

# Analysis of the Antideficiency Act in the Department of the Navy

By LCDR Eric D. Cheney

## INTRODUCTION

Every year the Department of the Navy (DoN) expends enormous resources developing a budget and competing with other federal agencies for scarce taxpayer-dollars to execute its mission. It is important that in our pursuit of scarce dollars, the people who provide us the money trust that we will be good stewards of the money. Negative public and Congressional perceptions jeopardize Navy funding. As responsible stewards of taxpayer dollars, we must strive to obtain the optimum use of our available resources, within the limits of the law.

Integral to this process is defining how much money is needed to execute our assigned mission, and telling Congress what we are going to spend the money on and at what rate we plan on spending the money. Learning from previous mistakes dating back to the 19<sup>th</sup> century, Congress implemented a series of laws designed to prevent government officials from spending the taxpayer's money in a manner that Congress did not intend. Collectively, these laws are referred to as the Antideficiency Act. Execution of the budget contrary to the Antideficiency act is a violation of federal law.

The Antideficiency Act is actually a series of laws whose objective is to bind the executive branch of government to the limits on expenditures of appropriated funds. Although complex in operation, the basic principle of the law, as the U.S. General Accounting Office (GAO) reports, is simple: "Government officials are warned not to make payments – or to commit the United States to make payments at some future time – for goods or services unless there is enough 'money' in the bank to cover the cost in full. The 'bank' of course is the available appropriation."<sup>1</sup>

In addition to preventing overspending at the total appropriation level, it also prevents overspending official administrative subdivisions of appropriations known as apportionments. The laws have been in existence for over a century, yet leaders and

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<sup>1</sup> GAO Principles of Federal Appropriations Law, "Red Book", Second edition, 1992, chapter 6, pg 11

decision makers with uncompromising integrity, advanced education, and proven professional aptitude continue to commit Antideficiency Act violations on a surprisingly large scale.

The Antideficiency Act consists of three sections of Title 31 of the United States Code: Sections 1341, 1342 and 1517. These three laws define how a person can commit an Antideficiency Act violation.

Section 1341 of Title 31 defines limitations on expending and obligating amounts. Specifically, it states, “An officer or employee of the United States Government or of the District of Columbia may not:

(a) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(b) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

(c) make or authorize an expenditure or obligation of funds required to be sequestered under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; or

(d) involve either government in a contract or obligation for the payment of money required to be sequestered under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.”<sup>2</sup>

Section 1342 forbids the acceptance of voluntary services. Specifically, it states that “An officer or employee of the United States Government or the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This Section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.”<sup>3</sup>

Section 1517, the most violated of the three codes that constitutes the Antideficiency Act, forbids the over obligation and expenditure of an apportionment or

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<sup>2</sup>Legal information Institute, Cornell University, <http://www4.law.cornell.edu/uscode/31/1341.html>

<sup>3</sup>Legal information Institute, Cornell University, <http://www4.law.cornell.edu/uscode/31/1342.html>

an amount permitted by a regulation prescribed for the administrative control of apportionments.<sup>4</sup>

As with other laws in our society, there are consequences for violating the Antideficiency Act laws. Violations of the Antideficiency Act should not be taken lightly. “In accordance with Sections 1349 and 1518 of Title 31 of the U.S. Code, an officer or employee violating Sections 1341(a), 1342, or 1517(a) of Title 31 shall be subject to appropriate administrative discipline, including—when circumstances warrant—a written reprimand, suspension from duty without pay, or removal from office. “In addition, in accordance with Sections 1350 and 1519 of Title 31 of the U.S. Code, an officer or employee convicted of willfully and knowingly violating Sections 1341(a), 1342, or 1517(a) of Title 31 shall be fined not more than \$5,000, imprisoned for not more than two years, or both.”<sup>5</sup>

Moreover, if an officer or employee is found guilty of violating the Antideficiency Act, whether it was done knowingly or not, a written report with the responsible persons names, the nature of the violation, and assigned punishment is sent to The President of the United States via the Director of the Office of Management and Budget (OMB), the President of the Senate, and the Speaker of the House of Representatives.

## **EDUCATION AND TRAINING**

Training and education, followed up with constant awareness, are two of the keys to preventing violations from occurring. The analysis of formal investigations of Antideficiency Act violations for an eleven-year period will illuminate more specifically where in the system people need to receive more training, and what learning objectives need more emphasis.

The Naval Financial Management Career Center (NFMC) was established to manage ASN (FM&C) sponsored programs and training courses for Navy and Marine Corps personnel; to coordinate developmental projects to improve financial management

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<sup>4</sup> Legal information Institute, Cornell University, [http://www.dtic.mil/comptroller/fmr/14/14\\_02.pdf](http://www.dtic.mil/comptroller/fmr/14/14_02.pdf)

<sup>5</sup> DODFMR, Vol. 14 page E-1, <http://www.dtic.mil/comptroller/fmr/>

education and training; and to improve communication and disseminate current information within the financial community.

## **INVESTIGATION PROCESS**

A violation may be discovered through procedures established within a command, or through either an internal or external audit. Once a potential violation is discovered, it has to be investigated. The investigation process can be broken down into three distinct phases; the preliminary review, the formal investigation, and the report to the President and the Congress. Figure 2, below, illustrates the investigative process and associated timeline requirements.

### **1. Preliminary Review**

The purpose of the preliminary review is to gather basic facts and determine whether a violation has or has not occurred. When the office of the USD(C) is notified of a potential violation by an audit report or otherwise learns of a potential violation, the Navy or Marine Corps has 90 days to conduct a preliminary investigation.

Once the preliminary review report has been completed and the findings indicate a potential violation, a formal investigation shall be initiated within 15 business days of the approval of the report. If the results of the preliminary review indicate that no violation has occurred, the preliminary review report completes the actions regarding the potential violation and no further action is required after the report is approved.

### **2. Formal Investigation**

The purpose of an investigation of a potential violation of the Antideficiency Act is to determine what happened, what were the causes, who was responsible, what actions should be taken to correct the current situation, and what actions should be taken to ensure that a similar violation does not occur in the future. Investigations of potential violations, including the submission of the final Summary reports to the office of the USD(C) shall be completed within 9 months.

If the results of a formal investigation determine that there was no violation, the investigation report must be reviewed by the USD(C) and the office of the Deputy General Counsel (Fiscal) (ODGC(F)) for review. If they both concur with the finding of “no violation,” then no further action is required. If they do not agree with the finding of

“no violation,” the investigation will be reopened and will proceed until the investigating officer can provide additional documentation to support a “no violation” conclusion, or determine that a violation did occur.

### **3. Report to the President and the Congress**

The office of the USD(C) reviews the summary report of violations for completeness, clarity, compliance with the reporting requirements, and adequacy of corrective and administrative disciplinary action taken. If the USD(C) office is not satisfied with the report, it will return the report to the ASN (FM&C) for correction and resubmission within a specified time period.

Once the office of the USD(C) is satisfied with the report, it will prepare notification letters to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives. These letters notify the President and the Congress of the violation, the nature of the violation, the names of the persons responsible for the violation, and the disciplinary action taken.

According to Chapter 5, Volume 14 of the DoD Financial Management Regulation, “The total process for investigation and reporting potential violations of the Antideficiency Act shall not take more than 1 year from the date of discovery through the preparation of transmittal letters to the President, the Director of the Office of Management and Budget, and the leaders of both Houses of Congress.”<sup>6</sup>

## **Data Presentation and Analysis**

The data gathered during this study and presented below covers all of DoN’s formal investigations from fiscal year 1987 through fiscal year 1997. Each case file was reviewed and all pertinent data were extracted and a synopsis of each case file was prepared. The data from each synopsis were then entered into a database and spreadsheet format for final analysis.

It is important to note that the year in which an Antideficiency Act occurred is often not the year in which it was investigated. Investigations lagged the year of violation on average by 24.6 months and in some cases by as much as 69 months. Some

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<sup>6</sup> Department of Defense Financial Management Regulation, Vol.14, ch.5, pg5-1. (Mar, 2001).

of the analysis that follows in this chapter is based on the year in which the violation occurred, but for continuity purposes most of it is based on the year in which the violation was investigated.

The data are analyzed in four separate categories: number of new investigations per year, types of violations, violations by claimant, and the investigations process. The results of the data analysis can be used as either a baseline in which all future studies are measured, an assessment of the DoN's effectiveness in reducing Antideficiency Act violations, as an aid in the refinement of the training curriculum, or it can help decision makers formulate new policy if necessary. Each of the four data categories is discussed in the following sections.

#### **A. NUMBER OF NEW INVESTIGATIONS PER YEAR**

The number of new investigations per year is a good metric for assessing the effectiveness of the DoN's effort to reduce Antideficiency Act violations. A direct trend analysis of violations per year could not be accomplished with the available data because of the time lag between the time a violation occurs and the time it was discovered. As previously mentioned, the time lag averages just over 24 months with a standard deviation of 19.3 months. Therefore, from a statistical perspective, approximately 67 percent of the violations that occurred for the last 44 months of data are included in the data set. Knowing this, it was determined that the number of investigations per year would be the best metric for this data set to determine the trend in frequency of violations in the DoN.

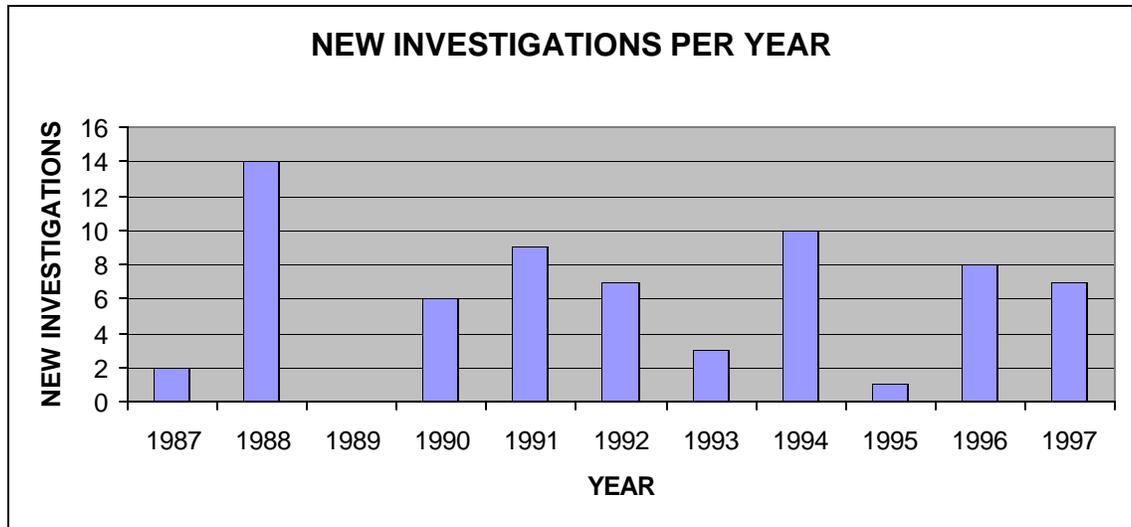


Figure 1. New Investigations per Year

Figure 1, above, showing the number of new investigations per year, indicates that the system is not stable, meaning the excessive variation makes it impossible to predict from one year to the next how many investigations will occur. For example, in 1988 there were seven times as many investigations as in 1987, and zero investigations in the following year. Similar data exists for 1994.

In an effort to smooth out the variation, it was found that taking a three-year moving average significantly reduces the error from the predicted values and actual values in a regression model. In Figure 2, below, it becomes apparent that by taking a three-year moving average of the data, which effectively smoothes out the data, the DoN will investigate about 18 Antideficiency Act violations every three years, or six per year on average.

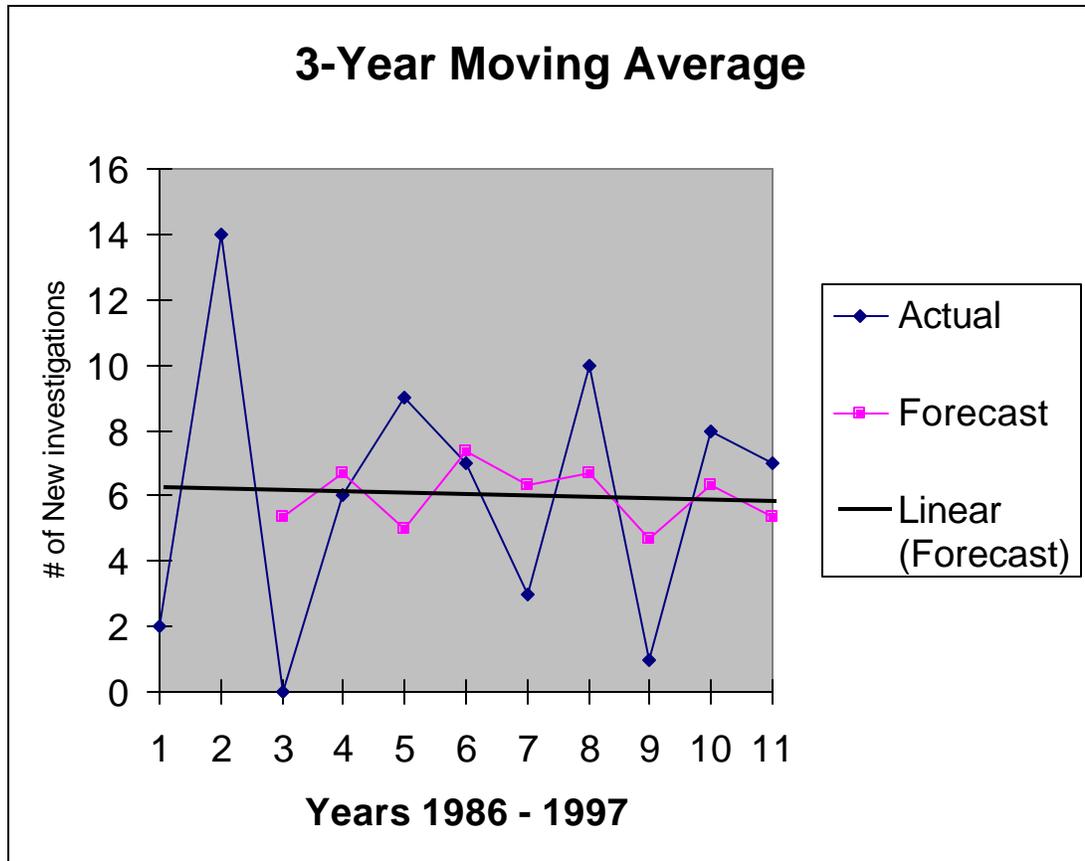


Figure 2. Three-Year Moving Average for New Investigations

The linear trend line in Figure 2 indicates that the three-year moving average decreases slightly over the 11-year period, but the decrease is negligible. It also shows that the number of investigations over a three-year period is stable, which is an excellent reference for planning purposes or as a baseline to use for future analysis.

## B. TYPES OF VIOLATIONS

The following analysis examines the types of violations in three layers. The first is a macro view that identifies violations segregated by the legal statutes that define what constitutes an Antideficiency Act violation, Section 1341, 1342, and 1517. Each level of analysis more narrowly focuses on where the DoN needs to focus its training and education efforts for Antideficiency Act prevention and establishing and implementing internal controls. The second layer analyzes the investigations by the three elements of

availability of appropriations: purpose, time, and amount. The final layer of analysis breaks down the investigations resulting from “purpose” violations into specific appropriation accounts to determine if any account is more violated than the others. This analysis illuminates where the errors are occurring, and where the improvements in training, awareness, and internal controls are needed.

### 1. Violations by Statute

Figure 3 shows that 87 percent of the violations were violations of Section 1517, and 13 percent were violations of Section 1341. There were no violations of section 1342. Although this seems disproportionate, it is to be expected because most of the financial transactions occur at the 1517 level in the flow of funds system. Recall from Chapter II that Section 1341 prohibits expenditures or obligations in excess of an appropriation or fund, and Section 1517 prohibits spending in excess of an apportionment of an appropriation. Although this is not unusual to have more 1517 violations, it should not be dismissed. It is important to further analyze the causes of these violations in hopes of reducing their occurrence.

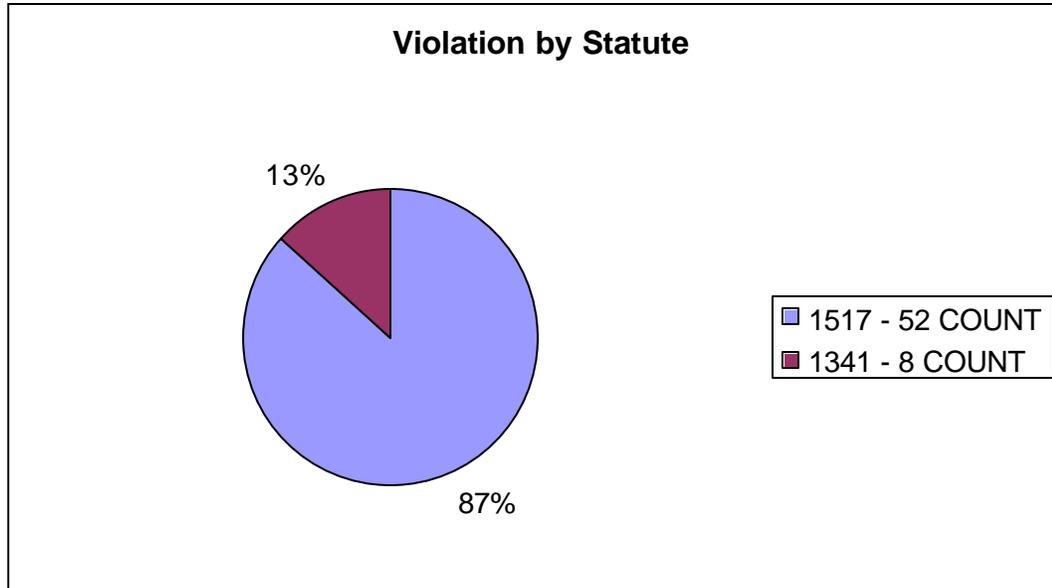


Figure 3. Violation by Statute

## 2. Violation by Availability of Appropriations

The concept of “availability” of appropriations is derived from whether appropriated funds are or are not “legally available” for a given obligation or expenditure. Whether appropriated funds are legally available for obligation or expenditure depends on three things:

- a. The purpose of the obligation or expenditure must be authorized;
- b. The obligation must occur within the time limits applicable to the appropriation; and
- c. The obligation and expenditure must be within the amounts Congress has established.<sup>7</sup>

All three elements to the concept of availability: purpose, time, and amount must be observed for the obligation or expenditure to be legal.



Figure 4. Availability Violations

In this step of the analysis, highlighted in Figure 4, it was discovered that 31 percent of the investigations occurred because of a potential violation with regard to

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<sup>7</sup> GAO/OGC-91-5, Appropriations Law, Volume 1, Chapter 4, page 2.

“amount,” 16 percent with regard to “time,” and that 53 percent of the investigations occurred because of a potential violation with regard to “purpose.”

The majority of the investigations with regard to an “amount” violation evolved because of poor accounting practices. Failure to post obligations or expenditures in a timely manner lead to a false understanding or assumption that commands had more money available to spend than they actually had. Subsequently, these commands often over-obligated their accounts and were charged with a violation of the Antideficiency Act.

The 16 percent of investigations resulting from a “time” violation occurred because commands unknowingly created liabilities in advance of appropriations by letting complex contracts, or because of communication errors between a command and its claimant.

The majority of investigations, and the one that deserves further analysis, resulted from violations of the “purpose” statute. The “purpose” statute is often referred to as a 1301 violation or the “color of money” statute. It requires that appropriated funds be used only for programs and purposes for which the appropriation is made. Although a violation of Section 1301 is not a violation of the Antideficiency Act, it can, and often does lead to a violation. When a 1301 violation has been discovered, accounting adjustments must be recorded so the correct account is charged. If the adjustments results in an over-obligation or over-expenditure of the appropriation or fund charged, then a violation of Section 1341 or 1517 has occurred which is a violation of the Antideficiency Act.

The Section 1301 violations occur because commands often exceed the investment/expense thresholds associated with certain types of appropriation accounts. The data show that more training and awareness needs to be performed on the nuances of what is an expense, what is an investment, and what are the appropriate thresholds associated with certain accounts that delineate the difference between the two.

Generally, “expenses” are the use of funds to operate and maintain an organization such as payroll, utilities, supplies and travel. These amounts are budgeted in the O&M,N and MPN accounts, which are annual appropriations. “Investments” are the

use of funds for acquisitions or additions to end items. For example, if a command purchases a computer terminal that will be connected to an already existing LAN system, that computer terminal must be purchased using investment type funds even though its unit cost is below the investment/expense threshold because it is an addition to an end item or existing system whose collective value exceeds the investment/expense threshold. Investments benefit future periods and are budgeted in a procurement account such as OPN, or the MILCON account, which are multiple year appropriations.

The current “expense” and “investment” threshold for O&M funds is \$100,000. For items with a system or unit cost less than \$100,000, the O&M,N appropriation is used. For items with a system or unit cost of \$100,000 or greater, the applicable procurement account is used. However, it is important to note that the investment/expense threshold was raised from \$3,000 to \$100,000 during the time period covered in this study.

There are actual cases in this study where commands tried to circumvent certain thresholds by purchasing “parts of buildings” whose value was less than the existing threshold at that time. Upon investigation it was revealed that the sum of the parts for the entire building or complex, once completed, was valued at more than the existing threshold. These commanders and their staffs were charged with violating the Antideficiency Act.

Other Section 1301 violations that occurred frequently in this analysis dealt with purchasing computer and other electronic equipment. Once again, the commands purchased several items individually at a cost less than the existing threshold, but when the pieces were joined together as a system, their total costs exceeded the threshold.

### **3. Appropriation Avoided**

In an effort to illuminate the causes of Section 1301 violations, an analysis of the particular appropriation accounts used in those transactions was conducted. Figures 5 and 6 below indicate that of the expense/investment threshold errors, DoN personnel are confusing the O&M,N account and the OPN account. Figure 5 reveals the types of accounts that should have been used in financial transactions but were not, resulting in a “color of money” violation. Figure 6 shows the type of accounts that were used

incorrectly in lieu of the appropriate account. Combined, Figures 5 and 6 indicate that OPN was the appropriation that should have been used in 82 percent of the 1301 violations but was not, and O&M, was improperly used in 65 percent of the 1301 violations. It is obvious that a significant number of people in the DoN make financial transactions using O&M,N funds when they should use OPN funds. Decision makers and course curriculum model managers can now focus their training courses to include more coverage of this deficiency, and the internal controls for identifying this type of error.

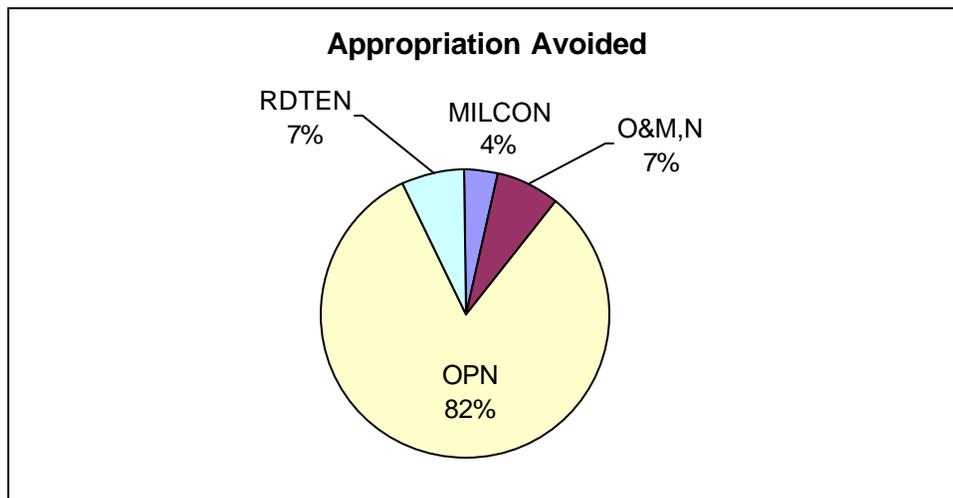


Figure 5. Appropriation Avoided

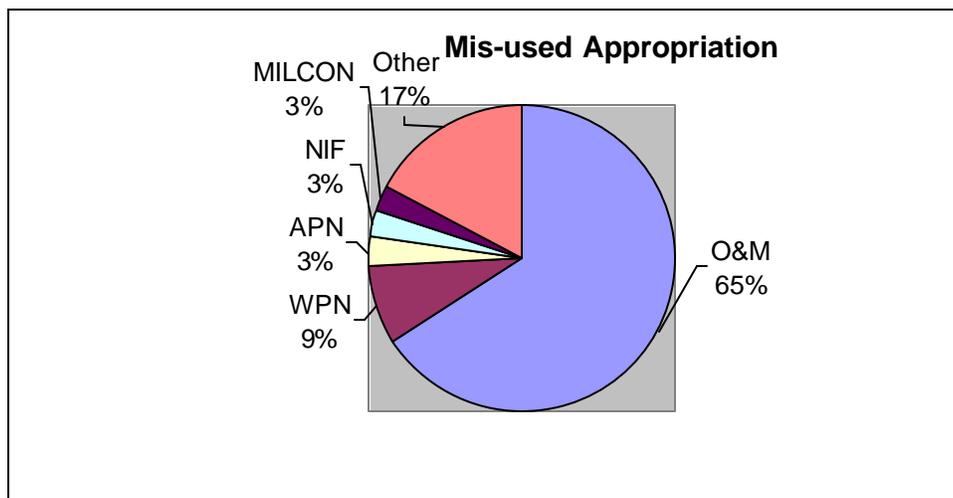


Figure 6. Mis-used Appropriation

The analysis of violations by availability infractions allows the decision makers to raise command awareness and focus their internal control efforts on reducing Section 1301 violations, which will reduce their Section 1517 violations. More specifically, they should assess their ability to properly distinguish between expense and investment appropriations and expenditures with particular attention paid to the use of their O&M,N and OPN accounts. Training course developers and curriculum model managers can also adjust their course material and teaching emphasis to better educate their students on the above findings. Commands must also continue to find ways to improve their accounting systems so their ledgers are updated in a timely manner.

### **C. VIOLATIONS BY CLAIMANT**

In the previous section an analysis was done that explained what caused the majority of violations that were investigated. This section analyzes the 62 investigations segregated by claimant to explain where the violations are occurring. This will allow decision makers to focus any special training or develop mission unique controls to specific claimants if needed.

Figure 7 segregates the number of violations by claimant. The figure illuminates all claimants who had two or more violations in this study. Claimants who had only one violation were combined to form the “other” category.

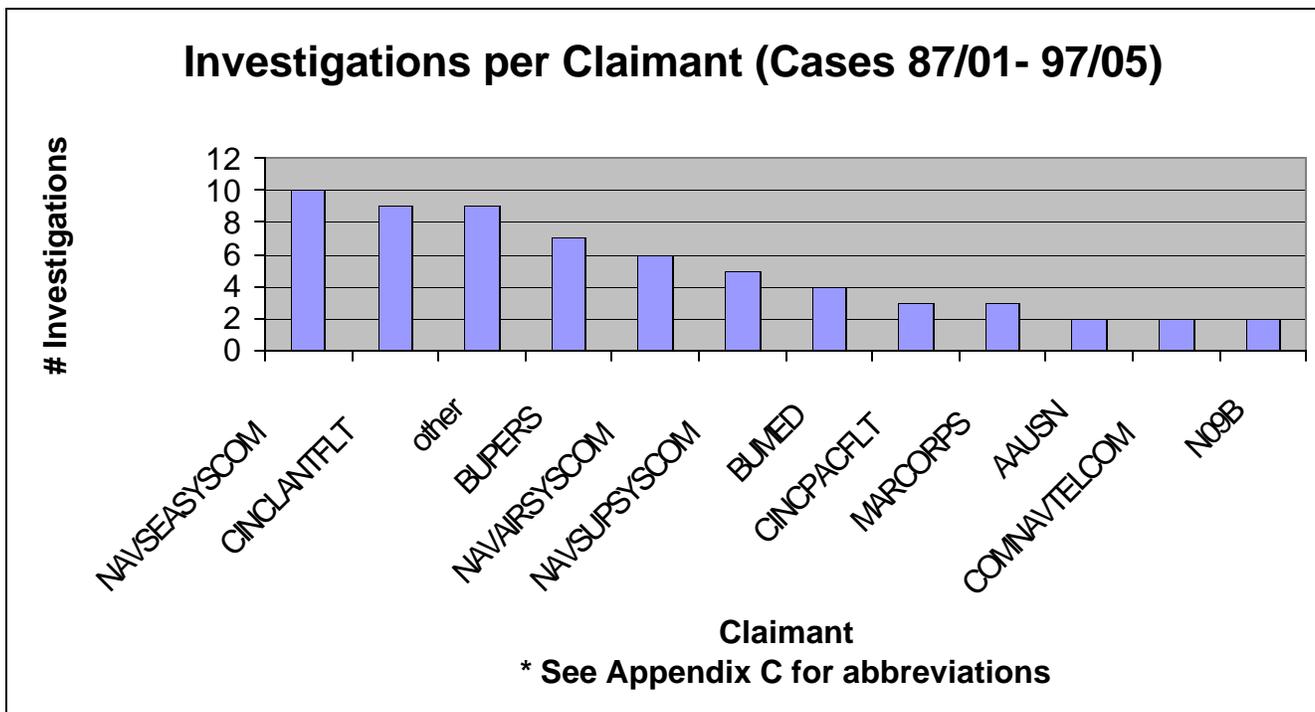


Figure 7. Investigations per Claimant

Segregating the investigations by claimant shows that three of the Systems Commands (SYSCOMS), Naval Sea Systems Command (NAVSEASYSKOM), Naval Air Systems Command (NAVAIRSYSKOM), and Naval Supply Systems Command (NAVSUPSYSKOM) account for 21 of the 62 cases. Upon first inspection it may seem unusual that approximately one third of all DoN investigations in this 11 year period were caused by only three of the major claimants, but after researching the system commands it was found that these commands collectively carry a larger portion of the Navy budget, deal with multiple appropriation accounts, and many of their financial transactions occur over a time span of several years.

The SYSCOMS are very large, complex commands that handle much of our highly complex acquisition dollars. Although it varies from year to year, the collective budget of the SYSCOMS usually exceeds one third of the total Navy budget, so it is not unusual that they account for one third of the investigations. To make matters more complex, many of the SYSCOM appropriation accounts are multi-year obligation accounts, which means the length of the obligation period is greater than one year. Dealing with multi-

year accounts requires more complex accounting systems, and more complex internal controls. Eight of 21 SYSCOM investigations resulted from mistakes made in mishandling funds during multi-year obligation availability periods.

Besides the SYSCOMS, the only other unusual statistic observed in Figure 7 is the large number of violations CINCLANTFLT has (9) relative to CINCPACFLT (3) – two very similar commands in terms of size, budget and mission. Of the nine CINLANTFLT investigations, seven of them were Section 1301 violations. Overspending appropriated funds caused the other two. CINCPACFLT had two Section 1301 violations and one overspending violation. CINCLANTFLT had two pairs of repeating offenses (cases 88/5 and 88/6, and cases 91/8 and 91/9) in consecutive years by the same person. Had the violation been discovered in a more timely manner, the two repeated violations (case 88/6 and 91/9) may have been avoided.

#### **D. INVESTIGATION PROCESS**

Paramount to the effective management of any system is discovering the flaws of the system in a timely manner, and correcting those flaws quickly so they are less likely to be repeated. The perception in Congress in the early 1990's was that the DOD did not take violations of the Antideficiency Act seriously. It often took several years for alleged violations to be investigated and brought to closure. In many cases investigations were completed after the individuals named responsible had retired. In an effort to expedite disclosure and investigation of potential violations, and to demonstrate to Congress the importance of the issue, the Office of the Secretary of Defense (OSD) developed and issued a new directive 7200.1, *Administrative Controls of Appropriations*, in May 1995. Immediately following the issuance of the new directive, DOD issued Financial Management Regulation (FMR) Volume 14, *Administrative Control of Funds and Antideficiency Act Violations*, in August 1995. These two documents changed the way the Navy processes Antideficiency Act violations in a timely and professional manner.

The following sections examine the investigation process from discovery of a violation to the USD(C) submitting the obligatory letters to the President of the United States and the leaders of Congress. Whether the violation was discovered internally or by some external investigation, and the time it takes to discover a violation, are two

excellent metrics the DoN can utilize to measure if the system of internal controls is effective. A command with effective internal controls in place will have fewer violations, and will be able to discover violations quickly while there is still time to correct the error and prevent recurrence.

### 1. Who Discovered the Violation

The 62 cases that were investigated from 1987 to 1997 were discovered by a variety of means ranging from hot-line tips and external investigations to internal audits. Figure 10, below, shows that 51 percent of the violations investigated were discovered via some sort of internal measures or checks during the course of routine work. Whenever a violation is discovered internally, it speaks well for the system of internal controls established by the Commander and his/her staff. The DoN can use this information to establish goals for improving the process of discovering violations by the originating command, and can be considered the baseline that future studies use to measure progress.

From the DoN's perspective, it really doesn't matter who finds the violations or how they are found. What is important is to correct the situation, develop a list of lessons learned, and take action to prevent recurrence.

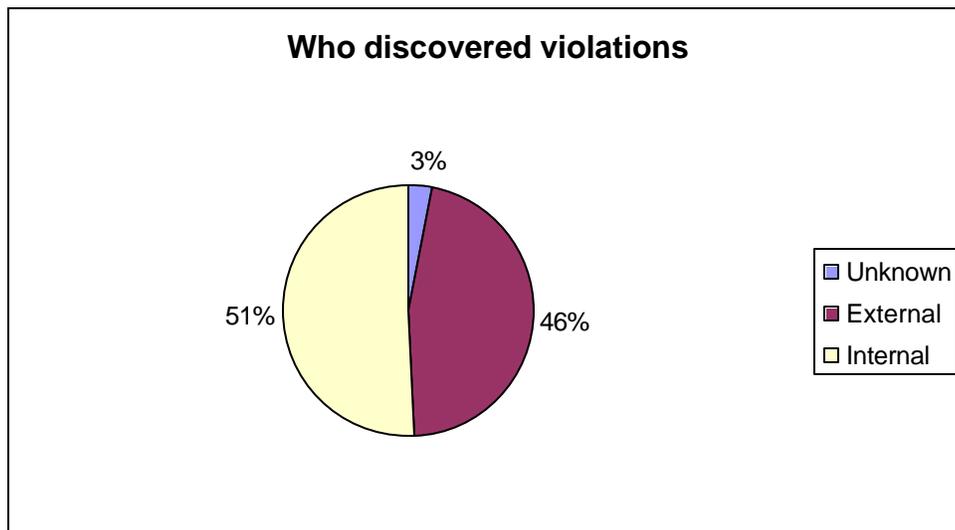


Figure 8. Who Discovered Violations

### 2. Time to Discover the Violation

When analyzing CINCLANTFLT's violations in a previous section, it was determined that two of the nine violations could have been prevented if the original violation was discovered in a timely manner. A quick analysis of BUPER's seven investigations reveals that four violations (cases 92/3, 92/4, 92/5, and 94/3) involved purchasing computer equipment for a Local Area Network system using O&M,N funds vice OPN funds. All four violations occurred in consecutive years from 1988 through 1991, yet the earliest date of discovery for all four violations was December 1991. Had the initial violation been discovered earlier, and awareness of, and training to the violation been heightened at the claimant level, the probability of the same violation occurring at that level over the next three years would have decreased significantly. Just by analyzing the investigations of the above two claimants, it can be argued that timely discovery of potential violations would have been reduced the DoN's number of violations by nearly 10 percent.

Figure 9 illustrates the number of months it took to discover a violation for the 62 cases used in this study. Because the data are so unstable and unpredictable, a moving average was necessary to develop a useful model that accurately predicts the months to discover with minimal errors. It was discovered through trial and error that a 5 case moving average was the smallest moving average value that could be used and still provide an accurate model. Fortunately, the analysis of time it took to discover the 62 potential violations in this study in figure 9 below shows a steady decrease from approximately 36 months in 1987 cases to just under 20 months in 1997 cases.

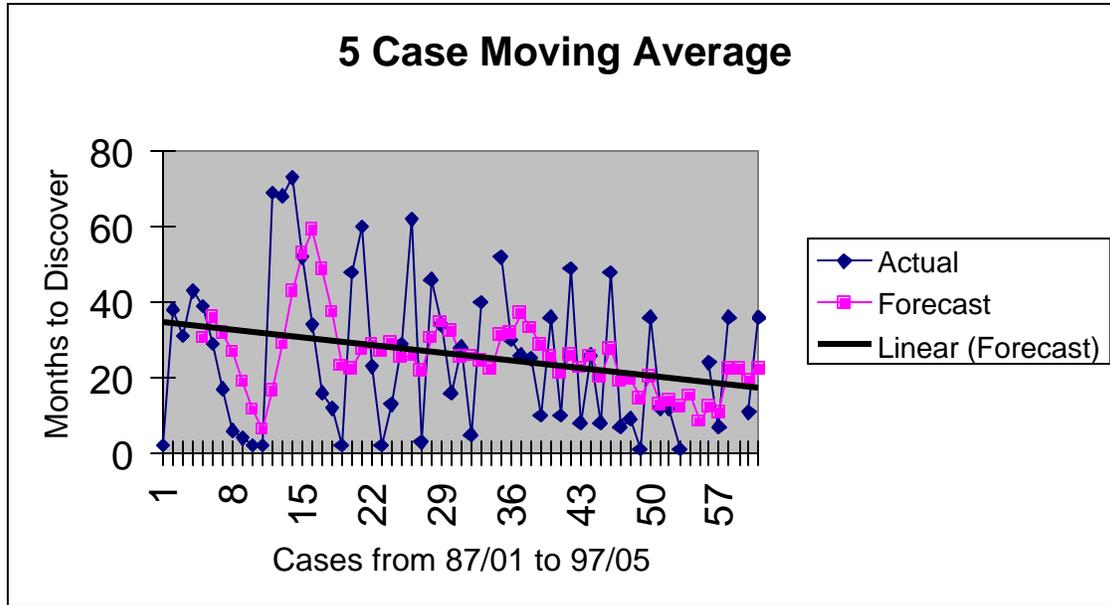


Figure 9. Time to Discover Violation

### 3. Time to Complete an Investigation

Equally important to the “time to discover” a violation is the “time to complete an investigation.” Quick resolution of a potential Antideficiency Act violation is necessary so Commanders can determine whether the violation was caused by systemic problems or because internal control measures were overlooked. Once this is known, the Commander can implement proper internal controls or provide proper training to prevent recurrence.

The analysis illustrated in Figure 10, below, uses the five case moving average model for the same reasons as they were above, and to keep the analysis consistent. The data shows an improvement over time from 40 months for 1987 cases to approximately 18 months for 1997 cases.

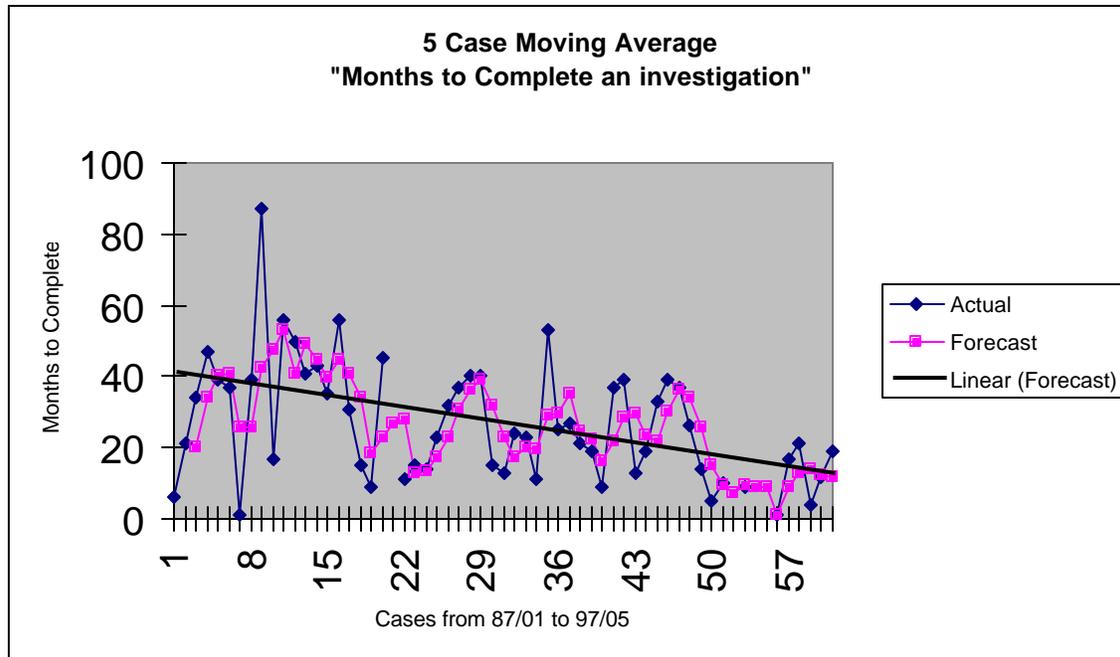


Figure 10. Months to Complete an Investigation

## SUMMARY

In today's climate of increasing defense budgets and a return to deficit spending at the federal level, certain members of Congress, the media, and citizen action groups will scrutinize how efficiently and effectively the DoN executes its budget. Hence, the DoN must continually demonstrate that it is a good steward of the taxpayer's money.

The Naval Financial Management Career Center and Centralized Financial Management Trainee Program (CFMCP) continue to provide ever-improving courses that aggressively address causes and methods of prevention of the Antideficiency Act. The office of the ASN (FM&C) is currently orchestrating a review of comptroller organizations for 23 major Navy commands, the Marine Corps, and over 200 subordinate activities. The purposes of this review are to ensure that comptrollers report directly to the activity commander; that clearly defined comptroller functions are assigned to the comptroller without overlap into other organizational entities; and the comptroller organization within a command is able to exercise its responsibility and authority. These changes will ensure that comptrollers are properly positioned to fulfill assigned fiduciary responsibilities. The following conclusions and recommendations are meant to assist the professionals who combat these violations everyday.

The DoN made significant improvements in managing several processes associated with the Antideficiency Act from 1987 to 1997. Most impressive were the significant declines in the time it took to discover a violation - from approximately 36 months in 1987 cases to just under 20 months in 1997 cases, and the time it took to complete an investigation - from 40 months for 1987 cases to approximately 18 months for 1997 cases. This is great news if your goal is to provide good treatment to an already sick patient. However, if the main objective for the DoN is to reduce and eventually eliminate the illness, that is to reduce or eliminate the likelihood that a command will commit an Antideficiency Act violation, the DoN must focus its energy and resources on timely and effective training, and proper development, implementation, and execution of internal control procedures.

In keeping with the old saying that, “an ounce of prevention is worth a pound of cure,” the DoN can make the greatest impact on reducing Antideficiency Act violations at the least cost by investing in timely and effective training, lobbying for a change in the investment/expense threshold limits, and further development of financial systems that have integrated internal controls that prevent or warn of an impending Antideficiency Act violation. Training in this context includes both the formal training courses sponsored by the Naval Financial Management Career Center and CFMCP, and command-level training delivered by individual members internal to an organization.

### **1. Type of Violations**

Conventional wisdom says, “if you want to catch fish, you go fishing where the fish are.” Hence, if you want to reduce the number of Antideficiency Act violations, you first have to discover where they are occurring in the system, and which type is most prevalent. This analysis indicates that 87 percent of the violations were violations of Section 1517 and suggests that it may be very beneficial for the DoN to seek ways to improve the administrative apportionment of funds process as these funds are distributed down to lower echelon commands.

It is equally imperative that commanders who receive funds with Section 1517 responsibility attached fully understand the availability of funds statutes and the ramifications of violating the statutes. Although more violations are expected because of

the larger number of financial transactions that occur at the 1517 level, this statute is the most violated of the three statutes that constitute the Antideficiency Act. Therefore, training on Section 1517 should be expanded if the DoN is concerned with reducing the number of violations.

***a. Section 1301 Violations***

Fifty-three percent of the violations involve violations of the “purpose” statute, better known as the “color of money” statute. The violations were broken down further into the accounts that were used inappropriately, and the accounts that were not used when they should have been used. The results showed that two specific “colors of money” were used incorrectly with greatest frequency - the OPN and O&M accounts.

The O&M account, an annual expense account, was used most often when it should not have been. Whenever a purpose statute was violated in this study, the O&M account was the account used in 65 percent of the cases when another account should have been used.

On the flip side of the coin, financial managers avoided using the OPN account, a multi-year procurement account, in 82 percent of the purpose statute violations. The DoN would achieve great returns on investing more time and resources in providing more thorough training on the distinction between what is an “investment” and what is an “expense,” and in the proper use of the OPN and O&M accounts. This can be incorporated into all of the formal training courses sponsored by CFMCP and by individual trainers at the organization level.

***b. Raise Threshold Limits***

An alternate solution to reducing violations associated with the expense/investment threshold is to raise the threshold limits. The fiscal year 2002 Authorization act increased the O&M threshold for minor construction from \$500,000 to \$750,000. This is an incremental increase that would have had little effect on reducing the number of violations in this study. A more influential step would be an increase in the \$100,000 threshold for purchasing general equipment. A Secretary of Air Force memorandum, dated 4 January 2001 recommends legislation to increase this threshold limit to \$500,000. Of the 62 violations in this case study, 18 of them would not have

existed if the threshold limit of \$500,000 were in place. An increase of this magnitude would give activities greater flexibility in reacting to changing operational requirements and reduce the number of Antideficiency Act violations in the DoN.

## **2. Violations by Claimant**

The highest concentration of Antideficiency Act violations occurred in the SYSCOMS. This should not be a surprise because the size of the budget and complexity of the procurement business, SYSCOMS are more vulnerable to Antideficiency Act violations. Hence they need to spend more time and resources on training their personnel in appropriation law. Research for this study indicates that the SYSCOMS already commit an enormous amount of resources and effort towards reducing Antideficiency Act violations.

The web sites provided by NAVSEASYSKOM and NAVSUPSYSCOM are excellent resources for information on the Antideficiency Act. However, the fact remains that during this eleven-year period, the SYSCOMS had the highest number of Antideficiency Act violations in the DoN. Thorough training, continuous refinement of their internal control procedures, and a constant heightened level of awareness at the SYSCOMS could reduce the number of Antideficiency Act violations in the DoN by up to 33 percent according to the analysis in chapter three.

### ***a. Recurring Violations***

During the case-by-case analysis of the violations it was discovered that CINCLANTFLT had two pairs of repeat violations in consecutive years by the same people, and BUPERS had four consecutive violations that were very similar in type and nature in four consecutive years. If the violations had been discovered in a timely manner, and procedures were in place to alert the subordinate commands under these claimants of the type and nature of the violations, then there is a good chance that five of those repeat violations would have been prevented. Serial offenses like these could be reduced through early discovery and proactive awareness mechanisms.

### ***b. E-mail Solution***

Once a violation is discovered, the budget policy and procedures division of the ASN (FM&C) could release an e-mail to all comptrollers that gives a brief

synopsis of the type and cause of the violation. The comptrollers could then pass the information on to persons who are at risk of committing similar violations. Publishing a brief synopsis of current investigations in the “DC Connection” and the Navy’s “Comptroller” magazine would raise awareness of Antideficiency Act violations in the financial community. This constant communication of information on the Antideficiency Act will keep the topic in the forefront of the minds of the professionals in the financial world.

### *c. Website Solution*

For training purposes, it may be beneficial for the ASN (FM&C) develop a website that has a synopsis of the most current violations from the past ten-years. Individual command trainers could use this data for research and training. Implementation of the e-mail system and website is a low cost solution that should result in a reduction of potential violations. The time and resources to perform these tasks would be miniscule compared to the time and resources required to complete just one investigation.

### **3. Alternative Perspective**

The analysis and resulting conclusions and recommendations in this study were completed and formulated based on the assumption that the DoN wanted to reduce the number of Antideficiency Act violations per year. However, when observed from a statistical perspective, the DoN is averaging only six investigations per year, yet conducts millions of financial transactions per year. Considering the number of financial transactions that occur in the DoN, are six investigations per year excessive? Considering the constant three year moving average of six investigations per year, the system may be at the point of diminishing returns meaning that to obtain further reduction would require a substantial increase in investment of resources. Is the cost of further reduction worth the benefit of better fiscal management? This analysis would also be dependent upon the size of violations in question as well as the frequency of violations. One major violation that receives substantial press coverage and Congressional interest can be more damaging to the DoN than several smaller violations that receive minimal press coverage. Obviously this is a subjective approach to the issue

that needs to be addressed by senior leaders in the DoN, but one that deserves consideration.