

§516.67

the case of ongoing criminal investigations, this coordination will be accomplished through the appropriate DOD criminal investigation organization.

§516.67 Overseas cases of fraud or corruption.

(a) Commanders of overseas major commands will establish procedures, similar to this regulation and consistent with the DFARS, and regulations and directives of their respective unified commands, for reporting and coordination of available remedies in overseas procurement fraud and corruption cases involving foreign firms and individuals. Overseas major commands will also maintain liaison with PFD and provide periodic reports of remedies coordination results.

(b) Overseas suspension and debarment actions are governed by DFARS 209.403 (48 CFR 209.403). The names of all firms and individuals suspended or debarred will be expeditiously forwarded to PFD for inclusion on the List of Parties Excluded From Federal Procurement or NonProcurement Programs.

(c) Overseas cases of fraud or corruption related to the procurement process that involve U.S. firms or U.S. citizens may be referred to PFD for coordination of remedies under this regulation.

§516.68 Program Fraud Civil Remedies Act (PFCRA).

(a) PFCRA was enacted on 21 October 1986 (Public Law 99-509) and implemented by DOD on 30 August 1988 (DOD Directive 5505.5). (See appendix E to this part.)

(b) PFCRA expands the capability of the government to deter and recover losses from false, fictitious or fraudulent claims and statements. It is also applicable to program fraud and provides an administrative remedy in addition to those otherwise available to the Army in procurement fraud or pay and entitlements fraud cases.

(c) As part of the Army implementation, the Secretary of the Army's duties and responsibilities under PFCRA as Authority Head are delegated to the Army General Counsel. The Chief, Intellectual Property Law Division, is the Army's Reviewing Official within

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the meaning of PFCRA. Army implementation also requires DA to follow the policies and procedures prescribed in enclosure 2 of DOD Directive 5505.5. (See appendix E to this part.)

(d) The DOD Inspector General (IG) is the Investigating Official within DOD. The duties of this position will be performed by the Assistant IG For Investigations. This individual is vested with the authority to investigate all allegations of liability under PFCRA. That authority includes the power to task subordinate investigative agencies to review and report on allegations that are subject to PFCRA. If the Investigative Official concludes that an action under PFCRA is warranted in an Army case, the official will submit a report containing the findings and conclusions of such investigation through PFD to the Army Reviewing Official.

(e) Pursuant to DOD IG guidance, USACIDC will forward appropriate cases that appear to qualify for resolution under PFCRA to the Investigating Official in a timely manner. Additionally, USACIDC will forward current information regarding the status of remedies pending or concluded. USACIDC may obtain remedies information by coordinating with PFD and the cognizant command.

(f) In pay and entitlement or transportation operation fraud cases, USACIDC will coordinate with the Office of the Secretary of the Army, Financial Management, Review and Oversight Directorate (SAFM-RO), to determine the status of any pending or proposed action under the Debt Collection Act. This information, in addition to information obtained under §517.68(e), will be forwarded with appropriate cases to the Investigating Official.

(g) In those cases where the Investigating Official has submitted a report to the Army Reviewing Official for action under PFCRA, PFD will, at the direction of the Reviewing Official, prepare all legal memoranda as necessary to transmit the Reviewing Official's intention to issue a complaint. As part of this responsibility PFD will do the following: coordinate with the affected command or agency to ensure that all appropriate remedies have been considered; evaluate the overall potential benefits to the Army; and, ensure that

action under PFCRA is not duplicative of other remedies already taken. In order to fully supplement the Reviewing Official's file, PFD may request a litigation report.

(h) PFD will coordinate all cases involving transportation operations emanating from Military Traffic Management Command (MTMC) activity, under the military transportation exception to the FAR, and all cases involving pay and entitlements fraud with SAFM-RO, for comments and recommendations. These matters will be forwarded with the case file to the Reviewing Official.

(i) If the Attorney General approves the issuance of a complaint, PFD, at the direction of the Army Reviewing Official, shall prepare the complaint and all necessary memoranda as required. PFD shall also designate attorneys to represent the Authority in hearings under PFCRA.

Subpart I—Cooperation With the Office of Special Counsel

§ 516.69 Introduction.

This subpart prescribes procedures for cooperation with the Office of Special Counsel (OSC) when OSC is investigating alleged prohibited personnel practices or other allegations of improper or illegal conduct within DA activities.

§ 516.70 Policy.

(a) DA policy follows:

(1) Civilian personnel actions taken by management officials, civilian and military, will conform to laws and regulations implementing established merit system principles and will be free of any prohibited personnel practices.

(2) Management officials will take vigorous corrective action when prohibited personnel practices occur. Disciplinary measures under AR 690-700, Chapter 751, may be initiated after consultation and coordination with appropriate civilian personnel office and labor counselor.

(b) DA activities will cooperate with OSC in the following ways:

(1) Promoting merit system principles in civilian employment programs within DA.

(2) Investigating and reporting allegations of improper or illegal conduct forwarded to the activity by HQDA.

(3) Facilitating orderly investigations by the OSC of alleged prohibited personnel practices and other matters assigned for investigation to the OSC, such as violations of the Whistleblower Protection Act of 1989, the Freedom of Information Act, or the Hatch Act.

§ 516.71 Duties.

(a) *DA General Counsel.* The DA General Counsel is responsible for the following:

(1) Provide overall guidance on all issues concerning cooperation with OSC, including the investigation of alleged prohibited personnel practices and allegations of improper or illegal conduct.

(2) Review for adequacy and legal sufficiency each OSC report of investigation that must be personally reviewed by the Secretary of the Army.

(3) Ensure compliance with the Civil Service Reform Act of 1978 by obtaining a suitable investigation of allegations of improper or illegal conduct received from OSC. This includes compliance with time limits for reporting results of the investigation and personal review of the report by the Secretary of the Army when required.

(4) Forward to the DOD Inspector General (DODIG) copies of each allegation of improper or illegal conduct referred to DA by OSC.

(5) Delegate to The Judge Advocate General the authority to act on behalf of the DA General Counsel in all OSC investigations of prohibited personnel practices.

(6) Act upon requests for counsel from "accused" or "suspected" employees.

(b) *Chief, Labor and Employment Law Office.* The Chief, Labor and Employment Law Office, OTJAG (DAJA-LE) is responsible for the following:

(1) Act for TJAG as the Senior Management Official in cooperating with OSC. As Senior Management Official, the Chief, DAJA-LE, through TJAG, will be responsible to the DA General Counsel for administration of the policies and procedures contained in this chapter.