

SECTION 145—REQUIREMENTS FOR REPORTING ANTIDEFICIENCY ACT VIOLATIONS

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Ex-145A Antideficiency Act Violation Sample Letter to the Director

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**Summary of Changes**

Requires agencies to state in the transmittal letter to the Director of OMB whether or not the agency received a clean audit opinion during the fiscal year(s) in which the violation occurred (section [145.7](#))

**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 incorporated into 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.
- 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 the amount allotted.

**SECTION 145—REQUIREMENTS FOR REPORTING  
ANTIDEFICIENCY ACT VIOLATIONS**

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

Under the Act, if you obligate or expend more than the amount in the TAFS or the amount apportioned or any other subdivision of funds, 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?**

<b>If you . . .</b>	<b>The amount . . .</b>	<b>Then, you must report a violation of . . .</b>
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.	<a href="#">31 U.S.C. 1341(a)</a>
	In an apportionment or reapportionment (a type of administrative subdivision of funds), such as a category B apportionment.	<a href="#">31 U.S.C. 1517(a)(1)</a>
	In an allotment or a suballotment (a type of administrative subdivision of funds).	<a href="#">31 U.S.C. 1517(a)(2)</a>
	In any other administrative subdivision of funds, if the overobligation results in the overobligation of one of the previous amounts.	<a href="#">31 U.S.C. 1517(a)</a>
Authorize or make a disbursement exceeding	In an appropriation or fund.	<a href="#">31 U.S.C. 1341(a)</a>
	In an apportionment or reapportionment (a type of administrative subdivision of funds). Includes the overobligation of a category B apportionment.	<a href="#">31 U.S.C. 1517(a)(1)</a>
	An allotment or a suballotment (a type of administrative subdivision of funds).	<a href="#">31 U.S.C. 1517(a)(2)</a>
	In any other administrative subdivision of funds if the overexpenditure results in the overexpenditure of one of the previous amounts.	<a href="#">31 U.S.C. 1517(a)</a>
Obligate or expend	Funds required to be sequestered.	<a href="#">31 U.S.C. 1341(a)</a>
Involve the Government in a contract or obligation	Before you receive the appropriation, unless such contract or obligation is authorized by law.	<a href="#">31 U.S.C. 1341(a)</a>
Accept voluntary service	In excess of that authorized by law.	<a href="#">31 U.S.C. 1342</a>

### **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.
- There are obligations or expenditures in closed accounts.

- Obligations and expenditures or adjustments to obligations and expenditures exceed the amount apportioned or allotted.

#### **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 121.11). If you incur an obligation against an anticipated budgetary resource, such as anticipated spending authority from offsetting collections (i.e., line 3C of the SF 132), then you will have a violation of the Antideficiency Act. If you incur obligations against unobligated balances that are not available for the purpose or amount so obligated in the account, then you will have a violation.

#### **145.7 How do I report a violation?**

*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 now must state whether or not their agency received a clean audit opinion during the fiscal year(s) in which the violation occurred.

*Letter to the President.* You will report a violation of the Antideficiency Act in the form of a letter (original and three copies) 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.
- All facts pertaining to the violation, including the type of violation (for example, overobligation of an appropriation, overobligation of an apportionment, overobligation of an allotment or suballotment), 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.
- 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, 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. 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.

If the letters to Congress 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 are not identical to the letter to the President, you will submit a copy of the letter to Congress with 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 and Congress on violations reported by the General Accounting 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 and the Congress 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 the Antideficiency Act has occurred, the agency head will report to the President and the Congress 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 and to the Congress will explain the agency's position.

**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.

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.

Sincerely,  
Agency Head

Enclosure

## Antideficiency Act Violation Sample Letter to the President

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

Dear Mr. 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.

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.]

[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. If identical to the report to the President, so state. (see section 145.7)]

Respectfully,  
Agency Head

