



441 G St. N.W.
Washington, DC 20548

B-331343

April 27, 2020

The Honorable Michael R. Pence
President of the Senate

The Honorable Nancy Pelosi
Speaker of the House of Representatives

Subject: *Fiscal Year 2019 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 extracted from the agency reports. Each summary includes a brief description of the violation 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 web site. In some cases, the agencies also sent us additional materials to accompany their transmittal letters. We will make these additional materials available to Members and their staffs upon request.

Please find enclosed the compilation of summaries of the nine Antideficiency Act violation reports and agency transmittal letters submitted to GAO in fiscal year 2019. GAO has not opined on the violations reported or the remedial actions taken.

If you have any questions, please do not hesitate to contact Shirley A. Jones, Managing Associate General Counsel, at (202) 512-8156, or Omari Norman, Assistant General Counsel for Appropriations Law, at (202) 512-8272.

A handwritten signature in black ink that reads "Thomas H. Armstrong".

Thomas H. Armstrong
General Counsel

Enclosure

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-01

Agency No.: Navy, 16-01 **Date Reported to GAO:** October 4, 2018

Agency: Department of the Navy (Navy) **Date(s) of Violation(s):** Fiscal Year 2006

Account(s): Procurement, Marine Corps **Amount Reported:** \$339,692

Description: The Navy, through the Department of Defense, reported that it violated the Antideficiency Act (ADA) when it obligated the incorrect appropriation to partially pay for the construction of a new facility at Marine Corps Base Camp Pendleton.

The construction project was initially characterized as a temporary, relocatable training facility, which would have required that the building be readily movable, erected, disassembled, stored, and reusable. However, the second floor of the facility was constructed using concrete, making it non-relocatable. Accordingly, the Navy reported that the project should have been characterized as a minor military construction project and exclusively paid for using Operation and Maintenance, Marine Corps appropriation. Instead, the Marine Corps Systems Command improperly used both Procurement, Marine Corps and Operation and Maintenance, Marine Corps appropriation to pay for the construction of this facility.

Remedial Action Taken: To prevent a recurrence of this type of violation, the Navy reported that the Marine Corps Systems Command issued “Construction Acquisition Guidelines” on January 27, 2016, which established procedures and internal controls to govern future construction and construction related efforts. The Navy identified the Assistant Program Manager and the lead Contracting Officer as being responsible for the ADA violation. The Contracting Officer received a formal letter of reprimand. The Assistant Program Manager was no longer a U.S. government employee when the violation was identified and so discipline was not pursued. The Navy determined that the ADA violations were not willfully or knowingly committed.

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

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-02

Agency No.: None Reported	Date Reported to GAO: October 29, 2018
Agency: Department of the Treasury (Treasury)	Date(s) of Violation(s): Fiscal Year (FY) 2015
Account(s): Salaries and Expenses, Departmental Offices	Amount Reported: \$35,996,536

Description: Treasury reported two separate violations of the Antideficiency Act (ADA) when it expended an amount more than was available in the Salaries and Expenses, Departmental Offices account.

The first violation occurred in July 2015 in the amount of \$9,906,155. The second violation occurred in August 2015 in the amount of \$26,090,381. Treasury stated that these two violations occurred due to delays in collecting payments from other federal entities under reimbursable agreements, and that the following circumstances contributed to the violations: (1) its fund control systems did not verify fund balances before an expenditure liquidating a valid obligation was approved; (2) its longstanding systems and practices did not include real-time monitoring of fund balances; and (3) in FY 2015, Congress enacted a new Salaries and Expenses, Office of Terrorism and Financial Intelligence account, which had previously been part of the Salaries and Expenses, Departmental Offices account, and the creation of the new account reduced the cash balance in the latter account during that fiscal year.

Remedial Action Taken: To prevent a recurrence of these types of violations, Treasury reported that it developed standardized processes and procedures, implemented signature workflows, and created a centralized filing system. Treasury reported that it also automated the generation of agreements and documents to enhance standardization and effectiveness of internal controls. Lastly, Treasury reported that dedicated personnel now monitor inter-governmental invoices to ensure timely posting of collections, and monitor the fund balance with Treasury to ensure the account carries a positive cash balance at the end of each month. Treasury did not report whether any disciplinary action was taken against any employees, but did report that it determined that the ADA violations were not willfully or knowingly committed.

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

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-03

Agency No.: None Reported	Date Reported to GAO: November 8, 2018
Agency: Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects (OFC)	Date(s) of Violation(s): Fiscal Year (FY) 2015
Account(s): Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects	Amount Reported: \$210,000

Description: On November 8, 2018, the Office of Management and Budget (OMB) transmitted a letter from OFC dated March 6, 2015, reporting a violation of the Antideficiency Act (ADA) when OFC obligated funds in advance of an apportionment.

OFC reported that it obligated \$210,000 in FY 2015 without an apportionment. OFC reported that it relied on the General Services Administration (GSA) to perform its accounting. GSA erroneously informed OFC that upon enactment of the FY 2015 Continuing Resolution (Public Law 113-164, as amended), it had been automatically apportioned funds under OMB Bulletin No. 14-03. Only after obligation, GSA notified OFC that the automatic apportionment provided by OMB under the FY 2015 Continuing Resolution did not apply to an account if either the House or Senate had reported or passed a bill that provided no funding for that account at the time the Continuing Resolution was enacted or extended. The House of Representatives had passed a 2015 Energy and Water Appropriations bill on July 10, 2014 that did not include any funding for OFC. GSA notified OFC of GSA's error on January 23, 2015.

Remedial Action Taken: OMB reported that OFC de-obligated funds to the maximum extent possible after it was notified of the error, and moved \$83,000 of the obligations that were improperly recorded to other accounts that OFC said were available for the same purposes. OMB apportioned the remaining \$127,000 balance and obtained a warrant from the Department of Treasury to cover these obligations. OFC determined that the ADA violations were not willfully or knowingly committed.

Note: In its March 6, 2015 letter, OFC noted that it would be “shut down” as of March 7, 2015.

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

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-04

Agency No.: DLA, 17-01

Date Reported to GAO: November 26, 2018

Agency: Defense Logistics Agency (DLA) **Date(s) of Violation(s):** Fiscal Years (FYs) 2015-2017

Account(s): Operation and Maintenance, Navy **Amount Reported:** \$229,444

Description: DLA, through the Department of Defense (DOD), reported violations of the Antideficiency Act (ADA) that occurred when it purchased boots under a contract that did not comply with the Berry Amendment, 10 U.S.C. §§ 2533a. The Berry Amendment prohibits the procurement of certain items if they are not grown, reprocessed, reused, or produced in the United States.

DLA awarded a multiyear contract in FY 2015 to procure boots for the Navy. A DOD Inspector General report determined that the contract did not comply with the Berry Amendment because components of the boots being purchased were not produced in the United States, and no valid exceptions to the Berry Amendment applied.

Remedial Action Taken: To prevent a recurrence of this type of violation, DLA reported that it performs reviews of contracts awarded by DLA Land & Maritime detachments at each of the shipyards every two years. Additionally, DLA reported that all DLA acquisition personnel are required to complete Buy American Statute and Berry Amendment courses offered by the Defense Acquisition University. The DLA headquarters management review team also visits all major subordinate commands to perform reviews to validate ongoing self-assessments reported by the major subordinate commands to detect Berry Amendment non-compliance issues. DLA identified one Contracting Officer as being responsible for the ADA violations. The individual left DLA and joined the U.S. Army Corps of Engineers (USACE) prior to completion of the ADA investigation. A copy of the ADA report was submitted to USACE for consideration. USACE determined that Berry Amendment training for the contracting officer was sufficient and no additional disciplinary action was taken. DLA determined that the ADA violations were not willfully or knowingly committed.

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

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-05

Agency No.: None Reported	Date Reported to GAO: December 13, 2018
Agency: Department of Justice (Justice)	Date(s) of Violation(s): Fiscal Years (FYs) 2005-2016
Account(s): Salaries and Expenses, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)	Amount Reported: Justice was Unable to Calculate the Amount

Description: Justice reported that it violated the Antideficiency Act (ADA) when it improperly used funds to open and close foreign ATF offices without providing advance notice to Congress, as required by its annual appropriations acts.

Justice’s annual appropriations acts prohibit it from spending funds to relocate or close an office, including those offices located in foreign countries, until it provides 45-days advance notice to the House and Senate Committees on Appropriations. Justice reported that it opened six, and closed two, foreign offices between FY 2005 through FY 2016 without first notifying Congress. Justice was not able to calculate the costs of the ADA violations that were associated with opening and closing the foreign offices for various reasons. For example, many of the expenses involved, such as salaries and foreign duty pay differentials, would have been incurred regardless of whether Justice had a temporary presence in the foreign location or a permanent office.

Remedial Action Taken: To prevent a recurrence of this type of violation, Justice reported that ATF published and circulated a standard operating procedure (SOP) for notifying Congress on office relocations. The SOP also provides staff with guidance for how to obtain internal authorizations and notification templates. Additionally, Justice reported that it has revised its internal policies for obtaining approvals in these types of situations. Justice identified its Office of Management and its International Affairs Division as being responsible for the ADA violations but noted that the violations spanned over 10 years, and involved a variety of individuals, some of whom likely are no longer still employed at ATF or in the same positions. Justice determined that the ADA violations were not willfully or knowingly committed, and reported that no disciplinary action was taken against any individuals.

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

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-06

Agency No.: None reported	Date Reported to GAO: April 12, 2019
Agency: Department of Homeland Security (DHS)	Date(s) of Violation(s): Fiscal Year (FY) 2012
Account(s): Analysis and Operations	Amount Reported: \$4,811,827

Description: DHS reported that it violated the Antideficiency Act (ADA) during FY 2012 when its Office of Intelligence and Analysis (I&A) made obligations in excess of its apportionment.

The ADA violation occurred when I&A used the incorrect apportionment methodology to calculate the amount of its funding while operating under an automatic apportionment of funds appropriated by the Consolidated Appropriations Act, 2012. This error led to I&A obligating funds in excess of its apportionment on December 30, 2011.

Remedial Action Taken: To prevent a recurrence of this type of violation, DHS reported that the Department no longer allows its components to calculate their automatic apportionment amounts. Rather, the DHS Office of the Chief Financial Officer now provides allocations to component DHS offices. DHS identified a Supervisory Budget Analyst as being responsible for the violation. DHS determined that the ADA violations were not willfully or knowingly committed, and reported that no disciplinary action was taken against the employee involved.

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

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-07

Agency No.: Air Force, 16-02

Date Reported to GAO: April 19, 2019

Agency: Department of the Air Force (Air Force) **Date(s) of Violation(s):** Fiscal Year 2010

Account(s): Operation and Maintenance, Air Force **Amount Reported:** \$2,729,870

Description: The Air Force, through the Department of Defense, reported that it violated the Antideficiency Act (ADA) when it improperly used Air Force's Operation and Maintenance (O&M) funds to procure movable containers that were incorporated into a construction project at Vogelweh Air Base in Germany.

The construction project was for work to convert a building at Vogelweh Air Base into a U.S. Air Force band facility. The Air Force reported that it initially characterized the removable containers as personal property and used O&M funds to procure them. However, the removable containers should have been characterized as a part of the overall cost of construction because they were installed as an integral part of the converted building. The Air Force reported that due to the overall cost of the effort, it should have been categorized as major military construction (MILCON). Accordingly, all aspects of the construction project, inclusive of the movable containers, should have been paid for exclusively with specific MILCON funds, but there were no MILCON funds available for this purpose.

Remedial Action Taken: To prevent a recurrence of this type of violation, the Air Force reported that it changed the processes for construction projects to utilize an overlapping team approach. The Air Force reported that it is also providing fiscal law training to a greater audience than just financial management personnel, with an emphasis on appropriation types and threshold limitations. The Air Force identified the former 86 Civil Engineer Squadron (CES) Deputy Commander, the former 86 CES Chief of Design, and the former Engineering Flight Chief as being responsible for the ADA violations. All three individuals received an oral admonishment and counseling from their supervisor. The Air Force determined that the ADA violations were not willfully or knowingly committed.

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

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-08

Agency No.: Navy 17-01	Date Reported to GAO: May 06, 2019
-------------------------------	---

Agency: Department of the Navy (Navy)	Date(s) of Violation(s): Fiscal Years (FYs) 2013-2015
--	--

Account(s): Operation and Maintenance, Navy	Amount Reported: \$1,070,677
--	-------------------------------------

Description: The Navy, through the Department of Defense, reported violations of the Antideficiency Act (ADA) that occurred when the Naval Supply Systems Command (NAVSUP) Fleet Logistics Center awarded a contract that did not comply with the Berry Amendment, 10 U.S.C. §§ 2533a. The Berry Amendment prohibits the procurement of certain items if they are not grown, reprocessed, reused, or produced in the United States.

NAVSUP awarded a contract that required the contractor to operate a retail store to sell various supplies, such as clothing, textiles, and hand or measuring tools, to Navy commands and organizations. A Department of Defense Inspector General investigation determined that a significant number of items purchased by the contractor for resale to customers did not comply with the Berry Amendment. The contractor acquired the non-compliant items based on the mistaken belief that they were exempt from Berry Amendment requirements.

Remedial Action Taken: To prevent a recurrence of this type of violation, the Navy referred the contractor to relevant sections of the contract to ensure the contractor understood Berry Amendment requirements. The Navy also reported that it updated the contract's administration plan to require routine Berry Amendment compliance inspections and assessments on a monthly or as-needed basis, or both. Additionally, the Navy reported that the contractor now requires suppliers to provide evidence of Berry Amendment compliance. The Navy identified two Contracting Officers and the Deputy Director of the Contracting Department as being responsible for the ADA violations. The Chief Executive Officer of the Navy Exchange Service Command orally counseled the Deputy Director. The two Contracting Officers are no longer U.S. government employees and so discipline was not pursued. The Navy determined that the ADA violations were not willfully or knowingly committed.

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

Antideficiency Act Reports – Fiscal Year 2019

GAO No.: GAO-ADA-19-09

Agency No.: None Reported **Date Reported to GAO:** July 8, 2019

Agency: Department of Veterans Affairs (VA) **Date(s) of Violation(s):** Fiscal Years (FYs) 2013-2015

Account(s): Information Technology Systems **Amount Reported:** \$8,000,000

Description: VA reported that its Office of Transition, Employment, and Economic Impact (OTEEI) violated the Antideficiency Act (ADA) when it used funds from its General Operating Expenses account, rather than from its Information Technology (IT) Systems account, to finance the development and maintenance of an IT dashboard.

VA reported that OTEEI used funds from its General Operating Expenses account because it was not aware that the IT Systems account should have been used for funding IT development costs. VA reported that the violation was partially cured by later charging and adjusting the appropriate IT Systems accounts after the error was identified by VA’s Office of Inspector General. However, the correction resulted in violations of certain statutory restrictions and conditions that Congress had placed on VA’s use of the IT Systems Development subaccount in the appropriations acts for FY 2013, FY 2014, and FY 2015. VA reported the ADA violation because of the violation of these restrictions.

Remedial Action Taken: To prevent a recurrence of this type of violation, VA reported that VA’s Office of Information and Technology revised its policy guidance both to clarify what constitutes IT and non-IT expenditures and to include definitions in accordance with VA’s appropriations act. The VA identified its former OTEEI Chief of Transition of the Veterans Benefits Administration as being responsible for the violation. VA did not report whether any disciplinary action was taken against any employees, but did report that it determined that the ADA violations were not willfully or knowingly committed.

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



COMPTROLLER

UNDER SECRETARY OF DEFENSE

1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

OCT 04 2018

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

Dear Mr. Dodaro:

This letter reports a violation of the Antideficiency Act (ADA), Navy case number 16-01 (enclosed), as required by 31 U.S.C. § 1351. The violation involved Fiscal Year (FY) 2006 Procurement Marine Corps (PMC) funds. The violation totaled \$339,692.00 and occurred at the Marine Corps Base (MCB) Camp Pendleton, CA. The Marine Corps Systems Command (MCSC) used funds for the acquisition and installation of a Modular Armored Tactical Combat House (MATCH) facility (Shoot House) at MCB Camp Pendleton described as “temporary training facility.” However, the MATCH Shoot House was a Class II Real Property and a non-relocatable facility used for long-term needs. The MCSC used PMC funds to partially pay for the facility instead of Operations and Maintenance, Marine Corps (OMMC) funds as required by 10 U.S.C. § 2805(c). Consequently, the MCSC incurred an uncorrectable violation of title 31 U.S.C. § 1301(a) and 31 U.S.C. § 1341¹.

The MCSC conjunctively obligated a total of \$689,502 for the MCB Pendleton MATCH Shoot House using \$349,850 of FY 2007 OMMC and \$339,692 of FY 2006 PMC funds. The contracting officer erroneously used FY 2006 PMC funds to partially finance the MATCH Shoot House training contract. Title 10 U.S.C. § 2805 provides statutory authority to carry out minor military construction projects not otherwise authorized by law. At the time, the Department of Defense could spend up to \$750,000 from appropriations available only for Operation and Maintenance to carry out an unspecified minor military construction project. Consequently, the MATCH Shoot House project should have been entirely funded from FY 2007 OMMC. The MCB Pendleton requirement was for a temporary, relocatable training facility. A relocatable facility is a building designed to be readily moved, erected, disassembled, stored, and reused to satisfy an interim facility requirement, normally 3 years or less. However, the second floor of the MATCH Shoot House utilized concrete, making it non-relocatable. The MATCH Shoot House was a military construction project and should have been classified as real property at the time funds were obligated for the construction.

¹ Although the circumstances described herein constitute a violation of 10 U.S.C. § 2805(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 (online at 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 GAO’s views to the contrary, consistent with section 145.8 of OMB Circular A-11, DoD is submitting this report in its entirety to the President, the Congress, and the Comptroller General.

The Assistant Program Manager, Live Training Systems Development Program, MCSC (retired) and the lead Contracting Officer, MCSC were found responsible for causing the ADA violation. The MCSC Commanding Officer issued the lead Contracting Officer, MCSC a formal letter of reprimand. The Assistant Program Manager, MCSC is no longer a United States Government employee and discipline was not pursued. The violation contained no 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 MCSC issued the "Construction Acquisition Guidelines," on January 27, 2016, which established procedures and internal controls for identification, funding, and contracting of construction and construction related efforts. The Deputy Commander, Resource Management and Assistant Commander of Contracts/Head of the Contracting Activity has required all Contracts and Financial Management Personnel to complete a Defense Acquisition University construction, Antideficiency Act, and Appropriations Law training courses.

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,

A handwritten signature in black ink, appearing to read "David L. Norquist". The signature is fluid and cursive, with a large initial "D" and "N".

David L. Norquist

Enclosure:
As stated



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

October 29, 2018

The President
The White House
Washington, DC 20500

Dear Mr. President:

This letter is to report two violations of the Antideficiency Act, as required by 31 U.S.C. 1351. The violations we are reporting occurred in 2015, prior to this administration. The first violation of 31 U.S.C. 1341 occurred in account 20-0101, Salaries and Expenses, Departmental Offices, in the total amount of \$9,906,155. This violation occurred in July of fiscal year 2015 when Treasury expended an amount in excess of the available cash balance in this account. The second violation of 31 U.S.C. 1341 occurred in the same account in the total amount of \$26,090,381. This violation occurred in August of fiscal year 2015 when Treasury expended an amount in excess of the available cash balance in this account.

Both violations occurred when Treasury incurred expenditures in the same account in amounts in excess of the available cash balance in the account due to delays in collecting payments from other Federal entities under reimbursable agreements. As a result of these delays, the Department of the Treasury disbursed more than the cash balance in account 20-0101.

Several circumstances contributed to the violation. First, Treasury's fund control systems do not verify fund balances before an expenditure liquidating a valid obligation is approved. Second, Treasury's longstanding systems and practices did not include real-time monitoring of fund balances. Finally, during fiscal year 2015, Congress created a separate Salaries and Expenses, Offices of Terrorism and Financial Intelligence account, which had previously been part of the Salaries and Expenses, Departmental Offices account, including under the continuing resolution during the first months of fiscal year 2015. The creation of the new Salaries and Expenses, Offices of Terrorism and Financial Intelligence account reduced cash balances in the Salaries and Expenses, Departmental Offices account during fiscal year 2015.

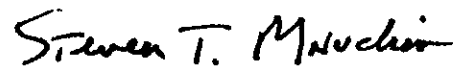
After identifying these violations, Treasury Departmental Offices (DO) took actions to ensure the maintenance of adequate cash balances by executing timely collections under reimbursable agreements. Since fiscal year 2015, DO has developed standardized processes and operating procedures, and implemented signature workflows and a centralized filing system. DO also automated the generation of agreements and associated financial documents to enhance standardization and effectiveness of internal controls. In addition, dedicated staff monitor outstanding inter-governmental invoices to ensure timely posting of collections, and monitor the

fund balance with Treasury to ensure the account carries a positive cash balance at the end of each month.

The Department of the Treasury determined that the violation contained no willful or knowing intent to violate the Antideficiency Act.

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

Respectfully,

A handwritten signature in black ink that reads "Steven T. Mnuchin". The signature is written in a cursive, slightly slanted style.

Steven T. Mnuchin



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 8, 2018

The Honorable Gene L. Dodaro
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Dodaro:

Enclosed is a letter transmitting to you a report of a violation of the Antideficiency Act (ADA) (31 U.S.C. § 1517(a)) on behalf of the now-closed Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects (Federal Coordinator).

The Office of General Counsel of the Office of Management and Budget is transmitting the Federal Coordinator's ADA report to you to ensure that your office receives a copy of the report in compliance with the requirements of the ADA. The Federal Coordinator previously submitted copies of the report to the President.

Our office is also submitting copies of the Federal Coordinator's report to the President of the Senate and the Speaker of the House of Representatives.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Paoletta".

Mark R. Paoletta
General Counsel

Enclosure

March 6, 2015

The Honorable Gene L. Dodaro
Comptroller General of the United States
General Accounting 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 31 U.S.C. 1517(b).

A violation of section 1517(a)(1) of Title 31 occurred during fiscal year (FY) 2015 in the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects' (OFC) account 95-15/16-2850 when \$210,000 was obligated in advance of an apportionment.

The OFC, which is a small independent agency with four full-time employees, contracts with the General Services Administration (GSA) to perform its accounting. GSA informed the OFC that it had been automatically apportioned funds under the FY 2015 Continuing Resolution (CR) (Public Law 113-164, as amended) in account 95-15/16-2850. This was erroneous, however, because the House of Representatives had passed a 2015 Energy and Water Appropriations bill on July 10, 2014, that did not include any funding for the OFC. Under Office of Management and Budget (OMB) Bulletin No. 14-03, the automatic apportionments provided by OMB under the CRs thus did not apply to the OFC.¹ Based on the guidance received from GSA as its financial service provider, the OFC made obligations in FY 2015 totaling \$210,000 without an apportionment. On January 23, 2015, GSA notified the OFC of the error. At that point, the OFC de-obligated funds to the maximum extent possible in account 95-15/16-2850, in line with OMB Circular No. A-11. The OFC was also able to move \$83,000 of the obligations improperly recorded against the CR to other accounts that were available for the same purposes and contained sufficient balances.

OMB then apportioned the \$127,000 balance in account 95-15/16-2850, and obtained a warrant from the Department of the Treasury to cover these obligations pursuant to section 105 of the CR.

The OFC has found no evidence that the violation was committed willfully or knowingly by anyone involved. The OFC will be shut down as of March 7, 2015.

¹ OMB Bulletin No. 14-03, which was transmitted to the heads of executive departments and establishments on September 25, 2014, states, "As has been the case in recent CR Bulletins, including FY 2014, if either the House or Senate has reported or passed a bill that provides no funding for an account at the time the CR is enacted or extended, this automatic apportionment does not apply to that account."



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

NOV 26 2018

COMPTROLLER

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), Defense Logistics Agency (DLA) case number 17-01 (enclosed), as required by 31 U.S.C. § 1351. The violations involved Fiscal Years (FYs) 2015 through 2017 Operation and Maintenance (O&M), Navy funds. The amount of violations totaled \$229,444 that resulted from the acquisition of non-compliant Berry Amendment items and occurred at the DLA Maritime – Puget Sound Naval Shipyard. The DLA Maritime Puget Sound incorrectly determined that an exception to the Berry Amendment, 10 U.S.C. § 2533a, applied when executing a protective footwear contract. Consequently, the DLA Maritime Puget Sound incurred uncorrectable violations of the Purpose Statute, title 31 U.S.C. § 1301(a), and the ADA, title 31 U.S.C. § 1341(a)(1)(A).¹

The DLA awarded a multiyear contract in FY 2015 to procure several sizes and types of boots for the Navy. The DoD Inspector General report, “DLA Compliance with the Berry Amendment and the Buy American Act,” identified that DLA Maritime Puget Sound procured protective footwear that did not comply with the Berry Amendment. The Metguard boot supplied under the contract had three components that were not produced within the United States, and for which there were no valid exceptions to the Berry Amendment. The Berry Amendment, 10 U.S.C § 2533a, prohibits the procurement of specific items if the items are not grown, reprocessed, reused, or produced in the United States.

The Contracting Officer, DLA Maritime Puget Sound was found responsible for causing the ADA violations. The individual left DLA prior to completion of the ADA investigation and did not receive disciplinary action. The ADA investigative report recommended Berry Amendment training as a corrective measure. The individual is currently an employee of the U.S. Army Corps of Engineers (USACE). A copy of the ADA report was submitted to USACE for consideration and disciplinary action. USACE determined that the Berry Amendment training requirement was sufficient and no additional disciplinary action was taken. The

¹ Although the circumstances described herein constitute a violation of 10 U.S.C. § 2533(a), 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 (online at 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 GAO’s views to the contrary, consistent with section 145.8 of OMB Circular A-11, DoD is submitting this report in its entirety to the President, the Congress, and the Comptroller General.



violations contained no willful or knowing intent on the part of the responsible individual to violate the ADA.

To prevent a recurrence of these types of violations, DLA's Procurement Process Support Directorate performs reviews of contracts awarded by the DLA Land & Maritime detachments at each of the shipyards every two years. In addition, all DLA acquisition personnel, including the DLA Maritime – Puget Sound Naval Shipyard acquisition, were mandated to complete the Buy American Statute and Berry Amendment courses offered by the Defense Acquisition University. The Headquarters DLA Agency Management Review team also visits Major Subordinate Commands (MSCs) once every two years to perform "Check the Checker" reviews. These reviews validate ongoing self-assessments reported by the MSCs, and provide a level of internal controls above the MSC level to potentially detect future Berry Amendment non-compliance issues.

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,

A handwritten signature in black ink, appearing to read "David L. Norquist". The signature is fluid and cursive, with a large initial "D" and "N".

David L. Norquist

Enclosure:
As stated



U.S. Department of Justice

Washington, D.C. 20530

December 13, 2018

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 violations occurred when the Department of Justice (Department) Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) opened and closed foreign offices without providing advance notice to Congress. The funding improperly expended with respect to these violations was from the ATF Salaries and Expenses account (Treasury Account Symbol 015_0700).

The Department's annual appropriations acts preclude the Department from spending funds to "relocate[] an office or employees" until it gives advance notice to the House and Senate Committees on Appropriations and waits the required number of days.¹ The Department has discussed with the Congressional committees regarding what types of relocations qualify for such notice. 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. These notice requirements extend to the opening and closing of foreign offices. The Department makes such notifications through the Congressional Relocation Report (CRR).

The Department has determined that ATF opened the following foreign offices in the indicated fiscal years without submitting CRRs to Congress:

- Toronto, Canada: 2005
- Monterrey, Mexico: 2008
- San Salvador, El Salvador: 2009
- Kingston, Jamaica: 2016
- Port of Spain, Trinidad and Tobago: 2016

¹ See Section 505 of Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016; Title V, Division B, Public Law 114-113 (129 Stat. 2323). We have cited the provision from fiscal year 2016 since a few of the office openings at issue occurred in that year. Note that every fiscal year the Department's appropriations act includes a similar provision, though the length of the waiting period following the notice has varied.

- Nassau, Bahamas: 2016

Further, the ATF closed the following two foreign offices in fiscal year 2014 without submitting CRRs to Congress:

- Merida, Mexico
- Vancouver, British Columbia, Canada

Since ATF opened or closed the above offices without sending CRRs to the appropriate Congressional committees, the ATF violated section 505 with respect to the above offices. By failing to satisfy the preconditions in section 505 prior to obligating and expending funds to open or close these offices, ATF incurred obligations and expenditures in excess of available appropriations in violation of the ADA. 31 U.S.C. § 1341(a)(1).

The foreign offices listed above were established as a result of coordinated efforts between the Justice and State Departments to facilitate criminal investigations and combat firearms trafficking and gang activity in foreign countries.² In researching these offices it was not always clear when ATF transitioned from having a *permissible presence* in a foreign location under the auspices of the State Department to establishing a *new office* of the Department. The Department considered several indicia to be relevant to our determination that ATF opened new offices, such as the reassignment of employees to permanent duty stations at those offices (with ensuing relocation payments), and the inclusion of the offices on ATF's website.

While the above indicia led the Department to conclude that ATF had opened permanent offices without providing the required Congressional notice, and that therefore ADA violations had occurred, the nature of these violations (as well as the fact that some occurred many years ago) made it impractical for ATF to determine with any degree of accuracy the amount of funds spent with respect to each violation. This is in large part due to the fact that many of the expenses incurred with respect to these offices, such as salaries and foreign duty pay differentials, would have been incurred regardless of whether the Department had a temporary presence or a permanent office. Further, while there were costs of establishing the permanent presence, those costs were offset by other savings. For example, when ATF permanently relocated employees to these offices, it stopped paying temporary duty travel expenses. Accordingly, ATF has not quantified the dollar amount associated with these ADA violations.

The Department found that ATF's Office of Management and its International Affairs Division were responsible for the ADA violations.³ The ADA violations occurred because of a

² While we recognize that the Department did not submit formal CRRs with respect to these offices, we note that the Department's involvement in these regions was often described in our Congressional budget submissions and other disclosures to Congress. There was never an intention by the Department, or ATF, to conceal these offices; merely a lack of understanding of the CRR process.

³ The fact that these violations spanned over 10 years, and involved a variety of individuals, would require extensive investigation to definitively name individuals responsible for each violation, some of whom likely are no longer still employed at ATF or in the same positions. The individuals currently responsible for these types of office openings and closings discovered the ADA violations themselves and followed Departmental policy to elevate the matter, and thus are aware of the issue and understand the importance of the Congressional notification process.

misunderstanding within ATF regarding the need to satisfy the CRR requirements in addition to the processes required for Justice and State Department approvals (pursuant to National Security Decision Directive (NSDD) 38). The violations were facilitated by a lack of ATF internal controls regarding these parallel processes (now addressed by new ATF procedures, noted below), and led ATF to open and close the foreign offices without ensuring that all legally required preconditions for the obligation and expenditure of funds had been met. No willful or knowing intent was found with respect to the ADA violations, and the Department has not disciplined any of the individuals involved, focusing instead on improving ATF internal controls.

The Department has instituted a number of corrective actions to preclude future incidents. In 2017, ATF published and circulated a 14-page Standard Operating Procedure (SOP) for the CRR process. The SOP contains a detailed explanation of the CRR and NSDD-38 authorization requirements, a step-by-step guide for obtaining internal ATF authorization, and templates for both CRR and NSDD-38 requests. In addition, the Department has revised its policy regarding NSDD-38 requests, and now requires the completion of the CRR notification process prior to NSDD-38 approval. Finally, the Department notes that since fiscal year 2005 it has received unmodified (clean) audit opinions on its financial statements.

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

Respectfully,



Lee J. Lofthus
Assistant Attorney General
for Administration, and
Chief Financial Officer



**Homeland
Security**

June 20, 2017

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) (2004) by the Department of Homeland Security's (DHS's) Office of Intelligence and Analysis (I&A).

The ADA violation occurred in the Analysis and Operations Treasury (AO) Treasury Appropriation Fund Symbol 70/12 0115 for a total amount of \$4,811,827 due to the application of the wrong apportionment methodology. This error led to I&A obligating funds in excess of their quarterly apportionment on December 30, 2011, during Fiscal Year 2012. A Supervisory Budget Analyst was responsible for the violation.

In September 2015, 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.

The violation was discovered by the Office of Management and Budget (OMB) on January 24, 2012, during a review of I&A's unclassified and classified Standard Form 132, Apportionment and Reapportionment. During this time, I&A was operating under an automatic apportionment of funding appropriated by the Consolidated Appropriations Act, 2012, which was enacted into law on December 23, 2011. As described by OMB Circular A-11 (August 2011; revised November 2011) § 120.28, OMB provided an automatic apportionment of funding until the first apportionment request was approved. This automatic apportionment required the use of the lowest of one of the following three apportionment methodologies:

- The pro-rata share (1/365th for each day) of the last year's enacted appropriations level.
- The pro-rata share (1/365th for each day) of the current year's enacted appropriation level.
- The historical seasonal level of obligations.

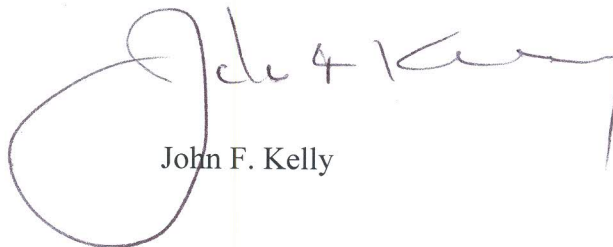
I&A applied the pro-rata share of the current year's enacted appropriation level on December 30, 2011. I&A then allocated and obligated 30 days of its appropriation ahead of guidance from the DHS Office of the Chief Financial Officers' Budget Division provided on January 4, 2012. This guidance determined that the seasonal rate resulted in the lowest apportionment amount, and should have instead been used by I&A because the seasonal rate yielded an apportionment amount of \$4,811,827 less than the apportionment rate actually applied by I&A.

The Department has taken corrective action to prevent future violations by improving its policies and procedures. Specifically, the Department no longer allows Components to calculate their automatic apportionment amounts. Rather, the DHS Office of the Chief Financial Officer now provides the allocations to the Components. This measure helps to ensure that a violation of this type 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 had no knowing and willful intent to violate the ADA.

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,

A handwritten signature in dark ink, appearing to read "John F. Kelly". The signature is stylized with a large, looping initial "J" and a long, sweeping horizontal stroke.

John F. Kelly



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1 100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

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

APR 19 2019

Dear Mr. Dodaro:

This letter reports a violation of the Antideficiency Act (ADA), Air Force case number 16-02 (enclosed), as required by 31 U.S.C. § 1351. The violation involved Fiscal Year 2010 Air Force Operations and Maintenance (O&M) funds. The violation totaled \$2,729,870 and occurred at the Vogelweh Air Base, Germany. The U.S. Air Force in Europe (USAFE) obligated and expended funds for work on a new USAFE band facility. The USAFE converted a building at Vogelweh Air Base to house the USAFE band using movable containers. However, the work constituted major construction and required Military Construction (MILCON) funds. Consequently, the USAFE incurred an uncorrectable violation of 31 U.S.C. § 1341(a)(1)(A).¹

The USAFE band was originally located at Sembach Air Base. Due to the Army gaining control of the base, USAFE decided to move the USAFE band to the Vogelweh Air Base. The empty furniture store on the Vogelweh Air Base was identified as the new home of the USAFE band. In order to make the facility compatible with USAFE band's requirements for offices, storage, and practice rooms, the store underwent construction and repair work, including demolition of the front of the store. In order to minimize costs to stay within O&M minor military construction funding limits, the Air Force planned to replace the front with removable containers.

The containers were originally characterized as personal property in order to be acquired with O&M funds and not be considered a construction cost. However, the containers were installed not as removable equipment but rather as an integral part of the new facility. When adding the costs of the containers and the work associated with several design changes to the original stated cost of construction, the entire construction project cost totaled \$2,729,870. This cost placed the facility in the category of specified MILCON. Prior to the obligation of funds, the facility should have been authorized by Congress (10 U.S.C. § 2802) and specific MILCON funds should have been appropriated for it. Only these funds could have been used to fund the

¹ Although the circumstances described herein constitute violations of 10 U.S.C. § 2802, and 10 U.S.C. § 2805(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.



project. As this military construction project exceeded the O&M threshold of \$750,000 for unspecified minor military construction, and the O&M funds used to fund the construction were not available for obligation (10 U.S.C. § 2805), the Purpose Statute (31 U.S.C. § 1301) was violated. As no MILCON funds were available to pay for it, an ADA violation was committed (31 U.S.C. §1341).

The former 86 Civil Engineer Squadron (CES) Deputy Commander, the former 86 CES Chief of Design, and the former Engineering Flight Chief were found responsible for causing the ADA violation. All three named responsible individuals received an oral admonishment/verbal counseling from their current supervisor. The violation contained no 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 USAFE changed the processes for construction projects to utilize an overlapping, team approach, bringing together programmers, designers, and engineers from inception to completion. The USAFE is conducting fiscal law training to a greater audience than just financial management personnel, with an emphasis on appropriation types and threshold limitations, to provide a greater understanding of the legal implication of programming actions with regard to projects and different types of equipment.

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,



Elaine McCusker
Deputy Under Secretary of Defense
(Comptroller)

Enclosure:
As stated



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

COMPTROLLER

MAY 06 2019

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), Navy case number 17-01 (enclosed), as required by 31 U.S.C. § 1351. The violations involved fiscal years 2013 through 2015 Operation and Maintenance, Navy funds. The violations totaled \$1,070,677 and occurred at the Naval Supply Systems Command (NAVSUP) Fleet Logistics Center (FLC), Norfolk, Virginia. NAVSUP awarded a contract requiring a contractor to operate a Servmart facility to sell various types of supplies to Navy commands and organizations. However, a significant number of items purchased from the FLC Norfolk Servmart by Navy commands, ships, and organizations did not comply with the requirements of 10 U.S.C. § 2533a (Berry Amendment). Consequently, NAVSUP incurred uncorrectable violations of title 31 U.S.C. § 1341.¹

NAVSUP required a contractor to operate the Servmart fixed and mobile supply stores at Naval Station Norfolk. The types of supplies that the contractor would sell to the customers in the Servmart included clothing, textiles, and hand or measuring tools. During an independent Department of Defense Office of Inspector General investigation of the potential Berry Amendment violations, a substantial number of hand tools were found to be foreign manufactured as they were stamped with their foreign country of origin.

In general, the Berry Amendment prohibits the use of appropriated funds to “procure” items that are not grown, reprocessed, reused, or produced in the United States. Due to a provision in the main contract that exempted the contractor from Berry Amendment compliance for purchases that did not exceed the simplified acquisition threshold (SAT) of \$150,000, the contractor acquired many foreign-made supplies, including Gore-Tex boots, believing that individual purchases by the customers, considered individual contracts under the terms of the main contract, would not exceed the SAT. However, no acquisitions fell below the SAT. The full value of the contract measured by cumulative value of anticipated orders for each fiscal year – \$40 million – determined whether the SAT applied to each order. It did not.

¹ Although the circumstances described herein constitute a violation of 10 U.S.C. § 2533a, 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 (online at 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 Office of Management and Budget Circular A-11, DoD is submitting this report in its entirety to the President, the Congress, and the Comptroller General.



Two contracting officers and the Deputy Director, Contracting Department, were found responsible for causing the ADA violations. The Chief Executive Officer, Navy Exchange Service Command, orally counseled the Deputy Director. The two contracting officers are no longer U.S. Government employees and discipline was not pursued. The violations contained no 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 contracting officer referred the contractor to the applicable sections of the contract relevant to the Berry Amendment and ensured its understanding of the requirements. The contracting officer updated the contract administration plan to include routine assessments of stocked items. Since April 2015, the contracting officer's representative has conducted one wall-to-wall inspection and additional assessments on a monthly and/or as-needed basis to check for Berry Amendment compliance. In addition, the contractor now requires that its suppliers provide definitive evidence of compliance with the Berry Amendment.

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,



Elaine McCusker
Deputy Under Secretary of Defense
(Comptroller)

Enclosure:
As stated

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUL 08 2019

The Honorable Gene Dodaro
Comptroller General of the United States
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.).

The violation occurred in the Department of Veterans Affairs (VA) Information Technology (IT) Systems account (36-0167) in the amount of \$8,000,000.52. The violation occurred as a consequence of an adjustment to obligations incurred between Fiscal Years (FY) 2013 and 2015 in connection with the improper use of the General Operating Expenses (GOE) account (26-0167) to finance development and maintenance of an IT dashboard. The IT Systems account (36-0167) was the proper funding source for the IT dashboard, but VA failed to comply timely with appropriations act restrictions regarding the use of the IT Systems account, resulting in a violation of the Antideficiency Act. The former Office of Transition, Employment, and Economic Impact (OTEEI) Chief of Transition of the Veterans Benefits Administration was responsible for the violation.

OTEEI inappropriately obligated and spent approximately \$8.0 million of its GOE appropriation, instead of the IT Systems appropriation, to develop and maintain an IT dashboard. The former OTEEI Director and Assistant Director stated that they were not aware that the IT Systems appropriation should have been used for funding IT development costs. OTEEI violated the Purpose Statute when it obligated and spent \$8.0 million of the GOE appropriation for IT development costs. A May 2018 Office of Inspector General report (discussed in greater detail below) identified the violation. In FY 2019, VA partially cured the Purpose Statute violation by adjusting its accounts to charge the IT dashboard expenses to the proper fiscal year IT Systems accounts. The remaining adjustments to VA's Financial Management System will be completed once this letter has been transmitted. Although the accounts contained sufficient funds to fully correct the errors, the correction resulted in violations of certain statutory restrictions that Congress had placed on VA's use of the IT Systems Development subaccount in the appropriations acts for FY 2013, FY 2014, and FY 2015 (Public Laws 113-6, 113-76, and 113-235). Specifically, the appropriations acts for FY 2013, FY 2014, and FY 2015 required that VA submit a Spend Plan before amounts could be obligated for each development project; that VA submit a request to the Committees to increase or decrease any development project by more than \$1 million (including newly-

Page 2.

The Honorable Gene L. Dodaro

defined projects); and that the Development subaccount must be used for projects and in the amounts, specified in the explanatory statement that accompanied the appropriations act. None of these conditions were met with respect to the dashboard project. As a result of violating these appropriations act restrictions on the use of IT Systems account appropriations, VA violated the Antideficiency Act.

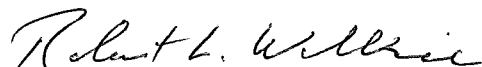
In its May 2, 2018, report titled "Review of Alleged Contracting and Appropriation Irregularities at the Office of Transition, Employment, and Economic Impact" (Project #2016-04555-R6-0192), the VA Office of Inspector General (OIG) found that OTEEI committed a Purpose Statute violation and may have violated the Antideficiency Act and recommended that the Executive in Charge for Benefits ensure the OTEEI Director consult with the Head of Contracting Activity and the Office of General Counsel to determine what actions need to be taken to remedy the unauthorized commitment, and that the Executive in Charge for Benefits obtain appropriate funding for all future IT costs. In addition, the OIG report recommended that the Executive in Charge for Benefits coordinate with the Office of Information and Technology (OIT), the Office of Management, and the Office of General Counsel to make accounting adjustments to debit the IT account that should have been used and credit the GOE account that was inappropriately used, determine whether Antideficiency Act violations occurred, and report the violations, as appropriate.

OIT recently issued revised policy guidance to clarify what constitutes IT and non-IT expenditures and to account for new technologies, to include definitions in accordance with VA's appropriations act for staff to use when obligating funds. It will be used by VA finance and contracting staff as obligations are incurred. VA believes that with clearer policy guidance, similar violations can be avoided.

VA has determined that the responsible party had no knowing nor willful intent to violate the Antideficiency Act.

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

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Wilkie".

Robert L. Wilkie