



Department of Defense **INSTRUCTION**

NUMBER 5505.02

August 29, 2013

Incorporating Change 1, Effective June 10, 2016

IG DoD

SUBJECT: Criminal Investigations of Fraud Offenses

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in Appendix 3 of Title 5, United States Code (U.S.C.), also known and referred to in this instruction as the “Inspector General Act of 1978,” as amended (Reference (a)), and DoD Directive (DoDD) 5106.01 (Reference (b)), this instruction:

a. Reissues DoD Instruction (DoDI) 5505.2 (Reference (c)).

b. Establishes the authority to initiate, conduct, and supervise fraud investigations within the DoD (including the Military Departments) and other investigations as the Inspector General of the Department of Defense (IG DoD) deems appropriate.

c. Gives particular regard to the activities of the Military Departments to avoid duplication of effort and ensure efficient and effective coordination and cooperation.

d. Establishes policy, assigns responsibilities, and prescribes procedures for determining which of the Defense Criminal Investigative Organizations (DCIOs) will conduct investigations of fraud offenses in accordance with both Title 18, U.S.C. (Reference (d)) and chapter 47 of Title 10, U.S.C., also known and referred to in this instruction as the “Uniform Code of Military Justice (UCMJ)” (Reference (e)), for those persons subject to the UCMJ.

e. Establishes procedures for DCIOs’ compliance with the reporting requirements of section 2638.603 of Title 5, Code of Federal Regulations (CFR) (Reference (f)) for matters referred to the DCIOs in accordance with section 535 of Title 28, U.S.C. (Reference (g)).

2. **APPLICABILITY.** This instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the Combatant Commands, the Office of the IG DoD (OIG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (referred to collectively in this instruction as the “DoD Components”).

3. POLICY. It is DoD policy that:

a. All allegations of fraud involving programs, persons, and organizations affiliated with the Department of Defense will be thoroughly evaluated in a timely fashion and, when indicated, investigated in accordance with the Inspector General Act of 1978, Reference (b), and DoDI 5505.15 (Reference (h)).

b. Allegations of misconduct by or involving senior officials will be promptly reported to the IG DoD in accordance with DoDD 5505.06 (Reference (i)).

c. DCIOs will substantially share the responsibility of conducting fraud offense investigations affecting the Department of Defense. The appropriate DCIO will conduct investigations of fraud allegations relating to DoD programs and personnel, in accordance with guidance in Enclosure 3 of this instruction.

(1) Although one DCIO may assume primary jurisdiction, this does not preclude another DCIO from joining investigations, provided the DCIO:

(a) Has Military Department or DoD Component-connected interest in the case.

(b) Can contribute the necessary resources to actively and constructively participate in the investigation.

(2) In the event investigative responsibility cannot be resolved pursuant to guidance outlined in Enclosure 3 of this instruction, the IG DoD will determine which agency will investigate a specific fraud matter.

(3) All allegations of fraud must be reported promptly to the DCIO designated in Enclosure 3 of this instruction.

d. Fraud investigations conducted by the Military Criminal Investigative Organizations (MCIOs) (or declined and subsequently investigated by alternative departmental investigative resources including, but not limited to, Component or Defense Agency Inspectors General, military or security police elements, other DoD investigators, or command authorities) are undertaken for the primary purpose of furthering Military Department functions. Accordingly, such investigations are not restricted by section 1385 of Reference (d), also known as the "Posse Comitatus Act." Additionally, section 1385 of Reference (d) does not apply to investigations conducted by, under the direction of, or at the request of the IG DoD, in accordance with section 8(g) of the Inspector General Act of 1978.

e. A referral for investigation by the IG DoD or a designated representative to a Military Department will be considered a formal request, as provided for in the Inspector General Act of 1978, References (b) and (h), and the procedures in Enclosure 3 of this instruction.

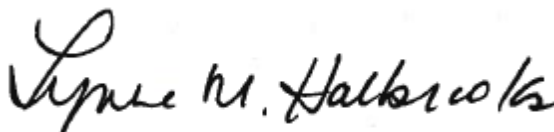
4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. RELEASABILITY. **Cleared for public release.** This instruction is available on the DoD Issuances Website at <http://www.esd.whs.mil/DD/>.

7. SUMMARY OF CHANGE 1. This change establishes procedures for Defense Criminal Organizations' (DCIOs') compliance with the reporting requirements in Reference (f), for matters referred to the DCIOs in accordance with Reference (g). This includes the requirement for DCIOs to notify the Director of the Office of Government Ethics of any referrals relating to possible violations involving current or former government officers or employees. This change also updates references for accuracy.

8. EFFECTIVE DATE. This instruction is effective August 29, 2013.



Lynne M. Halbrooks
Acting Inspector General
Department of Defense

Enclosures

1. References
2. Responsibilities
3. Investigative Responsibility and Procedures

Glossary

ENCLOSURE 1

REFERENCES

- (a) Appendix 3 of Title 5, United States Code (also known as the “Inspector General Act of 1978,” as amended)
- (b) DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012, as amended
- (c) DoD Instruction 5505.2, “Criminal Investigations of Fraud Offenses,” February 6, 2003 (hereby cancelled)
- (d) Title 18, United States Code
- (e) Chapter 47 of Title 10, United States Code (also known as “The Uniform Code of Military Justice (UCMJ)”)
- (f) Title 5, Code of Federal Regulations
- (g) Title 28, United States Code
- (h) DoD Instruction 5505.15, “DoD Contractor Disclosure Program,” June 16, 2010, as amended
- (i) DoD Directive 5505.06, “Investigations of Allegations Against Senior DoD Officials,” June 6, 2013
- (j) DoD Instruction 7050.05, “Coordination of Remedies for Fraud and Corruption Related to Procurement Activities,” May 12, 2014
- (k) Defense Contract Audit Agency Manual 7640.1, “DCAA Contract Audit Manual,” January 2013¹
- (l) Title 41, United States Code
- (m) Sections 3801 through 3812 of Title 31, United States Code (also known as the “Program Fraud Civil Remedies Act of 1986”)
- (n) DoD Instruction 5525.07, “Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DOJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes,” June 18, 2007

¹ Available at <http://www.dcaa.mil/cam.html>.

ENCLOSURE 2
RESPONSIBILITIES

1. IG DoD. The IG DoD:

a. Monitors DCIO investigative activities to avoid duplication while providing effective and timely investigative support to the DoD Components, as provided by this instruction and other IG DoD policies.

b. Resolves disagreements concerning DCIO jurisdictional responsibilities, as outlined in Enclosure 3 of this instruction.

c. Requires DCIOs provide timely investigative support to the DoD Components.

d. Requires the Defense Criminal Investigative Service (DCIS) to follow the guidance and procedures outlined in Enclosure 3 of this instruction.

e. Requires DCIS to provide copies of completed reports of investigation and other interim reports or documents necessary to support appropriate action by the appropriate DoD Components in accordance with DoDI 7050.05 (Reference (j)).

2. DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY (DCAA). Under the authority, direction, and control of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense, and in addition to the responsibilities in section 4 of this enclosure, the Director, DCAA, establishes procedures to ensure that DCAA Form 2000, "Suspected Irregularity Referral Form," or referrals of suspected fraud arising from DCAA audit activities affecting DoD, are referred to the IG DoD in accordance with chapter 4-700 of DCAA Manual 7640.1 (Reference (k)).

3. SECRETARIES OF THE MILITARY DEPARTMENTS. In addition to the responsibilities in section 4 of this enclosure, the Secretaries of the Military Departments require:

a. That allegations of fraud involving their respective Military Departments are referred promptly for investigation to the appropriate DCIO, as designated in Enclosure 3 of this instruction.

b. MCIOs to follow the guidance and procedures outlined in Enclosure 3 of this instruction.

c. MCIOs to provide copies of completed reports of investigation and other interim reports or documents necessary to support appropriate action by the appropriate DoD Components in accordance with Reference (j).

d. MCIOs to immediately provide written notification to explain why an investigation was not opened from an IG DoD referral for investigation.

4. DoD COMPONENT HEADS. The DoD Component heads:

a. Require that all allegations of fraud involving persons affiliated with the Department of Defense and any property or programs under their control or authority are referred promptly to the DCIO designated in Enclosure 3 of this instruction.

b. Establish procedures for the investigation of fraud allegations by alternative investigative resources when DCIOs decline to investigate the matter and/or the allegation(s) was not referred elsewhere for investigation. Such resources include, but are not limited to, Component or Defense Agency IG, military or security police elements, other DoD investigators, or command authorities. When results of the investigation warrant referral to the Department of Justice for enforcement action (civil and/or criminal), the DoD Component head will immediately notify the appropriate DCIO.

ENCLOSURE 3

INVESTIGATIVE RESPONSIBILITY AND PROCEDURES

1. DCIS PRIMARY JURISDICTIONAL RESPONSIBILITY. DCIS has primary responsibility for investigating all allegations of fraud involving:

a. OSD, Defense Agencies, and DoD Field Activities.

b. The CJCS and the Vice CJCS.

c. All contract and procurement actions awarded by DoD Components not otherwise supported by an MCIO, with the exception of those specified in sections 2 and 3 of this enclosure.

d. All Defense Logistics Agency (DLA) Disposition Services and DLA Distribution activities, with the exception of those specified in paragraph 2d of this enclosure. DCIS must, except under urgent circumstances, notify, within 72 hours, the cognizant MCIO office that an investigation has begun under this provision regarding a DLA Disposition Service or DLA Distribution activity on any installation covered in paragraph 2d of this enclosure. DCIS must accomplish any notice to or briefing of the installation commander with the participation of the cognizant MCIO.

e. All allegations of fraud committed by healthcare providers, including “partnership agreement” situations, under the TRICARE health program and fiscal intermediaries thereto. If the allegations concern a provider on a specific military installation or activity, the appropriate MCIO will be notified.

f. Allegations of suspected violations of sections 8701 through 8707 of Title 41, U.S.C. (Reference (1)) that contractors are required to report under that statute, whether or not they do so. If allegations concern a specific Military Department, DCIS will promptly notify the concerned Department (through the appropriate MCIO) when it initiates an investigation affecting that Department’s personnel, activities, or contracts, or when it discovers any suspected UCMJ violations. The exception to this notification requirement is when the IG DoD, or his or her designee, determines such notification is not appropriate. Likewise, an MCIO will promptly notify the DCIS when it initiates an investigation affecting the personnel, activities, or contracts of the OSD, Office of the CJCS, or other matters under DCIS’s primary jurisdiction as outlined in this instruction. This notification requirement should not limit the IG DoD statutory authority to conduct investigations in a manner deemed appropriate by the IG DoD.

g. All kickbacks (sections 8701 through 8707 of Reference (1)) or bribery (section 201 of Reference (d)) involving civilian employees of OSD, the Joint Staff, Defense Agencies, and DoD Field Activities.

h. Any allegations that the IG DoD considers appropriate for investigation by DCIS.

2. MCIO PRIMARY JURISDICTIONAL RESPONSIBILITY. The respective MCIOs have primary responsibility for investigating all allegations of fraud within their specific Military Department, not otherwise specified in sections 1 and 3 of this enclosure, involving:

a. Contract and procurement actions that a Military Department awards, regardless of what organization administers the contract, except for those specified in sections 1 and 3 of this enclosure.

b. Allegations of fraud involving the Defense Finance and Accounting Service (DFAS) where they pertain to pay and allowance or travel fraud by a civilian employee or Service member in a Military Department, or the DFAS providing services for a single:

(1) Post.

(2) Camp.

(3) Base or joint base.

(4) Facility.

(5) Installation-level activity of a Military Department.

c. DLA Disposition Services and DLA Distribution activities outside the United States (MCIO providing support to the host installation) and any allegations resulting from a compromise of physical security of the DLA Disposition Service, DLA Distribution activity, or the host installation (e.g., break-ins, theft of property). MCIOs must notify DCIS of any theft, illegal export, or diversion of de-militarized sensitive defense technologies from DLA Disposition Services outside the United States. DCIS has primary jurisdiction over any allegation that the IG DoD considers appropriate for investigation by DCIS.

d. The activities at an individual installation or facility, especially those that are under an installation commander's contracting authority. These also involve activities that affect the health, welfare, and morale of Service members (or their dependents) assigned to that specific installation or facility. These include circumstances where the allegations pertain to the activities at a military installation or facility supported by another installation or facility.

e. All matters regarding the Army and Air Force Exchange Service, the Navy Exchange Services Command, the Marine Corps Exchange, and all non-appropriated fund activities within the Military Departments.

f. Allegations of fraud perpetrated against TRICARE, a fiscal intermediary, or other health care providers or insurers by Service members, military retirees, and dependents who have received, made claims for, or requested benefits or services under such programs or operations.

g. Construction contracts that a single Military Department funds.

- h. All DoD dependents schools outside the continental United States.
- i. The Combatant Commands.
- j. All Defense Energy Support Center activities outside of the United States.
- k. All NATO projects and activities with expenditures by the Department of Defense.
- l. Allegations of kickbacks and bribery of a Service member or civilian employee of a Military Department, except those provided in sections 1 and 3 of this enclosure.

3. OTHER JURISDICTIONAL RESPONSIBILITY. DCIOs are responsible for investigating allegations of fraud not otherwise specified in sections 1 and 2 of this enclosure, involving:

a. Contracts that a single Military Department awards and where a contractor or subcontractor that has contracts with more than one DoD Component is alleged to have committed wrongdoing. The determination of whether the contractor has contracts with more than one DoD Component relates to the overall status of the contractor rather than to either the specific allegation(s) or contract(s) to which the allegations pertain.

b. Top 100 Defense contractors (including their subsidiaries). Since the IG DoD has a continuing and substantial interest in investigations that involve a Top 100 Defense contractor, DCIS will determine whether to participate in any investigation of a Top 100 Defense contractor.

c. Violations of antitrust laws.

d. All allegations of fraud with respect to contracts funded by other than military construction appropriations and awarded or administered to U.S. Army Corps of Engineers.

4. SPECIAL REPORTING RESPONSIBILITIES REGARDING SENIOR OFFICIALS.

DCIOs have responsibility for reporting all allegations of misconduct, including fraud, by senior officials to the IG DoD in accordance with Reference (i).

5. AGENCY WORKING GROUP (AWG). DCIOs will establish, at the headquarters level, an AWG to resolve jurisdictional issues that section 6 of this enclosure does not resolve. AWG members will be managers with co-equal authority to make binding decisions. The AWG representatives will resolve disputes in accordance with sections 7 and 10 of this enclosure.

6. JURISDICTIONAL RESPONSIBILITY-REGIONAL WORKING GROUPS (RWGs). The procedures for carrying out the responsibilities in section 3 of this enclosure are:

a. Except as noted in section 7 of this enclosure, DCIOs will establish RWGs at no higher than geographical regional levels (below headquarters level) to address and resolve jurisdictional responsibility issues.

b. The members of each RWG must be managers or supervisors with co-equal authority to make decisions regarding which organization(s) will conduct each investigation covered by this enclosure.

c. DCIOs must coordinate with the appropriate RWG all fraud allegations that involve equities of DoD Components other than those that fall within their jurisdiction before opening any inquiries, investigations, or criminal intelligence files or making presentations to any prosecutors regarding fraud allegations. Under urgent circumstances, a prosecutor may be consulted before coordination with the RWG; however, the circumstances must be explained in detail and documented for the RWG should such action be taken.

d. The RWG will use the provisions of sections 8 and 9 of this enclosure to determine which DCIO(s) will conduct the investigation.

e. The RWG will reach decisions by consensus in applying the criteria provided in this guidance and not by a majority rule vote.

f. A good faith effort must be made to resolve disputes at the local level. Disputes that cannot be resolved at that level will be resolved in accordance with section 10 of this enclosure.

g. The RWGs will conduct meetings as necessary to discuss issues of mutual interest.

7. SENSITIVE COMPARTMENTED INFORMATION (SCI) AND SPECIAL ACCESS PROGRAM (SAP) FRAUD INVESTIGATIONS. Investigations of fraud allegations involving SCI and SAPs will be coordinated so that:

a. The AWG will resolve jurisdictional issues for any investigation in accordance with section 3 of this enclosure involving SCI. Each DCIO's AWG representative must have the necessary level of clearances to participate in SCI matters.

b. The DCIO responsible for providing investigative support to any SAP will conduct such fraud investigation without referral to, or coordination with, any RWG or AWG.

8. JOINT INVESTIGATION FACTORS. Joint investigations may be considered under circumstances where:

a. The alleged fraud substantially involves and impacts the funding, programs, property, or personnel (as subjects) of more than one DoD Component.

- b. The nature of the investigation requires the commitment of more resources than a single DCIO can reasonably provide to the investigation.
- c. The DCIO that wants to join the investigation has and will provide sufficient resources to actively contribute to the investigative team.
- d. DoD-level policy or a memorandum of understanding applicable to the case requires more than one DCIO to participate in the investigation.
- e. The investigation involves a TRICARE provider on a military installation.
- f. The matter being investigated is considered to be of such importance to a Military Department that participation by more than one DCIO may avoid any appearance of conflict of interest, lack of independence, or possible command influence.
- g. The IG DoD determines that an investigation will be conducted jointly or that the DCIS must be a joint participant in an investigation with another DCIO(s).

9. JOINT INVESTIGATION OPERATIONAL GUIDELINES. When a joint investigation is appropriate in accordance with section 8 of this enclosure, these guidelines apply:

- a. Lead Investigative Agency. The lead DCIO for joint investigations will be determined based on the primary jurisdictional responsibilities listed in sections 1 and 2 of this enclosure. Disputes pertaining to the designation of lead DCIO will be resolved in accordance with procedures in sections 5, 6, and 10 of this enclosure.
- b. Substantive Activities Required. All DCIOs participating in the joint investigation must supply personnel to perform substantive and regular investigative activities to advance the case. Otherwise, their further joint participation will be terminated. Every effort will be made at the local RWG level to resolve the resource issue. If the resource issue cannot be resolved at the local level, the procedures in section 10 of this enclosure will be followed.
- c. Management of Joint Investigations. Agents participating in a joint investigation must form an investigative working group (IWG) and designate the lead DCIO in accordance with paragraph 9a of this enclosure. The IWG and respective field managers will mutually agree on and be responsible for managing and directing investigations, including case administration, reporting, and liaison with prospective prosecutors. The IWG is responsible for identifying investigative requirements and coordinating completion of investigative tasks, which may include:
 - (1) Notifying the centralized organization for the affected DoD Components and ensuring the centralized organization is provided timely information needed to implement, update, or revise a remedies plan in accordance with Reference (j).

(2) Originating and processing requests for electronic surveillance, search warrants, IG DoD subpoenas, and similar investigative techniques that require approval outside the DCIO.

(3) Establishing the format for preparing reports of investigation, memorandums for record, memorandums of interview, witness statements, and other related documentation.

(4) Efficiently and accurately reporting investigative outcomes for the IG DoD Semiannual Report to the Congress, as well as any other required reports (e.g., under National or Defense Incident Based Reporting Systems).

(5) Presenting the case for civil and criminal prosecution determinations.

(6) Preparing and submitting any referrals to the IG DoD for application of sections 3801 through 3812 of Title 31, U.S.C., also known as the “Program Fraud Civil Remedies Act of 1986” (Reference (m)).

10. RESOLVING DISPUTES

a. The appropriate RWG established in accordance with section 6 of this enclosure should address any questions about or conflicts arising from the interpretation of this guidance. The RWGs and senior field managers should make every effort to resolve issues at the lowest level possible. The AWG will handle disputes only after exhaustive efforts to resolve the issues at the local level.

b. The headquarters-level AWG will be responsible for resolving jurisdictional issues that the senior field managers cannot resolve.

c. Issues the AWG cannot resolve will be brought to the attention of DCIO commanders, DCIO senior leaders, or the Deputy Inspector General for Investigations, OIG DoD. If the DCIO senior leaders cannot resolve the dispute, then the matter will be referred to the IG DoD for resolution.

11. NOTICE FOR REFERRALS OUTSIDE THE DEPARTMENT OF DEFENSE. Allegations of fraud involving any DoD programs, operations, or personnel will not be referred to an investigative organization outside the DoD without advance notice to the IG DoD, unless the referral is required by DoDI 5525.07 (Reference (n)) or is otherwise specifically required by statute or regulation.

12. NOTIFICATION OF INFORMATION ABOUT ETHICS VIOLATIONS

a. Unless prohibited by law, DCIOs will notify the Director of the Office of Government Ethics (OGE) of any referrals involving current or former government officers or employees made pursuant to section 535 of Reference (g) relating to possible violations of sections 203,

205, and 207-209 of Reference (d). Notification may be delayed to prevent compromise of ongoing investigations. The DCIO will document notice to the Director of the OGE on OGE Form 202

([https://www.oge.gov/web/OGE.nsf/0/B831BA2C01CA6E4F85257EA7005ECCBD/\\$FILE/OG E%20FORM%20202.pdf](https://www.oge.gov/web/OGE.nsf/0/B831BA2C01CA6E4F85257EA7005ECCBD/$FILE/OG E%20FORM%20202.pdf)). The notification and referral may be emailed to referrals@ogc.gov, or it may be mailed to:

The U.S. Office of Government Ethics
Attn: Associate Director, Program Review Division
1201 New York Avenue, N.W., Suite 500
Washington, DC 20005-3917

b. The lead DCIOs conducting joint investigations are responsible for submitting the OGE Form 202 to the Director of the OGE.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

| | |
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| AWG | agency working group |
| CJCS | Chairman of the Joint Chiefs of Staff |
| DCAA | Defense Contract Audit Agency |
| DCIS | Defense Criminal Investigative Service |
| DCIO | Defense Criminal Investigative Organization |
| DFAS | Defense Finance and Accounting Service |
| DLA | Defense Logistics Agency |
| DoDD | DoD Directive |
| DoDI | DoD Instruction |
| IG DoD | Inspector General of the Department of Defense |
| IWG | investigative working group |
| MCIO | Military Criminal Investigative Organization |
| OGE | Office of Government Ethics |
| OIG DoD | Office of the Inspector General of the Department of Defense |
| RWG | regional working group |
| SAP | Special Access Program |
| SCI | Sensitive Compartmented Information |
| U.S.C. | United States Code |

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this instruction.

centralized organization. The organization within a DoD Component responsible for monitoring and ensuring the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.

DCIO. DCIS, United States Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

fraud. Any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which a person or entity is not entitled. Such practices include, but are not limited to:

Offering payment or accepting bribes or gratuities.

Making false statements.

Submitting false claims.

Using false weights or measures.

Evading or corrupting inspectors or other officials.

Deceiving either by suppressing the truth or misrepresenting material fact.

Adulterating or substituting materials.

Falsifying records and books of accounts.

Arranging for secret profits, kickbacks, or commissions.

Conspiring to do any of the acts described above.

Conflict of interest cases, criminal irregularities, and the unauthorized disclosure of official information relating to procurement and disposal matters.

MCIOs. United States Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

senior official

Active duty, retired, Reserve, or National Guard military officers in grades O-7 and above, or selected for promotion to grade O-7.

Current and former members of the Senior Executive Service.

Other current and former DoD civilian employees whose positions are deemed equivalent to that of a member of the Senior Executive Service (e.g., Defense Intelligence Senior Executive Service employees, Senior Level employees, and non-appropriated fund senior executives).

Current and former Presidential appointees.

Top 100 Defense contractors. The first 100 Defense contractors (including their subsidiaries) receiving the largest dollar volume of prime contract awards from the Department of Defense during the preceding fiscal year.

TRICARE. A regionally managed health care program for active duty, activated National Guard and Reserves, retired members of the uniformed services, National Guard and Reserves, and their families and survivors.