Checklist.

4.11. Legal Opinion. The PRR is incomplete without an attached legal opinion from the Appointing Official's SJA. However, the legal opinion should not declare that an actual ADA violation occurred (this is the function of the formal ADA investigation). The legal office should review the completeness of the investigation, the legal validity of the conclusions, and compliance with this instruction. If the SJA legal opinion identifies a problem with the PRR, the PRR is sent back to the PRO, through the ADA Focal Point, and all issues are addressed. The PRO may review, investigate further, agree or disagree with the SJA and either modify the report or not. Once all issues have been addressed, the SJA is given the opportunity to review the PRR again and either agree with changes, renew an objection, or recommend further changes.

4.12. Final PRR Transmittal. After the PRR has been completed and the legal review attached, the ADA Focal Point will prepare the PRR for approval by the Appointing Official and transmittal to SAF/FMFA. The ADA Focal Point will communicate PRR coordination delays for signature via email or memorandum, and in the weekly ADA status report to SAF/FMFA.

4.13. SAF/FMFA PRR Review. SAF/FMFA will review the final PRR for completeness within one week of receipt. The SAF/FMFA review will assess whether the report is complete, meets all administrative requirements, and contains sufficient documentation and analysis to support its findings.

4.13.1. SAF/FMFA shall return any PRR that is incomplete, or otherwise insufficient, to the appropriate ADA focal point for action by the PRO. SAF/FMFA's return package contains a transmittal memorandum, which addresses all identified report deficiencies. Upon receipt the PRO should:

4.13.1.1. Address any deficient areas noted by the SAF/FMFA review.

4.13.1.2. Gather additional documentary evidence, re-interview witness, and/or interview new witness if and as required.

4.13.1.3. Issue a formal addendum to the PRR, if the remedial action requires a substantive modification of the PRR. Any questions concerning whether a change is substantive or an addendum is needed should be directed to SAF/FMFA.

4.13.1.4. Once the PRO and the focal point have resolved all open issues, the focal point will return the revised report to SAF/FMFA for review. The ADA Focal Point shall ensure that the returned PRR is promptly acted upon and returned to SAF/FMFA within one week, or by the deadline set by SAF/FMFA.

4.13.1.5. Once SAF/FMFA is satisfied with the PRR (agreeing with its analysis and conclusion), SAF/FMFA shall either issue a memorandum (referring the matter for a formal investigation or closing it) or forward the PRR to SAF/GCA for legal review.

4.14. SAF/FMF Action. In the event SAF/FMF agrees with the findings of the PRO, finds the PRR sufficient, and determines that no additional legal review is required, SAF/FMF shall issue its final decision on the preliminary investigation.

4.14.1. PRR Recommendation of No Formal Investigation. Once all issues have been addressed and SAF/FMFA agrees with the PRR findings of no formal investigation, a SAF/FMF transmittal memorandum will be prepared, notifying the ADA Focal Point that the case will be closed.

4.14.2. PRR Recommendation of Formal Investigation. Once all issues have been addressed and SAF/FMFA agrees with PRR findings that a formal investigation is required, SAF/FMF shall document its final decision in a memorandum to the appropriate MAJCOM appointing official, initiating the formal ADA investigation. SAF/FMFA will also provide a copy to OUSD(C) as notification that a formal ADA investigation has been initiated.

4.15. Legal Review. If SAF/FMFA requires a legal review, a SAF/FMF transmittal memorandum will be prepared requesting SAF/GCA legal review of the PRR. The transmittal memorandum includes the final PRR, the legal review of the PRR, and documentation of any accounting adjustments that were made to correct the potential violation. The entire Preliminary case file is provided concurrent with the delivery of the transmittal memorandum. SAF/GCA will complete their legal review of the PRR, and provide a written opinion to SAF/FMF within a recommended 4 weeks.

4.15.1. If SAF/GCA issues a legal opinion agreeing with the PRR, that no formal investigation is required, a SAF/FMF transmittal memorandum will be prepared notifying the ADA Focal Point that the case will be closed and documenting its decision in the case.

4.15.2. If SAF/GCA issues a legal opinion agreeing with the PRR, that a formal investigation should be initiated, SAF/FMF shall document its final decision in a memorandum to the appropriate MAJCOM appointing official. SAF/FMFA will also provide a copy to OUSD(C) as notification if a formal ADA investigation is initiated. If SAF/GCA's opinion agrees with the PRR's conclusion, but rejects the PRO's analysis and rationale (and SAF/FMF concurs), the SAF/FMF memorandum initiating the formal investigation shall document the analysis that served as the basis for its decision.

4.15.3. If SAF/GCA issues a legal opinion disagreeing with the conclusion of the PRO, and SAF/FMFA agrees, SAF/FMFA shall document its final decision and rationale in the pertinent transmittal memorandum. The transmittal memorandum must contain sufficient detail to document the report's new finding.

Chapter 5

FORMAL ADA INVESTIGATIONS

5.1. Background. The purpose of an ADA violation investigation is to determine the event that caused the potential violation, the responsible individual(s), action(s) required to correct the violation, and action(s) taken to ensure that a similar violation does not occur in the future. When a preliminary review determines a potential ADA violation has occurred, a formal investigation is needed under the provisions of DoD FMR Volume 14. Generally, the existence of a potential violation is established during the preliminary review and before a formal investigation begins. Formal ADA investigations are requested by SAF/FMF after the determination that a potential ADA violation has occurred and a formal investigation is warranted. A formal ADA investigation is also performed when specifically requested by OUSD(C) or SAF/FM.

5.2. Formal ADA Timeline. The Appointing Official ensures the formal ADA investigation is the IO's primary duty until the formal case is closed. The Appointing Official also ensures that a legally sufficient ADA Report is transmitted to SAF/FMF within 17 weeks of the start of the formal investigation. See Attachment 16 for timeline. The DoD FMR, Volume 14, Chapter 7, requires the delivery of the final ADA Report to OUSD(C) Deputy Chief Financial Officer (DCFO) within 12 months and 2 weeks (54 weeks) from the date the preliminary review ended. If there was no related preliminary review, the final ADA Report is due twelve months from the formal investigation start date.

5.3. Suspected Criminal Conduct. The DoD FMR 7000.14-R, Volume 14, Chapter 5 requires if at any time during an investigation, the IO believes there may be a criminal issue(s) involved, the investigation is stopped immediately. The IO consults with legal counsel to determine if the issue should be referred to appropriate criminal investigators for resolution. When appropriate, formal ADA investigations are coordinated through the servicing Air Force Office of Special Investigations (AFOSI) detachment, where a determination is made on whether to open an AFOSI investigation.

5.4. Investigation of Senior Leader Actions.

5.4.1. If the subject of the ADA report involves actions of a O-6 (Colonel) and/or GS/GM-15 or equivalent SAF/FMFA will 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, chapter 5).

5.4.2. If the subject of the ADA report involves actions of an O-7 (Brigadier General), O-7 select or 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, chapter 4). SAF/FMFA will notify the Secretary of the Air Force, Office of the Inspector General, Senior Official Inquiries Directorate (SAF/IGS).

5.5. IO Appointment. The MAJCOM, FOA, and DRU Commander, or SAF/FMF for the Secretariat and Air Staff (hereinafter, referred to as the "Appointing Official"), in a written letter of designation, appoints a qualified IO to conduct a formal ADA investigation. The Appointing Official may delegate appointing authority to a member of their staff (e.g. Comptroller). The

Appointing Official may designate the same person that served as the PRO to serve as the IO for the formal investigation. See Chapter 3 of this AFI, "Selecting an Investigating Officer".

5.6. IO Responsibilities. The IO will prepare an ADA Report that contains all of the evidence required to support a factually and legally sound determination that an ADA violation has or has not occurred. (T-0) 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. (T-0)

5.6.1. The IO 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.

5.6.2. The IO states a conclusion as to the existence of an actual ADA violation, supported by the evidence and applicable legal precedent.

5.6.3. The IO identifies the events which caused the ADA violation.

5.6.4. The IO establishes whose action or inaction brought about the ADA violation, and the highest level of management that could have prevented the violation. The person identified may be named as the responsible party at the conclusion of the investigation.

5.6.5. The IO identifies the required procedural, accounting and funding corrections and whether the corrections have already been made.

5.6.6. The IO documents management actions taken to prevent a recurrence of the ADA violation.

5.7. Staff Judge Advocate (SJA) Investigative Role. The Appointing Official's SJA or servicing legal office will assign an attorney to advise the IO. (T-0) The IO consults with the legal advisor before beginning the investigation and should consult with the legal advisor on the case periodically thereafter.

5.7.1. A formal investigator may face a number of legal issues during the course of the investigation and is expected to take statements. A formal investigator consults with appropriate legal counsel on any legal issues associated with the investigation.

5.8. Assigning Functional Experts. 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 ensures the IO receives adequate support, including access to additional personnel with the requisite knowledge in all of the functional areas involved.

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

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

5.9.2. Identifies by name, rank/grade, and duty title, the holder of the funds (e.g., Colonel J. J. Smith, 9999 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 normally furnishes this evaluation.

5.9.3. 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, regulatory or statutory limitations, etc.), lists each document, and includes a copy of each document in the ADA Report. Citations are included in the body of the document if references are made to attachments or other information in the ADA Report.

5.9.4. 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.

5.9.5. Obtains and documents pertinent personal testimony per section 5.10, below.

5.9.6. Assembles and analyzes the documented evidence. Specifically:

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

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

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

5.9.6.4. 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., 5703400, Air Force, Fiscal Year 2010, Operations and Maintenance).

5.9.6.5. 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.

5.9.6.6. Determines the individual or individuals responsible for the ADA.

5.10. 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 to the IO) is desired because it has greater evidentiary value, puts the witness (interviewee) on notice that the interview is a serious matter, and subjects the witness to penalties for perjury or making a false statement. Electronically recorded (verbatim) transcripts of testimony should be obtained whenever possible. The IO must include the results of all testimonies obtained, including documentary evidence, in the ADA Report. (T-0) 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. (T-0) The ADA Investigator Training provides instructions on how to prepare for and conduct an

interview under oath. The IO may also use the investigative procedures described in AFI 90-301, *Inspector General Complaints Resolution*, as a point of reference only, for obtaining testimony.

Specifically, when obtaining sworn testimony the IO will:

5.10.1. Interview all of the individuals involved with the suspected transactions and documents their testimony. (T-0) 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. (T-0)

5.10.2. Provide the individual(s) with a copy of the Privacy Act Statement, Attachment 7, (before the interview begins), asks the individual(s) to read the statement, then ask, for the record, if they have read and understand the Privacy Act Statement. (T-1)

5.10.3. Recognize 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 ADA Report, for comment and presentation of rebuttal evidence or additional witnesses. (T-0) 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.

5.10.4. Elicit an explanation from the individual(s), who is potentially responsible for the suspected ADA violation, for their role or actions in the violation. Before interviewing the individual(s), the IO should consult the assigned legal advisor and installation SJA or servicing legal office. If 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 in accordance with Article 31, Uniform Code of Military Justice, and/or the 5th Amendment, United States Constitution. 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. (T-0) See paragraph 5.3. of this instruction.

5.10.5. Consult with the assigned legal advisor and installation SJA, if civilian employees (including non-appropriated fund employees) are members of a collective bargaining unit. Specifically, these employees may have a right to union representation, if they reasonably believe that disciplinary actions can be taken against them, as a result of the interview, and they request representation. (or if union representation is otherwise required under the terms of the existing collective bargaining unit) Similarly, contract employees might also be afforded certain rights under their respective contract. DoD FMR 7000.14-R, Volume 14, Chapter 7, requires that the person(s) named responsible in an ADA Report 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 ADA Report 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 ADA Report, summary report, and all

interim drafts should be marked “For Official Use Only.” See DoD Manual 5200.1 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.

5.11. 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, or it has been determined that no ADA violation has occurred. The IO’s conclusion that a responsible individual could not be identified for an ADA violation is not acceptable. Identification of more than one responsible individual may be required, under certain circumstances.

The IO does the following, when determining responsibility:

5.11.1. Analyze all pertinent facts and circumstances before affixing responsibility for an ADA violation. The responsible individual(s), generally, is 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) 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 attempts 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. (T-0) The IO will also assess and document whether the responsible individual(s) committed the ADA violation knowingly and willfully. (T-0)

5.11.2. Determine to what extent, and to what degree, the individual(s) was responsible for the ADA violation. (T-0) Specifically,

5.11.3. If operating personnel failed to follow established internal controls or operating procedures, identify that individual(s) as bearing a significant responsibility for the ADA violation. (T-0)

5.11.4. If a supervisor requested the employee(s) to disregard established internal controls or operating procedures, identify the supervisor as bearing a significant responsibility for the ADA violation. (T-0)

5.11.5. If the established internal controls or operating procedures are deficient, and the deficiencies were a major contributing cause of the violation, identify the supervisor that was responsible for the controls or procedures as bearing significant responsibility for the ADA violation. (T-0)

5.11.6. 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. (T-0) 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. (T-0)

5.11.7. If the violation involves a centrally managed allotment, identify the head of the operating agency, at the time the violation occurred, as responsible for the ADA violation.

(T-0) However, other individuals may also be identified as responsible for the ADA violation.

5.11.8. If an accounting error caused the ADA violation, identify the individual(s) who made the accounting error as responsible, assuming no other official should have detected the mistake. (T-0)

5.12. Corrective Actions and Lessons Learned. The IO determines why the internal controls or operating procedures were deficient and makes recommendations to improve processes to prevent future violations. The IO 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.

5.12.1. In accordance with the DoD Financial Management Regulation 7000.14-R, Volume 14, the investigating officer's responsibilities include recommending actions to prevent future violations of a similar type (procedural corrections) and correct the specific adverse funding condition (funding corrections) that resulted from the violation. When the causes and the individual (s) responsible for the violation have been determined, the DoD Component under investigation, working with the IO, determines the corrective actions necessary to ensure a violation of a similar nature does not recur. Those actions are included in the ADA Violation Report.

5.12.2. The DoD Component under investigation provides a list of "lessons learned," for use by others in addressing similar circumstances, by consulting with the management officials involved. The DoD Component, working with the IO, shall develop a summary of lessons learned from the specific circumstances of the case that can be applied to the installation involved, the major command, the DoD Component, or all DoD Components. (T-0)

5.13. Preparing the ADA Report. The IO must document the results of the formal ADA investigation in an ADA Report. (T-0) The Report is either an "ADA Violation Report" or an "ADA No Violation Report," depending on the outcome of the formal investigation.

The Appointing Official, in consultation with his/her MAJCOM SJA or servicing legal office approves the ADA Report and makes a determination as to whether the draft ADA Report recommends reporting an ADA violation to SAF/FMF. The report is considered a draft until the IO's conclusion has been reviewed by OSD and received their concurrence. The ADA Report should provide all information necessary to support the IO's conclusion, properly referenced and documented, in the prescribed format. The format is prescribed in the Formal ADA Report Checklist (Attachment 10).

5.13.1. The IO completes the ADA Report Checklist, (Attachment 10), at the conclusion of the formal ADA investigation, to ensure that all requirements have been met, except for the administration of disciplinary actions, if warranted.

5.13.2. The IO includes a copy of the signed completed checklist in the ADA Report.

5.13.3. The IO forwards the ADA Report (including all attachments, addenda, and checklists) to the ADA Focal Point (SAF/FMFA, at the Secretariat and Air Staff) for review within 8 weeks of the formal investigation start date. The ADA Focal Point will obtain a legal opinion from the Appointing Official's SJA or servicing legal office. After the ADA Report has been determined legally sufficient, the Focal Point will provide the ADA Report,

signed ADA Report Checklist, and SJA legal review to SAF/FMFA no later than 17 weeks after the formal investigation start date. However, SAF/FMF may allow less time, depending on the extent of the violation.

5.14. Releasing the ADA Report to the Responsible Individual(s) for Comment. Once the SJA or appropriate servicing legal office has determined the ADA Report to be legally sufficient the individual(s) initially determined by the IO to be responsible must be notified that they are being held responsible for the violation, and provided the opportunity to review the ADA Report and provide pertinent additional information. The ADA Focal Point will direct the IO to do the following:

5.14.1. Provide the responsible individual(s) an opportunity to read the ADA Report (after Appointing Official's SJA or servicing legal office approval), excluding any written legal advice provided to the IO. The IO should prepare a cover memorandum, mail the ADA Report to the responsible individual(s) (via registered mail, restricted delivery, return receipt requested). The IO should advise the responsible individual(s) of the following:

5.14.1.1. An ADA violation has occurred, and there has been an initial determination that they are a responsible individual for the violation, and they are being allowed an opportunity to review the ADA Report and examine evidence on which the determination was based. The individual must be given the opportunity to comment or provide rebuttal evidence and may provide pertinent additional information, which was not addressed in the ADA Report, 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.

5.14.1.2. The responsible individuals 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.

5.14.1.3. The responsible party may submit documentary evidence, physical evidence, and a statement/rebuttal to the IO. In addition, the responsible party may designate witnesses to testify on their behalf. Designated witnesses are either interviewed, or provided an opportunity to make a written statement for the record.

5.14.2. Document the refusal to comment. Generally, the IO will allow 10 days for the responsible individual to respond. If the individual(s) declines to make a statement, the IO will indicate this in an addendum to the ADA Report. 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 declination, the IO should include a statement to that effect in an addendum to the ADA Report. If the responsible individual(s) cannot be located, despite a diligent effort, the IO should include a statement to that effect in an addendum to the ADA Report.

5.14.3. Collect and evaluate all comments and rebuttal evidence provided by the responsible individual(s), make a final determination of who should be held responsible for the ADA violation and why, determine whether the individual(s) knowingly or willfully committed the violation, and include all of this information in an addendum to the ADA Report. ADA Report attachments and the ADA Report Checklist should be updated accordingly.

5.14.4. The IO must revise the ADA Report, if substantial changes occur (due to new or conflicting facts and circumstances discovered or comments and rebuttal evidence received), and provide the responsible individual(s) an opportunity to read the revised ADA Report and provide additional comments or rebuttal evidence to the revision.

5.15. ADA Report Transmittal. The ADA Focal Point will review the ADA Report for accuracy and completeness after responsible individual(s) comments have been addressed by the IO, and forward the revised ADA Report to the Appointing Official's SJA or servicing legal office for further legal review. If the SJA determines that the amended ADA Report is legally sufficient, the ADA Focal Point does the following:

5.15.1. Prepares a Comptroller Transmittal of ADA Report Memorandum (see Attachment 11), and forwards the ADA Report package to the Comptroller, for review and approval.

5.15.2. Transmits an electronic version of the original ADA Report package and ADA Report to SAF/FMFA, via email or another file transfer method established by SAF/FMFA.

5.15.3. Retains a copy of the ADA Report package. If it is determined that an ADA violation occurred, the ADA Focal Point will have to forward these documents to the Appointing Official.

5.16. SAF/FMFA review of the ADA Report. SAF/FMFA will review the ADA report for completeness, adequacy of facts presented in support of the conclusions reached, sufficiency of analysis, and the adequacy of evidentiary documentation. SAF/FMFA shall:

5.16.1. Assess whether the report is complete, and meets all administrative requirements. SAF/FMFA will ensure all Formal ADA Checklist requirements are included in the ADA report.

5.16.2. Review and approve the draft ADA Report provided by the ADA Focal Point to ensure the testimony, documentation, analysis, and conclusions are acceptable.

5.16.3. Review any accounting corrections proposed or made pursuant to the investigation to ensure propriety and accuracy of the adjustment and adherence to proper accounting standards.

5.16.4. Review the adequacy of the procedural or policy changes already instituted or otherwise proposed by the IO to prevent similar violations from recurring.

5.16.5. Ensure the IO has properly identified the individual(s) responsible for the violation (providing sufficient evidence and analysis), named the holder(s) of the funds, and evaluated the execution of DoD administrative fund controls.

5.16.6. Review and address any other matters related to the report's administrative compliance, quality, and completeness.

5.17. SAF/FMF Identified Deficiencies. SAF/FMFA shall return any ADA Report that is incomplete, or otherwise insufficient, to the appropriate ADA focal point for action by the IO. SAF/FMFA's return package shall contain a transmittal memorandum, which addresses all identified report deficiencies. Upon receipt the IO shall:

5.17.1. Address any deficient areas noted by the SAF/FMFA review. (T-1)

5.17.2. Gather additional documentary evidence, re-interview witnesses, and/or interview new witnesses if and as required.

5.17.3. Issue a formal addendum to the ADA report, if the remedial action requires a substantive modification of the report. (T-1) Any questions concerning whether a change is substantive or an addendum is needed should be directed to SAF/FMFA.

5.17.4. Once the IO and the focal point have resolved all open issues the focal point returns the revised report to SAF/FMFA for review. (T-1) SAF/FMFA, in coordination with the ADA focal point, shall determine whether any changes to the report require additional review by the responsible parties. The ADA Focal Point shall ensure that the returned ADA report is promptly acted upon and returned to SAF/FMFA within one week or by the deadline set by SAF/FMFA.

5.18. Request for Legal Opinion. Once SAF/FMFA is satisfied with the ADA Report, a SAF/FMF transmittal memorandum will be prepared requesting SAF/GCA legal review of the ADA Report. The transmittal memorandum summarizes SAF/FMFA's review and conclusions, identifying any specific concerns or deficiencies noted. The memorandum includes the final report (with all addendums), all attachments to the report, the SJA legal review, documentation of any accounting adjustments that were made to correct the potential violation, and the entire preliminary investigation file.

5.19. Legal Review. SAF/GCA shall review the package and provide a written legal opinion.

5.19.1. If SAF/GCA finds the ADA Report legally insufficient, such that additional information, analysis, or interviews are necessary before a determination on the potential ADA violation may be made, SAF/GCA shall provide a written legal opinion which identifies all noted deficiencies. The opinion, along with the package, is returned to SAF/FMFA. SAF/FMFA works with the appropriate ADA focal point and IO to resolve these deficiencies in accordance with paragraph 5.17, above. Once all deficiencies are addressed, SAF/FMF shall resubmit the package to SAF/GCA for review.

5.19.2. If SAF/GCA issues a legal opinion agreeing with the IO (in whole or in part), that a potential ADA violation has occurred, SAF/FMF shall document its final decision in a memorandum to OUSD(C). If SAF/GCA's opinion agrees with the IO's conclusion, but rejects the IO's analysis and rationale (and SAF/FMF concurs), the SAF/FMF memorandum must document the analysis that served as the basis for its decision. In these cases, SAF/FMF (in coordination with SAF/GC) must determine whether the change in rationale is substantively significant, such that the responsible parties did not have a meaningful opportunity to review the basis for the ADA and provide a response. Where the new basis for the ADA is a significant departure from the rationale of the IO, the responsible parties are granted another opportunity to review the package with the FMF final decision. In these instances, FMF shall issue a transmittal memorandum to the ADA focal point for action.

5.19.3. If SAF/GCA issues a legal opinion disagreeing with the conclusion of the IO and SAF/FMFA agrees with the IO, SAF/FMFA shall document its final decision and rationale in the pertinent transmittal memorandum.

5.19.4. Where SAF/GCA and FMF disagree with the IO and determine that an ADA has not occurred the memorandum should be sent to OUSD(C).

5.19.5. Where SAF/GCA and FMF disagree with the IO and determine that a potential ADA has occurred, the memorandum is sent to the appropriate ADA focal point for action by the IO. The FMF transmittal memorandum must document the new conclusion, its basis, analysis and supporting facts. In these cases, the IO is charged with identifying the responsible parties and providing them an opportunity to respond to the report (as amended by the FMF transmittal memorandum). This work (identifying responsible parties and providing them an opportunity to be heard) is documented through an addendum to the report. Upon receipt of the amended ADA report, FMF will review and forward the package to SAF/GCA, consistent with this instruction. Once the legal review is complete, SAF/FMF shall document its final decision in a memorandum to OUSD(C).

5.20. The Office of the Under Secretary of Defense Comptroller (OUSD(C) Review and Determination. The OUSD Comptroller makes the final determination with respect to the existence of an ADA and identification of the responsible individual (s).

5.20.1. Once the responsible individual (s) have been provided the opportunity to review and respond to the ADA report and the SAF/GCA legal opinion is obtained, SAF/FMFA forwards the ADA Report to OUSD(C) for the review and determination. OUSD (C) provides an advance decision on the ADA case prior to the administration of disciplinary actions.

5.20.2. The report for submission to OUSD (C) should include the following: The transmittal memorandum from SAF/FMF, the Report of Violation, Summary Report of Violation, statements of responsible person (s), and all associated legal reviews.

5.20.3. If OUSD(C) notes deficient areas of the report OUSD(C) notifies SAF/FMFA and SAF/FMFA ensures that all deficient areas noted by the OUSD(C) review are addressed.

SAF/FMFA works with the appropriate ADA focal point and IO to resolve these deficiencies in accordance with paragraph 5.17, above. Once all deficiencies are addressed, SAF/FMF shall resubmit the package to OUSD(C) for review.

5.20.4. If OUSD(C) and DoD Office of the General Counsel (Fiscal) (OGC (F)) make a determination of no ADA violation, SAF/FMFA will notify the ADA Focal Point. The ADA Focal Point notifies the individual (s) named responsible of the determination of no violation and generally, no disciplinary actions is administered, and the case is closed. However, if the investigation reveals other potential misconduct the matter may be referred to appropriate Air Force officials for further investigation and/or consideration of appropriate disciplinary action.

5.20.5. If OUSD(C) agrees that an ADA violation did occur, SAF/FMFA notifies the focal point to refer the matter to the disciplinary official(s), so that appropriate disciplinary action may be considered for individuals found to be responsible for the ADA, including the designation of an appropriate disciplinary official(s).

5.20.6. If OUSD(C) disagrees with a finding of no violation, SAF/FMFA will notifies the ADA focal point who will direct the IO to re-open and complete the case, including the identification of the responsible individual(s).

5.20.6.1. Once the responsible individual (s) have been provided the opportunity to review and respond to the ADA report and the SAF/GCA legal opinion is obtained,

SAF/FMFA shall resubmit the package along with the addendum to OUSD(C) for review and determination.

5.20.6.2. If OUSD(C) agrees with the addendum to the report and that an ADA violation did occur, SAF/FMFA will notify the ADA focal point, so that appropriate disciplinary action may be considered for individuals found to be responsible for the ADA, including the designation of the appropriate disciplinary official(s).

5.21. Upon Completion of the Review and Determination and the OUSD (C) Final Determination of the Responsible Individual:

5.21.1. SAF/FMFA will complete the Summary Report of Violation (SRV) and the final closure package to OUSD(C).

5.21.2. Upon completion of disciplinary actions, SAF/FMFA will update the SRV and prepare the transmittal letter. The transmittal letter documents the completion of disciplinary actions, and the resolution of the case.

5.21.3. SAF/FMFA will submit a final closure package to OUSD(C). The final closure ADA case file includes: the transmittal memorandum, the SRV, the acknowledgment statement (Attachment 13) and Commensurate Action Statement (Attachment 14) from the disciplinary official (with responsibility for determining the appropriate disciplinary action), corrective actions, and legal coordination.

5.22. Releasing the ADA Report to Internal or External Agencies:

5.22.1. The PRO, IO, ADA Focal Point, Appointing Official, Comptroller or any other individuals involved in a preliminary ADA review or formal ADA investigation should not release the PRR or ADA Report to anyone that is not participating in the ADA investigation. The ADA Report is incomplete until finally approved by OUSD(C). The ADA Report should be protected in accordance with AFI 31-401, *Information Security Program Management*.

5.22.2. The Appointing Official or Comptroller should consult with the Appointing Official's SJA or servicing legal office (AF/JAA and SAF/GCA, at the Secretariat and Air Staff) before releasing the Final ADA Report to any internal or external agency. Report all substantiated findings of ADA violations along with disciplinary actions to SAF/IGQ IAW AFI 90-301, Chapter 5 Table 5.3 Rule 8.

5.22.3. All legal reviews provided in the course of a preliminary or formal ADA investigation are privileged and may not be released outside the Air Force or DoD without a waiver of the privilege by the proper official. These privileges should not be waived without consultation with SAF/FM and SAF/GC.

5.23. Monthly Status Updates for On-Going ADA Investigations:

5.23.1. The MAJCOM ADA Focal Point will provide, at a minimum, monthly status updates to SAF/FMFA for all on-going preliminary reviews and formal ADA investigations. The status update includes detailed information on case progress and estimated completion dates, for each open case.

5.23.2. If the investigation is proceeding, as planned, and the MAJCOM ADA Focal Point anticipates the ADA Report (including the legal sufficiency review) be mailed to SAF/FMFA

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 PRR/ADA Report was completed, the date the PRR/ADA Report 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 formal ADA Report, the date the final package was mailed to SAF/FMFA, etc.).

5.23.3. If the ADA Report is not completed by the suspense date, or if the MAJCOM ADA Focal Point becomes aware that the ADA report cannot be transmitted to SAF/FMFA before the suspense 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 PRR/ADA Report is to be completed, the estimated date the PRR/ADA Report is to be provided to the Appointing Official's SJA or legal servicing office, the estimated date the legal sufficiency review is to be completed, the estimated date that each responsible individual responds to the PRR/ADA Report, the estimated date the final package is to be transmitted to SAF/FMFA, etc.).

5.23.4. SAF/FMFA is required to submit a detailed, ADA status report for formal investigations to OUSD(C) each month; therefore, 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.

Chapter 6

INTERAGENCY ADA INVESTIGATIONS

6.1. Interagency ADA investigations. Interagency (IA) cases are assigned to the Air Force by OUSD(C), via email or memorandum to SAF/FMF. OUSD(C) will assign an IA case number to the Air Force. SAF/FMFA will assign the case to the appropriate MAJCOM for investigation, or assign the case for investigation at the Secretariat/Air Staff level.

6.2. Interagency ADA cases follow the same review and investigation process and timeline as other Air Force ADA investigations. Preliminary and Formal reports for interagency cases should be prepared and submitted in accordance with chapters 4 and 5 of AFI 65-608.

LISA S. DISBROW
Assistant Secretary of the Air Force
(Financial Management and Comptroller)

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

AFPD 65-6, USAF Budget Policy

AFPD 16-5, Planning, Programming, Budgeting and Execution Process

AFPD 20-1, Acquisition and Sustainment Life Cycle Management

AFPD 34-2, Managing Nonappropriated Funds

AFPD 33-1, Information Resources Management

AFI 31-401, Information Security Program Management

AFI 33-332, Air Force Privacy and Civil Liberties Program

AFI 33-324, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections, 1 June 2000;

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

AFI 90-301, Inspector General Complaints

AFMAN 33-363, Management of Records

DoD Manual 5200.01, DoD Information Security Program: Controlled Unclassified Information (CUI)

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

Prescribed Forms

No forms are prescribed by this publication.

Adopted Forms

AF Form 847, Recommendation for Change of Publication

Abbreviations and Acronyms

ADA—Antideficiency Act

AFOSI—Air Force Office of Special Investigations

DCFO—Deputy Chief Financial Officer

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

IPT—Integrated Process Team

MAJCOM—Major Command

OMB—Office of Management and Budget

OUS(D)—Office of the Under Secretary of Defense (Comptroller)

PRO—Preliminary Review Officer

PRR—Preliminary Review Report

RDS—Records Disposition Schedule

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

SAF/FMB—Deputy Assistant Secretary, Budget

SAF/FMF—Deputy Assistant Secretary, Financial Operations

SAF/FMFA—Director, Financial Accounting and Reporting

SAF/GC—Air Force General Counsel

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

SAP—Special Access Program

SAPCO—Security Assistance Policy Coordinating Office

SJA—Staff Judge Advocate

USC—United States Code

Attachment 2

POTENTIAL ADA VIOLATION INFORMATION SHEET

Table A2.1. Potential ADA Violation Information Sheet.

1. Preliminary Case Number	TBD
2. Accounting Classification of Funds Involved (Appropriation) and the Line of Accounting	57 1 3400
3. Name and Location of the Activity/Organization Where the Potential Violation Occurred	HQ AFABC Base Name, City, State
4. Name and Location of the Activity/Organization Issuing the Fund Authorization	HQ AFABC Base Name, City, State
5. Amount of the Potential Violation	\$999,999.99
6. Nature of the Potential Violation	Title 31, U.S.C. 1502(a) – Bona Fide Need
7. Date Potential Violation Occurred	15 October XX
8. Date Potential Violation Reported to Comptroller	27 November XX
9. How Potential Violation Was Discovered	Internal Review
10. Description of Potential Violation	FY2010 O&M funds were used to obligate support services performed in FY20XX.
11. Name, Organization, and Phone Number of ADA Focal Point	
12. Name, Organization, and Phone Number of Preliminary Review Officer (PRO)	
13. Anticipated Date of Preliminary Review Report (PRR) Transmittal to SAF/FMFA	26 February 20XX.

Attach any reports, investigations or legal opinions that have been generated in relation to the potential ADA violation. A copy of the PRO appointment memorandum should also be provided.

Attachment 3**SAMPLE REQUEST FOR PRELIMINARY REVIEW AND TRACKING
MEMORANDUM**

MEMORANDUM FOR HQ AFXYZ/FM

FROM: SAF/FMFA
1500 West Perimeter Road, Suite 3100
Joint Base Andrews, MD 20762

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

Your organization is tasked to perform a preliminary ADA review to determine whether a potential ADA violation has occurred and if a formal ADA investigation is necessary. The need for this preliminary review is based on allegations that personnel used FY2000 funds to cover FY2001 expenses for the 2001 Symposium. Consequently, this could be a violation of the Time Limitation Statute (Title 31, U.S.C. § 1502), which in turn could lead to a violation of the Antideficiency Act (Title 31, U.S.C. § 1341). Further, personnel may also have violated the Miscellaneous Receipts Statute (Title 31 U.S.C. § 3302(b)) by failing to deposit funds collected in FY2000 into the United States Treasury.

We have assigned control number **P11-50** to your preliminary ADA review and you should use this control number in all your correspondences. Starting 21 May 2002, you have 90 calendar days to complete and forward the preliminary review report (PRR). Accordingly, **19 August 2002** is the suspense date for submitting the PRR to SAF/FMFA for review and coordination. Please refer to Chapter 4 of Air Force Instruction 65-608, *Antideficiency Act Violations*, 18 March 2005, for instructions on performing the preliminary review. (Note: The instruction is available at <http://www.e-publishing.af.mil/shared/media/epubs/AFI65-608.pdf>). If the Preliminary Review Officer determines that no violations exist and your legal personnel agree, this case will likely be closed. Additional reporting requirements and milestones will be provided if a formal ADA investigation is necessary.

Please update Attachment 2 and forward it to SAF/FMFAS by **20 June 2002**. Additionally, please ensure that your review follows and incorporates the checklist in Attachment 2. If you have questions, please contact the FMFA ADA Team at DSN 612-5210, or via e-mail at usaf.jbanafw.saf-fm.mbx.saf-FMFas-ada-workflow@mail.mil

Director, Accounting & Reporting
Financial Operations
(Financial Management)

Attachments:

1. Reporting Information for Preliminary ADA Review (P11-50)
2. Antideficiency Act (ADA) Preliminary Review/Investigating Officer Checklist

Attachment 4

SAMPLE PRELIMINARY REVIEW OFFICER (PRO) APPOINTMENT
MEMORANDUM

MEMORANDUM FOR HQ AFXYZ/FMF (Capt. Investigating Officer)

FROM: HQ AFXYZ/FM
Street Address, Room Number
City, State, Zip

SUBJECT: Potential Violation of the Antideficiency Act (ADA) Preliminary Review on
FY20XX Support Services at HQ AFABC (Case number pending assignment)

1. You are hereby appointed to conduct a preliminary review of potential violations of the ADA in accordance with the Department of Defense Financial Management Regulation (DoD FMR) 7000.14-R, Volume. 14, and AFI 65-608, Antideficiency Act Violations. The need for this preliminary review is based on an internal review of questionable obligations that identified a potential violation of 31 U.S.C. Section 1301. FY2010 O&M funds were used to obligate support services performed in FY20XX. The purpose of the preliminary review is to determine if a potential ADA violation occurred at HQ AFABC. If the research results determine no violation exists and the HQ AFXYZ/JAQ legal review agrees this case will be closed.
2. Please incorporate your findings and conclusions, as well as supporting documentary evidence, into a written draft Preliminary Review Report (PRR). The format for this report may be found in AFI 65-608, *Antideficiency Act Violations*. Moreover, DoD FMR 7000.14-R, Volume 14, in conjunction with AFI 65-608, establishes procedures for identifying, investigating, and reporting ADA violations. Your suspense to complete the draft PRR and provide to HQ AFXYZ/FM is **10 February 20XX**.
3. Please read the attached ADA Reviewer/Investigator Independence Statement, sign and date the form at the bottom, and return the form to the point of contact indicated below. A copy of the signed statement should also be included with the completed PRR.
4. As part of your investigation, you are authorized to obtain statements from individuals having knowledge of the transactions and events surrounding the suspected violation. The statements are to be documented in the report. Statements taken by you should ordinarily be unsworn. If it appears necessary to obtain sworn testimony, the investigation will be augmented with a duly appointed Air Force officer or employee who is empowered to administer oaths.
5. Your point of contact at HQ AFXYZ/FM is ADA Focal Point, HQ AFXYZ/FM, DSN 234-5678, adafocalpoint@afxyz.af.mil. Your legal advisor is Legal Advisor, HQ AFXYZ/JAQ, DSN 345-6789, legal.advisor@afxyz.af.mil. Please consult with them or any other functional area experts if you require assistance during your investigation.

6. If you have any questions, please contact ADA Focal Point, HQ AFXYZ/FM, DSN 234-5678, adafocalpoint@afxzy.af.mil.

Comptroller,
Director, Financial Management

Attachment:
ADA Reviewer/Investigator Independence Statement

cc:
HQ AFXYZ/FM (ADA Focal Point)
HQ AFXYZ/JAQ (Legal Advisor)

Attachment 5

SAMPLE FORMAL INVESTIGATION OFFICER (IO) APPOINTMENT
MEMORANDUM

MEMORANDUM FOR HQ AFXYZ/FMF (Capt. Investigating Officer)

FROM: HQ AFXYZ
Street Address, Room Number
City, State, Zip

SUBJECT: ADA Case No. F11-50, *FY2011 Support Services* at HQ AFABC
(SUSPENSE: X Sep XX)

1. You are appointed to conduct a formal investigation of potential violations of the Antideficiency Act (ADA) in accordance with DoD Financial Management Regulation (DoD FMR) 7000.14-R, Volume 14. An internal HQ AFABC/FM review identified questionable obligations that might lead to a potential violation of 31 U.S.C. Section 1301. FY2010 O&M funds were used to obligate \$999,999.99 in support services that were performed in FY2011. The preliminary review officer (PRO), in his report, determined FY2010 O&M (3400) funds were used to obligate support services that should have been funded with FY2011 3400 funds. FY2011 3400 funds were not available at the appropriate administrative subdivision to execute an accounting correction, creating a potential violation of 31 U.S.C. Section 1341 (a)(1)(B). The events described above require AFXYZ to appoint an investigating officer to complete a formal investigation. Your findings and conclusions as well as supporting testimony and other documentary evidence are to be incorporated into a written ADA Report. The format for this report can be found in AFI 65-608. DoD FMR 7000.14-R, Volume 14, in conjunction with AFI 65-608, establishes procedures for identifying, investigating, reporting and processing ADA violations. Volume 14, Ch 5 includes a checklist for appointing officials and investigating officers, ADA investigation reporting instructions and a sample ADA Report format. DoD FMR 7000.14-R, Volume 14 is available at <http://www.dtic.mil/comptroller/fmr/>.
2. This is to be your primary duty until the ADA Report has been approved by the Secretary of the Air Force, General Counsel, Fiscal, Administrative and Ethics (SAF/GCA). Your point of contact at HQ AFXYZ/FM is ADA Focal Point, HQ AFXYZ/FM, DSN 234-5678, adafocalpoint@afxzy.af.mil. Your legal advisor is Legal Advisor, HQ AFXYZ/JAQ, DSN 345-6789, legal.advisor@afxzy.af.mil. You are encouraged to consult with him throughout your investigation so potential legal issues may be timely identified along with the applicable statutes and regulations. You are encouraged to consult with HQ AFXYZ/FM at any time you require assistance during your investigation. You are entitled to advice from other functional area experts as well.
3. Please read the attached ADA Reviewer/Investigator Independence Statement, sign and date the form at the bottom, and return the form to the point of contact indicated below. A copy of the signed statement should also be included with the completed ADA Report.

4. Your suspense for completing the ADA Report (excluding disciplinary actions) and providing the report to HQ AFXYZ/FM is NLT X **June 20XX**.
5. If you have any questions, please contact ADA Focal Point, HQ AFXYZ/FM, DSN 234-5678, adafocalpoint@afxzy.af.mil.

APPOINTING OFFICIAL, Gen, USAF
Commander

Attachment:
ADA Reporting Instructions
ADA Reviewer/Investigator Independence Statement

cc:
HQ AFXYZ/FM
HQ AFXYZ/JAQ
SAF/FMFA

Attachment 6

ADA REPORTING INSTRUCTIONS AND ADDITIONAL INFORMATION

Key Reporting Dates For Case F11-50:

- a. Formal ADA investigation start date: **1 March 20XX**
- b. ADA Report (excluding disciplinary actions) due to SAF/FMFA: **1 July XX**. To ensure adequate time for the SAF/FMF review and the SAF/GCA legal review of SAF/FMF's determination of violation or no violation, Major Commands must complete the investigation (ADA Report, ADA Focal Point review, Appointing Official's SJA (or servicing legal office) legal opinion, responsible individual comment and Appointing Official approval) within **17 weeks** of the formal investigation start date and transmit the results to SAF/FMFA for review and coordination.
- c. An ADA Report is required by Congress when a violation of the ADA occurs. A violation is reported through DoD channels to both houses of Congress and through the Office of Management and Budget to the President.
- d. Volume 14 of the DoD FMR requires identifying the holder of funds. The holder of funds should be identified by name, title/rank and location in the ADA Report.

ADA INVESTIGATING OFFICER TRAINING

The DoD and Air Force policy require all appointed investigating officers receive the ADA Investigating Officer Training Course and certify their completion of this training **before** they begin an investigation, **and include a copy of the training certification as an attachment to their ADA Report**. SAF/FM sponsored the development of an Antideficiency Act (ADA) Investigating Officer Training course that delivers training to individuals designated as ADA investigating officers and preliminary review officers. The training focuses on (1) identifying and documenting the facts, circumstances, and causes surrounding the potential ADA violation; (2) taking sworn testimony from individuals having the knowledge of transactions and events surrounding the suspected violation, including the individual(s) identified as potentially responsible; and (3) reporting the investigation results in an ADA Report. This is a self-administered and self-certifying training course intended to improve the quality and timeliness of ADA investigations. The ADA Investigating Officer Training Course is located on the FM Distributed Learning site.

If 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 SAF/FMFA immediately so that SAF/FMFA can promptly coordinate this issue through SAF/IG.

The ADA Focal Point will review the Draft ADA Report, including all supporting documentation for completeness, and will forward the report to the SJA for a legal review. Once the legal review is complete, the responsible individual(s) must have the opportunity to read the report and to provide comments. The responsible individual's comments must be addressed by

the IO in an addendum to the report. The focal point will review the report and addendum, and provide the revised report to the SJA for another review. If the SJA finds the revised report legally sufficient, the focal point will prepare the transmittal letter for comptroller review and approval, and then transmit the ADA Report package to SAF/FMFA. SAF/FMFA will review the report for completeness and adequacy of facts presented in support of the conclusions reached. Once SAF/FMFA is satisfied with the ADA report, a transmittal letter will be prepared, requesting the SAF/GCA legal review. SAF/GCA will review all ADA Reports and the determinations made within, and will provide a legal sufficiency review.

Once SAF/GCA's review is complete, SAF/FMFA will forward all case files to OUSD(C). OUSD(C) will review and provide an advance decision, as to whether or not an ADA Violation has occurred.

If OUSD(C) determines that a violation has occurred, the case will be returned to Air Force for consideration of appropriate disciplinary action. In accordance with applicable laws, regulations and negotiated agreements, a properly designated disciplinary official(s) should consider disciplinary action for individual(s) found responsible for the ADA violation(s).

Upon completion of any disciplinary actions, SAF/FMFA will forward the Final ADA Report for review and coordination to SAF/GCA, and then to OUSD(C) for concurrence and closure.

Attachment 7**PRIVACY STATEMENT FOR PERSONAL INFORMATION TAKEN DURING
WITNESS TESTIMONY**

Policy: The Privacy 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 Secretary of the Air Force, 8020, Inspector General.

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.

Routine Uses:

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 (AFI 33 – 332, Privacy Act Program).

Attachment 8**SAMPLE REQUEST FOR RESPONSIBLE PARTY COMMENT ON ADA REPORT
REVIEW MEMORANDUM**

MEMORANDUM FOR MS. JANE DOE

FROM: HQ AFXYZ/FM
Street Address, Room Number
City, State, Zip

SUBJECT: Antideficiency Act Violation Case No. F11-50, *FY2011 Support Services* at HQ AFABC

On 1 March 20XX, HQ AFXYZ 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 \$999,999.99, occurred because FY2010 O&M (3400) funds were used to obligate support services that should have been funded with FY2011 3400 funds. FY2011 3400 funds were not available at the appropriate administrative subdivision to execute an accounting correction. As a result, a violation of 31 U.S.C. Section 1341 (a)(1)(B) occurred.

By law, it is mandatory that the party or parties responsible for this violation be identified, and that any extenuating circumstances are 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 [xxxxxxxxx]. You have a right to review the report prior to finalization and to examine evidence on which the determination was based. A copy of the ADA Violation Report, 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 ADA Violation Report, and designate additional witnesses to testify on your behalf.

Please submit your written statement, or declination to comment in writing, within 10 days of receipt of this memorandum. 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 ADA Violation Report, 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 HQ AFXYZ, DSN 345-6789.

INVESTIGATING OFFICER
Investigating Officer

Attachment:
ADA Violation Report

Attachment 9

PRELIMINARY REVIEW REPORT (PRR) CHECKLIST

The PRR checklist presents the criteria for a properly formatted PRR. Each checklist item corresponds to a section of the PRR. Inclusion of all checklist items in the report is required. Any omissions must be fully explained in the report. The checklist must be completed, signed, and attached to the report before the PRR is submitted to SAF/GCA for a legal opinion.

Authority

- _____ 1. Identify the PRO by name, rank/grade, title, and date of appointment. Include a copy of the PRO appointment memorandum.
- _____ 2. Include a copy of the PRO's independence statement.
- _____ 3. Include copies of the PRO's most recent certificates of fiscal law training and ADA Investigator training.

Report Format

- _____ 1. Title page, stating the Preliminary Review case number (and name, if applicable), PRO name and rank, address, telephone number, email address, and date of report
- _____ 2. Table of contents, including a list of tabbed attachments to the report
- _____ 3. Footnotes in the report referencing the appropriate supporting information in the attachments (e.g., text in the reporting that mentions upward obligation adjustments (UOAs) should reference the tab in the attachments that contains the UOA documents)
- _____ 4. PRO's signature on the completed report
- _____ 5. All drafts should be marked "For Official Use Only"
- _____ 6. All drafts should be marked "Pre-Decisional Document"

Preliminary Review Report

- _____ 1. Appropriations(s) Involved/Title, Symbol, and Apportionment Status
- _____ 2. Where Violation(s) Occurred
- _____ 3. Name and Location of Activity Issuing the Fund Authorization. Identify the level at which available funding was not properly obligated (i.e., program office, product or logistics center, MAJCOM, FOA, or DRU appropriation or limitation, etc.).
- _____ 4. Amount of Violation
- _____ 5. Date Violation(s) Occurred
- _____ 6. Type(s) of Violation(s)
 - _____ 6.1. State the type(s) of potential violation(s). 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.

____ 6.2. Include a statement of which statute was potentially violated, including the section and subsection. (e.g., 31 U.S.C. Sections 1301(a), 1341(a), 1342, 1502(a), 1517(a) and 3302(b)). If a regulation, funding document or administrative document was potentially violated, include a statement of review of Title 31 U.S.C., sections 1511-1519 and a determination of which section was potentially violated. If a statutory limitation was exceeded, include a statement of review of Title 31 U.S.C., sections 1341-1348, and title 10 and a determination of which section was potentially violated.

____ 7. Effect of the potential violation on the next higher level of funding. State whether the violation had an effect on the next higher level of funding.

____ 8. Include the date and description of how the potential violation was discovered. Who discovered the potential violation? Was the potential violation discovered by an audit, an internal review, or through some other means? 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. 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.

____ 9. Causes and Circumstances Surrounding the Potential Violation.

____ 9.1. Provide a recommendation as to whether or not a potential ADA violation exists. Provide a detailed summary of the events, circumstances, and evolution of the issues that led to the potential ADA violation; what actions should have been, but were not taken; what actions were taken that should not have been taken; and why the violation happened. 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.

____ 9.2. Provide a summary of funds control procedures in place at the time of the potential violation, and whether or not they were sufficient. Discuss whether the acts leading up to the potential violation were in accordance with established internal controls or local operating procedures.

____ 9.3. Describe the scope of the investigation and the methods used to accomplish the investigation, for example, face-to-face interviews; research of legal, financial, and management issues; written explanation of the facts of the potential violation, etc. Discuss the evolution of the issues investigated, number of people interviewed, mitigating circumstances surrounding the violation, issues that could or could not be proven during the investigation and the supporting rationale, any issues that cannot be agreed upon by those individuals involved, and any other comments that are pertinent to the investigation.

____ 9.4. Include results of interviews of individuals involved in the violation. Summarize relevant testimony and state any presumptions that were sustained or rebutted through facts established by the review, any questions of fact that cannot be resolved without a formal ADA investigation, and any other comments or findings that are pertinent to the subject of the review. Include the Privacy Act Statement for personal information taken during witness testimony. An example is provided at Attachment 7, AFI 65-608.

Discuss the issues, procedures, processes and the areas or functions that were reviewed, evaluated, and investigated; the names, ranks, and titles of the individuals that were interviewed; and a discussion of any related areas and matters that were not investigated and the rationale for omitting those areas or matters from the investigation.

____ 9.5. If the investigation has been undertaken because of an audit report, identify that report by title, number, date, and issuing audit organization. If the investigation was conducted as a result of a memorandum or report directing an investigation, then reference that document and attach a copy of the memo and/or report.

____ 9.6. Provide a detailed investigation timeline and a list of persons contacted. Describe the dates, place and scope of the investigation, as well as any physical evidence examined.

____ 9.7. Provide documentation of any funding or accounting transactions related to the potential violation. This can include, but is not limited to, proof of the availability of funds in the relevant appropriation(s) and fiscal year(s), proof of continuous availability of funds, funding authorization documents, contracts, invoices, authorized upward obligation adjustment (UOAs), etc.

____ 9.8. Provide documentation of relevant decisions and contributing circumstances causing potential violation(s), descriptions and labeling of relevant circumstantial evidence

____ 10. Corrective Action(s) Taken. State what funds were used to make necessary accounting corrections, such as appropriation, title, and fiscal year. Provide either the date that the funding correction was posted, or the date that it will be posted, and explain how the funding correction was accomplished (i.e., additional funds received, funds realigned, etc.). A deferred posting of a corrective entry does not preclude the necessity to report a potential ADA violation. In addition, state what procedural actions were taken and completed to preclude violations from happening in the future. This includes improvement of overall and specific policies, procedures, and processes used by the functional areas involved in the violation; revised statutes or regulatory guidance that may have been involved; established or improved internal procedures; and assurance that a similar violation will not occur in the future.

____ 11. Provide the name and title of the holder of the funds subdivision. The identification of the holder of funds must be supported with documentation. The DoD FMR defines Fund Holder in Volume 3, Chapter 11. Provide an evaluation of the performance of the fund holder control responsibilities. The level of command immediately above the holder will normally furnish this evaluation.

____ 12. Other Areas of Discussion. This section discusses any other issues that may not have directly caused the potential ADA violation, but are essential in completing the PRR.

____ 13. 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.

Preliminary Review Officer Name

Preliminary Review Officer Signature

ADA Focal Point Name

ADA Focal Point Signature

SAF/FMFA Reviewer Name

SAF/FMFA Reviewer Signature

Attachment 10

FORMAL ADA REPORT CHECKLIST

The Formal ADA Report checklist presents the criteria for a properly formatted Formal ADA Report. Each checklist item corresponds to a section of the Report. Inclusion of all checklist items in the report is required. Any omissions must be fully explained in the report. The checklist must be completed, signed, and attached to the report before the Report is submitted to SAF/GCA for a legal opinion.

Authority

- _____ 1. A copy of the SAF/FMF formal investigation request memorandum should be provided.
- _____ 2. Identifies the IO's name, rank/grade, title, and date of appointment. Include a copy of the IO appointment memorandum.
- _____ 3. Include a copy of the IO's independence statement.
- _____ 4. Include copies of the IO's most recent certificates of fiscal law training and ADA Investigator training.

Report Format

- _____ 1. Title page, stating the Formal ADA Report case number (and name, if applicable), IO name and rank, address, telephone number, email address, and date of report
- _____ 2. Table of contents, including a list of tabbed attachments to the report
- _____ 3. Footnotes in the report referencing the appropriate supporting information in the attachments (e.g., text in the reporting that mentions upward obligation adjustments (UOAs) should reference the tab in the attachments that contains the UOA documents)
- _____ 4. IO's signature on the completed ADA Report
- _____ 5. All drafts should be marked "For Official Use Only"
- _____ 6. All drafts should be marked "Pre-Decisional Document"

ADA Report

- _____ 1. Appropriations(s) Involved/Title, Symbol, and Apportionment Status
- _____ 2. Where Violation(s) Occurred
- _____ 3. Name and Location of Activity Issuing the Fund Authorization. Identify the level at which available funding was not properly obligated (i.e., program office, product or logistics center, MAJCOM, FOA, or DRU appropriation or limitation, etc.).
- _____ 4. Amount of Violation
- _____ 5. Date Violation(s) Occurred
- _____ 6. Type(s) of Violation(s)
 - _____ 6.1. State the type(s) of potential violation(s). 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.

____ 6.2. Include a statement of which statute was violated, including the section and subsection. (e.g., 31 U.S.C. Sections 1301(a), 1341(a), 1342, 1502(a), 1517(a) and 3302(b)). If a regulation, funding document or administrative document was potentially violated, include a statement of review of Title 31 U.S.C., sections 1511-1519 and a determination of which section was potentially violated. If a statutory limitation was exceeded, include a statement of review of Title 31 U.S.C., sections 1341-1348, and title 10 and a determination of which section was potentially violated.

____ 7. State whether the violation had an effect 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 to the Air Force apportionment and appropriation being exceeded.

____ 8. Provide the name, rank/grade, position title, job series and organization of the responsible individual(s). If the responsible individual(s) no longer hold(s) the position under which the (potential) violation occurred, indicate their last position and rank/grade before retirement or separation. If multiple responsible individuals are named, provide a determination as to what degree each individual was responsible for the violation (operating personnel failed to follow established controls or procedures, supervisor failed to establish adequate controls or procedures or requested an employee to disregard established controls or procedures).

____ 9. Indicate whether or not a signed statement was received from the responsible individual(s) in response to the draft ADA report, and attach the statement to the ADA report. Provide a statement of any new facts discovered from witness(es) designated by the responsible individual(s). Provide an evaluation of any conflicting facts or circumstances when the statement of the responsible officer(s) or employee(s) differs from the report. Include an explanation if the responsible individual(s), or their designated witness(es) declines to make a statement.

____ 10. Include the date and description of how violation was discovered. Who discovered the violation? Was the potential violation discovered by an audit, an internal review, or through some other means? If the audit recommendation is based on asserted conclusions of law, the IO should request the assigned legal advisor provide an independent analysis of the auditor's legal conclusions. If the facts recited by audit report are immaterial, irrelevant, or do not otherwise support the auditor's conclusions of law, the IO should state so in the report.

____ 11. Causes and Circumstances Surrounding the Violation.

____ 11.1. Provide a detailed summary of the events, circumstances, and evolution of the issues that led to the potential ADA violation; what actions should have been, but were not taken; what actions were taken that should not have been taken; and why the violation happened. 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.

____ 11.2. State clearly what the individual(s) responsible for the violation(s) did, or failed to do, that caused the violation(s). State whether the violation(s) was due to careless disregard of instructions; an error; a lack of adequate training, procedures, or controls; or due to other reasons. The report 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, and explain any mitigating or extenuating circumstances. If the violation(s) involved an appropriation with a negative balance, then state whether the cause of the negative balance was systemic or a unique situation.

____ 11.3. Provide a summary of funds control procedures in place at the time of the potential violation, and whether or not they were sufficient. Discuss whether the acts leading up to the potential violation were in accordance with established internal controls or local operating procedures.

____ 11.4. Describe the scope of the investigation and the methods used to accomplish the investigation, for example, face-to-face interviews; research of legal, financial, and management issues; written explanation of the facts of the potential violation, etc. Discuss the evolution of the issues investigated, number of people interviewed, mitigating circumstances surrounding the violation, issues that could or could not be proven during the investigation and the supporting rationale, any issues that cannot be agreed upon by those individuals involved, and any other comments that are pertinent to the investigation.

____ 11.5. Include results of interviews of individuals involved in the violation. Summarize relevant testimony and state any presumptions that were sustained or rebutted through facts established by the review, any questions of fact that cannot be resolved without a formal ADA investigation, and any other comments or findings that are pertinent to the subject of the review. Discuss the issues, procedures, processes and the areas or functions that were reviewed, evaluated, and investigated; the names, ranks, and titles of the individuals that were interviewed; and a discussion of any related areas and matters that were not investigated and the rationale for omitting those areas or matters from the investigation. Transcripts of interviews, including acknowledgment of rights, should be attached to the report. Include the Privacy Act Statement for personal information taken during witness testimony. An example is provided at Attachment 7, AFI 65-608.

____ 11.6. If the investigation has been undertaken because of an audit report, identify that report by title, number, date, and issuing audit organization. If the investigation was conducted as a result of a memorandum or report directing an investigation, then reference that document and attach a copy of the memo and/or report.

____ 11.7. Provide a detailed investigation timeline and a list of persons contacted. Describe the dates, place and scope of the investigation, as well as any physical evidence examined.

____ 11.8. Provide documentation of any funding or accounting transactions related to the potential violation. This can include, but is not limited to, proof of the availability of funds in the relevant appropriation(s) and fiscal year(s), proof of continuous availability of funds, funding authorization documents, contracts, invoices, authorized upward obligation adjustment (UOAs), etc.

____ 11.9. Provide documentation of relevant decisions and contributing circumstances causing potential violation(s), descriptions and labeling of relevant circumstantial evidence.

____ 12. Provide a statement of whether or not the individual(s) named responsible knowingly and willfully committed the violation, and evidence to support the statement. If the determination has been made that the violation was knowingly and willfully committed, a statement should be provided as to the ensuing coordination with AFOSI.

____ 13. Disciplinary Actions Taken. Consideration of disciplinary action occurs after OUSD(C) has completed the review and determination, provided an advance decision and made the final determination of the responsible party. Disciplinary action, if deemed appropriate, is determined by the disciplinary official.

____ 13.1. Obtain a written Acknowledgement Statement signed by the Disciplinary Official (responsible for determining the appropriate disciplinary action (Attachment 13)) which

acknowledges that he or she understands that a an ADA violation is a violation of Federal Statute, b) an ADA violation constitutes a misuse of DoD funds even though the misuse may not have been knowing or willful, and despite whether the disciplinary official considers the misuse harmful to DoD or the Air Force; c) the Department is required to report the violation to the President (via the Director, Office of Management and Budget), the U.S. Congress, and to the Government Accountability Office (GAO); d) an unintentional violation does not justify a decision not to administer disciplinary action; and e) disciplinary action shall be commensurate with the severity of the violation, and factors leading to the violation or its resolution may be considered.

13.2. Obtain a written Commensurate Action Statement (Attachment 14) from the Disciplinary Official, which states what type of disciplinary action, if any, was taken and provide documentation of the disciplinary action. If no action was taken, then explain why. (The statement must address why he or she believes that the disciplinary action taken, or the failure to take disciplinary action, is commensurate with the severity of the violation. If there are extenuating circumstances, they must be considered. In civilian disciplinary actions, the notice of decision letter issued by disciplinary official (otherwise known in civilian personnel as the deciding official) may be used as the Commensurate Action statement, provided it adequately addresses the matters cited above.

____ 14. Corrective Action(s) Taken. State what funds were used to make necessary accounting corrections, such as appropriation, title, and fiscal year. Provide 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.). A deferred posting of a corrective entry does not preclude the necessity to report a potential ADA violation. In addition, state what procedural actions were taken and completed to preclude violations from happening in the future. This includes improvement of overall and specific policies, procedures, and processes used by the functional areas involved in the violation; revised statutes or regulatory guidance that may have been involved; established or improved internal procedures; and assurance that a similar violation will not occur in the future. 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.

____ 15. State whether the administrative control of funds prescribed in DoD FMR Volume 14, Chapter 1 is adequate. If the official signing the report recommends changes to this chapter, then submit the proposed changes to the OUSD(C) DCFO.

____ 16. State steps taken to coordinate the report with the other components or agencies involved, when applicable. Specifically, 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.

____ 17. Provide the name and title of holder of the funds subdivision, and a brief statement of their responsibility in the potential violation. The identification of the holder of funds must be supported with documentation. The DoD FMR defines Fund Holder as “an individual holding an administrative subdivision of funds or an operating target, who is responsible for incurring obligations against the administrative subdivision or target and for managing the use of such

funds.” Include an evaluation of the performance of the fund holder control responsibilities. The level of command immediately above the holder will normally furnish this evaluation. See 2.11 for appropriate information to be included.

____ 18. Other Areas of Discussion. This section discusses any other issues that may not have directly caused the potential ADA violation, but are essential in completing the ADA Report. 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.

Investigating Officer Name

Investigating Officer Signature

ADA Focal Point Name

ADA Focal Point Signature

SAF/FMFA Reviewer Name

SAF/FMFA Reviewer Signature

Attachment 11**SAMPLE COMPTROLLER TRANSMITTAL OF ADA REPORT MEMORANDUM**

MEMORANDUM FOR SAF/FMF

FROM: HQ AFXYZ/FM
Street Address, Room Number
City, State, Zip

SUBJECT: Transmittal, Antideficiency Act ADA Violation Report and Legal Review, Case Number F11-50

1. This is to inform you that the subject ADA Violation Report has been completed; and HQ AFXYZ/JA has, tentatively, confirmed that a violation of 31 U.S.C. Section 1341 (a)(1)(B), occurred.
2. In accordance with Office of the Under Secretary of Defense (Comptroller) policy, the Draft ADA Violation Report and legal review are forwarded for your review and transmittal to Secretary of the Air Force, General Counsel, Fiscal, Administrative and Ethics (SAF/GCA), for their final determination and/or confirmation that an ADA violation did, in fact, occur.
3. Please advise my office of SAF/GCA's final determination, so we can proceed with the appropriate disciplinary actions, if necessary.

Appointing Official

Attachments:

1. F11-50 ADA Violation Report
2. HQ AFXYZ/JA Legal Opinion

Attachment 12

SAMPLE COMPTROLLER TRANSMITTAL MEMORANDUM

TO COMMANDER/SUPERVISORY OFFICIAL

MEMORANDUM FOR HQ AFABC/CC/Supervisory Official

FROM: HQ AFXYZ/FM

Street Address, Room Number

City, State, Zip

SUBJECT: Request for Disciplinary Actions, *FY2011 Support Services* at HQ AFABC, Antideficiency Act (ADA) Violation Case F11-50

1. Based on the results of the subject ADA investigation, the investigating officer determined that an ADA violation occurred and that Ms. Jane Doe was the individual responsible for this violation. On 1 November 2011, the Office of the Under Secretary of Defense Comptroller (OUSD(C)), confirmed that an ADA violation occurred, so this matter is now being returned to you for action necessary to consider appropriate disciplinary action in accordance with applicable law, regulations and negotiated agreements. This will include the designation of appropriate disciplinary official(s).

2. In accordance with DoD, Financial Management Regulation, DoD FMR 7000.14-R, Volume 14, Administrative Control of Funds and Antideficiency Act Violations, properly designated disciplinary officials are required to prepare an Acknowledgement Statement which must include the following:

(a) 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 the Office of Management and Budget (OMB), to the Congress; and the Government Accountability Office (GAO) (4) an unwillful or unintentional violation does not justify a decision not to administer disciplinary action; and (5) disciplinary action shall be commensurate with the severity of the violation and factors leading to the violation or its resolution may be considered; and

(b) A written statement addressing why he or she believes that the disciplinary action taken, or the failure to take disciplinary action, is commensurate with the severity of the violation. If there are extenuating circumstances, they must be considered.

3. We request your office complete the administration of any appropriate disciplinary actions by 1 January 2012, and provide the above referenced statements to my office, for inclusion in the Final ADA Violation Report and submission to the OUSD(C). If you have any questions, please let me know.

Appointing Official

Attachments: ADA Violation Report

Attachment 13**SAMPLE ACKNOWLEDGEMENT STATEMENT**

MEMORANDUM FOR SAF/FMF

FROM: Disciplinary Official
HQ AFABC/CC
Street Address, Room Number
City, State, Zip

SUBJECT: Acknowledgement Statement for Antideficiency Act (ADA) Violation, Case F11-50
– Ms. Jane Doe

1. I have been designated as the individual who is responsible for determining the appropriate disciplinary action for [individual] who has been found to be responsible for the subject ADA violation.

2. 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 the Office of Management and Budget (OMB), to the Congress and to the Government Accountability Office (GAO); (d) an unintentional ADA violation does not justify a decision to not administer disciplinary action; and (e) disciplinary action shall be commensurate with the severity of the violation and factors leading to the violation or its resolution must be considered.

Disciplinary Official's Signature

Attachment 14

SAMPLE COMMENSURATE ACTION STATEMENT

MEMORANDUM FOR SAF/FMF

FROM: Disciplinary Official
HQ AFABC
Street Address, Room Number
City, State, Zip

SUBJECT: Commensurate Action Statement, ADA Violation Report, Case Number F11-50

[NEED SAMPLE STATEMENT WHICH must address why disciplinary official believes that the disciplinary action taken, or the failure to take disciplinary action, is commensurate with the severity of the violation. If there are extenuating circumstances, they must be considered.]

Disciplinary Official's Signature

Attachment 15

ADA REVIEWER/INVESTIGATOR INDEPENDENCE STATEMENT

I have read and understand Section 3.4.8. of Air Force Instruction (AFI) 65-608, *Antideficiency Act Violations*, pertaining to personal and external impairments to independence.

() I have no personal impairments, and I am not aware of any external or organizational impairments to independence on this project as defined in AFI 65-608. I will notify the appointing official immediately if I become aware of the potential existence of any actual or perceived personal, external or organizational impairment on my part or a coworker's part between the date below and the issuance of the final report.

() I believe I cannot be independent or impartial on the assignment for the following reason(s).

() I have identified the listed potential impairment (specify whose/what) to independence and have taken the following actions:

--	--

Signature

Date

Examples of Personal Impairments. The reviewer/investigator has:

a. An immediate family or close family member who works for or is a member of the organization in which the potential ADA occurred.

b. A close personal relationship with an individual who is a supervisor or employee of the organization in which the potential ADA occurred, and the individual is in a position to exert direct and significant influence over the operations of the entity or program under review/investigation.

c. An interest or managerial responsibility that is direct, or is significant/ material though indirect, in the organization or program in which the potential ADA occurred. For example, the reviewer/investigator is a director, officer, or member of management and participates in decision-making, supervisory, or monitoring functions.

d. Been employed, within the past 3 years (including as a contractor), by the organization in which the potential ADA occurred.

e. Preconceived ideas toward individuals, groups, organizations, or objectives of the organization or program in which the potential ADA occurred that could bias the investigation.

f. Biases that result from employment in, or loyalty to, a particular group, organization, or level of government.

g. In addition to the above personal impairments, a reviewer/investigator should not:

(1) Review work of a previous supervisor or co-worker with whom the reviewer/investigator has either a close personal or working relationship.

(2) Seek employment with the investigated organization during the conduct of the review/investigation.

Examples of External and Organizational Impairments. Factors that may restrict, or interfere with a reviewer/investigator's ability to form independent and objective opinions and conclusions, include:

a. Interference or influence that improperly limits the scope of a review/investigation.

b. Unreasonable restrictions on the time allowed to complete the review/investigation (e.g., pending retirement, scheduled deployment within 12 months, etc.)

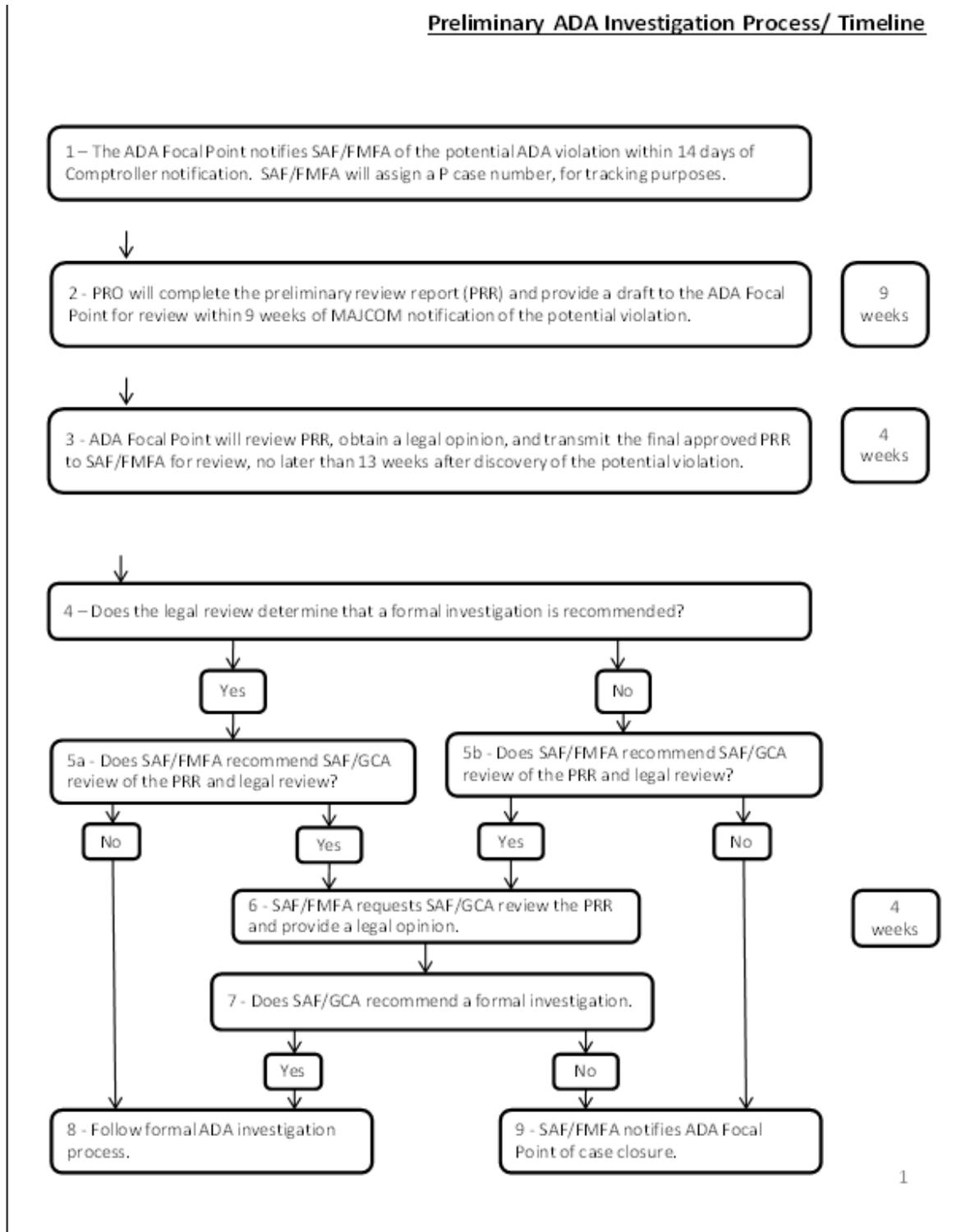
c. Authority to overrule or influence the investigator's judgment as to the appropriate content of a(n) review/investigation report.

d. Influences that jeopardize the investigator's continued employment for reasons other than competency or the need for review/investigation.

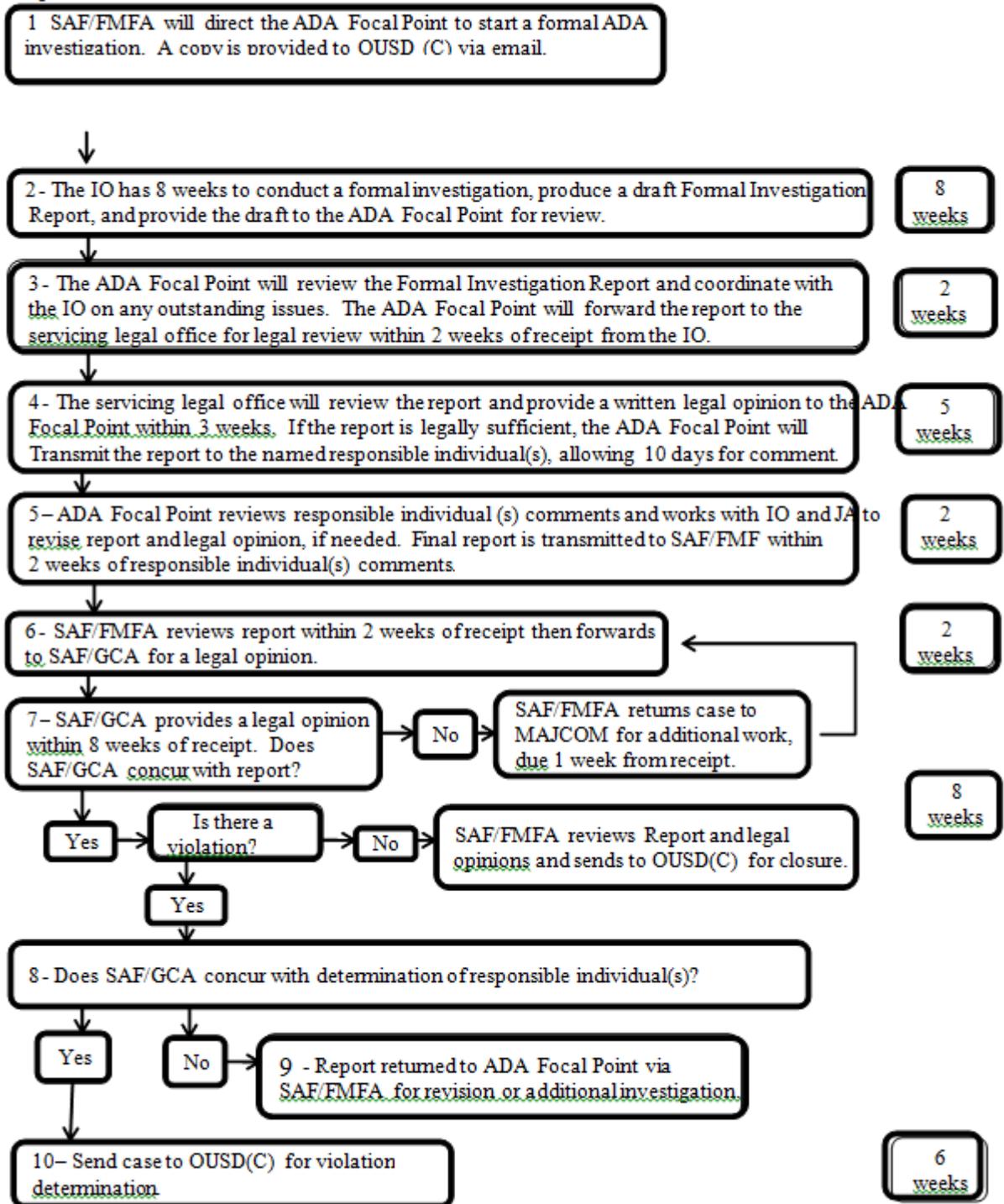
Attachment 16

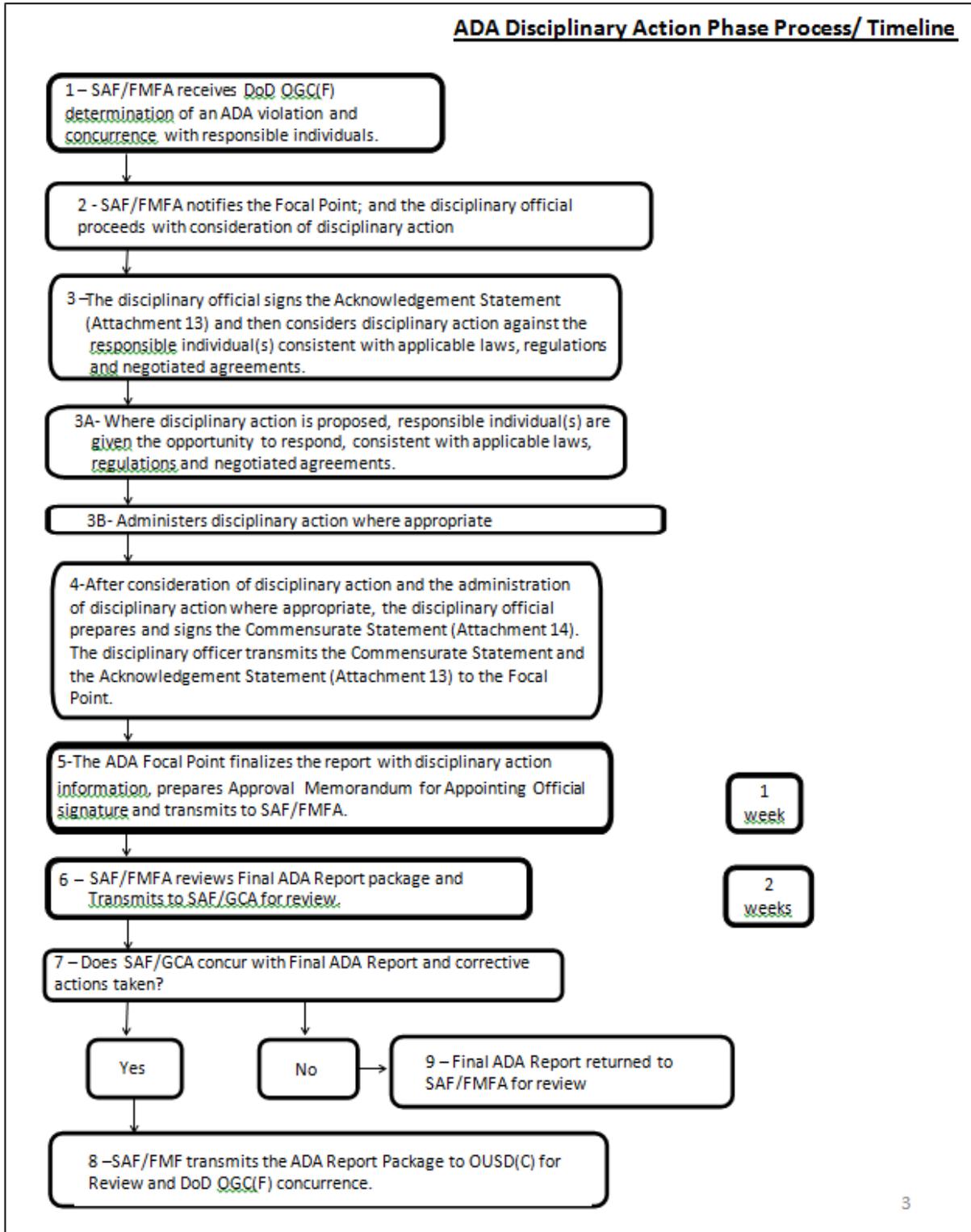
ADA INVESTIGATION PROCESS/TIMELINE

Figure A16.1. ADA Investigation Process/Timeline.



Formal ADA Investigation Process/ Timeline





Discipline should be considered in a timely manner and resolved as quickly as possible, consistent with applicable laws, regulations and negotiated agreements.