**THE SECRETARY OF HEALTH AND HUMAN SERVICES**
**WASHINGTON, D.C. 20201**

June 30, 2010

The Honorable Nancy Pelosi
Speaker of the House of Representatives
H-232, The Capitol
Washington, D.C. 20515

Dear Mrs. Pelosi:

This letter is to report a violation of the Antideficiency Act, as required by section 1517(b) of Title 31, United States Code.

Summary of Violation

A violation of section 1517 at the apportionment level occurred in account 75-09/10-0392, Indian Health Facilities, Recovery Act, in the total amount of $240,505. The violation occurred on August 19, 2009 in connection with an FY 2009 health care facilities construction project in Nome, Alaska. On this date, the Indian Health Service (IHS) awarded a construction contract for $90,490,505, when the amount apportioned for this activity was $90,250,000. The resulting over-obligation was corrected by reducing the amount of these specific funds obligated for the contract to match the amount in the apportionment's Category B level for the Nome project.

Factors Leading to Violation

The primary factors leading to the violation were that (a) the funds for this facilities project were made available differently than the way funds had previously been apportioned, and (b) IHS staff did not fully understand the implications of this change. The Indian Health Facilities account is typically apportioned with all of the individual facility projects grouped together under "Category A", which allowed IHS the flexibility to adjust amounts allotted to individual projects as necessary within the total quarterly apportionment level. However, as part of a government-wide effort for greater transparency of funds appropriated in the American Recovery and Reinvestment Act, the apportionment specifically separated out the funding for the two construction projects (in Nome, Alaska, and Eagle Butte, South Dakota) into separate "Category B" lines, which are used to distribute budgetary resources by purpose rather than by quarter.

In the process of managing the projects, IHS determined it was necessary to shift funds from the Eagle Butte project to the Nome project. IHS assumed it was permissible to follow the same procedure they had previously followed when funds were apportioned under Category A. The IHS staff operated consistent with previous practice by shifting funds between allotments based on programmatic needs. IHS staff then signed a contract that exceeded the amount apportioned for this project by $240,505. However, IHS should have first requested a reapportionment to shift funds between the two Category B lines prior to shifting funds between the two allotments.

When it was realized that an over-obligation had occurred, it was rectified by reducing the amount of these specific funds obligated for the contract to match the amount in the apportionment's Category B level for the Nome project when IHS staff learned an approved reapportionment is required to shift funds between Category B lines. At no time was the amount of the appropriation exceeded.

Actions Taken to Mitigate Violation and Sanction Involved Employees

The violation was not committed willfully and knowingly. Since the problem was systemic, the Department has concluded that responsibility for the violations cannot fairly be attributed to specific individuals.

IHS now clearly understands the differences between Category A and Category B apportionments after consultation and discussion with OMB and HHS. The IHS Director has personally reviewed the contributing factors to this error with her Senior Staff and Chief Financial Officer and directed them to immediately undertake the following corrective actions.

First, to prevent the reoccurrence of this type of violation, IHS now requires clearance and approval of transactions recording allotments in the accounting system from higher-level managers, instead of the previous practice of allowing IHS budget execution staff to self-approve allotment level transactions. Second, the IHS Chief Financial Officer has counseled IHS apportionment request preparers to request specific guidance for any new items introduced into the apportionment process. Third, pertinent IHS staff will be alerted to training opportunities on changes and updates to OMB Circular A-11 on an annual basis. Fourth, as an additional level of control, IHS staff will work with OMB to proactively identify any significant differences in apportionment patterns. Finally, the HHS Office of Budget will provide budget execution training to IHS, which will cover apportionments and other budget execution issues.

Identical letters are being sent to the Speaker of the House of Representatives, the President of the Senate, and the Comptroller General.

Sincerely,

Kathleen Sebelius

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THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

June 30, 2010

The Honorable Joseph Biden
President of the Senate
The White House
Washington, D.C. 20500

Dear Mr. President:

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Summary of Violation

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Factors Leading to Violation

The primary factors leading to the violation were that (a) the funds for this facilities project were made available differently than the way funds had previously been apportioned, and (b) IHS staff did not fully understand the implications of this change. The Indian Health Facilities account is typically apportioned with all of the individual facility projects grouped together under "Category A", which allowed IHS the flexibility to adjust amounts allotted to individual projects as necessary within the total quarterly apportionment level. However, as part of a government-wide effort for greater transparency of funds appropriated in the American Recovery and Reinvestment Act, the apportionment specifically separated out the funding for the two construction projects (in Nome, Alaska, and Eagle Butte, South Dakota) into separate "Category B" lines, which are used to distribute budgetary resources by purpose rather than by quarter.

In the process of managing the projects, IHS determined it was necessary to shift funds from the Eagle Butte project to the Nome project. IHS assumed it was permissible to follow the same procedure they had previously followed when funds were apportioned under Category A. The IHS staff operated consistent with previous practice by shifting funds between allotments based on programmatic needs. IHS staff then signed a contract that exceeded the amount apportioned for this project by $240,505. However, IHS should have first requested a reapportionment to shift funds between the two Category B lines prior to shifting funds between the two allotments.

When it was realized that an over-obligation had occurred, it was rectified by reducing the amount of these specific funds obligated for the contract to match the amount in the apportionment's Category B level for the Nome project when IHS staff learned an approved reapportionment is required to shift funds between Category B lines. At no time was the amount of the appropriation exceeded.

Actions Taken to Mitigate Violation and Sanction Involved Employees

The violation was not committed willfully and knowingly. Since the problem was systemic, the Department has concluded that responsibility for the violations cannot fairly be attributed to specific individuals.

IHS now clearly understands the differences between Category A and Category B apportionments after consultation and discussion with OMB and HHS. The IHS Director has personally reviewed the contributing factors to this error with her Senior Staff and Chief Financial Officer and directed them to immediately undertake the following corrective actions.

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