APPENDIX E TO PART 516—DEPARTMENT OF DEFENSE DIRECTIVE 5505.5, IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

DOD Directive 5505.5 is contained in 32 CFR part 277.

APPENDIX F TO PART 516—GLOSSARY

Abbreviations

AAFES: Army and Air Force Exchange Service
AMEDD: Army Medical Department
AFARS: Army Federal Acquisition Regulation Supplement
ASBCA: Armed Services Board of Contract Appeals
AUSA: Assistant United States Attorney
CFR: Code of Federal Regulations
COE: United States Army Corps of Engineers
DA: Department of the Army
DFARS: Defense Federal Acquisition Regulation Supplement
DOD: Department of Defense
DOJ: Department of Justice. In this regulation, reference to DOJ means either United States Attorneys’ Offices or The (main) Department of Justice in Washington, DC
DCIS: Defense Criminal Investigative Service
e.g.: An abbreviation for exempli gratia, meaning “for example”
et seq.: An abbreviation for et sequentes, meaning “and the following”
FAR: Federal Acquisition Regulation
FAX: Facsimile Transmission
FBI: Federal Bureau of Investigation
FOIA: Freedom of Information Act
GAO: General Accounting Office
HQDA: Headquarters, Department of the Army
i.e.: An abbreviation for id est, meaning “that is”
IG: Inspector General
JA: Judge Advocate
MACOM: Major Command
MSPB: Merit Systems Protection Board
NAP: Nonappropriated Fund
OTJAG: Office of The Judge Advocate General
OSC: Office of Special Counsel
PFA: Procurement Fraud Advisor
PPCRA: Program Fraud Civil Remedies Act
PFD: Procurement Fraud Division
PFI: Procurement Fraud or Irregularities
RJA: Recovery Judge Advocate
SAUSA: Special Assistant U.S. Attorney
SJA: Staff Judge Advocate
TDY: temporary Duty
TJAG: The Judge Advocate General
UCMJ: Uniform Code of Military Justice

USACIDC: U.S. Army Criminal Investigation Command
USALSA: U.S. Army Legal Services Agency
USARCS: U.S. Army Claims Service
USATDS: U.S. Army Trial Defense Service
USMA: United States Military Academy

Terms

Active Duty

Full-time duty in the active military service of the United States. Includes: full-time training duty; annual training duty; active duty for training; attendance, while in the active military service, at a school designated as a Service School by law or by the Secretary of the military department concerned; and, attendance, while in the active military service, at advanced civil schooling and training with industry. It does not include full-time National Guard duty under Title 32, United States Code.

Army Activities

Activities of or under the control of the Army, one of its instrumentalities, or the Army National Guard, including activities for which the Army has been designated the administrative agency, and those designated activities located in an area in which the Army has been assigned single service claims responsibility by DOD directive.

Army Property

Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefore, real or personal property of a foreign government which is in the possession or control of the Army, one of its instrumentalities, or the Army National Guard, including property of an activity for which the Army has been designated the administrative agency, and property located in an area in which the Army has been assigned single service claims responsibility.

Centralized Organization

That organization of a DOD component responsible for coordinating and monitoring of criminal, civil, contractual, and administrative remedies relating to contract fraud. For DOD components other than the Army, the Centralized organizations are as follows: the Office of General Counsel, Department of the Air Force; the Office of the Inspector General, Department of the Navy; and the Office of General Counsel, Defense Logistics Agency.

Claim

The Government’s right to recover money or property from any individual, partnership, association, corporation, governmental body, or other legal entity (foreign and domestic)
except an instrumentality of the United States. A claim against several joint debtors or tortfeasors arising from a single transaction or incident will be considered one claim.

**Claims Officer**
A commissioned officer, warrant officer, or qualified civilian employee designated by the responsible commander and trained or experienced in the conduct of investigations and the processing of claims.

**Corruption**
Practices that include, but are not limited to, solicitation, offer, payment, or acceptance of bribes or gratuities; kickbacks; conflicts of interest; or unauthorized disclosure of official information related to procurement matters.

**Counsel for Consultation**
An attorney, provided by DA at no expense to the military member or civilian employee, who will provide legal advice to the witness concerning the authority of OSC, the nature of an OSC interview and their individual rights and obligations. The counsel may accompany the witness to the interview and advise the witness during the interview. No attorney-client relationship is established in this procedure.

**Counsel for Representation**
An attorney, provided by DA at no expense to the military member or civilian employee, who will act as the individual's lawyer in all contacts with the MSPB and the OSC during the pendency of the OSC investigation and any subsequent OSC initiated action before the MSPB. An attorney-client relationship will be established between the individual and counsel for representation.

**DA Personnel**
DA personnel includes the following:
- a. Military and civilian personnel of the Active Army and The U.S. Army Reserve.
- b. Soldiers of the Army National Guard of the United States (Title 10, U.S.C.) and, when specified by statute or where a Federal interest is involved, soldiers in the Army National Guard (Title 32, U.S.C.). It also includes technicians under 32 U.S.C. 709(a)(d).
- c. USMA cadets.
- d. Nonappropriated fund employees.
- e. Foreign nationals who perform services for DA overseas.
- f. Other individuals hired by or for the Army.

**Debarment**
Administrative action taken by a debarring authority to exclude a contractor from Government contracting and Government-approved subcontracting for a specified period.

**Deciding Official (Chapter 7)**
SJA, legal adviser, or Litigation Division attorney who makes the final determination concerning release of official information.

**DOD Criminal Investigation Organizations**
Refers to the USACICD; the Naval Investigative Service; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the Inspector General, DOD.

**Fraud**
Any intentional deception of DOD (including attempts and conspiracies to effect such deception) for the purpose of inducing DOD action or reliance on that deception. Such practices include, but are not limited to, the following: bid-rigging; making or submitting false statements; submission of false claims; use of false weights or measures; submission of false testing certificates; adulterating or substituting materials; or conspiring to use any of these devices.

**Improper or Illegal Conduct**
- a. A violation of any law, rule, or regulation in connection with Government misconduct; or
- b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

**Information Exempt From Release To The Public**
Those categories of information which may be withheld from the public under one or more provisions of law.

**Judge Advocate**
An officer so designated (AR 27–1).

**Legal Adviser**
A civilian attorney who is the principal legal adviser to the commander or operating head of any Army command or agency.

**Litigation**
Legal action or process involving civil proceedings, i.e., noncriminal.

**Litigation in Which The United States Has an Interest**
- a. A suit in which the United States or one of its agencies or instrumentalities has been, or probably will be, named as a party.
- b. A suit against DA personnel and arises out of the individual’s performance of official duties.
- c. A suit concerning an Army contract, subcontract, or purchase order under the...
terms of which the United States may be re-
quired to reimburse the contractor for recover-
ies, fees, or costs of the litigation.

b. A suit involving administrative pro-
cedings before Federal, state, municipal, or
foreign tribunals or regulatory bodies that
may have a financial impact upon the Army.

c. A suit affecting Army operations or
which might require, limit, or interfere with
official action.

d. A suit in which the United States has a
financial interest in the plaintiff’s recovery.

e. Foreign litigation in which the United
States is bound by treaty or agreement to
ensure attendance by military personnel or
civilian employees.

Medical Care
Includes hospitalization, outpatient treat-
ment, dental care, nursing service, drugs,
and other adjuncts such as prostheses and
medical appliances furnished by or at the ex-
pense of the United States.

Misdemeanor
An offense for which the maximum penalty
do not exceed imprisonment for 1 year. Mi-
demeanors include those offenses cat-
egorized as petty offenses (18 USC §3559).

Official Information
All information of any kind, however
stored, that is in the custody and control of
the Department of Defense, relates to infor-
mation in the custody and control of the De-
partment, or was acquired by DoD personnel
as part of their official duties or because of
their official status within the Department
while such personnel were employed by or on
behalf of the Department or on active duty
with the United States Armed Forces.

Operating Forces
Those forces whose primary missions are
to participate in combat and the integral
supporting elements thereof. Within DA, the
operating forces consist of tactical units or-
ganized to conform to tables of organization
and equipment (TOE).

Personnel Action
These include—

a. Appointment.

b. Promotion.

c. Adverse action under 5 U.S.C. 7501 et seq.
or other disciplinary or corrective action.

d. Detail, transfer, or reassignment.

e. Reinstatement.

f. Restoration.

g. Reemployment.

h. Performance evaluation under 5 U.S.C.

4301 et seq.

i. Decision concerning pay, benefits, or
awards, or concerning education or training
if the education or training may reasonably
be expected to lead to an appointment, pro-
motion, performance evaluation, or other
personnel action.

j. Any other significant change in duties or
responsibilities that is inconsistent with the
employee’s salary or grade level.

Private Litigation
Litigation other than that in which the
United States has an interest.

Process
The legal document that compels a defend-
ant in an action to appear in court; e.g., in
a civil case a summons or subpoena, or in a
criminal case, a warrant for arrest, subpoena
or summons.

Prohibited Personnel Practice
Action taken, or the failure to take action,
by a person who has authority to take, direct
others to take, recommend, or approve any
personnel action—

a. That discriminates for or against any
employee or applicant for employment on
the basis of race, color, religion, sex, na-
tional origin, age, handicapping condition,
marital status, or political affiliation, as
prohibited by certain specified laws.

b. To solicit or consider any recommenda-
tion or statement, oral or written, with re-
spect to any individual who requests, or is
under consideration for, any personnel ac-
tion, unless the recommendation or state-
ment is based on the personal knowledge or
records of the person furnishing it, and con-
ists of an evaluation of the work perform-
ance, ability, aptitude, or general qualifica-
tions of the individual, or an evaluation of
the character, loyalty, or suitability of such
individual.

c. To coerce the political activity of any
person (including the providing of any polit-
cal contribution or service), or take any ac-
tion against any employee or applicant for
employment as a reprisal for the refusal of
any person to engage in such political activ-
ity.

d. To deceive or willfully obstruct any per-
son with respect to such person’s right to
compete for employment.

e. To influence any person to withdraw
from competition for any position for the
purpose of improving or injuring the pros-
pects of any other person for employment.

f. To grant any preference or advantage
not authorized by law, rule, or regulation to
any employee or applicant for employment
(including defining the scope or manner of
competition or the requirements for any po-
osition) for the purpose of improving or injur-
ing the prospects of any particular person for
employment.

g. To appoint, employ, promote, advance,
or advocate for appointment, employment,
promotion, or advancement, in or to a civil-
ian position any individual who is a relative
Department of the Army, DoD

(as defined in 5 U.S.C. 3110) of the employee, if the position is in the agency in which the employee is serving as a public official or over which the employee exercises jurisdiction or control as an official.

b. To take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for being a whistleblower, as defined below.

c. To take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

Prosecutive Authorities

These include—

a. A U.S. Attorney;

b. A prosecuting attorney of a State or other political subdivision when the U.S. Attorney has declined to exercise jurisdiction over a particular case or class of cases; and

c. An SJA of a general court-martial convening authority considering taking action against a person subject to the UCMJ.

Recovery JA

A JA or legal adviser responsible for assertion and collection of claims in favor of the United States for property claims and medical expenses.

Significant Case of Fraud and Corruption

A procurement fraud case involving an alleged loss of $100,000 or more; all corruption cases related to procurement that involve bribery, gratuities, or conflicts of interest; any defective products or product substitution in which a serious hazard to health, safety or operational readiness is indicated, regardless of loss value; and, any procurement fraud case that has received or is expected to receive significant media coverage.

Staff Judge Advocate

An officer so designated (AR 27–1). The SJA of an installation, a command or agency reporting directly to HQDA, or of a major subordinate command of the U.S. Army Materiel Command, and the senior Army JA assigned to a joint or unified command.

A process to cause a witness to appear and give testimony, e.g., at a trial, hearing, or deposition.

Suspension

Administrative action taken by a suspending authority to temporarily exclude a contractor from Government contracting and Government-approved subcontracting.

Suspension and Debarment Authorities

Officials designated in DFARS, section 9.403, as the authorized representative of the Secretary concerned.

Tortfeasor

A wrongdoer; one who commits a tort.

APPENDIX G TO PART 516—FIGURES

This appendix contains figures cited or quoted throughout the text of this part.

Figure C–1. Sample Answer to Judicial Complaint, With Attached Certificate of Service

In the United States District Court for the Southern District of Texas Corpus Christi Division, No. C–90–100

John Doe, Plaintiff v. Togo D. West, Jr., Secretary of the Army, Department of the Army, Defendant.

First Affirmative Defense

The Complaint is barred by laches.

Figure C–3. Sample Answer to Judicial Complaint, with attached Certificate of Service. This is intended to be used as a guide in preparing a draft Answer as part of a Litigation Report.

Answer

For its answer to the complaint, defendant admits, denies and alleges as follows:

1. Admits.

2. Denies.

3. Denies.

4. The allegations contained in paragraph 4 are conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

5. Denies the allegations contained in the first sentence of paragraph 5; admits the allegations contained in the second sentence of paragraph 5; denies the remainder of the allegations in paragraph 5.

6. Denies the allegations in paragraph 6 for lack of knowledge or information sufficient to form a belief as to their truth.

7. Denies each allegation in the complaint not specifically admitted or otherwise qualified.