

July 28, 2008

Congressional Committees

Subject: *Financial Management: DOD's Ability to Prevent, Identify, Investigate, and Report on Antideficiency Act Violations*

This report formally transmits the attached briefing in response to Senate Report No. 110-77,¹ which accompanied the National Defense Authorization Act for Fiscal Year 2008.² The Senate Report directed GAO to review the department's efforts to prevent, identify, investigate, and report Antideficiency Act (ADA) violations and disciplinary actions taken when violations occur. On July 22, 2008, we provided our preliminary observations to staff of your committees in response to the mandate. We will be reporting details on the information presented in the briefing in a future report.

We are sending copies of this report to the appropriate congressional committees. We are also sending copies of our final report to the Secretary of Defense; the Under Secretary of Defense (Comptroller); and the Secretaries of the Army, Navy, and Air Force. This report will also be available at no charge on GAO's Web site at <http://www.gao.gov>. Should you or your staff have any questions concerning this report, please contact me at (202) 512-9095 or rasconap@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Darby Smith, Assistant Director; Evelyn Logue, Assistant Director; F. Abe Dymond, Assistant General Counsel; Lauren Catchpole; Francine DelVecchio; Sandra Lord-Drakes; Jamie Haynes; Wil Holloway; and Jason Kirwan.



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¹S. Rep. No.110-77, at 401 (Oct.1, 2007).

²S. 1547, 110th Cong.: See Pub. L. No. 110-181, 122 Stat. 3 (Jan. 28, 2008).

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DOD's Ability to Prevent, Identify, Investigate, and Report on Antideficiency Act Violations

Briefing for the Congressional Defense Committees

July 2008



Briefing Agenda

- Introduction
- Summary of Preliminary Observations
- Background
- Objectives
- Scope and Methodology
- Preliminary Observations
- Agency Views



Introduction

- On January 17, 2007, the Department of Defense (DOD) Acting Inspector General testified before the Senate Committee on Armed Services, Subcommittee on Readiness and Management Support, on potential violations of the Antideficiency Act (ADA) at DOD
- Based on the DOD Inspector General's testimony, the committee expressed concerns about the volume of potential ADA violations, the pace and transparency of ADA investigations, and DOD's process for investigating potential violations
- Senate Report No. 110-77,¹ which accompanied the National Defense Authorization Act for Fiscal Year 2008,² directed GAO to review the department's efforts to prevent, identify, investigate, and report ADA violations and disciplinary actions taken when violations occur

¹S. Rep. No. 110-77, at 401 (October 1, 2007)

²S. 1547, 110th Cong.: See Pub. L. No. 110-181, 122 Stat. 3 (Jan. 28, 2008)



Summary of Preliminary Observations

- Given the numerous documented control risks over funds control, DOD does not have reasonable assurance that it has prevented, identified, investigated, and reported all potential ADA violations
- DOD has stated that knowledgeable personnel are critical to improving the department's funds control processes and the military services have efforts underway to provide training. However, neither the Navy nor the Air Force could provide documentation of the processes and procedures they have or will utilize to ensure that their key funds control personnel are trained
- Neither the DOD Comptroller nor the military services had effectively overseen and monitored compliance with DOD's Financial Management Regulation (FMR) provisions to ensure that those assigned to investigate potential ADA violations were qualified, trained, and independent
- The DOD Comptroller has taken steps to improve transparency within the department over the ADA investigation process
- Disciplinary actions taken by the military services for the 34 cases with confirmed ADA violations in fiscal years 2006 and 2007 were consistent with the Act and the DOD FMR



Background – Antideficiency Act

- Federal agencies, including DOD, are responsible for ensuring that appropriated funds are used only for purposes, and within the amount and timeframes, prescribed by Congress
 - ADA is not a single act, but rather a series of related provisions that evolved over a period of time to require and enforce apportionments and agency subdivisions of apportionments to achieve more effective control and conservation of funds
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Background – Antideficiency Act (cont'd)

- The ADA contains both affirmative requirements and specific prohibitions, such as the
 - requirement that OMB, on delegation from the President, apportion appropriated funds and other budgetary resources for all executive branch agencies. An apportionment may divide amounts available for obligation by specific time periods (usually quarters), activities, projects, objects, or combination thereof
 - requirement for a system of administrative controls within each agency, established by regulation, that is designed to (1) prevent obligations and expenditures in excess of apportionments or reapportionments; (2) fix responsibility for any such obligations or expenditures; and (3) establish the levels at which the agency may administratively subdivide apportionments, if it chooses to do so, and
 - prohibition against the incurring of obligations or making of expenditures in advance or in excess of an appropriation
- The DOD FMR, which was approved by OMB, serves as the department's funds control regulation and establishes procedures for DOD components to use in identifying, investigating, reporting, and processing ADA violations



Objectives

Senate Report areas of interest

- Determine the effectiveness of existing measures for the prevention of Antideficiency Act violations (slide 10)
 - Determine the adequacy of training provided to DOD military and civilian personnel (slide 11)
 - Determine the adequacy of current procedures utilized for preliminary and formal investigations of potential Antideficiency Act violations (slide 12)
 - Determine the qualifications and independence of personnel utilized at each stage of an investigation (slides 13 and 14)
 - Determine the timeliness of investigations of potential violations (slide 15)
 - Determine the transparency both inside and outside DOD of the investigating process (slides 16 and 17)
 - Determine the use and adequacy of available disciplinary measures for Antideficiency Act violations (slides 18 and 19)
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Scope and Methodology

- We analyzed the 54 ADA cases DOD closed for the military services in fiscal years 2006 and 2007
 - 34 cases – DOD concluded that an ADA violation had occurred
 - 20 cases – DOD concluded that an ADA violation had not occurred
- We reviewed prior GAO and DOD Inspector General audit reports, and OMB and GAO guidance to obtain an understanding of the deficiencies in DOD's funds control systems, processes, and internal control that impede its ability to prevent or identify ADA violations
- We reviewed documentation and interviewed DOD and military service personnel to obtain an understanding of the long-term and interim solutions the department has underway to improve its ability to prevent and identify potential ADA violations
- We reviewed DOD's FMR and interviewed appropriate officials to identify DOD criteria pertaining to the timeliness of investigations, the qualifications and independence requirements of investigating officers, and the processes and procedures for ensuring compliance with the FMR



Scope and Methodology (cont'd.)

- We did not assess whether the conclusions reached or the disciplinary actions taken for the ADA cases reviewed were appropriate
- We conducted this performance audit from July 2007 through July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for the information provided based on our audit objectives



Preliminary Observations

Effectiveness of Existing Measures in Preventing ADA Violations

- DOD's complex and inefficient payment processes, nonintegrated business systems, and weak internal control environment hinder its ability to ensure prompt and proper matching of disbursements with obligations and to adequately control and record transactions
- DOD's processes to timely and reliably determine the amount of funds available to spend are cumbersome, placing the department at risk for overobligating and overspending its appropriations in violation of the ADA
- In its fiscal year 2007 Performance and Accountability Report, the department acknowledged that there are pervasive weaknesses in its internal control system



Preliminary Observations

Adequacy of Training Provided to Funds Control Personnel

- DOD and military service officials have stated that knowledgeable personnel are critical to improving the department's funds control processes
- The military services have efforts underway to provide classroom or web-based training to key funds control personnel
- However, neither the Navy nor the Air Force could provide documentation of the processes and procedures they have or will utilize to ensure that key funds control personnel are trained



Preliminary Observations

Adequacy of Procedures Used to Conduct Preliminary and Formal ADA Investigations

- The DOD FMR, which was approved by OMB, serves as the department's funds control regulation and establishes procedures for DOD components to use in identifying, investigating, and reporting ADA violations
- However, neither DOD nor the military services have processes and procedures for ensuring compliance with the FMR. While we did not evaluate how each case was investigated, we found that the military services did not
 - have documentation to verify that investigating officers were qualified, trained, and independent
 - comply with the FMR in ensuring that ADA cases were completed within the established timeframes



Preliminary Observations

Investigating Officer - Qualifications

- Neither DOD nor the military services had established processes and procedures to oversee and monitor compliance with FMR provisions to ensure that investigating officers were qualified
- We were unable to determine whether most of the 66 investigating officers assigned to the 54 ADA cases reviewed had received training. Specifically, our work showed that only
 - 7 had received initial training in fiscal law
 - 4 of the above 7 had received refresher fiscal law training within 5 years of initial training
 - 5 had received training on how to conduct an investigation



Preliminary Observations

Investigating Officer - Independence

- The FMR does not require documentation of investigating officer independence
 - The military services had not established processes and procedures to ensure that investigating officers were free of personal or external impairments to their ability to conduct objective and independent ADA reviews and investigations consistent with the DOD FMR
 - The military services' appeared to focus on organizational independence as the criterion for ensuring investigating officer independence
 - Our analysis of the 54 ADA cases disclosed that in
 - 35 cases, the military services chose the investigating officer(s) from an organization external to the one under investigation and therefore was organizationally independent
 - 19 cases, the military services lacked documentation needed to determine whether the investigating officer assigned to the case was organizationally independent
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Preliminary Observations

Timeliness of ADA Cases

- The FMR has set forth that a preliminary review, formal investigation, and Office of the Secretary of Defense (OSD) review should be completed within approximately 15 months and 25 days, however, none of the military services consistently met this timeframe
- Of the 54 ADA cases, 22 (or over 41 percent) took longer than 30 months to complete
- The average timeframes for the military services to complete the ADA investigative process
 - Army – 33 months
 - Air Force – 31 months
 - Navy (formal and OSD phases only) – 17 months
- Military service officials were unable to provide specific reasons as to why the established timeframes were not generally achieved other than indicating that each case has its own set of specific circumstances and complexities



Preliminary Observations

Transparency of the Investigation Process

- DOD had internal visibility over the 54 ADA cases closed for the military services in 2006 and 2007 as required by the FMR and the Act. It has begun to provide internal visibility for open cases. The department externally reported the 34 cases it concluded had an ADA violation to the President and the Congress, with a copy to GAO, as required by the Act
- The DOD Comptroller has taken steps to improve transparency of the ADA investigation process, including
 - implementation of an electronic “dashboard” in 2006 for use in monitoring ongoing formal investigations within the department
 - a February 2008 update to the FMR requires components to report information to the DOD Comptroller on preliminary reviews



Preliminary Observations

Transparency of the Investigation Process (cont'd.)

- As of June 17, 2008, none of the military services had reported the full scope of information on preliminary reviews as required by the FMR. Examples of missing information include: (1) the means by which the violation was discovered, (2) anticipated dates of completion, and (3) the names and contact information for members of the preliminary review team



Preliminary Observations

Disciplinary Actions

- For the 34 closed ADA cases in which DOD concluded that an ADA violation had occurred, we determined that the nature of the disciplinary actions taken were consistent with the Act and the DOD FMR
- The Act and the FMR identify the types of disciplinary actions that may be taken. Agency management decides what disciplinary action, if any, to take



Preliminary Observations

Disciplinary Actions (cont'd.)

Table 1: Disciplinary Actions Taken By the Military Services in 34 Cases of Antideficiency Act Violations Reported in Fiscal Years 2006 and 2007

Types of discipline	Army	Navy	Air Force
No discipline	19	6	2
Verbal discipline	2	4	4
Non-punitive discipline	19	5	1
Formal discipline	19	2	0
Total¹	59	17	7

Source: GAO analysis of DOD data

¹Disciplinary actions may have been taken against multiple individuals

- We did not assess the appropriateness of disciplinary actions imposed in any case



Agency Views

- We obtained oral comments on a draft version of these slides. The DOD Comptroller, the Army, and the Air Force generally agreed with the information presented. The Navy generally did not agree with the issues presented. However, the Navy was unable to provide documentation to substantiate that funds control personnel were properly trained and their investigating officers were qualified, trained, and independent. Based upon comments received, we have revised our slides, as appropriate.

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