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Washington, DC 20548

B-335654

December 20, 2023

The Honorable Kamala Harris
President of the Senate

The Honorable Mike Johnson
Speaker of the House of Representatives

Subject: *Fiscal Year 2023 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 (FY) 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 fifteen Antideficiency Act violation reports and agency transmittal letters submitted to GAO in FY 2023. The Department of Housing and Urban Development (HUD) submitted seven reports,¹ the United States Department of Agriculture and the Department of Justice² (DOJ) submitted two reports, while the Inter-American Foundation, the Office of Personnel

¹ While HUD only submitted one ADA report to GAO during FY 2023, the report separately identified 7 violations resulting from different fact patterns. As a result, we're summarizing each of these violations separately.

² While DOJ only submitted one ADA report to GAO during FY 2023, the report separately identified 2 violations resulting from different fact patterns. As a result, we're summarizing each of these violations separately.

Management, the Environmental Protection Agency (EPA),³ and the Consumer Product Safety Commission 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, five of the reported violations resulted from government officials or employees obligating or expending funds in violation of statutory spending restrictions, while two other violations resulted from government officials or employees expending anticipated funds.

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.



Edda Emmanuelli Perez
General Counsel

Enclosure

³ EPA submitted a report of an Antideficiency Act violation to GAO on December 29, 2021, but the report was not recorded as received until March of 2023. Therefore, we are including this report in the FY 2023 Antideficiency Act Reports Compilation.

Antideficiency Act Reports – Fiscal Year 2023

GAO No.: GAO-ADA-23-01

Agency No.: None Reported

Date Reported to GAO: March 1, 2023

Agency: Environmental Protection Agency (EPA)

Date(s) of Violation(s): Fiscal Years (FYs) 2017-18

Account(s): Environmental Programs and Management **Amount Reported:** \$52,407.09

Description: EPA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it incurred obligations and made expenditures without providing advance congressional notification in violation of a statutory prohibition.⁴

According to EPA, in FYs 2017 and 2018, a statutory provision required it to notify Congress in advance of obligating or expending amounts in excess of \$5,000 to furnish the Administrator’s office. EPA reported that it incurred the following expenses to furnish the Administrator’s office during FYs 2017 and 2018: \$43,238.68 on the installation of a soundproof privacy booth⁵; \$2,963.05 on a desk; \$1,950.00 on delivery and installation of artwork loaned from other government agencies; \$1,606.15 on framing, delivering, and installing an American flag; \$1,764.46 on miscellaneous framing; and \$5,884.75 on two biometric locks. EPA reported that it failed to notify Congress, violating this provision and the ADA.

⁴ See, e.g., Financial Services and General Government Appropriations Act, 2017, Pub. L. No. 115-31, div. E, title VII, § 710, 131 Stat. 326, 379 (May 5, 2017). (“During the period in which the head of any department or agency, or any other officer or civilian employee of the Federal Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is transmitted to the Committees on Appropriations of the House of Representatives and the Senate.”). The same language was repeated in the FY 2018 Financial Services and General Government Appropriations Act.

⁵ GAO previously concluded that EPA violated the statutory provision when it incurred these expenses for the installation of a soundproof privacy booth for the Administrator’s office. B-329603, Apr. 16, 2018. According to EPA, it concurs with GAO’s conclusion.

EPA reported that when the violation occurred, there were no procedures in place to notify employees about the statutory provision.

Remedial Action Taken: To prevent a recurrence of this type of violation, EPA reported that it included information about the section 710 legal requirements in its annual guidance document to all EPA budget officers. According to EPA, because it did not have any procedures in place to make employees aware of the statutory provision when the violations occurred, the violations could not be fairly attributed to any individual. EPA determined 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 2023

GAO No.: GAO-ADA-23-02

Agency No.: None Reported	Date Reported to GAO: November 21, 2022
Agency: United States Department of Agriculture (USDA)	Date(s) of Violation(s): Fiscal Year (FY) 2021
Account(s): Commodity Credit Corporation Fund	Amount Reported: \$1,611,127

Description: USDA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1517(a), when it incurred obligations in excess of the amount apportioned for its Tree Assistance Program (TAP).

According to USDA, at the end of FY 2021, TAP had an unobligated, apportioned balance of \$690.71. However, during FY 2022, USDA discovered that 34 contracts signed and approved in FY 2021 were never recorded, which created \$1,611,818 in additional obligations for FY 2021. According to USDA, these obligations exceeded the amounts apportioned for TAP by \$1,611,127, and therefore, USDA violated the ADA.

USDA reported that the violation occurred because multiple Farm Service Agency (FSA) county office program technicians failed to record obligations for the contracts at issue on the dates they were approved.

Remedial Action Taken: To prevent a recurrence of this type of violation, USDA reported that FSA program managers will enact controls to ensure timely recording of contracts. According to USDA, these controls will include additional staff training, reminders during monthly calls with state program specialists, adding deadlines to handbooks, sending reminder notices, monitoring contract input timelines, and score carding.

USDA reported that it holds the 19 program technicians who failed to record the obligations for the contracts responsible. USDA determined 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 2023

GAO No.: GAO-ADA-23-03

Agency No.: None Reported **Date Reported to GAO:** February 27, 2023

Agency: Consumer Product Safety Commission (CPSC) **Date(s) of Violation(s):** April 29, 2022; June 29, 2022; September 20, 2022

Account(s): Salaries and Expenses **Amount Reported:** \$1,263.47

Description: CPSC reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341, when it incurred obligations and expended funds to purchase clothing with an appropriation that was not available for such purpose.

CPSC reported that during a routine review of purchase card activity and a subsequent administrative investigation, it discovered that a Special Assistant had used their agency-issued purchase card to order clothing with the CPSC logo for their office. The Special Assistant made the first purchase on or about April 29, 2022, for \$498.47; the second purchase on or about June 29, 2022, for \$425; and the third and final purchase on or about September 20, 2022, for \$340. According to CPSC, because CPSC's FY 2022 appropriation was not available for these apparel purchases, CPSC violated the ADA.

CPSC reported the violation occurred because the Special Assistant saw other CPSC employees wearing clothing with the CPSC logo, and believed CPSC's appropriations were available to purchase such clothing.

Remedial Action Taken: To prevent a recurrence of this type of violation, CPSC reported that it restructured and centralized its purchase card program to more effectively monitor procurement activities. CPSC also reported that additional training will be provided to personnel, focusing on the types of purchases allowed and prohibited with appropriated funds. Furthermore, CPSC reported that its Office of Financial Management will review relevant merchant category codes not typically associated with authorized agency purchases to identify and potentially restrict them. Finally, CPSC indicated that it will reexamine training for approving officials to improve oversight prior to reconciliation. CPSC also reported that it will ensure that training for purchase card holders is explicit regarding the use of agency funds for personal expenses, and noted that training will emphasize more prominently that employees who violate the ADA may be subject to its penalties.

According to CPSC, the employee responsible for the violation was the Special Assistant who purchased the clothing, and this individual will no longer serve as a purchase card holder or engage in any procurement activities for the duration of their tenure with the agency. CPSC also reported that employee personal funds were used to reimburse the Treasury for these purchases.⁶ CPSC determined there was no knowing and willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; Email from Chief Financial Officer, CPSC, to Staff Attorney, GAO (Oct. 24, 2023).

⁶ Email from Chief Financial Officer, CPSC, to Staff Attorney, GAO (Oct. 24, 2023).

Antideficiency Act Reports – Fiscal Year 2023

GAO No.: GAO-ADA-23-04⁷

Agency No.: None Reported **Date Reported to GAO:** March 9, 2023

Agency: Department of Justice (DOJ) **Date(s) of Violation(s):** FY 2021

Account(s): United States Marshals Service (USMS), Salaries and Expenses **Amount Reported:** Approximately \$2,700,000

Description: DOJ reported a violation of the Antideficiency Act (ADA), 31 USC § 1341(a)(1)(A), when it incurred obligations and made expenditures in violation of a statutory prohibition.

According to DOJ, the Department is subject to a statutory provision, which prohibits DOJ from spending funds to “relocate an office or employees” unless it provides advance notice to Congress.⁸ In May 2021, USMS relocated its New York/New Jersey Regional Fugitive Task Force from a building in New York’s 10th Congressional District to a building in New York’s 7th Congressional District without providing notice to Congress. DOJ reported that it incurred approximately \$2,700,000 in expenses as a result of the relocation. According to DOJ, it violated the statutory provision and the ADA, when it failed to notify Congress of this relocation.

DOJ reported this ADA violation occurred because the USMS Chief of Construction Management made the determination that the relocation of this office did not require congressional notification.

Remedial Action Taken: To prevent future violations of this provision, the program office and financial employees responsible for sending and reviewing the congressional

⁷ While DOJ only submitted one ADA report to GAO during FY 2023, the report separately identified 2 different violations. As a result, we’re summarizing each of these violations separately.

⁸ “None of the funds provided under this Act . . . shall be available for obligation or expenditure through a reprogramming of funds that: . . . (4) relocates an office or employees . . . unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.” Commerce, Justice, Science, and Related Agencies Appropriations Act, 2021, Pub. L. No. 116-260, div. B, title V, § 505, 134 Stat. 1235, 1276 (Dec. 27, 2020).

notices were instructed on the review and oversight of their reporting requirements. Additionally, the Acting Assistant Attorney General for Administration issued a memorandum to Component Heads reminding them of their responsibilities to ensure compliance with the ADA and this statutory provision, and specifically discussed relocations and reorganizations as areas in which components need to comply with the notification provision. According to DOJ, the employee responsible for this violation was the USMS Chief of Construction Management, who has since retired, and DOJ determined there was no knowing and willful intent to violate the ADA.

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

Antideficiency Act Reports – Fiscal Year 2023

GAO No.: GAO-ADA-23-05

Agency No.: None Reported

Date Reported to GAO: March 9, 2023

Agency: Department of Justice (DOJ)

Date(s) of Violation(s): FYs 2019 and 2021

Account(s): USMS, Federal Prisoner Detention

Amount Reported: \$2,901.45

Description: DOJ reported a violation of the Antideficiency Act (ADA), 31 USC § 1341(a)(1)(A), when it incurred obligations and made expenditures in violation of a statutory prohibition.

According to DOJ, the Department is subject to a statutory provision, which prohibits DOJ and its components from using their appropriations to pay for the abortions of inmates in their custody unless the life of the mother is endangered, or in the case of rape or incest.⁹ DOJ reported that in FY 2019, two prisoners requested elective abortion procedures. The Prisoner Operations Division, Office of Medication Operations (POD OMO), authorized only security and transportation costs for the procedures; however, the medical providers submitted bills to USMS that included the costs of elective abortion procedures, which USMS certified and authorized payment for. Additionally in FY 2019, DOJ reported that POD OMO approved a request for routine gynecological services for a prisoner, but an elective abortion was performed during the visit without prior knowledge or approval from USMS. However, when the medical provider submitted a bill for the procedure, USMS certified and authorized payment for the services. Finally, DOJ reported that in FY 2021, USMS approved payment for an abortion procedure which the prisoner personally certified met the requisite conditions to be covered by USMS’s appropriations, but upon further investigation, USMS concluded the procedure was elective. According to DOJ, in each of these cases, it violated this statutory provision and the ADA.

⁹ See, e.g., Commerce, Justice, Science, and Related Agencies Appropriations Act, 2022, Pub. L. No. 117-103, div. B, title II, § 202, 136 Stat. 101, 131 (Mar. 15, 2022) (“None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape or incest: *Provided*, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.”). According to DOJ, similar language is repeated annually in its appropriation.

Remedial Action Taken: To prevent future violations of this statutory provision, DOJ identified several steps it has taken or will soon take, including: issuing a memorandum to the field discussing criteria for funding elective abortion procedures with federal funds; updating related forms to ensure prisoners seeking elective abortion procedures acknowledge their fiscal responsibilities and requiring districts to submit the completed forms to POD OMO with their initial request for medical services; hosting a national conference call on the subject with the United States Marshals and the district Chiefs; working to create an internal control process to flag abortion-related codes for review by POD OMO prior to any payment to a medical provider; and updating the Standard Operating Procedures related to abortions to clarify roles and responsibilities and the need for POD OMO review and approval. According to DOJ, two of the Assistant Directors of POD were responsible for these violations because such division has the responsibility for program management and oversight of prisoner medical claims. For these violations, DOJ determined there was no knowing and willful intent to violate the ADA.

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

Antideficiency Act Reports – Fiscal Year 2023

GAO No.: GAO-ADA-23-06

Agency No.: None Reported **Date Reported to GAO:** April 10, 2023

Agency: United States Department of Agriculture (USDA) **Date(s) of Violation(s):** FY 2017

Account(s): Office of Communications; Office of the Secretary **Amount Reported:** \$58.47; \$10

Description: USDA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it incurred obligations and made expenditures in violation of a statutory prohibition.

In FY 2017, USDA was subject to agency-specific¹⁰ and government-wide¹¹ provisions that prohibited USDA from using appropriations to influence any action on any legislation or appropriation matters. According to USDA, the then-Secretary of Agriculture gave a speech on September 8, 2017, in which he urged state foresters to contact Congress in support of a “permanent fire funding fix” when there was legislation before Congress to facilitate the provision of additional funds for wildfire suppression operations. A press release was subsequently issued containing the same statements. USDA noted that GAO had previously concluded that the speech and press release

¹⁰ “None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913.” Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017, Pub. L. No. 115-31, div. A, title VII, § 754, 131 Stat. 138, 178 (Dec. 23, 2022).

¹¹ “No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.” Pub. L. No. 115-31, div. E, title VII, § 715, 131 Stat. 380.

constituted grassroots lobbying in violation of these two prohibitions, which amounted to violations of the ADA.¹²

Remedial Action Taken: To prevent a recurrence of this type of violation, the staff involved in the drafting and posting of the press release were given a two-hour refresher on the Hatch Act and federal lobbying restrictions through USDA's Office of Ethics. Additionally, USDA reported that it deleted the offending language in the press release and reposted the edited version to its website.

According to USDA, the employee responsible for the violation was the Director of the Office of Communications, and they are no longer with the Department or in federal service. USDA determined there was no knowing and willful intent to violate the ADA.

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

¹² GAO reached this conclusion in B-330095, July 22, 2020, and directed that the Office of Communications should determine the total costs associated with the violations when they report the violation to the President and Congress. USDA reported that the cost associated with the press release was \$58.47, and the cost associated with the Secretary's remarks was \$10.

Antideficiency Act Reports – Fiscal Year 2023

GAO No.: GAO-ADA-23-07

Agency No.: None Reported

Date Reported to GAO: April 27, 2023

Agency: Office of Personnel Management (OPM) **Date(s) of Violation(s):** October 2022

Account(s): Employees Health Benefits Fund **Amount Reported:** \$194,271,795

Description: OPM reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1517, when it incurred obligations that exceeded the apportionment for the Employees Health Benefits Fund.

According to OPM, in October 2022, based on end of FY 2022 financial information, OPM incurred benefit payment obligations to health plans and insurance carriers who provide health benefits coverage to Federal employees, retirees, and their dependents in an amount that exceeded their apportionment. OPM reported that this occurred because there was a sizeable change in the value of unpaid carrier obligations from the beginning of the fiscal year to the end of the fiscal year that was not fully anticipated by the Office of the Chief Financial Officer's estimated obligations.

Remedial Action Taken: To prevent a recurrence of this type of violation, OPM reported that it will add a requirement to the Federal Employees Health Benefits Program Carrier Audit Guide for carriers to provide current estimates of fiscal year-end liabilities at the end of August. This will allow time to consider whether reapportionment of the account is necessary prior to the end of the fiscal year.

OPM did not identify any specific individuals that were responsible for the violation, and determined 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 2023

GAO No.: GAO-ADA-23-08

Agency No.: None Reported

Date Reported to GAO: June 23, 2023

Agency: Inter-American Foundation (IAF) **Date(s) of Violation(s):** FY 2021¹³

Account(s): IAF

Amount Reported: \$220,106.12

Description: IAF reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when the balance of its IAF account reached a temporary negative balance 10 times during the period between December 11, 2020 and May 13, 2021.

IAF reported that it maintains a reimbursable interagency agreement (IAA) with the U.S. Agency for International Development for Building Community Resilience in the Eastern and Southern Caribbean. IAF reported that the agreements did not include authorizations for advance payment, but due to an error in timing on the part of IAF, expenditures were made from the IAF account prior to the agreements being processed. As a result, according to IAF, the account had a temporary negative account balance 10 times, resulting in ADA violations.

IAF reported that multiple factors contributed to the violations, including the reimbursement cycle of the IAAs, the lack of internal controls to verify fund cash balances, and a long-standing practice that did not include real-time monitoring of cash account balances specific to authorized reimbursable obligational authority.

Remedial Action Taken: To prevent a recurrence of this type of violation, IAF reported taking several corrective actions. These include collecting cash advances in all future Economy Act reimbursable agreements, modifying billing processes and implementing new internal controls for planning and monitoring cash flows relating to reimbursable Economy Act authority, and continuing to educate staff on ADA requirements for Economy Act transfers.

IAF did not identify any specific individuals that were responsible for the violations, and determined there was no knowing or willful intent to violate the ADA.

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

¹³ IAF reported the violations occurred on the following dates: December 11, 2020; December 14, 2020; January 5, 2021; January 12, 2021; January 28, 2021; February 17, 2021; March 10, 2021; May 5, 2021; and May 13, 2021.

Antideficiency Act Reports – Fiscal Year 2023

GAO No.: GAO-ADA-23-09¹⁴

Agency No.: None Reported **Date Reported to GAO:** September 29, 2023

Agency: Department of Housing and Urban Development (HUD) **Date(s) of Violation(s):** FY 2017

Account(s): Rental Housing Assistance Program (RAP) **Amount Reported:** \$2,089,879.17

Description: HUD reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1517(a)(2), when it exceeded an allotment in the RAP account.

According to HUD, in October and November 2016, HUD misallotted recaptured budget authority to the RAP account from properties that converted to the Project-Based Rental Assistance platform. This made it appear there were greater account balances in the RAP account than there actually were. Despite HUD’s discovery and communication of the error in June 2017, HUD exceeded its allotment in the RAP account from June 14 to June 30, 2017, in the amount of \$2,089,879.17.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that it reinstated a budgetary resource planning workflow for these and other associated recaptures. HUD also advised offices handling these recaptures on the need to more closely coordinate and communicate when funding errors are discovered. Finally, HUD noted that the unique obligations imposed here will not be at issue again in the future, given that the properties eligible for conversion under the program have since been converted.

HUD did not identify any specific individuals that were responsible for the violations. HUD determined there was no knowing or willful intent to violate the ADA.

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

¹⁴ While HUD only submitted one ADA report to GAO during FY 2023, the report separately identified 7 different violations. As a result, we’re summarizing each of these violations separately.

Antideficiency Act Reports – Fiscal Year 2023

GAO No.: GAO-ADA-23-10

Agency No.: None Reported	Date Reported to GAO: September 29, 2023
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Agency: Department of Housing and Urban Development (HUD)	Date(s) of Violation(s): FYs 2016-2019
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Account(s): Administrative Support Offices, and Program Offices	Amount Reported: \$38,137.27
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Description: HUD reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it incurred obligations and made expenditures in violation of a statutory prohibition.

According to HUD, beginning in FY 2016, Congress prohibited the use of its appropriations to issue performance awards to employees who had been subject to administrative discipline during certain periods.¹⁵ HUD reported that performance awards, special act awards, and spot awards were issued to employees who had been subject to administrative discipline. Because appropriations were obligated and expended for this purpose, HUD reported it violated this statutory prohibition and the ADA.¹⁶

According to HUD, this violation occurred because management did not take sufficient steps to implement these provisions.

¹⁵ HUD's FY 2016 appropriation contained the language: "None of the funds under this title may be used for awards, including performance, special act, or spot, for any employee of the Department of Housing and Urban Development who is subject to administrative discipline in fiscal year 2016, including suspension from work." Transportation, Housing and Urban Development, and Related Agencies Appropriation Act, 2016, Pub. L. No. 114-113, div. L, title II, § 236, 129 Stat. 2834, 2896 (Dec. 18, 2015). This provision was repeated in subsequent appropriations covering the period of the ADA violation here.

¹⁶ HUD also reported that 6 time-off awards and 2 time-off awards were issued in FYs 2017 and 2018, respectively, which although they do not have associated cash value, resulted in violations of the statutory prohibition and the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that the Office of the Chief Human Capital Officer (OCHCO) implemented internal procedures to ensure compliance with these provisions. HUD also explained that its Office of the Chief Financial Officer (OCFO) and Office of the Assistant Secretary for Administration issued a joint memorandum establishing definitions and protocols for compliance. OCFO and OCHCO will carefully review future appropriations acts to ensure compliance with changing prohibitions.

HUD did not identify any specific individuals that were responsible for the violations. HUD determined 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 2023

GAO No.: GAO-ADA-23-11

Agency No.: None Reported

Date Reported to GAO: September 29, 2023

Agency: Department of Housing and Urban Development (HUD)

Date(s) of Violation(s): FY 2018

Account(s): Working Capital Fund (WCF) **Amount Reported:** \$12,801,062.85

Description: HUD reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1517(a)(2), when it incurred obligations in excess of the amounts allotted to the WCF.

According to HUD, its staff allotted the value of planned reimbursable agreements to the WCF and incurred obligations against such amounts even though the agreements had not been executed or reported. As a result, HUD obligated in excess of its allotment because amounts for the planned reimbursable agreements were not legally available for obligation.

HUD reported that several factors contributed to the resulting violation, including its implementation of a budget execution strategy that misunderstood the timing of its ability to obligate the funds, as well as insufficient staff training and lack of documentation and procedures.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that it revised its procedures for executing these agreements and has reinforced the need for timely execution of its agreements within the Office of the Chief Financial Officer and throughout the Department.

HUD did not identify any specific individuals that were responsible for the violations. HUD determined 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 2023

GAO No.: GAO-ADA-23-12

Agency No.: None Reported	Date Reported to GAO: September 29, 2023
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Agency: Department of Housing and Urban Development (HUD)	Date(s) of Violation(s): FY 2019
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Account(s): Federal Housing Administration Mutual Mortgage Insurance	Amount Reported: \$0.36
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Description: HUD reported a violation of the Antideficiency Act (ADA), 31 U.S.C. § 1517(a)(1), when it incurred obligations in excess of its apportionment.

According to HUD, the relevant 2019 apportionment included a line item for downward reestimates in the amount of \$17,464,951,417.00, and a corresponding footnote stating as follows: “The actual amount apportioned is \$17,464,951,416.64.” According to HUD, it failed to take the footnote into account when it obligated \$17,464,951,417 for downward reestimates, resulting in an overobligation of its apportionment by \$0.36 and a violation of the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that it has since improved its policies and procedures relating to rounding on apportionments, and has consulted with staff on the need to carefully review footnotes on its apportionment.

HUD did not identify any specific individuals that were responsible for the violations. HUD determined 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 2023

GAO No.: GAO-ADA-23-13

Agency No.: None Reported **Date Reported to GAO:** September 29, 2023

Agency: Department of Housing and Urban Development (HUD) **Date(s) of Violation(s):** FY 2019

Account(s): Executive Offices Salaries and Expenses (S&E) **Amount Reported:** \$35,514.36

Description: HUD reported a violation of the Antideficiency Act (ADA), 31 U.S.C. § 1341(a), when it made expenditures in excess of amounts available in its one-year S&E account.

According to HUD, it provides Administrative Law Judge (ALJ) services to other federal agencies through interagency agreements (IAAs) on a reimbursable basis. In FY 2019, a one-year account was maintained for all funds collected pursuant to those IAAs, and HUD's payroll services obligated relevant ALJ hours against this account. According to HUD, these obligations were incurred before reimbursements from the other agencies' accounts had been collected, resulting in the account being disbursed into a negative cash position when each payroll was processed in violation of the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that it has revised its payroll processing to ensure that when IAAs are operating on a reimbursable basis, up-front payroll processing occurs against direct appropriations available for that purpose.

HUD did not identify any specific individuals that were responsible for the violations. HUD determined 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 2023

GAO No.: GAO-ADA-23-14

Agency No.: None Reported

Date Reported to GAO: September 29, 2023

Agency: Department of Housing and Urban Development (HUD)

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

Account(s): Homeless Assistance Grants (HAG) **Amount Reported:** \$6,922,885.93

Description: HUD reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it incurred obligations and made expenditures in excess of the amount appropriated for a grant program.

According to HUD, in HUD’s FY 2018 appropriation act, Congress authorized “up to” a certain amount within the HAG account for grants to provide critical assistance to survivors of domestic violence, dating violence, and stalking. According to HUD, this set-aside created a legally binding cap on funds available for the program, but program management erroneously misinterpreted the set-aside to provide additional funds to the account. HUD reported that this resulted in the set-aside being implemented in a manner that over-obligated and over-expended the HAG account in violation of the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that it took steps to make funds legally available to mitigate the error in its FY 2019 and 2020 funding cycles. HUD also reported that it coordinated with congressional staff to support revisions to the HAG account to remedy the issue. Additionally, HUD reported that it revised its guidance to staff to ensure that projects selected as DV projects receive funding from the DV set-aside. According to HUD, it will further continue to monitor changes in, and implementation of, its appropriations through guidance and Notices of Funding Opportunities.

HUD did not identify any specific individuals that were responsible for the violations. HUD determined 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 2023

GAO No.: GAO-ADA-23-15

Agency No.: None Reported	Date Reported to GAO: September 29, 2023
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Agency: Department of Housing and Urban Development (HUD)	Date(s) of Violation(s): FY 2017
------------------------------------------------------------------	-----------------------------------------

Account(s): Administrative Support Offices	Amount Reported: \$7,069,232.36
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Description: HUD reported a violation of the Antideficiency Act (ADA), 31 U.S.C. §§ 1341(a) and 1517(a), when it incurred obligations and made expenditures in excess of the amounts available in its Administrative Support Offices account because refunds were credited to the wrong appropriations account.

According to HUD, it has occupied the Robert C. Weaver Federal Building (Weaver Building) pursuant to a lease and occupancy agreement with the General Services Administration (GSA) for many years. HUD reported that in FY 2016, it made approximately \$30 million in rental payments to GSA, and when the building required emergency repairs during such fiscal year, HUD funded the repairs through its own appropriations. GSA determined that the repair costs were “shell items” that were already included in HUD’s rental payments for FY 2016 and refunded these costs to HUD.

According to HUD, GSA refunded the overpayment amount in the form of monetary credits toward HUD’s FY 2017 rental bills for the Weaver Building. The monetary credits were deposited in the FY 2017 account, and obligations and expenditures were incurred against these amounts. However, according to HUD, these credits should have been deposited in the original FY 2016 account from which the erroneous payments were made. This resulted in HUD incurring obligations and making expenditures in the FY 2017 account that were in excess of what was legally available in such account.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that it altered its internal protocols to require consultation with its appropriations attorneys when GSA proposes alternative funding approaches to its lease and occupancy agreement total charges and credits. HUD has also explained that it will deposit future monetary credits into the appropriate accounts, or else to the Department of the Treasury if applicable.

HUD did not identify any specific individuals that were responsible for the violations. HUD determined there was no knowing or willful intent to violate the ADA.

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 29 2021

THE ADMINISTRATOR

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

Dear Mr. Dodaro:

I write to report violations of the Antideficiency Act as required by section 1351 of title 31, United States Code. The violations of 31 U.S.C. § 1341(a) occurred in the U.S. Environmental Protection Agency's Environmental Programs and Management account, Treasury Account Symbol 06816/170108, in the amount of \$52,407.09. The violations occurred in fiscal years 2017 and 2018 in connection with expenses incurred for the purpose of furnishing the Administrator's office.

Section 710 of the governmentwide general provisions of each year's Financial Services and General Government appropriations act provides that during the period in which any presidential appointee holds office no funds may be obligated or expended in excess of \$5,000 to furnish, redecorate, purchase furniture for, or make improvements to the appointee's office unless advance notice is transmitted to the Committees on Appropriations of the House of Representatives and the Senate. Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, div. E, title VII, § 710 (May 5, 2017); Consolidated Appropriations Act, 2018, Pub. L. 115-141, div. E, title VII, § 710 (Mar. 23, 2018).

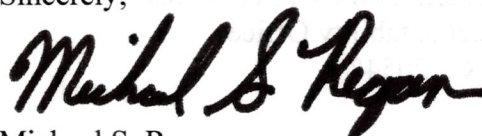
The Government Accountability Office opined that the EPA violated this provision when the agency obligated \$43,238.68 from its FY 2017 Environmental Programs and Management appropriation account for the installation of a soundproof privacy booth for the Administrator's office without first making the required notifications. B-329603, Apr. 16, 2018. The EPA concurs that a violation occurred.

Further, upon review of its records the EPA found additional related violations. Between March 2017 and November 2017 the EPA spent \$2,963.05 on a desk; \$1,950.00 delivering and installing artwork on loan from other government agencies; \$1,606.15 framing, delivering, and installing an American flag; \$1,764.46 on miscellaneous framing; and \$5,884.75 on two biometric locks.

Since discovery of the violations, the agency has included information in its annual Advice of Allowance guidance document to all EPA budget officers notifying them of the Section 710 legal requirements. When the violations occurred, the EPA had no procedures in place to notify employees of Section 710 requirements. Therefore, the violations cannot be fairly attributed to any individual. Accordingly, the EPA has determined there was no knowing or willful intent to violate the Antideficiency Act, and no administrative discipline will be imposed.

Identical reports are being submitted to the President, President of the Senate, and the Speaker of the House of Representatives in accordance with the process set forth in the Office of Management and Budget's Circular A-11.

Sincerely,



Michael S. Regan



Office of the Secretary
Washington, DC 20250

November 7, 2022

THE HONORABLE EUGENE LOUIS DODARO
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. 1517.

Background

A violation of 31 U.S.C. § 1517(a) occurred in account 12X4336 in the total amount of \$1,611,127. The violation occurred in fiscal year (FY) 2021 when the Farm Service Agency (FSA) exceeded the FY 2021 Tree Assistance Program (TAP) apportionment amount.

TAP provides financial assistance to eligible orchardists and nursery tree growers to replant or rehabilitate eligible trees, bushes, and vines lost by natural disasters. TAP is a Commodity Credit Corporation program administered by FSA.

TAP closed in FY 2021 with an unobligated amount of \$690.71 left from its FY 2021 Budgetary Authority. During the opening months of FY 2022 it was discovered that there were 34 unrecorded contracts that were signed and approved in FY 2021 totaling \$1,611,818 in 19 FSA County Offices across 10 states. This amount exceeded FSA's TAP apportionment by \$1,611,127.

During FY 2021, multiple FSA county office Program Technician's (PT) who signed and approved the producers' applications failed to record the resulting contracts as obligations into the accounting system on the date of approval. The agency holds the 19 PTs responsible for the violations but notes the PTs had no knowledge and willful intent to violate the ADA.

Corrective Action

FSA program managers will enact controls to ensure all contracts are timely inputted into the system. Controls will include additional staff training, reminders during monthly calls with state program specialists, adding deadlines to handbooks, sending reminder notices, monitoring contract input timelines and score carding.

THE HONORABLE EUGENE LOUIS DODARO
Page 2

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

Sincerely,

A handwritten signature in cursive script that reads "Gloria Montaño Greene".

Gloria Montaño Greene
Deputy Under Secretary
Farm Production and Conservation



February 27, 2023

The Honorable Gene L. Dodaro
Comptroller General
Government Accountability Office
441 G St., NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report three related violations of the Antideficiency Act, as required by 31 U.S.C. § 1351.

The violations of 31 U.S.C. § 1341, which occurred in the 2022 Salaries and Expenses, Consumer Product Safety Commission (CPSC) Treasury account (061-2022-2022-0100-000), involved the obligation of CPSC funds to purchase clothing not required for use on duty. The three purchases (totaling \$1,263.47) occurred in Fiscal Year 2022 and were not material to the agency's financial statements. The funds relating to each purchase have been returned to the Treasury.

Upon discovery of these purchases during routine oversight of purchase card activity, the agency undertook an administrative investigation. The investigation found that a CPSC Special Assistant on three occasions used their agency-issued purchase card to purchase clothing with the CPSC logo for their office. The first purchase was made on or about April 29, 2022, for \$498.47. The second purchase was made on or about June 29, 2022, for \$425.00. The third and final purchase was made on or about September 20, 2022, for \$340. These purchases were in violation of the Antideficiency Act because the CPSC's FY 2022 appropriation provides no express authority for apparel purchases and the clothing items in question do not qualify as authorized under the necessary expense doctrine.

The agency followed all applicable laws and guidance regarding training of purchase card holders and the employee who made the purchases acknowledges receiving the related training. However, after observing CPSC employees wearing clothing with the CPSC logo, the employee believed that these purchases were permissible with agency funds. In fact, based on the agency's investigation, the CPSC-branded clothing the employee observed being worn by other CPSC personnel was either purchased with personal funds or properly purchased with authorized funds.

In an attempt to prevent recurrence of this type of violation, the purchase card program for

similarly staffed CPSC offices has been restructured in a centralized manner to more effectively monitor procurement activities. Management will provide additional training to personnel in these offices on the types of purchases that are allowed with appropriated funds, and those, such as personal clothing, that are prohibited. Moreover, the agency's Office of Financial Management will review all relevant merchant category codes to identify codes not typically associated with authorized agency purchases. The agency will then explore restricting purchases that use those codes. Additionally, training for approving officials will be reexamined to improve oversight prior to the reconciliation process. The agency will also ensure that its training for purchase card holders is explicit regarding the use of personal funds for purchases that could be prohibited if paid for using agency funds. Finally, going forward, the agency's training will emphasize more prominently that employees who violate the Antideficiency Act may be subject to the Act's penalties.

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. CPSC received an unqualified audit opinion on its financial statement audit for fiscal year 2022. Since 2018, moreover, at least two audits, reviews, or assessments specific to CPSC's purchase card program have been completed annually. In these numerous audits the risk of illegal, improper, or erroneous purchases has been found to be low. In addition, no significant control deficiencies have been found. Based on the above, in addition to the low risk and materiality levels of the purchase card program, management believes adequate controls are in place.

The responsible employee in these incidents will no longer serve as a purchase card holder or engage in any procurement activities for the duration of their tenure with the agency. Agency management has determined that the employee did not have knowing and willful intent to violate the Antideficiency Act.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Alex D. Hoehn-Saric".

Alex Hoehn-Saric
Chair



Washington, D.C. 20530

March 7, 2023

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
Washington, D.C. 20530

Dear Comptroller General:

This letter reports violations of the Antideficiency Act (ADA), as required by section 1351 of Title 31, United States Code. The first violation occurred when the Department of Justice's (Department's) United States Marshals Service (USMS) relocated an office in a way that crossed Congressional district lines without providing advance notice to Congress, violating 31 U.S.C. § 1341(a)(1)(A). Approximately \$2,700,000 from the USMS Salaries and Expenses account 015-21-0324 was improperly expended. The second violation occurred when the USMS funded abortions by prisoners in a way that violated a general provision in the Department's appropriations act, also violating 31 U.S.C. §1341(a)(1)(A). The USMS improperly expended \$2,901 from the USMS Federal Prisoner Detention account 015-X-1020 with respect to this violation.

Office Relocation

The Department's annual appropriations acts preclude it from spending funds to "relocate an office or employees" until it gives advance notice to the House and Senate Committees on Appropriations and waits fifteen days.¹ The Department and the Congressional committees have negotiated an agreement regarding what types of relocations qualify for such notice. Under the agreement with the committees, the Department is required to give Congressional notice before opening a new office, closing an office, or relocating an office from one Congressional district to another. The Department makes such notifications through the Congressional Relocation Report (CRR).

¹ See Section 505 of Commerce, Justice, Science, and Related Agencies Appropriations Act, 2021; Title V, Division B, Public Law 116-260. We have cited the provision from fiscal year 2021 since that is the year in which the office relocated. Note that every fiscal year the Department's appropriations act includes a similar provision.

The Department's USMS relocated the New York/New Jersey Regional Fugitive Task Force (NY/NJ RFTF) from 88 10th Avenue, New York, New York, 10011, in the 10th Congressional District, to 86 34th Street, Brooklyn, New York, 11232, in the 7th Congressional District, in May 2021, without giving prior notice to Congress. The USMS lease for the task force was expiring and was not going to be renewed, forcing the task force to move. The distance between the old and new office locations is 6.7 miles, and no USMS personnel were authorized relocation expenses. The expenditures for the office relocation were made from the USMS Salaries and Expenses appropriation account (Treasury Account Fund Symbol 015-21-0324) for a total amount of approximately \$2.7 million.

Because the USMS relocated the NY/NJ RFTF from one Congressional district to another without first sending a CRR to the appropriate Congressional committees, the Department has concluded that it violated section 505 with respect to the office relocation. By failing to satisfy the preconditions in section 505 prior to obligating and expending funds to relocate the office, the USMS incurred obligations and expenditures in excess of available appropriations in violation of the Antideficiency Act. 31 U.S.C. § 1341(a)(1)(A).

Although multiple USMS employees were responsible for this oversight, the USMS Chief of Office of Construction Management made the determination that this office relocation did not require Congressional notification. This employee retired from the USMS on April 29, 2022. No willful or knowing intent was found with respect to this Antideficiency Act violation, but those employees who are still at the USMS have received additional training. The program office and the financial employees who are responsible for submitting and/or reviewing the CRR have been instructed regarding the necessary review and oversight of the reporting requirements to ensure this type of error does not occur again. In addition, the Acting Assistant Attorney General for Administration issued a memorandum to Component Heads reminding them of their responsibility to ensure that they comply with funding restrictions and the Antideficiency Act, and specifically discussed relocations and reorganizations as areas in which components need to comply with the notification provision.

Abortion Restriction

The Department's annual appropriations acts include the following provision:

Sec. 202. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape or incest: *Provided*, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

See, e.g., Department of Justice Appropriations Act, 2022 (Title II, Div. B, Public Law 117-103) (the same or similar provisions have appeared for many years). Therefore, components such as

the USMS and the Bureau of Prisons can only pay for the abortions of inmates in their custody if “the life of the mother would be endangered if the fetus were carried to term, or in the case of rape or incest.” Abortions that do not fall within these exceptions are referred to as “elective.”

Elective Abortions Funded by the USMS

The Department has determined that the USMS paid for three elective abortions in fiscal year 2019 and one elective abortion in fiscal year 2022 (note that the request for this final abortion was made in fiscal year 2021, but the payment was made by the USMS in fiscal year 2022). In fiscal year 2019, two prisoners requested elective abortions, and the Prisoner Operations Division, Office of Medication Operations (POD OMO) authorized only security and transportation costs for the procedures. However, on both occasions, the medical providers submitted bills to the USMS which included the costs of the two elective abortions. The USMS mistakenly certified the invoices and authorized the National Managed Care third party vendor, Heritage, to pay the providers for the medical services. In a third case in fiscal year 2019, the POD OMO approved a request for routine gynecological services, but an elective abortion was performed during the medical visit, without the prior knowledge or approval of the USMS. The medical provider sent a bill for the gynecological services, including the elective abortion. The USMS mistakenly certified the invoice and authorized Heritage to pay the provider for the medical services. In fiscal year 2021, a medical request for an abortion was submitted to the POD OMO. Attached to the request was a form signed by the prisoner certifying that the conditions of the requested abortion met the criteria to be federally funded, when, in fact, on further investigation, the abortion was deemed elective and did not meet the criteria. Based on the completed form, the POD OMO approved payment for the procedure, and the USMS certified the invoice and authorized Heritage to pay the provider for the medical services. In all four cases, the USMS later reimbursed Heritage for its payments to the providers for these elective abortions.

Therefore, in total, the USMS paid for four elective abortions (three in FY 2019 and one in FY 2022), in violation of section 202 of the annual appropriations act. The funding improperly expended was from the USMS Federal Prisoner Detention appropriation account (Treasury Account Symbol 015-X-1020), for a total amount of \$2,901.45.

There were multiple offices and employees who had a role in each of the violations. The POD, which is a Headquarters Division located in Arlington, Virginia, has the responsibility for program management and oversight of prisoner medical claims, so two Assistant Directors of the POD were ultimately responsible for these violations. One of these Assistant Directors retired in April 2020, and the other retired in May 2022. There is no indication that anyone willfully violated the federal funding prohibition on elective abortions or the Antideficiency Act. Individuals who are still employed at the USMS have been counseled and trained, and additional guidance has been sent to all USMS employees regarding the utilization of federal funds for abortions and the responsibilities of accountable officers. We further note that the USMS has not attempted to recover these improper payments. In addition to the challenges inherent in any such attempt, the USMS believes that the cost of recovery efforts would exceed the amount paid.

Follow-up Actions

The USMS has provided the following list of corrective actions it has or soon will be taking to correct process failures to ensure that the USMS does not fund elective abortions in the future:

- (1) Issue a memorandum to the field discussing the criteria for making federal payments relating to abortion procedures and the importance of ensuring they are met before the USMS certifies any payments;
- (2) Update the related forms to ensure prisoners seeking elective abortions acknowledge their fiscal responsibilities and require districts to submit the completed forms by the prisoner to POD OMO for consideration with the initial request for medical services;
- (3) Host a national conference call on the subject with the United States Marshals and district Chiefs to discuss this issue;
- (4) Work with Heritage to create an internal control process where all abortion-related codes are flagged for review by the POD OMO prior to any payment to the medical provider;
- (5) Send reminders and memoranda, and update the Standard Operating Procedures related to abortions to clarify roles and responsibilities and the need for POD OMO review and approval; and
- (6) Communicate the procedures to privately-operated detention facilities and intergovernmental agreement (IGA) facilities that house USMS prisoners to ensure they are seeking the proper approvals prior to allowing federal funding to be used for an abortion.

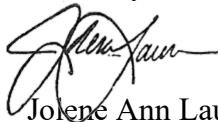
Conclusion

The Department takes its appropriations and Antideficiency Act responsibilities very seriously and will work to ensure that no further violations occur. The Department has strict funds control policies and procedures that are laid out in Department of Justice Order 2030.4G, "Control of Funds under Apportionment."² The Department notes that since fiscal year 2005 it has received unmodified (clean) audit opinions on its financial statements.

² This order was signed by the Assistant Attorney General for Administration on April 12, 2010. It is not clear whether the order was approved by the Office of Management and Budget at the time, but the Department will be updating the order in the near future and will comply with all required approval processes.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jolene Ann Lauria". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jolene Ann Lauria

Acting Assistant Attorney General
for Administration



Office of the Secretary
Washington, DC 20250

January 23, 2023

THE HONORABLE GENE L. DODARO
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller General Dodaro:

This letter is to report violations of the Antideficiency Act (ADA), as required by Section 1351 of Title 31, United States Code. The violations of 31 U.S.C. §1341 occurred fiscal year 2017 in the following Office of the Secretary (OSEC) Treasury Symbol accounts: 1270150, U.S. Department of Agriculture's (USDA) Office of Communications (OC); and 1270115, Office of the Secretary.

The violations arose from a September 8, 2017, speech by the previous Secretary of Agriculture that included two statements urging state foresters to contact Congress to support a "permanent fire funding fix," and a subsequent press release published the same day by USDA that included those two statements. The Government Accountability Office (GAO) later determined both the speech and related press release did not comply with a government-wide and an agency-specific anti-lobbying provision in Public Law 115-31, the Consolidated Appropriations Act of 2017¹. Specifically, the GAO determined "These communications constituted grassroots lobbying prohibited by two provisions in the Consolidated Appropriations Act, 2017. USDA violated these provisions when it obligated and expended funds appropriated by the act to prepare and deliver the Secretary's statements and to develop and publish the associated press release. USDA's obligation and expenditure of appropriated amounts for this prohibited purpose also violated the Antideficiency Act, 31 U.S.C. §1341(a)(1)(A)."²

As directed by GAO in its July 22, 2020, decision³, OC, at the time, determined the total costs associated with the press release to be \$58.47, with \$42.39 directly associated with writing the press release and \$16.08 directly associated with posting the Press Release to the Internet. All funds obligated to prepare and post the September 8, 2017 Press Release were directly attributed to staff time associated with these tasks. The staff of the Office of the Secretary employed at the

¹ Pub. L. No. 115-31, Div. A, § 754 and Div. E, § 715 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017, <https://www.congress.gov/115/plaws/publ31/PLAW-115publ31.pdf>

² <https://www.gao.gov/products/b-330095>

³ *Id.*

THE HONORABLE GENE L. DODARO

Page 2

time of the violation reported the total costs associated with making the unscripted remarks to be \$10, again with all funds obligated and directly attributed to staff time.

The OC Director responsible for the Antideficiency Act violation in 2017 left USDA and Federal service in 2019. The Department determined that there was no willful or knowing intent on the part of the previous Director of OC to violate the Antideficiency Act, and no further violations have occurred under the subsequent or current OC Director. Corrective actions taken at the time included a 2-hour refresher with USDA's Office of Ethics on the Hatch Act and Federal restrictions on lobbying for the staff involved in drafting and posting the Press Release and revising the press release to delete the offending language, which was then reposted to USDA.gov.⁴

A similar letter is being sent to the President of the United States, the President of the Senate, the Speaker of the House of Representatives.

Sincerely,



THOMAS J. VILSACK
Secretary

⁴ <https://www.usda.gov/media/press-releases/2017/09/08/perdue-calls-congress-fix-forest-service-fire-funding-problem>



GAO-ADA-23-07

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

April 24, 2023

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

Dear Mr. Comptroller General:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. 1517(b). A violation of 31 U.S.C. 1517 occurred in account 24-8440, the Employees Health Benefits Fund, in the total amount of \$194,271,795. The violation occurred in early October 2022, as experience-rated carriers participating in the Federal Employees Health Benefits Program (FEHBP) filed end of fiscal year 2022 financial information.

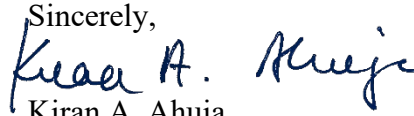
The Office of Personnel Management (OPM) incurred in benefit payment obligations to health plans and insurance carriers who provide health benefits coverage to Federal employees, retirees and their dependents that exceeded the value apportioned by the Office of Management and Budget. Importantly, the Employees Health Benefits Fund, which incurred more than \$62 billion of benefit payment obligations in fiscal year 2022, had and has sufficient resources to cover the full obligation. The total value of benefit payment obligations is not known until after the conclusion of the fiscal year, when participating carriers report on liabilities, including the value of incurred but unpaid health insurance claims.

The proximate cause of the violation is the magnitude of the change in the value of carrier unpaid obligations from the beginning of the fiscal year to the end of the fiscal year (over 32 percent). This change was not fully anticipated in the Office of the Chief Financial Officer (OCFO) estimates of benefit payment obligations that formed the basis for OPM's apportionment and reapportionment requests for this account over the course of fiscal year 2022.

Benefit payment obligations under the FEHBP can be projected, but not known with certainty before they occur. To prevent recurrence of the same type of violation, OPM will add a requirement to the FEHBP Carrier Audit Guide for carriers to provide a current estimate of fiscal year-end liabilities at the end of August of each fiscal year. This will provide OPM with a preview that can be analyzed and considered with other financial information to determine whether reapportionment of this account before the fiscal year closes is necessary.

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

Identical reports are being submitted to the President of the United States, the President of the Senate, and the Speaker of the U. S. House of Representatives.

Sincerely,

Kiran A. Ahuja,
Director



INTER-AMERICAN FOUNDATION

June 23, 2023

Mr. Gene Dodaro
The Comptroller General of the Government Accountability Office
Washington, D.C. 20510
Sent via email: AntideficiencyActRep@gao.gov

Dear Mr. Dodaro:

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

The violations involved IAF account *95-3100 2018/2023* (the IAF Account) and totaled \$220,106.12. In fiscal year 2021, between December 11, 2020 and May 13, 2021 (the Relevant Period), the IAF Account dipped into a temporary negative cash balance ten times¹ in connection with the IAF's reimbursable Participating Agency Service Agreement with the U.S. Agency for International Development (USAID) for *Building Community Resilience in the Eastern and Southern Caribbean* (the Interagency Agreement).

The violations noted herein were the result of discordant timing and delay in the reimbursement process between IAF and USAID under the Interagency Agreement. The Interagency Agreement between the IAF and USAID did not allow for cash advances, and the reimbursable IPACs were being processed subsequent to expenditures resulting in temporary negative cash balances for the IAF during the Relevant Period.

The violations noted herein were rooted in: (1) the structure of the Interagency Agreement which set forth a reimbursement cycle that did not comport with temporary non-negative cash balances in the IAF Account; (2) lack of internal controls² to verify available fund cash balances specific to reimbursable obligational authority before an expenditure liquidating a valid reimbursable obligation is approved; and (3) a long standing practice that did not include real-time monitoring of cash account balances specific to authorized reimbursable obligational authority.

¹ The violations occurred on 12/11/20, 12/14/20 (twice), 1/5/21, 1/12/21, 1/28/21, 2/17/21, 3/10/21, 5/5/21, 5/13/21.

² The Bureau of the Fiscal Service's Administrative Resource Center (ARC) maintains the financial management system which supports IAF's overall internal controls specific to fund control.

Corrective Action

To prevent a recurrence of these violations, the IAF has taken the following corrective actions:

- Requiring the collection of cash advances in all future Economy Act interagency reimbursable agreements to mitigate the risk of disbursing an account into a negative cash position;
- Modifying billing processes and implementing new internal control procedures to plan, monitor, and manage cash flows related to Economy Act reimbursable authority, to prevent a negative cash position from occurring; and
- Furthering and continuing education and training for IAF staff on the ADA requirements of Economy Act reimbursable agreements.

The IAF is a small agency (approximately 50 FTEs) and as such, funding decisions go through a chain of review at many levels. The IAF has an administrative system of control in place inclusive of fund control systems and procedures, and not inconsistent with internal control procedures prescribed under law. Upon review of all the relevant facts, the IAF has concluded that the responsibility for the violations cannot be fairly attributed to specific individuals. In addition, the IAF has determined there was no willful or knowing intent to violate the Anti-Deficiency Act by any agency official.

Identical reports are being submitted to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

Respectfully,

A handwritten signature in black ink, appearing to read 'S. Aviel', written in a cursive style.

Sara Aviel
Chief Executive Officer
Inter-American Foundation



OFFICE OF THE CHIEF FINANCIAL OFFICER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

GAO-ADA-23-09
GAO-ADA-23-10
GAO-ADA-23-11
GAO-ADA-23-12
GAO-ADA-23-13
GAO-ADA-23-14
GAO-ADA-23-15

September 29, 2023

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

Dear Comptroller General:

This letter is to provide a consolidated report of seven separate violations of the Antideficiency Act (ADA), as required by 31 U.S.C. 1351 and 1517(b), **which occurred during fiscal years 2016 through 2019.**¹

The seven separate ADA violations occurred across several accounts of the Department of Housing and Urban Development (the Department or HUD) in the total amount of \$28,956,712.30 during fiscal years 2016 through 2019. The Department has determined that each of the seven violations reported herein were due to systemic failures and there was no knowing or willful intent to violate the ADA. As a result, no responsible officials have been identified.

The Department has made a concerted effort, with the assistance of the Office of Management and Budget (OMB), during the past several years to complete the investigations and report the ADA violations included here. It is important to note that the Department completed a significant financial transformation over the past few years, including the development and implementation of many new and improved financial policies and procedures. The Department continues its work to improve HUD's internal capacity. The identification, correction, and reporting of these and any other ADA violations is an important part of the Department's overall effort to correct longstanding systemic financial deficiencies.

Violation 1 – Rental Housing Assistance Program (RAP). A violation of 31 U.S.C. 1517(a)(2) occurred at the allotment level in the RAP account (86-X-0148) in the total amount of \$2,089,879.17 in June 2017.

The violation occurred because recaptured budget authority from existing properties that converted to the Project-Based Rental Assistance (PBRA) platform via the Rental Assistance Demonstration (RAD) was misallotted to the RAP account in October and November 2016,

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

giving the appearance that the available RAP account balances were higher than they actually were. Pursuant to the RAD statute (Pub. L. 112-55, as amended), any budget authority recaptured from RAP properties that had converted via RAD to a PBRA contract was to be rescinded, appropriated, and transferred to the PBRA account (86-X-0303) to be used only for funding these PBRA conversions.² While the allotment error was discovered in June 2017, the resulting communication about the error did not effectively prevent the over-obligation of legally available resources allotted to the RAP account, which occurred from June 14 to June 30, 2017, in the amount of \$2,089,879.17.

The Department has determined the violation occurred due to systemic failures in budget execution. When this error occurred, offices involved with the budgetary resource planning process were insufficiently engaged and failed to validate balances and properly administer recaptured amounts, including with respect to this unique statutory restriction. Staff turnover in the various offices contributed to this lack of engagement. In response to these errors, the Department reinstated its budgetary resource planning workflow for this and other recaptures. These offices were also advised regarding the need to more closely coordinate and communicate when funding errors are discovered, to prevent such errors from creating ADA violations.

Finally, all remaining RAP properties eligible for conversion have since converted, and no additional conversions or associated recaptures under this unique statutory authority will occur.

Violation 2 – Employee Performance Awards. Violations of 31 U.S.C. 1341(a) occurred in the total amount of \$38,137.27 in the following salaries and expenses (S&E) accounts: Administrative Support Offices (86-16-0335 and 86-17-0335) and Program Offices (86-16-0334, 86-17-0334, 86-18-0334, 86-16-0337, 86-17-0337, 86-16-0338, 86-17-0338, 86-16-0340, 86-17-0340, and 86-19-0340).³ The violations occurred during fiscal years 2016 through 2019 in connection with the obligation of funds for personnel awards.

Beginning in HUD’s fiscal year (FY) 2016 appropriations Act, Congress prohibited the use of appropriated funds to provide awards to employees who had been subject to administrative discipline during certain periods.⁴ HUD management did not take sufficient steps to implement these provisions. A number of performance awards, special act awards, and spot

² The relevant statutory authority for the Rental Assistance Demonstration, as amended and codified at 42 U.S.C. 1437f note, provides as follows: “*Provided further*, That amounts, including contract authority, recaptured from contracts following a conversion under the Second Component, except for conversion of section 202 project rental assistance contracts, *are hereby rescinded and an amount of additional new budget authority, equivalent to the amount rescinded is hereby appropriated, to remain available until expended for such conversions:*” (emphasis added). The purpose limitation, emphasized herein, was added by the fiscal year 2015 appropriations Act (Pub. L. 113-235, Dec. 16, 2014).

³ In addition, 6 time-off awards in FY 2017 and 2 time-off awards in FY 2018 for a total of 90 hours of leave were issued in violation of the above such provisions. While time off awards have no cash value, their issuance violated the Act and, as such, we note that an additional, nominal Antideficiency Act violation occurred.

⁴ Section 236 of HUD’s FY 2016 appropriations Act, Pub. L. 114-113 (December 18, 2015); section 233 of HUD’s Consolidated Appropriations Act, 2017, Pub. L. 115-31 (May 5, 2017); and section 230 of HUD’s Consolidated Appropriations Act, 2018, Pub. L. 115-141 (March 23, 2018).

awards were issued and associated funds were obligated and expended when, in fact, such awards were prohibited by law and no funds were available for those obligations.

To prevent future violations of this nature, the Office of the Chief Human Capital Officer (OCHCO), which manages award policy and procedures for the Department, has implemented clear internal procedures to ensure compliance with these provisions. A joint memorandum from the Office of the Chief Financial Officer (OCFO) and HUD's Office of the Assistant Secretary for Administration, which oversees OCHCO, was issued to Departmental management, establishing definitions and protocols for compliance. As appropriations Act requirements and structures change over time, OCFO and OCHCO will carefully review future appropriations Acts for any changing prohibitions and continue to make any changes necessary to ensure compliance.

Violation 3 – Working Capital Fund (WCF). A violation of 31 U.S.C. 1517(a)(1) and 31 U.S.C. 1517(a)(2) occurred in the WCF account (86-X-4598) in the total amount of \$12,801,062.85. This violation occurred on October 1, 2017, and continued during FY 2018, in connection with the obligation of funds for Federal shared service agreements for the Department's human resources, financial management and payroll services.

When establishing its WCF operations, HUD implemented a budget execution strategy that misunderstood the relationship between its ability to obligate funds expected to be received under reimbursable agreements (also called "customer agreements") and the timely execution of such reimbursable agreements. Due to insufficient HUD staff training and a lack of documentation and procedures, HUD staff allotted the value of planned reimbursable agreements to the WCF account and incurred obligations against such amounts even though no customer agreements had been executed or recorded. As a result, even though proper funds verifications were performed by Departmental officials, those funds verifications failed to protect the Department from over-obligation of the WCF account because amounts that appeared to be available for obligation were not actually available.

To prevent a violation of this nature from recurring, the Department has revised its procedures for executing reimbursable authority and reinforced the need for timely execution of customer agreements within OCFO and throughout the Department.

Violation 4 – Federal Housing Administration (FHA) Mutual Mortgage Insurance (MMI) Downward Reestimate Rounding Violation. A violation of 31 U.S.C. 1517(a)(1) occurred in HUD's FHA MMI Fund financing account (86-X-4587) in the amount of \$0.36 in FY 2019. There is no de minimis exception to the ADA reporting requirements at 31 U.S.C. 1517(b); accordingly, HUD is reporting this error.

The relevant FY 2019 apportionment included a line item for downward reestimates of \$17,464,951,417, and included a corresponding footnote stating "The actual amount apportioned is \$17,464,951,416.64." A proper understanding of the apportionment including the footnote was that only \$17,464,951,416.64 had been apportioned by OMB. However, HUD allotted, and subsequently executed, downward reestimates totaling \$17,464,951,417 without reducing the available amounts to account for the rounding on the apportionment line item. Accordingly, the

Department's obligations and outlays exceeded the amounts made available by the apportionment in violation of 31 U.S.C. 1517(a)(1) in the amount of \$0.36.

The Department has determined that there was no knowing or willful intent to violate the ADA. Since this apportionment violation occurred, HUD has improved its policies and procedures regarding rounding on apportionments, and staff have been counseled on the need to carefully review apportionment footnotes.

Violation 5 – Executive Offices (EO) Salaries and Expenses (S&E) Negative Cash Balances for Reimbursable Work. Violations of 31 U.S.C. 1341(a) occurred in the total amount of \$35,514.36 in the EO S&E account (86-19/19-0332) related to reimbursable agreements with other Federal agency accounts during FY 2019.

In most fiscal years, including FY 2019, HUD provides Administrative Law Judge (ALJ) services to other Federal agencies pursuant to Federal interagency agreements (IAAs) on a reimbursement basis. In FY 2019, when HUD's direct EO S&E appropriations became two-year appropriations, a separate one-year account was maintained for all funds received pursuant to those IAAs to ensure that the period of availability of one-year funds collected from other Federal agency accounts was not extended to two-years upon receipt by HUD. HUD's payroll processing coded the relevant ALJ hours to draw directly from the one-year account up-front, even though the reimbursements from other Federal agency accounts had not yet been collected. As a result, when each payroll was processed, the one-year account was disbursed into a negative position. Consistent with OMB guidance regarding a negative cash position in a TAFS, this violated the ADA.

The Department has determined that there was no knowing or willful intent to violate the ADA. To prevent similar violations in the future, HUD has revised its payroll processing such that when an IAA is operating on a reimbursable basis, the up-front payroll processing occurs against direct appropriations available for that purpose.

Violation 6 – Homeless Assistance Grants Domestic Violence Set-Aside. A violation of 31 U.S.C. 1341 occurred in the Homeless Assistance Grants (HAG) appropriation account (86-18/20-0192) in FY 2019, with respect to FY 2018 funds, in the total amount of \$6,922,885.93, related to the improper implementation of a new set-aside within such account.

Beginning with HUD's FY 2018 appropriations Act, Congress created in HUD's HAG account a new set-aside for grants for rapid re-housing projects, supportive service projects, and other eligible activities that the Secretary determines to be critical to assist survivors of domestic violence, dating violence, and stalking (referred to as "the DV set-aside"). This violation occurred due to a mismatch between the legal requirements of the relevant appropriations Act, which were properly described on the Department's apportionments and allotments for this account, and the programmatic understanding of the purpose and congressional intent underlying the new set-aside. While an "up to" set-aside creates a legally binding cap on funds available for that specific purpose, program management understood this funding to be "bonus" funding, and to be available in addition to other appropriated funds. Relying on what they understood to be

congressional intent, HUD program management implemented the set-aside in a manner that incurred obligations and expenditures in excess of the amount appropriated for that purpose.

HUD took steps to identify and make funds legally available pursuant to section 231 of HUD's FY 2020 Appropriations Act to mitigate this error in the FY 2019 and FY 2020 funding cycles and coordinated with congressional staff to support revisions to the HAG account to remedy this issue. HUD revised the Notices of Funding Opportunity (NOFOs) and the internal processing guidance that HUD staff rely upon to ensure that projects selected as DV projects receive funding from the DV set-aside. The appropriations language with respect to this requirement has continued to change over the fiscal years since this error occurred, and the Department continues to carefully monitor its implementation in such NOFOs and guidance.

The Department has determined that this violation was due to a systemic failure with no knowing or willful intent to violate the ADA, and, as a result, no responsible officials have been identified.

Violation 7 – Rent Credits. A violation of 31 U.S.C. 1341(a) and 1517(a) occurred in the Administrative Support Offices (ASO) appropriation account (86-17-0335) in FY 2017, in the total amount of \$7,069,232.36, related to the improper accounting treatment of monetary credits received from the General Services Administration (GSA). This violation was identified pursuant to an audit conducted by HUD's Office of Inspector General, which is available at <https://www.hudoig.gov/sites/default/files/2021-03/2021-PH-0002.pdf>.

For many years, pursuant to lease and occupancy agreements between HUD and GSA, HUD's Headquarters offices have occupied the Robert C. Weaver Federal Building (The Weaver Building). During FY 2016, HUD made rent payments to GSA of approximately \$30 million in exchange for GSA's provision of habitable and usable space during that fiscal year. However, the Weaver Building required emergency repairs during FY 2016 that GSA was unable to provide, and which HUD thus funded from its own appropriations. GSA determined that the emergency repairs funded by HUD were "shell items" for which HUD had previously paid rent to GSA and that, as a result, HUD's FY 2016 total rent payments included overpayments for services not actually rendered.

GSA refunded HUD's overpayments, totaling \$7,787,674.98, by issuing monetary credits that reduced HUD's FY 2017 rent bills for the Weaver Building. Pursuant to the refund exception to the miscellaneous receipts act, those credits should have been applied to the FY 2016 Office of Administration S&E account from which the original erroneous payments were made, which was an annual appropriation account not available for new obligations during FY 2017. Instead, HUD retained the \$7,787,674.98 in "savings" within the FY 2017 S&E account and obligated and expended nearly all of those amounts during FY 2017. As a result of this accounting error, HUD over-obligated its FY 2017 S&E account by \$7,069,232.36.

HUD has altered its internal protocols to ensure that, when GSA proposes alternative funding approaches that would be incorporated into the lease and occupancy agreement total charges and credits, the Office of Administration will submit such proposals to and consult with HUD's appropriations attorneys before agreeing to any such proposals. In the future, any

monetary credits issued by GSA will be reviewed by HUD and credited to the appropriate account, either to the account from which the original erroneous payment was issued pursuant to the refund exception to the miscellaneous receipts act, or directly to the U.S. Treasury if no exception to the miscellaneous receipts act applies.

Conclusion

The Department has made considerable progress in its financial transformation efforts, and continues to enhance its internal controls, training, and technical accuracy as additional opportunities to improve are identified. The Department's system of administrative control of funds was updated in fiscal years 2017 and 2018, including the revision of the Department's Funds Control Handbook that was reviewed and approved by OMB. Any necessary funds control improvements, supplemental training, or other mitigation efforts have been identified within each violation reported above.

Identical reports are being submitted 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,

VINAY SINGH

Digitally signed by: VINAY SINGH
DN: CN = VINAY SINGH C = US O = U.S. Government OU =
Department of Housing and Urban Development, Office of Chief
Financial Officer
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Vinay V. Singh, Chief Financial Officer
Department of Housing and Urban Development