

SECTION 40 -- REQUIREMENTS FOR REPORTING ANTIDEFICIENCY ACT VIOLATIONS

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Ex-40A Antideficiency Act Violation Sample Letter to the Director
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40.1 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.
- 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 appropriation or fund or the amount apportioned or any other subdivision of funds, you shall be subject to appropriate administrative discipline, including -- when circumstances warrant -- a written reprimand, suspension from duty without pay, or removal from office.

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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 A.

40.2 What violations must I report?

If you . . .	The amount . . .	Then, you must report of violation of . . .
Authorize or make an obligation exceeding	In an appropriation or fund.	31 U.S.C. 1341(a)
	In an apportionment or reappropriation (a type of administrative subdivision of funds).	31 U.S.C. 1517(a)(1)
	In an allotment or a suballotment (a type of administrative subdivision of funds).	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)
Authorize or make a disbursement exceeding	In an appropriation or fund.	31 U.S.C. 1341(a)
	In an apportionment or reappropriation (a type of administrative subdivision of funds).	31 U.S.C. 1517(a)(1)
	An allotment or a suballotment (a type of administrative subdivision of funds).	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)
Obligate or Expend	Funds required to be sequestered.	31 U.S.C. 1341(a)
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)
Accept voluntary service	In excess of that authorized by law.	31 U.S.C. 1342

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

In addition to the violations specified in section 40.2, 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 70, 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 are in excess of 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))

40.4 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.

40.5 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.

40.6 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 40A.

Letter to the President. You will report a violation of the Antideficiency Act violation in the form of a letter (original and three copies) from your agency head to the President. A sample letter is provided in Exhibit 40B.

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The letter will set forth the following:

- 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 50.7.
- 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.

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.

40.7 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.

40.8 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 40.6 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

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

Dear Mr. Director:

Enclosed is a letter transmitting a violation report 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] 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.

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:

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

A violation occurred in account [Treasury symbol and title]. 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 40.2). 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 40.1)]

[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 21)]

[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 40.6)]

Respectfully,
Agency Head