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April 21, 2022

The Honorable Kamala Harris
President of the Senate

The Honorable Nancy Pelosi
Speaker of the House of Representatives

Subject: *Fiscal Year 2021 Antideficiency Act Reports Compilation*

Agencies that violate the Antideficiency Act must report the violation to the President and Congress and transmit a copy of the report to the Comptroller General at the same time. 31 U.S.C. §§ 1351, 1517(b). The report must contain all relevant facts and a statement of actions taken.

Since fiscal year 2005, GAO, in its role as repository for the Antideficiency Act reports that agencies submit, has produced and publicly released an annual compilation of summaries of the reports. We base the summaries on unaudited information we extract from the agency reports. Each summary includes a brief description of the violation, as reported by the agency, and of remedial actions agencies report that they have taken. We also include copies of the agencies' transmittal letters. We post the summaries and the agency transmittal letters on our public website. In some cases, the agencies also send us additional materials with their transmittal letters. We make these additional materials available to Members and their staffs upon request.

Please find enclosed the compilation of summaries of the 17 Antideficiency Act violation reports and agency transmittal letters submitted to GAO in fiscal year 2021. The Department of Homeland Security submitted six reports and the Department of Defense submitted three reports. The Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Department of Agriculture, the Department of Housing and Urban Development, the Department of Veterans Affairs, the General Services Administration, the National Archives and Records Administration, and the Pension Benefit Guaranty Corporation each submitted one report.

While GAO has not opined on the agency reports or the remedial actions taken, we do note that many of the reported violations resulted from similar agency actions. For example, six of the reported violations occurred during a lapse in appropriations, with four resulting from agencies incurring obligations without available budget authority for activities that were not excepted by the Antideficiency Act and two resulting from

agencies accepting voluntary services that were not excepted by the act. Three of the reported violations resulted from obligating or expending funds in violation of statutory spending restrictions.

If you have any questions, please contact Shirley A. Jones, Managing Associate General Counsel, at (202) 512-8156, or Charlie McKiver, Assistant General Counsel for Appropriations Law, at (202) 512-5992.

A handwritten signature in black ink that reads "Edda Emmanuelli Perez". The signature is written in a cursive, flowing style.

Edda Emmanuelli Perez
General Counsel

Enclosure

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-01

Agency No.: None Reported	Date Reported to GAO: October 7, 2020
Agency: Consumer Product Safety Commission (CPSC)	Date(s) of Violation(s): Fiscal Year 2019
Account(s): Salaries and Expenses	Amount Reported: \$79.70

Description: CPSC reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1342, when it accepted voluntary services when a furloughed employee worked during the partial government shutdown that occurred between December 2018 and January 2019.

According to CPSC, an employee assigned to the Division of Chemistry in the Directorate of Laboratory Services was furloughed on December 26, 2018, due to a lapse in appropriations. CPSC reported that its furlough notice, which the employee signed, instructed the employee not to work on official business, even as an unpaid volunteer. While furloughed, the employee accessed his official CPSC e-mail and sent a total of six emails from his official e-mail.

Remedial Action Taken: To prevent a recurrence of this type of violation, CPSC reported that it will continue to emphasize that employees who work while furloughed are subject to the penalties of the ADA. According to CPSC, the responsible employee received a three-day suspension and was required to receive trainings on the ADA and its application to government furloughs. CPSC reported that the responsible employee did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; E-mail from Acting Chief Financial Officer, CPSC to Staff Attorney, GAO (Dec. 15, 2021).

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-02

Agency No.: None Reported **Date Reported to GAO:** October 7, 2020

Agency: Department of Agriculture
(USDA) **Date(s) of Violation(s):** Fiscal Year 2019

Account(s): Agricultural Research
Service Salaries and Expenses **Amount Reported:** \$11.03

Description: USDA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1342, when it accepted voluntary services when a furloughed employee worked during the partial government shutdown that occurred between December 2018 and January 2019.

According to USDA, a Contracting Specialist in the Agricultural Research Service (ARS) uploaded a document into the Integrated Acquisition System on December 31, 2018, while furloughed. According to USDA, ARS accepted the voluntary services in violation of the ADA, 31 U.S.C. § 1342.

Remedial Action Taken: To prevent a recurrence of this type of violation, USDA reported that ARS had a process to disseminate information to employees regarding emergency and shutdown furlough procedures, furlough notices, and ethics during a lapse in appropriations. According to USDA, the responsible employee has been advised of the prohibition against working while furloughed. ARS has determined that the responsible employee did not did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-03

Agency No.: None Reported	Date Reported to GAO: November 5, 2020
Agency: Department of Veterans Affairs (VA)	Date(s) of Violation(s): Fiscal Years (FYs) 2017 and 2018
Account(s): Medical Services; Medical Community Care ¹	Amount Reported: \$1,091,078,347

Description: VA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it obligated funds from the wrong appropriations account for State Veterans Homes in FYs 2017 and 2018, and did not have sufficient funds in the correct appropriations account to cover the obligations.

VA reported that it charged obligations for State Veterans Homes for FYs 2017, 2018, and 2019 to its Medical Community Care account. For each of those FYs, the Medical Services appropriation contained specific language for State Veterans Homes. VA's Office of General Counsel advised VA that it was required to charge the obligations to the Medical Services account to comply with the purpose statute. However, VA reported that insufficient funds remained in the Medical Services account to charge the obligations for FYs 2017 and 2018, and it therefore violated the ADA for those FYs.

Remedial Action Taken: To prevent a recurrence of this type of violation, VA reported that the President's FY 2021 budget requested a provision that would allow erroneously obligated and expended funds to be charged to the Medical Community Care Account. Congress included a similar provision in the Military Construction, Veterans Affairs, and Related Agencies Appropriations Act. According to VA, it reviewed the language in its Medical Services appropriations to ensure that no oversights remained. VA reported that the Veterans Health Administration (VHA) is improving congressional justification materials to clarify how programs should be funded in the future. According to VA, the employee responsible for the violation was the VHA Chief Financial Officer, who did not knowingly or willfully violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; E-mail from Senior Level Attorney, VA to Staff Attorney, GAO (Oct. 5, 2021).

¹ Throughout this report, where an agency reports that it violated the ADA by obligating or expending funds from an incorrect account, we identified both the account initially charged, and the account that was supposed to be charged, according to the agency.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-04

Agency No.: None Reported

Date Reported to GAO: January 14, 2021

Agency: Department of Housing and Urban Development (HUD)

Date(s) of Violation(s): Fiscal Years (FYs) 2009, 2010, 2012, 2014, 2017, and 2018

Account(s): Executive Offices, Management and Administration; Administrative Support Offices, Management and Administration; Community Planning and Development, Program Office Salaries and Expenses; and Fair Housing and Equal Opportunity, Program Office Salaries and Expenses

Amount Reported: \$158,850.74

Description: HUD reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), in FYs 2009, 2010, 2012, 2014, 2017, and 2018, when it incurred obligations and expended funds without providing advance congressional notification in violation of a statutory prohibition.

According to HUD, on a number of occasions, HUD staff made obligations and expenditures for offices and other spaces assigned to presidentially appointed officials that were covered by then-applicable advance congressional notification requirements. HUD reported that advance notification was not given to Congress before making such obligations and expenditures. HUD noted that the failures to notify Congress occurred due to a lack of written procedures regarding the statutory notification requirements.

According to HUD, the HUD Office of Inspector General conducted an investigation and issued a report with respect to office furniture purchased for the Secretary's dining room that found no evidence of misconduct and made no recommendations because of remedial actions proposed by HUD and HUD's intent to report an ADA violation.² Additionally, HUD reported that the purchase contract for the Secretary's dining room furniture was canceled.

² GAO issued a decision regarding HUD's obligation of appropriated funds in this manner. B-329955, May 16, 2019.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that it has instituted a mandatory review process under which various offices must review and pre-approve all proposed purchases that may fall within the government-wide limitation to furnish, redecorate, or make improvements for the offices of presidentially appointed officials. Additionally, HUD reported that the Office of Administration is developing a standard operating procedure to formally document this review process. HUD reported that this error was systemic in nature and therefore, no responsible employees were identified. According to HUD, there was no knowing or willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-05

Agency No.: Navy, 19-01/02

Date Reported to GAO: January 19, 2021

Agency: Department of the Navy (Navy)

Date(s) of Violation(s): Fiscal Years 2009-2013

Account(s): Operation and Maintenance, Marine Corps (OMMC), Other Procurement, Marine Corps (PMC), funds transferred from the Joint Improvised Explosive Devise Defeat Organization funds

Description: Navy, through the Department of Defense, reported that it violated the Antideficiency Act (ADA), 31 U.S.C. §§ 1341(a), 1517(a), when it obligated and expended funds from the incorrect appropriation for the construction of ground training systems located on Military Operations on Urban Terrain (MOUT) sites, and did not have any funds in the correct appropriations accounts to charge the obligations and expenditures. Navy also reported it violated the ADA when it improperly obligated and expended OMMC and PMC funds for the construction of MOUT training facilities for which Congress has not provided an authorization or appropriation. Finally, Navy reported it violated the ADA when it incorrectly used an appropriation to purchase movable equipment associated with the construction projects.

Remedial Action Taken: To prevent a recurrence of this type of violation, Navy reported that it updated policies regarding relocatable buildings, training systems, and site work and performed contracts compliance review. Navy clarified that the Marine Corps Systems Command (MCSC) is not authorized to write contracts for construction-like work or work subject to the Davis-Bacon Act of 1931. According to Navy, MCSC took corrective actions related to program management, contracting, engineering, and financial management. Navy reported that two former MCSC Commanding Officers were responsible for the violations, and that both individuals are now retired. According to Navy, there was no willful or knowing intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-06

Agency No.: None Reported	Date Reported to GAO: February 4, 2021
Agency: Pension Benefit Guaranty Corporation (PBGC)	Date(s) of Violation(s): Fiscal Years (FYs) 2004 and 2005
Account(s): Pension Benefit Guaranty Corporation Fund	Amount Reported: \$319,501,649

Description: PBGC reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it entered into two multiyear leases in FYs 2004 and 2005, and did not have sufficient funds in those FYs to cover its total liability for the leases.

PBGC reported that on August 9, 2004, it entered into a multiyear lease for rentable space for a term of approximately 14 years and 4 months. Additionally, on September 30, 2005, PBGC reported that it entered into a multiyear lease for rentable space for a term of approximately 13 years and 3 months. According to PBGC, upon executing the leases, PBGC did not record an obligation equal to its total liability but instead funded these multiyear leases incrementally. PBGC reported that it attempted to make account adjustments to comply with the ADA, but did not have sufficient funds in FYs 2004 and 2005 to fund the total liabilities for the space.

Remedial Action Taken: To prevent a recurrence of this type of violation, PBGC states that it took actions to bring its leasing program into compliance with the recording statute, 31 U.S.C. § 1501(a)(1), and the ADA. PBGC reported that it renegotiated new, short term, annual leases in place of the previous multiyear leases. According to PBGC, it also revised its directive governing its system of administrative control of funds and has submitted this for OMB approval. PBGC determined that there was no knowing or willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-07

Agency No.: DCMA 20-01 **Date Reported to GAO:** February 19, 2021

Agency: Defense Contract Management Agency (DCMA) **Date(s) of Violation(s):** Fiscal Years 2015 and 2016

Account(s): Operation and Maintenance (O&M), Defense-Wide; Research, Development, Test and Evaluation (RDT&E) **Amount Reported:** \$1,248,155.63

Description: DCMA, through the Department of Defense, reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1517(a), when it corrected its errant obligations and expenditures for the development of the Earned Value Analysis System (EVAS), and exceeded the amount of funds available through the formal subdivision of funds for the EVAS.

DCMA reported that it used appropriations from its O&M account to fund the development of the EVAS. According to DCMA, because of the significant software development, testing and evaluation requirements defined in the EVAS performance work statements, DCMA should have used its RDT&E account instead of its O&M account to fund the project. DCMA reported that the violation occurred due to lack of oversight over information technology finance and budget, and lack of communication among various groups.

Remedial Action Taken: To prevent a recurrence of this type of violation, DCMA conducted a comprehensive realignment of the duties and responsibilities associated with budget formulation and execution processes. According to DCMA, it issued a revised policy to facilitate agency leadership review of key procedures. DCMA reported that it has centralized the fund execution process and moved this responsibility to the Headquarters Finance and Business Operations/ Comptroller Directorate. DCMA identified the Chief Information Officer (CIO) as responsible for the violation. DCMA reported that the individual who served as CIO is no longer a government employee and discipline was not pursued. DCMA determined that the responsible individual did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-08

Agency No.: Navy, 19-03

Date Reported to GAO: March 17, 2021

Agency: Department of the Navy (Navy)

Date(s) of Violation(s): Fiscal Years (FYs)
2013-2018

Account(s): Operation and Maintenance,
Navy (O&MN); Shipbuilding and
Conversion, Navy (SCN)

Amount Reported: \$25,966,667.79

Description: Navy, through the Department of Defense, reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it improperly obligated and expended funds from the incorrect appropriations account to convert a large covered lighter barge into a Berthing and Messing barge and did not have sufficient funds in the correct appropriations account to cover the obligations and expenditures.

According to Navy, the Naval Sea Systems Command, Southwest Regional Maintenance Center (SWRMC) improperly obligated and expended O&MN funds to convert a large covered lighter barge into a Berthing and Messing barge. Navy determined that this occurred due to the program manager improperly characterizing the conversion as modernization through maintenance and repair work. Navy also reported that the non-severable work was improperly split over the course of several years as O&MN funds became available. Navy reported that conversion of service craft such as barges is funded from a specific annual appropriation for ship conversion, and as such, SCN funds should have been used. According to Navy, after recognizing the error, it did not have FY 2013 SCN funds available to cure the violations.

Remedial Action Taken: To prevent a recurrence of this type of violation, SWRMC has instituted organizational and process changes to strengthen the programmatic, contracting, and funding review associated with ship modernization. Additionally, Navy reported that the Director, Fleet Maintenance for the Commander, U.S. Pacific Fleet (COMPACFLT) established a detailed review process of barge work. Lastly, Navy reported that COMPACFLT will implement a formal qualification and continuing training program for fleet maintenance program managers. According to Navy, the program manager was responsible for the violation. COMPACFLT issued the program manager a letter of caution. Navy determined that the responsible individual did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-09

Agency No.: None Reported **Date Reported to GAO:** May 6, 2021

Agency: National Archives and Records Administration (NARA) **Date(s) of Violation(s):** Fiscal Year (FY) 2019

Account(s): Operating Expenses (OE) **Amount Reported:** None Reported

Description: GAO, following a congressional request, determined that NARA violated the Antideficiency Act (ADA), 31 U.S.C. §§ 1341(a), 1342, when it incurred obligations during a lapse of appropriations between December 22, 2018, and January 25, 2019. B-331091, July 16, 2020. GAO concluded that NARA’s activities in connection with the publication of three temporary rules for the National Oceanic and Atmospheric Administration, a final rule for the Department of Labor, and a notice for the Centers for Disease Control and Prevention violated the ADA because NARA lacked available budget authority and no exception to the ADA that would otherwise authorize its obligations applied. *Id.* See 31 U.S.C. §§ 1341(a), 1342.

NARA’s report expressed disagreement with GAO’s determination. It asserted that NARA did not violate the ADA because NARA believes the activities were authorized by the necessary implication exception to the ADA.

Remedial Action Taken: NARA did not identify remedial actions taken.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-10

Agency No.: None Reported **Date Reported to GAO:** May 27, 2021

Agency: General Services Administration (GSA) **Date(s) of Violation(s):** Fiscal Year (FY) 2017

Account(s): Acquisition Services Fund (ASF) **Amount Reported:** \$690,000,000

Description: GSA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1517(a), when it obligated funds in the ASF in excess of its apportionment.³

According to GSA, the majority of ASF obligations are related to “flow-through” activity, which consists of customer orders for which GSA has entered into reimbursable agreements with agencies to procure goods and services for those agencies. In FY 2017, GSA exceeded the amount apportioned for ASF flow-through obligations by \$689.4 million, and exceeded the amount apportioned for the entire ASF by \$251.5 million. According to GSA, these violations occurred due to higher than anticipated agency customer orders and lack of internal controls to prevent GSA from incurring obligations for vendor orders in excess of the amount apportioned for ASF flow-through obligations.

Remedial Action Taken: To prevent a recurrence of this type of violation, GSA instituted a Corrective Action Plan (CAP), which contains more stringent measures for regular monitoring and forecasting. Specifically, GSA noted that the CAP requires increased scrutiny of ASF flow-through obligations by establishing monthly monitoring controls over apportionment levels and reviews of report documentation to ensure alignment between budgetary and proprietary forecasts. Additionally, under the CAP, GSA will develop and implement a monitoring process to determine whether it needs to request a reapportionment late in the year to deal with unexpected changes in activity. According to GSA, it also will consider developing automatic preventative system controls.

³ While GSA initially reported that it violated 31 U.S.C. § 1341, GSA later stated that the reported violation occurred because the agency obligated funds in excess of an apportionment, which is a violation of 31 U.S.C. § 1517(a). E-mail from Deputy Budget Director, GSA to Staff Attorney, GAO (Jan. 13, 2022).

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; E-mail from Deputy Budget Director, GSA to Staff Attorney, GAO (Jan. 13, 2022).

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-11

Agency No.: None Reported	Date Reported to GAO: June 11, 2021
Agency: Department of Homeland Security (DHS)	Date(s) of Violation(s): Fiscal Years (FYs) 2010-2016
Account(s): None Reported	Amount Reported: \$361,164,112.23

Description: DHS reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it incurred obligations without providing advance congressional notification, in violation of a statutory prohibition.

According to DHS, it identified 42 contract violations that occurred between FYs 2013 and 2016. Additionally, DHS reported that it identified 104 Other Transaction Authority (OTA) agreement violations that occurred within the Transportation Security Administration (TSA) between FYs 2010 and 2015. According to DHS, these violations occurred because DHS did not provide congressional notification in advance of entering into contracts and OTAs as required by DHS's FYs 2010-2016 appropriations acts. DHS reported that the violations occurred due to a misunderstanding of the notification requirements, inattention to detail, and inadequate quality review.

Remedial Action Taken: To prevent a recurrence of this type of violation, DHS revised the Homeland Security Acquisition Manual to clarify the process for providing Congressional notifications. DHS reported that additional tools were developed to assist contracting officers in determining when Congressional notification is required and to help monitor Congressional notification compliance, including training. According to DHS, TSA updated its OTA policy and checklist to enhance compliance and mandated an OTA refresher training for contracting officers. DHS determined that the Chief Procurement Officer was responsible for the contract violations, and that a TSA contracting officer was responsible for the OTA violations. DHS reported that the TSA contracting officer's warrant was suspended on July 8, 2015, and the employee voluntarily separated from TSA in October 2015. No disciplinary actions against the responsible employees were taken. DHS has determined that the responsible individuals did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-12

Agency No.: None Reported

Date Reported to GAO: June 11, 2021

Agency: Department of Homeland Security (DHS)

Date(s) of Violation(s): Fiscal Years (FYs) 2010; 2016-2019

Account(s): Working Capital Fund, Departmental Management

Amount Reported: None Reported

Description: DHS reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it exceeded its available account balance.

DHS reported that the violation was discovered when DHS's Financial Management Division conducted a policy review. During this review, DHS states it discovered that its Working Capital Fund had exceeded its available fund balance with Treasury in July 2010 and from March 2016 through August 2019. DHS reported that this violation occurred because DHS's processes and procedures were predicated on a misinterpretation of the law, which was the assumption that an ADA violation did not occur if the accounts receivable offset the negative cash balance.

Remedial Action Taken: To prevent a recurrence of this type of violation, DHS submitted legislative language to Congress for consideration that would allow anticipated reimbursements to offset negative cash balances. The proposed language was enacted in the 2020 Consolidated Appropriations Act. The FY 2021 enacted appropriations did not provide for continued usage of DHS's Working Capital Fund, and instead appropriated funds directly to the servicing Management Directorate offices. DHS identified the former Financial Operations Director as the responsible party. The responsible party has retired from federal service. According to DHS, the responsible party did not knowingly or willfully violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-13

Agency No.: None Reported	Date Reported to GAO: June 11, 2021
Agency: Department of Homeland Security (DHS)	Date(s) of Violation(s): Fiscal Years (FYs) 2013, 2014, 2015 and 2016
Account(s): Immigration and Customs Enforcement (ICE), Salary and Expenses	Amount Reported: \$90,736.87

Description: DHS reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it incurred obligations without providing advance congressional notification, in violation of a statutory prohibition.

DHS reported that ICE obligated more than \$5,000 to furnish the Director's suite without providing advance Congressional notification, as required by statute, between FYs 2013 and 2016. According to DHS, this resulted in ICE obligating funds that were not legally available. The violation was discovered by ICE in 2016, when a professional staff member on the Senate Committee on Appropriations Subcommittee on Homeland Security requested an inventory of the materials and contract work used in the Director's suite renovation. DHS reported that the violation occurred due to a lack of awareness of the restriction by the responsible employee.

Remedial Action Taken: To prevent a recurrence of this type of violation, ICE is ensuring appointment of certifying officials, as well as improving internal controls with regard to restrictions in appropriations language and the Congressional notification process. DHS also reported that funds certifiers are required to review relevant transactions, and that ICE implemented a process to appoint certifying officials in a manner that ensures that certifying officials understand the roles assigned to them. DHS reported that certifying officials will receive additional guidance in their Budget Formulation Handbook regarding current appropriations language and applicable restrictions. According to DHS, an employee serving as the project manager and funds certifier was responsible for the violation. No disciplinary actions against the responsible employee were taken. DHS determined that the responsible employee did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-14

Agency No.: None Reported

Date Reported to GAO: June 11, 2021

Agency: Department of Homeland Security (DHS)

Date(s) of Violation(s): Fiscal Year (FY) 2019

Account(s): Citizenship and Assimilation Grant Program

Amount Reported: \$9,947,152

Description: DHS reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1517(a), when it incurred obligations in excess of its apportionment.

According to DHS, grants were awarded and obligated by the USCIS prior to receiving an apportionment for the Federal Assistance account in FY 2019. DHS reported that USCIS requested an apportionment upon determination that there was not an apportionment covering the grants, but the request was submitted too late to be processed by the end of the fiscal year. As a result, DHS reported that grants were awarded without an approved apportionment in place. DHS determined that the violation occurred due to turnover in key personnel responsible for the apportionment process and failure in internal controls.

Remedial Action Taken: To prevent a recurrence of this type of violation, DHS reported that it improved standard operating procedures and internal controls, and implemented training for key personnel in the apportionment process. According to DHS, USCIS implemented steps to validate an apportionment before approving funding and added monthly reconciliations. DHS determined that the Acting Chief of the Budget and Planning Division in USCIS was the responsible individual. No disciplinary action against the responsible employee was taken. DHS determined that the responsible party did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-15

Agency No.: None Reported	Date Reported to GAO: June 11, 2021
Agency: Department of Homeland Security (DHS)	Date(s) of Violation(s): Fiscal Year (FY) 2018
Account(s): Operations and Support, United States Coast Guard (USCG)	Amount Reported: \$177,608.41

Description: DHS reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when DHS obligated funds for contract modifications during a lapse in appropriations.

According to DHS, a contracting officer, an excepted employee, awarded five contract modifications without available appropriations during a lapse in appropriations. The violations were discovered by the contracting officer's supervisor during a system review. DHS determined that these violations occurred due to a lapse in judgment by the contracting officer. Upon notification of the violations, the contracting officer immediately cancelled the contract modifications. The modifications were cancelled prior to any contract performance, such that USCG was not liable for any modification costs.

Remedial Action Taken: To prevent a recurrence of this type of violation, USCG has released notifications on acquisition guidance when a lapse in appropriations occurs, directing contracting officers and contracting specialists to adhere to applicable restrictions. DHS reported that the responsible employee was the contracting officer. No disciplinary action against the responsible employee was taken. The contracting officer was required to attend additional acquisition training and a Principles of Federal Appropriations Law course. DHS determined that the responsible party did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-16

Agency No.: None Reported

Date Reported to GAO: June 11, 2021

Agency: Department of Homeland Security (DHS)

Date(s) of Violation(s): Fiscal Years (FY) 1974-2019

Account(s): Operations and Support, United States Coast Guard (USCG)

Amount Reported: None Reported

Description: DHS reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it entered into lease agreements with uncapped liabilities.

According to DHS, between FYs 1974 and 2019, it had leases with escalation and/or indemnification clauses without limitations. DHS reported that these leases created a potentially unlimited liability on behalf of the federal government. DHS reported that these violations were discovered after it began reviewing leases for potential ADA violations in response to GAO's conclusions in B-328450, Mar. 6, 2018. DHS determined that the violation occurred due to lack of guidance regarding uncapped liabilities in lease agreements.

Remedial Action Taken: To prevent a recurrence of this type of violation, DHS updated policy and procedures to include information regarding uncapped liabilities and developed training for warranted real property contracting specialists. Additionally, according to DHS, it renegotiated terms for the leases at issue. DHS determined that the Assistant Commandant for Engineering was responsible for the violations. No disciplinary actions for this matter were taken. DHS determined that the responsible party did not willfully or knowingly violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2021

GAO No.: GAO-ADA-21-17

Agency No.: None Reported

Date Reported to GAO: September 30, 2021

Agency: Commodity Futures Trading Commission (CFTC)

Date(s) of Violation(s): Fiscal Years (FYs) 1995-2015, 2014-2017

Account(s): Expenses

Amount Reported: \$88,314.06

Description: CFTC reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341, during FYs 1995-2015, when it entered into leasing contracts with open-ended liabilities. Additionally, CFTC reported that it violated the ADA, 31 U.S.C. § 1341, when it paid senior political officials above limits based on their political appointee employment status with CFTC.

According to CFTC, it entered into contracts to lease real property for office space in four locations. On March 6, 2018, GAO issued B-328450, finding that CFTC had agreed to uncontrolled and unlimited liabilities with definite appropriations in these leasing contracts in violation of the ADA. In addition, CFTC reported that it improperly paid five political appointees at rates inconsistent with a pay freeze set forth in the Consolidated Appropriations Acts for FYs 2014-2017. CFTC reports that it violated the ADA because it did not have the authority to increase the pay for these individuals due to the government-wide provisions prohibiting pay rate increases for certain senior level political officials in each applicable appropriations act.

Remedial Action Taken: To prevent a recurrence of these types of violations, CFTC reported that it has implemented controls to ensure proper legal and financial oversight of future contracts. Additionally, CFTC signed a memorandum of understanding with the General Services Administration to procure future leases on behalf of CFTC. In regard to overpayment, CFTC reported that it created controls to ensure that political employee position types are separated from other positions in the human resources and payroll systems. Additionally, each of the employees who were overpaid signed requests to waive the debt and CFTC reports that its Chairman approved the waivers. CFTC determined that the violations occurred as result of systemic weaknesses, and that there was no willful or knowing intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.



THE CHAIRMAN

GAO-ADA-21-01

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

October 7, 2020

Gene L. Dodaro
Comptroller General of the United States
U.S. General Accounting Office
Room 7165
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act, as required by 31 U.S.C. 1351.

A violation of 31 U.S.C. 1342 occurred in the 2019 Salaries and Expenses, Consumer Product Safety Commission Treasury account (061-2019-2019-0100-000) when an employee, while in a furlough status, worked during the partial government shutdown that occurred December 2018 through January 2019. This resulted in the government's receipt of voluntary services. A furloughed employee was responsible for the violation.

An employee who is a Chemist assigned to the Division of Chemistry in the Directorate of Laboratory Sciences was furloughed on December 26, 2018, as part of an orderly shutdown from a lapse in appropriations. The furlough notice, which the employee signed, instructed the employee not to work on official business at all, even as an unpaid volunteer. Nonetheless, the employee accessed his official CPSC email account on five separate occasions, December 28, 2018; and January 3, 5, 7, and 24, 2019, sending a total of six emails from his CPSC email address. The employee acknowledged receiving and signing the furlough notice instructing him not to work during the furlough. Such actions by the employee resulted in a violation of the voluntary services prohibition of the Antideficiency Act.

The agency carefully followed all applicable laws and guidance regarding shutdown furloughs, and the employee acknowledges receiving the notice not to conduct work. Going forward, the agency's shutdown plan and communications will continue to emphasize that employees who work in violation of the voluntary services prohibition in 31 U.S.C. 1342 are subject to the penalties in the Antideficiency Act.

CPSC received an unqualified audit opinion on our financial statement audit for fiscal year 2018. In 2014, the Office of Management and Budget reviewed and approved the CPSC's Administrative Control of Funds in accordance with OMB Circular A-11, Section 150, Administrative Control of Funds.

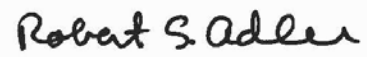
The responsible employee received a three-day suspension and was required to receive training on the Antideficiency Act and its application to government furloughs. Agency management

Page 2

determined that the employee had no knowing and willful intent to violate the Antideficiency Act.

Identical reports also are being submitted to the President of the Senate and the Speaker of the House of Representatives.

Sincerely,

A handwritten signature in black ink that reads "Robert S. Adler". The signature is written in a cursive style with a clear, legible font.

Robert Adler
Acting Chairman



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250

October 7, 2020

The Honorable Gene L. Dodaro
Comptroller General of the United States
United States Government Accountability Office
441 G Street, NW.
Washington, D.C. 20548

Dear Comptroller Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by Title 31 U.S. Code § 1351.

A violation of Title 31 U.S. Code § 1342 occurred in account 012–2019–2019–1400–000, totaling \$11.03 from the Salaries and Expense account for fiscal year 2019. A violation of Title 31 U.S. Code § 1342 occurred at the Agricultural Research Service (ARS). The ADA violation occurred on December 31, 2018, when Mr. James Porter, Contracting Specialist, uploaded a corrective action memorandum that was requested by the Acquisition and Property Division into the Integrated Acquisition System (IAS) during the furlough period in fiscal year 2019. The furlough period began December 22, 2018 and ended January 25, 2019.

Mr. Porter was previously counseled by his supervisor on the importance of contract clause uploading. An email was sent on December 21, 2018, indicating that Mr. Porter must upload a corrective action memorandum to a contract folder by January 1, 2019. Mr. Porter was in the process of reviewing contracts and preparing shutdown notices on December 21, 2018. Mr. Porter uploaded the requested correction action memorandum into the IAS on December 31, 2018, because of the contents of the email sent on December 21, 2018. The employee's salary and benefits for the time spent uploading the document was \$11.03. The service benefited ARS, and ARS accepted the voluntary service in violation of Title 31 U.S. Code § 1342.

To prevent a reoccurrence of this type of violation, ARS has a process of disseminating information to employees with regards to frequently asked questions on emergency/shutdown furlough procedures; furlough notices; and the Ethics Q&A – During a Lapse in Appropriations.

The adequacy of the system of administrative control of funds has been approved by the Office of Management and Budget.

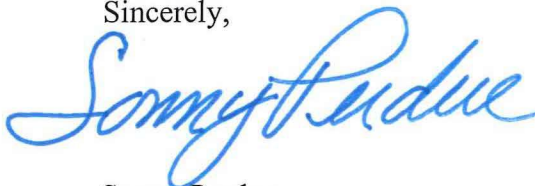
Mr. Porter has been counseled regarding the prohibition against working as a furloughed employee during a furlough period.

ARS has determined that the responsible party had no knowing and willful intent to violate the ADA.

The Honorable Gene L. Dodaro
Page 2

Identical reports are being submitted to the President, the President of the Senate, and the Speaker of the House of Representatives. The Director of the Office of Management and Budget has also been informed of the ADA violation.

Sincerely,

A handwritten signature in blue ink that reads "Sonny Perdue". The signature is written in a cursive, flowing style.

Sonny Perdue
Secretary



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

November 5, 2020

The Honorable Gene Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act, as required by section 1351 of title 31, United States Code (U.S.C.), pursuant to 31 U.S.C section 1341(a). The violation occurred in the Department of Veterans Affairs (VA) Medical Services account (36-0160) in the amount of \$703,735,515 for fiscal year (FY) 2017, and \$387,342,832 for FY 2018, for obligations related to care of Veterans at State Veterans Homes.

Prior to FY 2017, VA requested funding for State Veterans Homes in the Medical Services appropriation account. In FY 2017, the President's Budget proposed the creation of a new appropriation account (i.e., Medical Community Care) and requested funding for State Veterans Homes in the new account. VA charged expenses for this program in the Medical Community Care account in FY 2017, FY 2018 and FY 2019. However, in each of these fiscal years, the Medical Services appropriation retained specific language for State Veterans Homes. If a specific appropriation exists for a particular item (in this case, State Veterans Homes), then that appropriation must be used and it is improper to charge the more general appropriation.

VA's Office of General Counsel advised the Veterans Health Administration (VHA) to reverse the obligations recorded in the Medical Community Care account and record them in the Medical Services account to comply with the Purpose Statute, 31 U.S.C. § 1301(a), and the appropriations acts for the periods in question. Insufficient funds remain in the Medical Services account to properly record the State Veterans Homes obligations in FY 2017 and FY 2018.

Correcting this error would create significant administrative and operational burden and negatively impact Veterans' care by reducing current and prior-year funding available in the Medical Services account. The FY 2021 President's Budget includes a provision that will allow the erroneously obligated funds to remain in Medical Community Care for Veteran care (see FY 2021 Appendix, page 1089, section 229):

SEC. 229. Obligations and expenditures applicable to the "Medical Services" account in fiscal years 2017 through 2019 for aid to State homes (as authorized by section 1741 of title 38, United States Code) shall remain in the "Medical Community Care" account for such fiscal years (Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2020).

Page 2.

The Honorable Gene Dodaro

VA respectfully requests that Congress include this provision in the FY 2021 appropriation for VA. Following the identification of this deficiency, VA undertook a close review of the statutory language in the Medical Services appropriation to ensure that no additional unintentional oversights remained following the separation of the Medical Community Care appropriation from this appropriation. In addition, VHA is improving the Congressional Justification materials for the two appropriation accounts to make explicit how programs are budgeted and should be funded going forward.

VA received an unmodified (“clean”) audit opinion on the Department’s consolidated financial statements in FY 2017 and FY 2018. VA has determined that the responsible parties had no knowing nor willful intent to violate the Antideficiency Act.

Identical letters are being submitted to the President, the President of the Senate, and the Speaker of the House.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. Wilkie". The signature is written in a cursive, slightly slanted style.

Robert L. Wilkie



CHIEF FINANCIAL OFFICER

January 14, 2020

The Honorable Gene L. Dodaro
Comptroller General of the United States
441 G St. NW
Washington, DC 20548

Dear Comptroller General:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. 1351.¹

A violation of 31 U.S.C. 1341(a) occurred in the Department of Housing and Urban Development's salaries and expenses (S&E) accounts Executive Offices (86-14-0332), Administrative Support Offices (86-09-0335, 86-10-0335, 86-12-0335, 86-14-0335, 86-18-0335), and Program Offices (86-17-0340, 86-18-0338) in the total amount of \$158,850.74. The violations occurred during fiscal years 2009, 2010, 2012, 2014, 2017, and 2018. The Department has determined that these violations occurred due to systemic failures, and, as a result, no responsible officials have been identified.

On a number of occasions during the fiscal years identified above, staff obligated and expended funds for the offices, office suites, conference rooms, or other spaces assigned to certain presidentially appointed officials that were covered by then-applicable advance Congressional notification requirements.² No official or employee provided the required advance notification before making such obligations and expenditures. The failures to notify occurred due to a lack of written policies and procedures with regard to the notification requirement in question.

The HUD Office of Inspector General conducted an investigation and issued a report with respect to the purchase of furniture for the Secretary's dining room that found no evidence of misconduct and made no recommendations to the Department because of the efforts described below and confirmation of HUD's intent to report an ADA violation.³ The report also noted that the purchase contract was cancelled and no cancellation fees were assessed.

¹ This letter is signed by HUD's Chief Financial Officer pursuant to the Department of Housing and Urban Development's Fiscal Year 2003 Appropriations Act (Salaries and Expenses (S&E) Account; Public Law 108-7).

² This provision can be found at section 710 of the Financial Services and General Government Appropriations Act, 2018, Pub. L. 115-141, div. E, title VII (March 23, 2018). Identical or nearly identical notification provisions were enacted in the annual government-wide General Provisions in each of the fiscal years covered within this report.

³ HUD OIG, *Investigation into Alleged Violation of Federal Appropriations Law by the Office of the Secretary*, Report Number: 2018SI006075I (Washington, D.C.: Sept. 2019).

The Government Accountability Office likewise conducted a review of this subject matter and issued a decision concurring with HUD's determination that a violation of the Antideficiency Act should be reported.⁴

The Department completed a comprehensive revision of its *Administrative Control of Funds Policies and Procedures Handbook* (Handbook) in 2017, in an effort to strategically improve the Department's documentation of key funds control policies and internal controls and address prior funds control weaknesses as well as Office of the Inspector General audit findings. This Handbook was reviewed and approved by the Office of Management and Budget (OMB). At the same time, in consultation with OMB, the Department split out and developed and implemented a separate policies and procedures document for S&E funding.

To prevent this issue from recurring, the Department has instituted a mandatory review process under which its Office of Administration and Office of the Chief Financial Officer must review and pre-approve all proposed purchases that may fall within the jurisdiction of the government-wide limitation to furnish, redecorate, purchase furniture for, or make improvements for the office suites of presidentially appointed officials. The Office of Administration is developing a standard operating procedure to further and more formally document this mandatory review and approval process for use of S&E funding for these covered purchases.

The Department has determined, due to the lack of sufficient written policies and procedures, that this error was systemic in nature and there was no knowing and willful intent to violate the Antideficiency Act.

Identical reports are being sent to the President (through the Director of the Office of Management and Budget), the Speaker of the House of Representatives, and the President of the Senate.

Sincerely,



Irving L. Dennis, Chief Financial Officer
Department of Housing and Urban Development

⁴ *U.S. Department of Housing and Urban Development—Compliance with Statutory Notification Requirement and the Antideficiency Act*, B-329955, May 16, 2019.



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

JAN 19 2021

The Honorable Gene Dodaro
Comptroller General of the United States
Washington, DC 20548

Dear Mr. Dodaro:

This letter reports violations of the Antideficiency Act (ADA), contained in Navy case numbers 19-01/02 (enclosed), as required by 31 U.S.C. § 1351. The violations involved fiscal years (FY) 2009 through 2013 Operations and Maintenance, Marine Corps (OMMC), Other Procurement, Marine Corps (PMC), and similar funds transferred from the Joint Improvised Explosive Device Defeat Organization funds. The violations totaled \$70,133,853.19 and occurred at eight different military installations. As the command responsible for funding the construction of Military Operations on Urban Terrain (MOUT) sites, the Marine Corps Systems Command (MCSC) failure to provide proper oversight allowed the Program Manager for Training Systems (PM TRASYS) to improperly obligate and expend OMMC and PMC funds for the acquisition of MOUT ground training systems designed to represent different types of cities and villages found primarily in the United States Central Command Area of Responsibility. Performing military construction at these MOUT sites required, in general, either Specified Military Construction (MILCON), Unspecified Minor Military Construction (UMMC), or Operation and Maintenance (O&M) funds. In sum, no MILCON and UMMC funds were available then and currently for projects that were required to be funded by these funds, and O&M funds are not currently available for other minor construction projects. Instead, the MILCON and UMMC military construction projects were impermissibly funded with OMMC and PMC, and two minor construction projects were funded with PMC. Under these circumstances violations of the ADA occurred. Additional violations include incorrect use of OMMC funds for movable equipment associated with the construction projects. Consequently, the MCSC incurred uncorrectable violations of title 31 U.S.C. § 1341(a)(1)(A).¹ and 31 U.S.C. § 1517(a).

The MCSC awarded an Indefinite Delivery Indefinite Quantity contract with multiple delivery orders (DOs) to construct a series of urban terrain environments designed to provide

¹ Although the circumstances described herein constitute violations of 10 U.S.C. § 2802 and 10 U.S.C. § 2805(a)(1) and (c), the Department of Justice (DOJ) Office of Legal Counsel (OLC) has concluded that “a violation of a statutory restriction on spending does not violate the ADA where the restriction is not ‘in an appropriation.’” See also: DOJ OLC opinion, “Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences,” April 5, 2007 (http://www.justice.gov/sites/default/files/olc/opinions/2007/04/31/epa-light-refreshments13_0.pdf); and DOJ OLC letter, “Re: Whether the Federal Aviation Administration’s Finalizing and Implementing of Slot Auction Regulations Would Violate the Anti-Deficiency Act,” October 7, 2008. However, given the Government Accountability Office’s views to the contrary, consistent with section 145.8 of the Office of Management and Budget Circular A-11, Department of Defense is submitting this report in its entirety to the President, the Congress, and the Comptroller General of the United States.



enhanced combat training on MOUT. Seventeen of the 34 DOs awarded under this contract have been identified as violations of the ADA. The MCSC established the PM TRASYS in order to accomplish its mission related to Training Systems and Equipment. The PM TRASYS developed an acquisition strategy that incorrectly classified these MOUT training systems as equipment (personal property), and not as buildings, facilities, structures or improvements to land (real property). The MOUT structures, whether they constituted moveable or real property, required site preparation for placement. This included ground leveling, concrete pads, gravel paving, concrete paved footers for stability, and new electrical utilities and street lighting. The site preparation work constituted military construction as it improved the land. Based on the cost of the buildings that were real property and the site preparation, certain construction funds were required to pay these costs.

The MCSC constructed approximately 17 MOUT facilities at various installations. Ten projects had cost over \$2 million each and were funded with OMMC and PMC funds, or a combination of both. As each project exceeded \$2 million, it became a major MILCON project and could not be funded with OMMC or PMC funds. Under the provisions of Title 10, military departments can only carry out major MILCON projects that are specifically authorized by Congress (10 U.S.C. § 2802). Once this occurs, the project must be funded from an appropriation available to pay for the cost of the project. In general, MILCON appropriations are made available for specified major MILCON projects authorized by current law, specifically those projects approved by Congress in the authorization acts for the same year as the appropriations acts. These ten construction projects were not authorized by Congress and funds were not appropriated. Therefore, obligations incurred for these projects were not authorized and no MILCON funds were available then and currently for account corrective action. The ADA was violated as obligations were made in excess of appropriations.

In addition, there were five minor military construction projects that should have been funded with UMMC Funds. Each one exceeded the maximum limit of \$750 thousand below which permitted the use of OMMC funds, but did not exceed the specified MILCON threshold of \$2 million (10 U.S.C. 2805(a)(1)). Unlike major MILCON projects, these minor projects did not require authorization by Congress. As the amount of UMMC funds that are appropriated is limited, the USMC allotted insufficient funds to UMMC accounts to cover the costs of these projects. The USMC could not find sufficient funds from UMMC accounts to make appropriate account corrections. Accordingly, violations of 31 U.S.C. § 1517 resulted in ADA violations.

One construction project costing under \$750 thousand was conjunctively funded with OMMC and PMC funds. 10 U.S.C. § 2805(c) provides statutory authority to carry out minor military construction projects not otherwise authorized by law. At the time of these violations the DoD could spend up to \$750 thousand from OMMC appropriations to carry out these projects. PMC funds could not be used for minor construction projects, and therefore the project should have been entirely funded with OMMC. In another construction project under

\$750 thousand, PMC funds were used exclusively to pay for the construction costs when they should have been funded with OMMC. There are no sufficient OMMC funds that could have been used to make account correction.

Three projects used containers to build the MOUT structures, as personnel property, and were properly funded with PMC funds. However, additional items were acquired that were integral to the items already purchased with PMC funds, but instead they were funded with OMMC. These items should have been also funded with PMC funds. As PMC funds were not available to make account corrections, violations of 31 U.S.C. § 1517 resulted in ADA violations.

Two former MCSC Commanding Officers (CO) were found responsible for causing the ADA violations. The two named responsible officials have retired from the United States Marine Corps. The Department of the Navy (DON), after reviewing the specific facts and circumstances of these ADA violations and because the actions occurred more than ten years ago, decided not to pursue discipline for either responsible official. The report concludes that there was not willful or knowing intent on the part of the responsible individuals to violate the ADA.

To prevent a recurrence of this type of violation, the DON has updated and clarified policy surrounding relocatable buildings, training systems, and site work; performed contracts compliance review; and clarified that MCSC is not authorized to write contracts for construction-like work or work subject to the Davis-Bacon Act of 1931. MCSC also implemented a series of program management, contracting, engineering, and financial management corrective actions related to projects that may have a potential for any type of construction.

Identical reports are also being submitted to the President (through the Director of the Office of Management and Budget), President of the Senate, and Speaker of the House of Representatives.

Sincerely,



Thomas W. Harker
Performing the Duties of the Under Secretary of
Defense (Comptroller)/Chief Financial Officer

Enclosure:
As stated



GAO-ADA-21-06

Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

February 4, 2021

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington DC 20548

Dear Mr. Dodaro:

This letter is to report violations of the Antideficiency Act (ADA) that occurred in 2004 and 2005, as required by 31 U.S.C. 1351.

Violations of 31 U.S.C. 1341(a) occurred in account 16-4204 /X, the Pension Benefit Guaranty Corporation Fund, in the amount of \$319,501,649.00. The first violation occurred on August 9, 2004, when the Pension Benefit Guaranty Corporation (PBGC or Corporation) entered into a multiyear real property lease for headquarters space at 1200 K Street, NW, Washington DC 20005. The second violation occurred on September 30, 2005, when the Pension Benefit Guaranty Corporation entered into a multiyear property lease for headquarters space at 1275 K Street, NW, Washington DC 20005.

On August 9, 2004, PBGC entered into a multiyear lease for 385,247 ANSI/BOMA rentable square feet of space at 1200 K Street for a term of approximately fourteen years and four months. On September 30, 2005, PBGC entered into a multiyear lease for 51,024 ANSI/BOMA rentable square feet¹ of space at 1275 K Street for a term of approximately thirteen years and three months. Upon executing these multiyear leases, PBGC did not record an obligation equal to its total liability for the leases in accordance with 31 U.S.C. 1501(a)(1). Instead, the Corporation funded these multiyear leases on an annual basis. The Corporation attempted to make account adjustments to comply with 31 U.S.C. 1501(a)(1) but did not have sufficient funds in fiscal years 2004 and 2005 to fund the total liability for the two leases, which resulted in two violations of 31 U.S.C. 1341(a).

The Corporation has taken actions to bring its leasing program into compliance with 31 U.S.C. 1501(a)(1) and to prevent additional violations of 31 U.S.C. 1341(a). In 2015, the Corporation asked the General Services Administration to procure and award a new headquarters lease on behalf of the agency. GSA awarded the Corporation's new headquarters lease in December of 2017. The Corporation also renegotiated new, short term, annual leases for its headquarters

¹ PBGC increased its square footage at 1275 K Street to 69,991 during its final ten-year term.

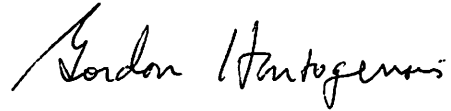
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locations at 1200 K Street and 1275 K Street. The Corporation also revised its directive governing its system of administrative control of funds and has submitted the directive for OMB review and approval.

The Corporation will not impose administrative discipline or further action with respect to the Contracting Officers responsible for these violations. The Corporation has determined that the responsible parties had no knowing and willful intent to violate the Antideficiency Act.

An identical report has been submitted to the President of the United States via the Office of Management and Budget, and identical reports are also being submitted to the President of the Senate and the Speaker of the House of Representatives.

Respectfully,

A handwritten signature in cursive script that reads "Gordon Hartogenesis". The signature is written in black ink and is positioned above the printed name and title.

Gordon Hartogenesis
Director



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

The Honorable Gene Dodaro
Comptroller General of the United States
Washington, DC 20548

FEB 19 2021

Dear Mr. Dodaro:

This letter reports a violation of the Antideficiency Act (ADA), contained in Defense Contract Management Agency (DCMA) case number 20-01 (enclosed), as required by 31 U.S.C. § 1517(b). The violation involved fiscal year (FY) 2015 Operation and Maintenance (O&M), funds. The violation totaled \$1,248,155.63 and occurred at the DCMA Headquarters, Fort Lee, Virginia. The DCMA improperly obligated and expended O&M funds to develop the Earned Value Analysis System (EVAS) as a replacement for the manual process of DCMA's earned value management tasks. Given the significant development, integration, and testing, DCMA's use of O&M funding was improper and Research, Development, Test and Evaluation (RDT&E) funds should have been used. The cost of the development work on the EVAS exceeded the amount of FY 2015 RDT&E funds that were made available to DCMA in a formal subdivision of funds. Exceeding such amount resulted in an uncorrectable ADA violation of 31 U.S.C. § 1517.

The DCMA improperly used O&M funds for the EVAS effort, violating the Purpose Statute. Use of O&M funds for EVAS was inappropriate due to the significant software development, testing, and evaluation requirements that were defined in the Performance Work Statement. The Chief Information Officer (CIO) controlled all program dollars, funds, and reporting during EVAS budget formulation and execution. The CIO programmed and managed funds to ensure they were available when needed, and there was no visibility outside of the CIO's office. Consequently, the lack of oversight over Information Technology (IT) finance and budget; lack of communication and coordination between finance, IT, and contracting; and non-recognition of the appropriate funds for EVAS development led to an ADA violation.

The CIO was found responsible for causing the ADA violation. The CIO is no longer a U.S. Government employee and discipline was not pursued. The violation contained no willful or knowing intent on the part of the responsible individual to violate the ADA.

To prevent a recurrence of this type of violation, the DCMA conducted a comprehensive realignment of duties and responsibilities of the budget formulation and execution processes that are used across the agency. DCMA also issued a revised policy to affirm that the agency leadership has validated, prioritized, and resourced requirements that were vetted and monitored through the appropriate corporate governance process and appropriately programmed through the Program Budget Review procedure. The new policy has also centralized the funds execution process and moved the responsibility to the Headquarters Finance and Business Operations/Comptroller Directorate.



Identical reports are being submitted to the President (through the Director of the Office of Management and Budget), President of the Senate, and Speaker of the House of Representatives.

Sincerely,

A handwritten signature in blue ink that reads "D. A. Glenn". The signature is written in a cursive style with a large initial "D" and "G".

Douglas A. Glenn
Performing the Duties of the Under Secretary of
Defense (Comptroller)/Chief Financial Officer

Enclosure:
As stated



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

The Honorable Gene Dodaro
Comptroller General of the United States
Washington, DC 20548

MAR 17 2021

Dear Mr. Dodaro:

This letter reports violations of the Antideficiency Act (ADA), contained in Navy case number 19-03 (enclosed), as required by 31 U.S.C. § 1351. The violations involved fiscal years (FYs) 2013 through 2018 Operation and Maintenance, Navy (O&MN), funds. The violations totaled \$25,966,667.79 and occurred at the Naval Sea Systems Command, Southwest Regional Maintenance Center (SWRMC), San Diego, California. The SWRMC improperly obligated and expended O&MN funds to convert a large covered lighter barge into a Berthing and Messing barge. The specific Shipbuilding and Conversion, Navy (SCN) funds were required for the conversion. As O&MN funds were used for the barge conversion work in lieu of SCN funds, the Purpose Statute (31 U.S.C. § 1301) was violated for each obligation made during that time period. The Navy did not have SCN funds available to cure the violations. As a result, the Navy violated the ADA (31 U.S.C. § 1341(a)(1)(A)) multiple times.

The Special Programs–Berthing and Messing Program Manager (PM) improperly characterized the conversion of the large covered lighter barge as modernization through maintenance and repair work, and used O&MN funds to finance the work. In addition, the work was improperly split and proceeded over the course several years when excess O&MN funds became available.

Ship conversion is funded from annual procurement appropriations under the heading “SCN.” The appropriation states the funds are for expenses necessary for the construction, acquisition, and conversion of vessels as authorized by law. While the appropriation names specific ships for construction, it also makes SCN funds available for conversion of service craft. The Navy considers barges to be service craft. As the contracted conversion work began in FY 2013, and the work was non-severable, FY 2013 SCN funds should have been used to fund the effort. However, no SCN funds for service craft were appropriated in FY 2013.

The PM was found responsible for causing the ADA violations. The Director, Fleet Maintenance for the Commander, U.S. Pacific Fleet (COMPACFLT) issued the PM a Letter of Caution. The violations contained no willful or knowing intent on the part of the responsible individual to violate the ADA.



To prevent a recurrence of this type of violation, the SWRMC has instituted organizational alignment and process changes to strengthen the programmatic, contracting and funding review associated with ship modernization requirements. The COMPACFLT has established a process for review of barge work across all stakeholders and required staff. The staff effort will involve Fleet Counsel, Fleet Comptroller, and the barge experts in the Naval Sea Systems Command. In addition, COMPACFLT will implement a formal qualification and continuing training program for all fleet maintenance program managers.

Identical reports are being submitted to the President (through the Director of the Office of Management and Budget), President of the Senate, and Speaker of the House of Representatives.

Sincerely,

A handwritten signature in black ink that reads "D. A. Glenn". The signature is written in a cursive style with a large initial "D" and "G".

Douglas A. Glenn
Performing the Duties of the Under Secretary of
Defense (Comptroller)/Chief Financial Officer

Enclosure:
As stated



Office of
General
Counsel

GAO-ADA-21-09

May 6, 2021

Honorable Gene L. Dodaro
Comptroller General
Government Accountability Office
Washington, DC 20548

Re: B-331091, *National Archives and Records Administration-Publication of Federal Register during the Fiscal Year 2019 Lapse in Appropriations* (July 16, 2020)

Dear Mr. Dodaro:

I am providing this report to explain the National Archives and Records Administration's (NARA) position regarding the above-captioned opinion issued by the Government Accountability Office (GAO) on July 16, 2020.

The opinion found that NARA committed several Antideficiency Act (ADA) violations during Fiscal Year 2019. For the reasons set forth in the enclosed letter to Tom Armstrong, GAO's General Counsel, dated January 19, 2021, NARA disagrees that any ADA violations occurred.

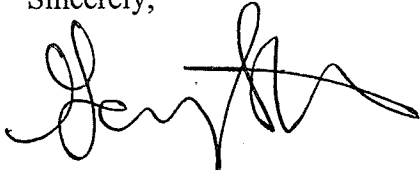
GAO concluded that NARA violated the Antideficiency Act when the Office of the Federal Register (OFR), a component of NARA, incurred obligations in the absence of appropriations during the partial Government shutdown that occurred between December 22, 2018, and January 25, 2019. GAO found ADA violations arising from OFR's publication of three temporary rules for the National Oceanic and Atmospheric Administration; a final rule for the Department of Labor; and OFR's processing and scheduling of a notice for the Centers for Disease Control and Prevention. GAO's conclusion rested on the premise that no legal exception to the ADA permitted NARA to incur such obligations.

It is NARA's view that the OFR activities of concern to GAO during the 2019 partial shutdown did not violate the ADA because the activities were authorized by the necessary implication exception. The Department of Justice's (DOJ) Office of Legal Counsel (OLC) articulated this exception to the ADA in opinions issued in 1981 and 1995. 43 U.S. Op. Atty. Gen. 293 (Jan. 16, 1981); Opinion of the Office of Legal Counsel, Department of Justice, *Government Operations in the Event of a Lapse in Appropriations*, 1995 WL 17216091 (Aug. 16, 1995); *Effect of Appropriations for Other Agencies and Branches on the Authority to Continue Department of Justice Functions During the Lapse in the Department's Appropriations*, 19 Op. O.L.C. 337 (Dec. 13, 1995). The opinions address the specific scenario of a partial Government shutdown and the enclosed letter provides more detail regarding our conclusions.

NARA initially decided not to file this report, as the enclosed letter states. However, GAO encourages agencies to submit reports even when an agency and GAO disagree. We are submitting this letter in support of our joint commitment to government transparency and accountability to the President, Congress, and the American people.

NARA is also submitting copies of this report to the President of the Senate, the Speaker of the House of Representatives, and the Acting Director of the Office of Management and Budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary M. Stern". The signature is fluid and cursive, with a prominent horizontal stroke across the middle.

GARY M. STERN
General Counsel

Enclosure



GAO-ADA-21-10

The Administrator

May 27, 2021

The Honorable Gene Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Dodaro:

Please see attached U.S. General Services Administration Anti-Deficiency Act report from August 2019.

If you have any questions and concerns, please contact me or Ms. Gianelle E. Rivera, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501-0563.

Sincerely,

A handwritten signature in blue ink, appearing to read "KK".

Katy Kale
Acting Administrator

Enclosure



Report of Violation of Administrative Funds Control Procedures and Antideficiency Act Violation

The U.S. General Services Administration's (GSA) Office of the Chief Financial Officer (OCFO) is submitting this report of a violation of the Antideficiency Act and of GSA's Administrative Funds Control procedures in accordance with GSA Directive 4200.2B ADM, "GSA System for the Administrative Control of Funds."

The Office of Management and Budget (OMB), through a process termed "apportionment," places limitations on, among other things, the overall level of customer orders placed with GSA's Acquisition Services Fund (ASF). In fiscal year (FY) 2017, GSA accepted customer orders that exceeded the limitation by \$690 million. Although GSA customers properly funded the orders, the overage violated GSA's Directive 4200.2B ADM and the Antideficiency Act (ADA).¹ This report sets forth the circumstances surrounding this violation.

Overview

The ASF was established in 2007² to procure goods and services on behalf of GSA's programs and customer agencies, with the goal of leveraging the Federal Government's economies of scale and of streamlining and centralizing the procurement process. To this end, the majority of ASF obligations are related to "flow-through" activity, which consists of customer orders for which GSA has entered into reimbursable agreements with agencies to procure goods and services for those agencies.

For these "flow-through" obligations, agencies obligate their own funds and place orders with GSA. Those agency obligations to GSA must fit within each customer agency's own appropriations and apportionments before those orders are placed with GSA. GSA then accepts the order and the customer agency's funding, enabling the customer agency to enter into contracts with outside vendors to fulfill those orders.

In FY 2017, GSA recorded ASF obligations of \$13,626,210,788, including obligations related to "flow-through" activity in the amount of \$12,366,036,970. These amounts exceeded the total ASF apportioned budget authority of \$13,374,733,572 and the "flow-through" apportioned budget authority of \$11,676,650,072.

¹ 31 U.S.C. § 1341

² 40 U.S.C. § 321

The FY 2017 results are summarized below.

	Pegasys Financial System		
	Apportioned	Actual	Variance
Category A (ASF Overhead)	1,565,000,000	1,143,422,950	421,577,050
Category B (ASF Flow-Thru)	11,676,650,072	12,366,036,970	-689,386,898
Category B (IAE Obligations)	133,083,500	116,750,868	16,332,632
Total ASF	13,374,733,572	13,626,210,788	-251,477,216

GSA processed more than \$2.3 billion in flow-through obligations in September of FY 2017, which is \$550 million more than was recorded in September of FY 2016. This was higher than the anticipated customer orders. The ASF apportionment, however, did not account for this growth potential, and therefore the ASF flow-through apportionment limitation was exceeded by \$689.4 million. The overall ASF apportionment limitation was exceeded by \$251.5 million. Although the ASF had sufficient funds, exceeding the apportionment limitation violated GSA's Administrative Funds Controls Procedures and the ADA.

1. All pertinent facts of the violation, including the cause and a statement by the responsible officer(s) or associate(s) concerning any extenuating circumstances:

A. What controls were in place under GSA's system of internal controls to prevent the violation?

GSA's information technology systems did not have sufficient internal controls in place to prevent the violation. Pegasys, GSA's financial management system, does have controls to prevent the interface—i.e., the recording—of obligations in excess of OMB apportioned authority in certain circumstances. However, GSA's acquisitions systems do not have controls to prevent GSA from accepting customer orders and placing orders with vendors in excess of the OMB-apportioned reimbursable obligation authority in Pegasys. Therefore, by the time, GSA's Federal Acquisition Service's (FAS) acquisitions systems were attempting to interface those obligations with Pegasys, the total GSA reimbursable obligations (i.e., the sum of all reimbursable obligations recorded to date in Pegasys plus the end-of-year customer orders in the FAS acquisitions feeder systems) had already exceeded the OMB obligation limitation.

In other words, the obligation limitation had already been violated, and, at year-end, it was a matter of recording those valid reimbursable obligations in Pegasys to accurately report the obligations incurred in the ASF. Compounding this was the fact that customer orders came from multiple FAS systems and lines of business. Some acquisitions

system obligations did not interface with Pegasys until the end of the month, giving financial managers minimal time to accommodate the obligations within limitations.³

In terms of GSA internal control processes, ADM 4200.2B (section 6.c) states:

Reimbursable work is constantly monitored to make sure that obligations and expenditures do not exceed the lesser of amounts allowed or available resources. Allowees immediately inform the allottee of changes in anticipated reimbursements or other receipts. Allowances are adjusted and, if necessary, the GSA CFO requests reapportionment from OMB.

GSA's OCFO, however, did not consistently monitor reimbursable work. Nor did the Acting Budget Director have a regimented review of the ASF that compared anticipated customer orders and actual obligations against apportionment limitation. Under the direction of the Acting Budget Director, Andrea Fisher-Colwill, two Office of Budget Division Directors—Craig Hull, Director of the Budget Control, Oversight, and Formulation Division; and Andrew Roach, Director of the FAS Budget Division—were most directly culpable for the lack of these reviews and therefore the ultimate violation.

Craig Hull's division was responsible for the apportionment process and for monitoring the execution of GSA's budget versus the apportionment limitation. Andrew Roach's division was responsible for understanding FAS financial projections and the need to update apportionments based on the projections. These two divisions should have worked together to make customer order projections, monitor balances, and determine if GSA was in danger of exceeding the apportionment limitation. If the divisions had done so, GSA could have requested a new apportionment to accommodate the expected obligations.

B. When were GSA personnel alerted to the problem and who received the alert?

The U.S. Department of Agriculture (USDA), GSA's financial shared service provider, informed Craig Hull at 3:24 p.m. on September 30, 2017, that USDA was unable to post obligations due to a Pegasys "spending error." Craig Hull correctly replied that he would not expect such an error "unless we've exceeded the amount apportioned." While USDA and GSA personnel were exchanging emails, no one took affirmative action or escalated the matter to the GSA Budget Director or higher. At that point, nothing could have been done to limit ASF obligations because the obligations were due to valid customer orders. Still, if the matter had been escalated, GSA officials may have requested from OMB revised apportioned obligational authority to accommodate the valid ASF obligations.

³ Requisitioning, Ordering, and Documentation System and Order Management Services, which interface through FEDPAY, recorded nearly \$850 million of transactions on or after September 30, 2017, as their valid obligations were processed through October 2, 2017.

C. *What actions GSA could have taken after receiving the alert to prevent the violation? What actions did GSA take and the reason those actions were taken?*

When GSA personnel received the alert, they could not have affected the obligations interfacing with Pegasys since those obligations were already valid customer orders. At that point, it was simply a matter of recording the obligations in Pegasys. However, if the potential violation had been escalated to GSA Budget and OCFO leadership before midnight on September 30, 2017, OMB may have given GSA permission, possibly even oral permission, to exceed the apportionment limitation and record the revised limitation in Pegasys in the following days. This does not imply that revising the apportionment in a small-time window on the last day of the fiscal year would have been routine.

However, OMB Circular A-11, which governs the apportionment process, states that:

“OMB may also choose to indicate its approval of an apportionment in other ways {i.e. *other than the traditional ‘Max Data Entry’ system*}, including by letter, telephone, hard copy, or other method that is appropriate to the particular circumstance.”

Ultimately, GSA personnel took no action, other than exchanging emails and discussing the possibility of shifting funds to cover the overage. The following is a summary of the September 30, 2017, emails pertinent to the violation:

- At 3:24 p.m., USDA informed Craig Hull of its inability to post obligations due to a Pegasys “spending error.” Craig Hull correctly replied that he would not expect such an error to occur “unless we’ve exceeded the amount apportioned.” (This was, in fact, the case.)
- At 5:01 p.m., USDA emailed Bob Smalskas of GSA’s Office of Financial Management (OFM), copying other OFM officials and Vivi Tran-Chu, head of the OCFO’s Data Delivery and Management Division. In its email, USDA stated that \$90 million of Visual Invoice Tracking and Payment obligations were not processed and that USDA needed “someone in Budget to address the budget issue in order for us to process the documents.” USDA also stated that it was awaiting guidance from Craig Hull and Sunny Kwa, a GSA employee who works for Craig Hull.
- At 7:59 p.m., Michelle Norman, an employee at GSA’s Kansas City, Missouri, Finance office, added others to the chain including Andrew Roach and Brian Block from FAS Budget Division (BBF). Brian Block responded by asking Craig Hull if funds could be shifted. Craig Hull did not respond.
- At 11:25 p.m., in a follow-up to the USDA 5:01 p.m. email, Vivi Tran-Chu emailed Craig Hull, Andrew Roach, and others, stating “help us resolve the budget issue for AAS.”

- At 11:40 p.m., Brian Block responded that, if there is availability to shift between ASF fund codes, Craig Hull or Sunny Kwa would have to make those changes based on Pegasys user roles.

On October 2, 2017, USDA employee, Thane Douglas, a Supervisory Accountant, wrote to Craig Hull, Andrew Roach, Vivi Tran-Chu, and others about the need to lift controls to process \$179 million in valid obligations. The obligations had not been processed into Pegasys on September 30, 2017, since the ASF had obligations that exceeded the apportionment limitation. Evan Farley, GSA's Deputy CFO, gave permission to proceed and record the valid obligations on October 2, 2017.

D. Whether anyone ignored or interfered with existing internal controls?

There is no evidence that any GSA personnel willfully ignored or interfered with existing controls.

2. The name and position of the associate(s) responsible for the violation:

- Craig Hull, Division Director, GSA OCFO, Office of Budget, Budget Control, Oversight, and Formulation Division
- Andrew Roach, Division Director, GSA OCFO, Office of Budget, FAS Budget Division
- Andrea Fisher-Colwill, Acting Budget Director, GSA OCFO, was the supervisor of both Craig Hull and Andrew Roach

3. Administrative discipline taken or proposed:

Both Office of Budget Division Directors—Craig Hull and Andrew Roach—were counseled and received lowered FY 2017 performance evaluations than they would have received had the violation not occurred. GSA found no evidence showing that either Director intentionally committed the violation.

4. Actions to safeguard against or prevent recurrence of the same type of violation:

GSA OCFO instituted a Corrective Action Plan (CAP) in response to the violation and the Notification of Finding and Recommendation (NFR) issued by GSA's financial auditor, KPMG. The CAP contains more stringent measures for regular monitoring and forecasting of end-of-year ASF activity, along with a review of acquisition system interfaces and GSA's financial management system.

Specifically the CAP requires GSA OCFO to:

1. Increase the level of scrutiny applied to ASF reimbursable/flow-through obligations by establishing or refining monthly monitoring controls over apportionment levels and reviewing the Report on Budget Execution and Budgetary Resources (SF-133) and revenue/business volume forecasts to ensure alignment between budgetary and proprietary forecasts.
2. Develop and implement a year-end forecasting control to be instituted in the fourth quarter of the fiscal year. This would give OCFO insight into whether the current apportionment is sufficient given business volume projections or if OCFO needs to submit a revised apportionment.
3. Develop and implement a monitoring process to reapportion late in the year to deal with unexpected changes in activity. Establish and implement controls to properly monitor the completion of the apportionment.
4. Explore the feasibility and practicality of developing and implementing automated preventive system controls in FAS ordering systems to alert users of activity increases and to prevent acceptance of orders in excess of apportioned funding levels. This will entail an OCFO/GSA IT/FAS team to explore the viability of implementing system level controls for FAS ordering systems.

These measures were implemented in FY 2018.

OMB has reviewed a letter for the Administrator's signature notifying the President and others of GSA's violation of the ADA.



Homeland Security

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report violations of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351 (2004). The letter separates the violations into two sections grouped into two categories: Contracts and Other Transaction Authority agreements (OTAs).

Category 1 identifies 42 violations of 31 U.S.C. § 1341 that occurred on contracts awarded between fiscal years 2013 and 2016 throughout the Department of Homeland Security (DHS) totaling \$251,491,088.91. The DHS Chief Procurement Officer (CPO) was responsible for the contract violations. Category 2 identifies 104 OTAs awarded between fiscal years 2010 and fiscal year 2015 at the Transportation Security Administration (TSA) totaling \$109,673,023.32. A Contracting Officer at TSA was responsible for the OTA agreement violations.

In September 2017, the Department's Office of the Chief Financial Officer completed an investigation on this matter. The investigation found the Department violated 31 U.S.C. § 1341(a) when it obligated more than was legally available in the appropriation. This violation occurred because the Department did not provide the Congressional notification required by general provisions of the Department's appropriations acts in fiscal years 2010 through 2016.

The contracting violations were discovered on August 11, 2016, when the CPO took the initiative to conduct an internal review and validation of the compliance, timeliness, and accuracy of the Congressional notifications issued by DHS Contracting Officers. The violations occurred due to misunderstanding of the notification requirements, inattention to detail, and inadequate quality review. The CPO has revised the Homeland Security Acquisition Manual to clarify the process for reporting Congressional notification. Additional decision tools were developed to assist Contracting Officers in determining when Congressional notification is required and to help Components monitor Congressional notification compliance. The Heads of Contracting Activities will be held accountable for compliance. Training has been provided to Contracting Officers on Congressional notification requirements and policy changes. These measures have strengthened awareness of the notification requirements and ensures this type of violation does not occur again within the Department.

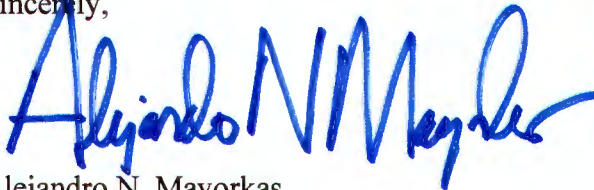
A Contract Compliance Review at TSA of sample OTAs on June 18, 2015, identified OTAs awarded without evidence of the required Congressional notification. A subsequent full review of OTAs was completed in January 2016 that identified the reported violations. The violations occurred because the Contracting Officer did not follow the policies and procedures implemented to ensure that Congressional notifications were provided as required. The Contracting Officer's warrant was suspended on July 8, 2015, and the employee voluntarily separated from TSA in October 2015. TSA updated its OTA policy and checklist to enhance compliance, mandated OTA refresher training for Contracting Officers, and developed a reporting tool for assisting Contracting Officers in determining when Congressional notification is required.

Due to the nature of these violations, no disciplinary action against the employees involved in this matter was taken. The Department has determined that the responsible parties had no knowing and willful intent to violate the ADA.

The Department's system of administrative control of funds was approved by the Office of Management and Budget (OMB) on January 20, 2010. The policy was revised in Fiscal Year 2020 to provide clarification based on the Consolidated Appropriations Act, 2020, and is being routed for OMB approval prior to publishing.

An identical copy of this letter is being sent to the President, the President of the Senate, and the Speaker of the House of Representatives. A similar letter is also being provided to the Director of OMB.

Sincerely,



Alejandro N. Mayorkas
Secretary

Enclosure



Homeland Security

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report violations of the Antideficiency Act (ADA), as required by 31 U.S.C. 1351.

The ADA violations involving a negative cash balance with Treasury occurred in Treasury Appropriation Fund Symbol 070 X 4640. The violation happened in connection with the Department's Working Capital Fund in July 2010, and from March 2016 through August 2019. The Department determined that the former Financial Operations Director was responsible for the violation.

In September 2019, the Department's Office of the Chief Financial Officer completed an investigation into whether the Department violated 31 U.S.C. 1341(a) when the amount expended in the Department's Working Capital Fund exceeded the available fund balance with Treasury.

The violation was discovered in September 2018 when the Department's Financial Management Division (FMD) conducted a policy review. During the review, FMD discovered that the Department's Working Capital Fund was operating under a negative cash balance with Treasury. The Department's Working Capital Fund process and procedures were established under the assumption that an ADA did not exist if the accounts receivable collections offset the negative cash balance. Such action resulted in a violation of 31 U.S.C. 1341(a), which prohibits the Federal government exceeding available fund balances with Treasury whether apportioned or not. The Department determined the violation occurred due to a misinterpretation of the law.

To mitigate the violation for Fiscal Year (FY) 2020, the Department submitted legislative language to Congress for consideration that would allow anticipated reimbursements to offset negative balances. The proposed language was enacted in the Consolidated Appropriations Act, 2020, authorizing funds from the working capital fund to be obligated and expended in anticipation of reimbursements. The FY 2021 Enacted

The Honorable Gene L. Dodaro

Page 2

appropriations does not provide for continuing usage of the Department's Working Capital Fund and appropriates funds directly to the servicing Management Directorate offices.

No disciplinary action for this matter was taken. The responsible party is retired from Federal Service. The Department determined that the responsible party had no knowing or willful intent to violate the ADA.

The Department's system of administrative control of funds was approved by the Office of Management and Budget (OMB) on January 20, 2010.

An identical copy of this letter is being sent to the President, President of the Senate, and the Speaker of the House of Representatives.

Sincerely,

A handwritten signature in blue ink that reads "Alejandro N. Mayorkas". The signature is written in a cursive, flowing style.

Alejandro N. Mayorkas
Secretary

Enclosure



Homeland Security

March 16, 2021

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA) as required by 31 U.S.C. § 1351 (2004) by the Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE).

The ADA violation occurred in the ICE Annual Salary and Expenses Treasury Appropriation Fund Symbol 070 0540 for the amount of \$90,736.87 when ICE obligated more than \$5,000 to furnish the Director's suite without providing advance Congressional notification, as required. This error led to ICE obligating funds in excess of the amount available during Fiscal Years 2013, 2014, 2015, and 2016. ICE obligated funds that were not legally available because ICE did not satisfy the Congressional notification requirement. The employee serving as the project manager and funds certifier was responsible for the violation.

In March 2017, the Department's Office of the Chief Financial Officer completed an investigation on this matter. The Office found that the Department violated 31 U.S.C. § 1341(a) when it obligated more than was legally available in the appropriation, because ICE did not notify Congress.

The violation was discovered by ICE on April 13, 2016, when a professional staff member on the Senate Committee on Appropriations Subcommittee on Homeland Security requested an inventory of the materials and contract work used in the Director's suite renovation. Upon gathering the requested documentation, it was discovered that ICE obligated in excess of the \$5,000 cap without providing Congressional notification. The violation occurred due to lack of awareness of the restriction by the responsible employee. A government-wide provision applicable to the Department's appropriated funds during this time made no funds in excess of \$5,000 available for the purpose of furnishing, redecorating, or improving the office of an employee appointed by the President during the employee's term of office without first notifying the Committees on Appropriations of the Senate and the House of Representatives.

ICE has taken corrective action to prevent future violations by ensuring appointment of certifying officials, as well as improving internal controls with regards to restrictions in appropriation language and the Congressional notification process. Funds certifiers are required to review the transactions and ensure the obligation represents a valid use of the appropriation prior to approval in accordance with the DHS Financial Management Policy Manual (FMPM). ICE implemented a process to appoint certifying officials in writing in accordance with the FMPM. This process ensures certifying officials understand the roles and responsibilities assigned to them. The ICE budget office reviews current appropriation language and documents the requirements and restrictions applicable to the Component. This guidance is provided to certifying officials and will be included annually as an appendix to the Budget Formulation Handbook. This handbook will assist certifying officials with fulfilling their responsibilities. These measures help strengthen awareness to ensure this type of violation does not occur again.

Due to the nature of this violation, no disciplinary action against the employee involved in this matter was taken. The Department has determined that the responsible party did not have a knowing and willful intent to violate the ADA.

The Department's system of administrative control of funds was approved by the Office of Management and Budget (OMB) on January 20, 2010. The policy was revised in Fiscal Year 2020 to provide clarification based on the Consolidated Appropriations Act, 2020, and is being routed for OMB approval prior to publishing.

An identical copy of this letter is being sent to the President, the President of the Senate, and the Speaker of the House of Representatives. A similar letter is also being provided to the Director of OMB.

Sincerely,



Alejandro N. Mayorkas
Secretary



Homeland Security

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. 1517(b) at the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS).

The ADA violation involving the Citizenship and Assimilation Grant program occurred in Treasury Appropriation Fund Symbol 070 19 0408. The violation happened on September 26, 2019, when grants in the amount of \$9,947,152 were awarded and obligated prior to receiving an apportionment for the Federal Assistance account in Fiscal Year 2019. The Acting Chief of the Budget and Planning Division of USCIS was responsible for the violation.

In June 2020, the Department's Office of the Chief Financial Officer completed an investigation on this matter. The Office found that the Department violated 31 U.S.C. 1517(a) when it made obligations in excess of its apportionment.

In September 2019, USCIS discovered there was not an approved apportionment for the Federal Assistance account. USCIS requested an apportionment upon determination that there was not an apportionment, but the request was submitted too late to be processed by the end of the fiscal year. Such action resulted in a violation of 31 U.S.C. 1517(a) because grants were awarded in September without an approved apportionment.

The Department determined the violation occurred due to turnover in key personnel responsible for the apportionment process and failure in the internal controls. The Department has taken corrective actions to prevent future violations by improving standard operating procedures and internal controls and implementing training for key personnel on the apportionment process. Specifically, USCIS implemented steps to validate the apportionment before approving funding in the financial system and added monthly reconciliations.

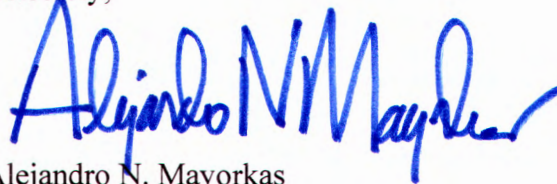
Due to the nature of this violation, no disciplinary action against the employee involved in this matter was taken. The Department has determined that the responsible party had no knowing and willful intent to violate the ADA.

The Honorable Gene L. Dodaro
Page 2

The Department's system of administrative control of funds was approved by the Office of Management and Budget (OMB) on January 20, 2010. The policy was revised in Fiscal Year 2020 and is being routed for OMB approval prior to publishing.

An identical copy of this letter is being sent to the President, President of the Senate, and the Speaker of the House of Representatives.

Sincerely,

A handwritten signature in blue ink that reads "Alejandro N. Mayorkas". The signature is fluid and cursive, with the first name being the most prominent.

Alejandro N. Mayorkas
Secretary

Enclosure



Homeland Security

March 16, 2021

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report violations of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351 (2004), by the United States Coast Guard (USCG).

The ADA violations occurred in Treasury Appropriation Fund Symbol 070 18 0610 in the amount of \$177,608.41. The violations occurred on January 21, 2018, in connection with the USCG Operating Expenses.

In October 2018, the Department's Office of the Chief Financial Officer completed an investigation on this matter. The investigation found the Department violated 31 U.S.C. § 1341(a) when it obligated more than was legally available in the appropriation. These violations occurred because the Department obligated funds on five contract modifications during a lapse in appropriations.

The violations were discovered on January 22, 2018, when the contracting officer's supervisor conducted a system review. The supervisor identified five modifications that were awarded by an excepted employee during the lapse in appropriation. The Department determined that these violations occurred due to a lapse in judgement by the contracting officer.

USCG immediately instituted remedial actions and new controls to address the violations. Specifically, the contracting officer immediately cancelled the contract modifications upon notification of the violations. The modifications were cancelled prior to any contract performance so USCG was not liable for any modification costs. USCG has taken action to release notifications on acquisition guidance when a lapse in appropriation occurs, directing contracting officers and contracting specialists to immediately adhere to the applicable guidance in notifications. This action will strengthen awareness of the requirements and ensure this type of violation does not occur again within the Department.

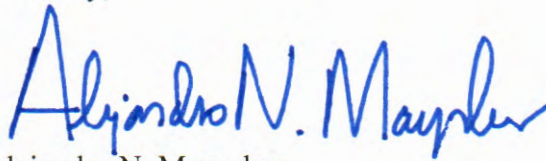
The Honorable Gene L. Dodaro
Page 2

The Department's system of administrative control of funds was approved by OMB on January 20, 2010.

No disciplinary action against the employee involved in this matter was taken. The contracting officer was required to attend additional acquisition training as well as a Principles of Federal Appropriations Law course. The Department determined that the responsible party had no knowing and willful intent to violate the ADA.

An identical copy of this letter is being sent to the President of the Senate, the Speaker of the House of Representatives, and the Comptroller General. A similar letter is also being provided to the Director of OMB.

Sincerely,



Alejandro N. Mayorkas
Secretary



Homeland Security

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report violations of the Antideficiency Act (ADA), as required by 31 U.S.C. 1351.

The ADA violations involving uncapped liabilities on lease agreements occurred in Treasury Appropriation Fund Symbol 070 X 0610. The violations happened in connection with the United States Coast Guard leases starting in Fiscal Year 1974 and continuing through Fiscal Year 2019. The Department determined that the Assistant Commandant for Engineering was responsible for the violations.

In December 2019, the Department's Office of the Chief Financial Officer completed an investigation into whether the Department violated 31 U.S.C. 1341(a) when the United States Coast Guard entered into lease agreements with uncapped liabilities.

The violations were discovered in March 2018 when the Department Chief Readiness Support Officer required Components to review leases for potential ADA violations in response to Government Accountability Office opinion, B-328450, Commodity Future Trading Commission - Liabilities Outside of the Government's Control. During the review, the Department discovered leases that contained language concerning (1) escalation clauses for taxes or operating costs without an upper limit and/or (2) indemnification clauses where the Government promises to reimburse the Lessor in the case of a covered low limit without a fixed upper limit. Such action resulted in a violation of 31 U.S.C. 1341(a) because seven leases included a provision or provisions that created an uncontrollable and potentially unlimited liability on behalf of the Federal Government.

The Department determined the violations occurred due to lack of knowledge and guidance regarding uncapped liabilities on lease agreements. The Department renegotiated terms for leases identified with uncapped liabilities. Furthermore, the Department updated policy and procedures to include information on uncapped liabilities as well as developed training for warranted real property contracting specialists.

No disciplinary action for this matter was taken. The Department determined that the responsible party had no knowing or willful intent to violate the ADA.

The Department's system of administrative control of funds was approved by the Office of Management and Budget (OMB) on January 20, 2010. The policy was revised in Fiscal Year 2020 and the revised policy is being routed for OMB approval prior to publishing.

An identical copy of this letter is being sent to the President, President of the Senate, and the Speaker of the House of Representatives.

Sincerely,

A handwritten signature in blue ink that reads "Alejandro N. Mayorkas". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Alejandro N. Mayorkas
Secretary



U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581

Rostin Behnam
Acting Chairman

(202) 418-5575
CFTCChairman@CFTC.gov

September 30, 2021

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
Washington, D. C. 20510

Dear Comptroller General Dodaro,

The purpose of this letter is to officially report two violations of the Antideficiency Act (“ADA”), as required by section 1351 of Title 31, United States Code. The first violation pertains to lease contracts that contain liabilities outside of the government’s control that were entered into by the U.S. Commodity Futures Trading Commission (the “CFTC” or “Commission”) from fiscal years (“FY”) 1995 to 2015. The second violation pertains to the overpayment of certain senior political officials from FY 2014 to 2017. The Commission has instituted new internal controls to prevent a reoccurrence of both of these types of violations.

Lease Contract Liabilities

A violation of 31 U.S.C. § 1341(a) occurred in account 339 1400, Expenses, Commodity Futures Trading Commission, from FY 1995 through FY 2015 in an undeterminable amount. The violations resulted from the CFTC entering into contracts to lease real property for office space in Washington, District of Columbia; New York, New York; Chicago, Illinois; and Kansas City, Missouri, containing provisions that constituted open-ended liabilities in violation of the ADA.

On March 6, 2018, the United States Government Accountability Office (“GAO”) issued Comptroller General Decision B-328450, Commodity Futures Trading Commission – Liabilities Outside of the Government’s Control (“Decision”). This Decision concluded that the Commission’s lease agreements for its four locations contained provisions in which the CFTC agreed to liabilities which it did not control. The GAO further explained that:

“an agency violates the Antideficiency Act when it enters into an uncontrolled liability that has no fixed limit that the government may ascertain when it agrees

to assume the liability, unless the agency has specific statutory authority that permits it to do so.”

The leases and related documents covered in the GAO opinion span a period of over 20 years, which significantly limited the CFTC’s ability to recreate a complete historical record of its budgetary and accounting records related to its real property leases. The CFTC carefully reviewed all available historical agency records, both paper and electronic, in an effort to identify all instances where the CFTC agreed to uncontrolled liabilities.

The review included an in-depth analysis of the four leases, totaling approximately 1,300 pages, and approximately 300 personnel hours. As a result, the investigation identified 103 instances where the CFTC did, in fact, agree to assume uncontrolled liabilities that were unlimited as to the amount.

After reviewing the GAO’s opinions related to the CFTC’s leases, the Commission took steps to ensure that future contracts entered into by the CFTC contain no legal liabilities where the total amount is outside of the CFTC’s control and that it records an obligation for the total potential amount. The Commission has implemented new internal controls to ensure proper legal and financial oversight of all future contracts, including leases. In addition, in 2016, the Commission signed a memorandum of understanding with the U.S. General Services Administration (“GSA”) to procure all future space needs of the CFTC.

The Commission has determined that the lease agreements were executed with no willful or knowing intent to violate the ADA and no specific individual is solely responsible for the actions. As noted above, the CFTC has instituted new internal controls and agreements with the GSA to prevent a reoccurrence of this type of violation.

Overpayment of Certain Senior Political Officials

A violation of 31 U.S.C. § 1341(a) occurred in account 339 1400, Expenses, Commodity Futures Trading Commission, from FY 2014 to 2017 in the total amount of \$88,314.06. The violations were a result of overcompensation paid to certain senior political officials that should have been limited based on their political appointee employment status with the Commission.

In January 2017, the Commission reviewed the Office of Personnel Management (“OPM”) Compensation Policy Memorandum (“CPM”) 2017-02 for impacts to its employees. CPM 2017-02 included guidance for agency use in reviewing the pay rates and pay limitations for certain senior political officials as a result of a government-wide pay rate increase freeze applicable to these officials. Specifically, the guidance explained that the pay freeze set forth in the Consolidated Appropriations Act, 2016, Division E, Section 738, continued to apply to certain senior political appointees under the continuing resolution, Further Continuing and Security Assistance Appropriations Act, 2017, had restricted the pay for political appointees “at or above level IV of the Executive Schedule . . . notwithstanding any other provision of law . . .” unless such appointees are “in another pay system whose position would be classified at GS-15 or below . . .” During review of the CPM 2017-02 guidance, the CFTC determined it was a continuation of prior guidance regarding pay freezes that applied to certain current and new

political appointees (*i.e.*, those paid at or above the EX-IV level) since FY 2014. The CFTC discovered that some of its political appointees were receiving compensation above the EX-IV level and had received pay increases along with all other CFTC employees in the years in which the pay freeze was effective at FY 2013 levels (FY 2014-2017). The improper increases included the annual cost of living and merit pay increases granted to Commission employees during this period of time.

Based on a review of the compensation records conducted by the CFTC, it was determined that four employees were receiving compensation above the EX-IV pay level and one employee that received compensation exceeding the statutory limitation of the pay freeze was no longer employed at the Commission. The amount of overpayments to the five individuals totaled \$88,314.06 and each employee submitted a signed waiver request to the Commission to waive the debt. The waivers were subsequently approved by the Chairman in 2018.

The Commission did not have the authority to increase the pay for these individuals given the government-wide provisions prohibiting pay rate increases for certain senior level political officials contained in each applicable fiscal year's appropriation act. Therefore, the funds were not legally available for the purpose. The ADA was violated at the time the payments were made because the authorization of the original salary overpayments from the single annual appropriation violated the ADA.

The CFTC has coordinated corrective actions to ensure that a political employee's position type is clear and separate from other Commission positions in the human resources and payroll system to preclude future overpayments of this nature. Also, due to the repetitive occurrence of pay adjustments with statutory limitations, the Commission is improving the internal controls over its pay-setting processes among the Human Resources Branch, the Finance Management Branch, and the Legal Division. These organizations will review appropriations language annually to ensure that the CFTC is aware of limiting language and executing appropriately.

The Commission has determined that the overpayment activity occurred with no willful or knowing intent to violate the ADA, and no specific individual is solely responsible for the actions. As noted above, CFTC has instituted systemic changes and new internal controls intended to prevent a reoccurrence of this type of violation.

Identical reports will be submitted to the President.

Most respectfully,

