

UNDER SECRETARY OF DEFENSE

1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

JUL 19 2016

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

Dear Mr. Dodaro:

This letter reports multiple violations of the Antideficiency Act (ADA), Navy case number 14-03 (enclosed), as required by 31 U.S.C. 1351. The violations involved fiscal years (FYs) 2009-2013 Operation and Maintenance, Navy (O&MN). The violations totaled \$52,990 and occurred within the Naval Postgraduate School (NPS). In this case, NPS Comptroller improperly authorized the use of appropriated funds for the purchase of meals and beverages at conferences and workshops. The expenditure of appropriated funds for food in instances other than as authorized by statute or where the expenditure can be established to be a necessary expense violates the Purpose Statute, 31 USC § 1301(a)¹. The violation is uncorrectable, resulting in a violation of 31 USC § 1341(a)(1)(A).

As a rule, food is a personal expense for which appropriated funds are not available. Exceptions to the rule are construed narrowly. In general, the use of appropriated funds for the purchase of food must specifically be authorized by statute or that the agency demonstrates that the expenditure is an essential part of the effective accomplishment of a statutory mission. The NPS improperly used O&MN funds to provide meals and refreshments to non-DoD personnel attending NPS conferences, hold receptions at a number of conferences, and reimburse a faculty/staff member for expenses associated with buying refreshments for conference workers.

The NPS Comptroller expended \$18,049 of O&MN funds to finance NPS Morale, Welfare, and Recreation (MWR) bartender service fees and happy hour type food to host cocktail receptions at various events. Receptions are entertainment and their costs are personnel expenses. As appropriated funds cannot be used for these purposes, an ADA violation was incurred in each instance where a reception took place.

¹ Although the circumstances described herein constitute a violation of 31 U.S.C. § 1301(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 (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 NPS Comptroller also obligated and disbursed \$34,706 for NPS MWR to provide meals and refreshments to non-DoD personnel who attended conferences. Agencies may consider the cost of providing meals and refreshments to conference attendees an allowable conference cost so long as attendance at the meals is important to ensure full participation in essential discussions, lectures, or speeches concerning the purpose of the conference. The NPS failed to provide sufficient justification that meals were required to ensure the attendees full participation in lectures, discussions, and speeches.


Finally, the NPS Comptroller obligated and disbursed \$235 to reimburse a faculty staff member for expenses associated with buying refreshments for conference workers. This was a personnel expense for which appropriated funds were not available.

Mr. Kevin Little, Comptroller, was found responsible for the 31 U.S.C. 1341(a)(1)(A) violations. Vice Admiral, U.S. Navy (Ret) Donald A. Route, President, Naval Postgraduate School administered a letter of Adverse Action to Mr. Little. He received a suspension from work for three days. The violations contained no willful or knowing intent on the part of the responsible individual to violate the ADA.

The NPS Comptroller has discontinued the general practice of approving the use of appropriated funds to pay for meals and beverages at conferences, meetings, and seminars. With regard to exceptions to the general rule that food is a personal expense, NPS strictly follows policy issued by the Office of the Assistant Secretary of the Navy (Financial Management and Comptroller) in a May 12, 2006, memorandum, "Use of Appropriated Funds to Purchase Food for Events and Clarification of Rules for Conference Fees". With regard to community and public relations, international relations, and DoD protocol events, NPS follows DoD Directive 7250.13 dated June 30, 2009, "Use of Appropriated Funds for Official Representation Purposes", which establishes policy for the hosting of official receptions, dinners, and similar events for official guests of the United States and the DoD.

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,



Michael McCord

Enclosure:
As stated