

SECTION 145—REQUIREMENTS FOR REPORTING ANTIDEFICIENCY ACT VIOLATIONS

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Summary of Changes

Provides guidance on when to request an appropriation to liquidate an obligation that was a violation of the Antideficiency Act (section [145.10](#)).

145.1 What is the Antideficiency Act?

The Antideficiency Act consists of provisions of law that were passed by Congress (beginning in the nineteenth century and later codified in Title 31 of the United States Code) to prevent departments and agencies from spending their entire appropriations during the first few months of the year. The Act *prohibits* you and any other Federal employee from:

- Entering into contracts that *exceed* the enacted appropriations for the year.
- Purchasing services and merchandise *before* appropriations are enacted.

The Act:

- Requires that OMB *apportion* the appropriations, that is, approve a plan that spreads out spending over the fiscal period for which the funds were made available.
- Requires, subject to the approval of OMB, the head of each executive agency to prescribe by regulation a system of administrative control of funds ([31 U.S.C. 1514\(a\)](#)).
- Restricts *deficiency apportionments* to amounts approved by the agency heads only for "extraordinary emergency or unusual circumstances."
- Establishes *penalties* for Antideficiency Act violations. Violations are obligations or expenditures in excess of the lower of the amount in the affected account, the amount apportioned, or any administrative subdivision of funds specified in your agency's fund control regulations as being subject to the Antideficiency Act. As specified in Appendix H, agency fund control regulations must specify that violations of allotments and suballotments are also violations of the Antideficiency Act. If the agency chooses to and OMB approves, the agency may also make allowances and allocations subject to the Antideficiency Act. In this case, obligations and expenditures that exceed allowances and allocations are violations of the Antideficiency Act.

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- Requires the agency head to report any Antideficiency Act violations to the President, through the OMB Director; Congress; and the Comptroller General.

Under the Act, if you obligate or expend more than the amount in the Treasury Account Fund Symbol (TAFS) or the amount apportioned or the amount in any other subdivision of funds that are identified in your agency fund control regulations as being subject to the Antideficiency Act, you will be subject to appropriate administrative discipline, including—when circumstances warrant—a written reprimand, suspension from duty without pay, or removal from office.

In addition, if you are convicted of willfully and knowingly overobligating or overexpending the amount, then you shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

In 1982, Congress reworded and reorganized the language of the Antideficiency Act along with the rest of Title 31 of the United States Code. The intent of Congress was to modernize the language of the Act, without changing its meaning. You will find a crosswalk between the provisions of law that made up the Antideficiency Act before it was modernized and the current language in [appendix G](#).

145.2 What violations must I report?

All Antideficiency Act violations must be reported. Here are some common examples:

If you . . .	The amount . . .	Then, you must report a violation of . . .
Authorize or make an obligation exceeding	In an appropriation or fund. This may include obligations for purchases of goods or items that are prohibited by statute.	31 U.S.C. 1341(a)
	In an apportionment or reapportionment (a type of administrative subdivision of funds), such as a category B apportionment. This also includes incorporated footnotes.	31 U.S.C. 1517(a)(1)
	In an allotment or a suballotment (a type of administrative subdivision of funds, see Appendix H, section 4).	31 U.S.C. 1517(a)(2)
	In any other administrative subdivision of funds, if the overobligation results in the overobligation of one of the previous amounts.	31 U.S.C. 1517(a)(2)
Authorize or make a disbursement exceeding	In an appropriation or fund.	31 U.S.C. 1341(a)
	In an apportionment or reapportionment (a type of administrative subdivision of funds). Includes the overobligation of a category B apportionment. This also includes incorporated footnotes.	31 U.S.C. 1517(a)(1)
	In an allotment or a suballotment (a type of administrative subdivision of funds, see Appendix H, section 4).	31 U.S.C. 1517(a)(2)
	In any other administrative subdivision of funds if the overexpenditure results in the overexpenditure of one of the previous amounts.	31 U.S.C. 1517(a)(2)
Obligate or expend	Funds required to be sequestered.	31 U.S.C. 1341(a)

If you . . .	The amount . . .	Then, you must report a violation of . . .
Involve the Government in a contract or obligation	Before you receive the appropriation, unless such contract or obligation is authorized by law.	31 U.S.C. 1341(a)
Sign a contract that obligates the Government to indemnify parties against losses ("open-ended indemnification" clause)	Indeterminate.	31 U.S.C. 1341(a)
Accept voluntary service	In excess of that authorized by law.	31 U.S.C. 1342

Consult your OMB representative if your violation involves the Purpose Statute (31 U.S.C. 1301) or a funding restriction in an Act other than an appropriations Act, and refer to the Memorandum for the General Counsel of the Environmental Protection Agency from C. Kevin Marshall, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences* (April 5, 2007), available at <http://www.justice.gov/olc/opiniondocs/epa-light-refreshments13.pdf>.

145.3 How do the requirements for reporting violations differ for credit programs?

In addition to the violations specified in section 145.2, report overobligation or overexpenditure of:

- The subsidy—where an officer or employee of the United States has made or authorized a direct loan obligation or loan guarantee commitment that requires a subsidy cost obligation or expenditure in excess of amounts appropriated and/or apportioned for such purposes. Modifications of direct loans or loan guarantees (or of direct loan obligations or loan guarantee commitments), as defined in section 185, that result in obligations or expenditure in excess of apportioned unobligated balances of subsidy amounts are violations (31 U.S.C. 1341(a), 31 U.S.C. 1517(a)).
- The credit level supportable by the enacted subsidy—where an officer or employee of the United States has made or authorized a direct loan obligation or loan guarantee commitment, that is in excess of the level specified by law. This includes, for example, obligations or expenditures that exceed a limitation on direct loan obligations or guaranteed loan commitments (31 U.S.C. 1341(a)).
- The amount appropriated for administrative expenses—where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation that is in excess of the amount appropriated for administrative expenses (31 U.S.C. 1341(a)).
- The expired unobligated balance of the subsidy—where an officer or employee of the United States has made or authorized an expenditure or created or authorized an obligation, including a commitment, against unobligated subsidy balances after the period of obligational authority has expired. Correction of mathematical or data input errors up to the amount of the expired unobligated balance of the subsidy are not violations. Corrections of these errors in excess of the amount of the expired unobligated balance of the subsidy are violations (31 U.S.C. 1341(a)).
- The apportioned borrowing authority in a financing account. Section 505(c) of the Federal Credit Reform Act subjects financing accounts to apportionment: “All of the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code.”

145.4 Do the requirements for reporting violations differ for revolving funds?

No. The incurring of obligations in excess of apportioned budgetary resources in a revolving fund is a violation of the Antideficiency Act, whether or not a fund has unapportioned budgetary resources or non-budgetary assets greater than the amount apportioned.

145.5 Do the requirements for reporting violations differ for closed and expired accounts?

No. You are required to report violations when obligations and expenditures or adjustments to obligations and expenditures exceed the original appropriations in expired accounts as well as closed accounts. This also includes obligations and expenditures or adjustments to obligations and expenditures made before the account expired that exceed amounts apportioned or amounts in any other subdivision of funds that are identified in your agency's fund control regulations as being subject to the Antideficiency Act.

145.6 How do I treat anticipated budgetary resources?

You may not obligate against anticipated budgetary resources before they are realized even though the anticipated budgetary resources have been apportioned (see section [120.45](#)). If you incur an obligation against an anticipated budgetary resource, such as anticipated spending authority from offsetting collections, then you will have a violation of the Antideficiency Act.

145.7 How do I report a violation?

In preparing your report on a violation, please consult your OMB representative. Below are the requirements for such a report.

Transmittal letter to the Director of OMB. You will transmit the letter from your agency head to the President through the Director of OMB. A sample transmittal letter is provided in exhibit [145A](#) that shows the format that must be followed. Agencies must state whether or not their agency received a clean audit opinion during the fiscal year(s) in which the violation occurred. If it is suspected that the violation was knowing and willful, the letter must state the agency has submitted information to the Department of Justice. If the agency has determined that a violation was not knowing and willful, agencies must state this determination in the letter.

Letter to the President. You will report a violation of the Antideficiency Act in the form of a letter from your agency head to the President. A sample letter is provided in exhibit [145B](#) that shows the format that must be followed.

The letter will set forth all of the following information:

- The title and Treasury symbol (including the fiscal year) of the appropriation or fund account, the amount involved for each violation, and the date on which the violation occurred.
- The name and position of the officer(s) or employee(s) responsible for the violation. A responsible officer or employee is an individual who took, or failed to take, an action that was a proximate cause of the violation. For an individual to be a responsible official, there should be a direct, identifiable nexus between the action (or inaction) of the named individual and the corrective measures taken by the agency to prevent future violations.
- All facts pertaining to the violation, including the type of violation (for example, overobligation of an appropriation, overobligation of an apportionment, overobligation of any subdivision of funds, including an allotment or suballotment, identified in your agency's fund control regulations), the primary reason or cause, any statement from the responsible officer(s) or employee(s) with respect

to any circumstances believed to be extenuating, and any germane report by the agency's Inspector General and/or the agency's counsel.

- A statement of the administrative discipline imposed and any further action(s) taken with respect to the officer(s) or employee(s) involved in the violation.
- In the case where an officer or employee is suspected of willfully and knowingly violating the Antideficiency Act, confirm that all information has been submitted to the Department of Justice for determination of whether further action is needed. If the agency has determined that a violation was not knowing and willful, agencies must state this determination in the letter.
- A statement regarding the adequacy of the system of administrative control prescribed by the head of the agency and approved by OMB, if such approval has been given. If the head of the agency determines a need for changes in the regulations, or your system of administrative controls has never been approved by OMB, such proposals will be submitted as provided in section [150.7](#).
- A statement of any additional action taken by, or at the direction of, the head of the agency, including any new safeguards provided to prevent recurrence of the same type of violation.
- If another agency is involved, a statement concerning the steps taken to coordinate the report with the other agency.
- Identical reports will be submitted to the presiding officer of each House of Congress and the Comptroller General. If identical to the report to the President, so state.

Letters to Congress. You will report identical letters to the Speaker of the House of Representatives and the President of the Senate.

Letters to the Comptroller General. You will report to the Comptroller General of the Government Accountability Office. Agencies may electronically send PDF (portable document format) copies of these reports to AntideficiencyActReports@gao.gov (for further information see OMB Memorandum [M-05-09](#) dated March 11, 2005).

If the letters to Congress and the Comptroller General are identical to the letter to the President, include a statement to this effect in the letter to the President. If the letters to Congress and the Comptroller General are not identical to the letter to the President, you will submit a copy of the letter to Congress and the Comptroller General with your letter to the President and, moreover, you will submit to the Congress and the Comptroller General a copy of your letter to the President. Additionally, agencies are required to ensure that the entire violation package maintains consistency with regard to the type of Antideficiency Act violation that has occurred. If there is an inconsistency in the package, agencies are required to submit an explanation for the record (emails are acceptable).

145.8 What if the GAO reports a violation?

You should report to the President, Congress, and the Comptroller General on violations reported by the Government Accountability Office in connection with audits and investigations.

In these cases, the report to the President will indicate whether the agency agrees that a violation has occurred, and if so, it will contain an explanation as to why the violation was not discovered and previously reported by the agency. If the agency does not agree that a violation has occurred, the report to the President, Congress, and the Comptroller General will explain the agency's position.

145.9 What if OMB suspects a violation?

Whenever OMB determines that a violation of the Antideficiency Act may have occurred, OMB may request that an investigation or audit be undertaken or conducted by the agency. In such cases, a report describing the results of the investigation or audit will be submitted to OMB through the head of the agency. If the report indicates that no violation of the Antideficiency Act has occurred, the agency head will so inform OMB and forward a copy of the report to OMB. If the report indicates that a violation of

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the Antideficiency Act has occurred, the agency head will report to the President, Congress, and the Comptroller General in accordance with section [145.7](#) as soon as possible. If the agency head does not agree that a violation has occurred, the report to the President, Congress, and Comptroller General will explain the agency's position.

145.10 When do I need to request (and obtain) an appropriation in order to liquidate an obligation that was a violation of the Antideficiency Act?

The Antideficiency Act applies to expenditures as well as obligations, and thus an expenditure is a separate violation of the Antideficiency Act.

Accordingly, if you think that you may have obligated funds in violation of the Antideficiency Act that you have yet to expend, you should immediately contact your counsel's office and budget office to discuss the situation and appropriate next steps, including contacting your agency's OMB representative with budget responsibility for the account.

In most cases, you will not need to request (and obtain) an appropriation in order to liquidate an obligation that was incurred in violation of the Antideficiency Act. (Such an appropriation is referred to as a "deficiency appropriation.")

When an obligation that was a violation of the Antideficiency Act has already been liquidated, a deficiency appropriation is not necessary.

A deficiency appropriation is also not necessary when other resources are available to liquidate the obligation. For instance, the agency may be able to liquidate the obligation by:

- (1) using unobligated balances that can be made available through a re-allotment, a revised apportionment, a reprogramming, or a transfer from another account (if the agency has transfer authority);
- (2) deobligating funds; or
- (3) if the account has been closed, exercising the authority to use current-year funds under 31 U.S.C. 1553.

A deficiency appropriation is only necessary where there is not existing budget authority that is available to liquidate the obligation.

Appropriations to liquidate obligations that violated the Antideficiency Act (i.e., deficiency appropriations) are subtracted from total budgetary resources available for obligation. As a result, the appropriation is still recognized in the budget authority totals as a current cost, but the appropriation is unavailable to be used for any purpose except to liquidate the obligation (see sections [20.4\(b\)](#) and [82.18](#)).

Regardless of whether a deficiency appropriation is needed, all Antideficiency Act violations involving either obligations or expenditures must be reported to the President, the Congress, and the Government Accountability Office in accordance with this section.

This discussion does not address those situations in which an appropriation is needed in order to liquidate obligations that are lawfully incurred, such as obligations incurred for excepted activities pursuant to the Antideficiency Act (see section [124](#)).

Antideficiency Act Violation
Sample Letter to the Director

Note: If a violation occurred in section 1341 of Title 31, United States Code (U.S.C.), then it is required to be reported under section 1351 of Title 31, U.S.C.

If a violation occurred in section 1517 of Title 31, U.S.C., then it is required to be reported under section 1517(b) of Title 31, U.S.C.

Honorable Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Director:

Enclosed is a letter transmitting a violation of section [1341 or 1517] of Title 31, United States Code to the President.

The Antideficiency Act violation totaled \$XXXX.XX. This violation report is required by section [1351 or 1517(b)] of Title 31, United States Code, to be submitted to the President; it is being submitted through the Director of the Office of Management and Budget. The agency [did] [did not] receive a clean audit opinion during the fiscal year(s) in which the violation occurred. [The agency has determined that the violation contained no willful or knowing intent on the part of the responsible party/parties to violate the Antideficiency Act.]

To comply with the aforementioned provisions, copies of the report are also being submitted to the President of the Senate and the Speaker of the House of Representatives as well as the Comptroller General.

Sincerely,
Agency Head

Enclosure

Antideficiency Act Violation
Sample Letter to the President

Note: If a violation occurred in section 1341 of Title 31, United States Code (U.S.C.), then it is required to be reported under section 1351 of Title 31, U.S.C.

If a violation occurred in section 1517 of Title 31, U.S.C., then it is required to be reported under section 1517(b) of Title 31, U.S.C.

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

This letter is to report a violation of the Antideficiency Act, as required by section [1351 or 1517(b)] of Title 31, United States Code.

A violation of section [1341 or 1517] occurred in account [Treasury symbol and title] in the total amount of \$X,XXX. The violation occurred on [date] in connection with [identify the affected program or activity] for FY XXXX. Mr./Ms. _____ (rank/grade/title) was [were] the officer(s) responsible for the violation(s).

[Describe the nature of the violation (see section [145.2](#)). Then state the primary reason or cause. Include any statement from the responsible officer(s) or employee(s) as to any circumstances believed to be extenuating. Include any germane report by the agency's Inspector General.]

[State which administrative discipline was imposed as well as any further action(s) taken with respect to the officer(s) or employee(s) involved. (see section [145.1](#))]

[In the case where an officer or employee is suspected of willfully and knowingly violating the Antideficiency Act, confirm that all information has been submitted to the Department of Justice. If the agency has determined that a violation was not knowing and willful, state such determination by including the following sentence, "The agency has determined that the violation contained no willful or knowing intent on the part of the responsible party/parties to violate the Antideficiency Act."]

[State whether the adequacy of the system of administrative control has been approved by OMB. (see section [150.7](#))]

[State whether any additional action need be taken to prevent recurrence of the same type of violation.]

[If another agency is involved, state what steps are being taken to coordinate the report with the other agency.]

[Identical reports will be submitted to the presiding officer of each House of Congress as well as the Comptroller General. If identical to the report to the President, so state. (see section [145.7](#))]

Respectfully,

Agency Head