



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

August 26, 2016

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

Dear Mr. Comptroller:

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.).

A violation of section 1341(a) occurred in the Department of Veterans Affairs (VA) Medical Support and Compliance (MS&C) account (36-0152) in the amount of \$92,542,998.62. The violation occurred between fiscal years (FYs) 2010 and 2014 in connection with MS&C funds that were obligated toward an intra-agency agreement with the VA Franchise Fund for the development of the Health Care Processing System (HCPS). The Veterans Health Administration (VHA) did not use the required Information Technology (IT) Systems account (36-0167) to fund the development of HCPS. The previous two VHA Deputy Chief Business Officers (DCBO) were the officers responsible for the violation.

The HCPS is an automated system that, when fully developed, will replace VHA's existing Fee Basis Claims System. The VHA Chief Business Office (CBO) violated appropriations law by improperly obligating a total of \$92,542,998.62 of funds appropriated to the MS&C account to finance the development of HCPS. Section 1301 of Title 31, U.S.C. (i.e., the Purpose Statute) states that "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." The IT Systems account was the specific and exclusive appropriation available for developing, enhancing, and modernizing IT systems used in the administration of VHA activities, pursuant to the provisions of the Consolidated Appropriations Act, 2010 (Public Law 111-117); the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Public Law 112-10); the Consolidated Appropriations Act, 2012 (Public Law 112-74); the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6); and the Consolidated Appropriations Act, 2014 (Public Law 113-76). Therefore, the use of the MS&C appropriations during the period of FYs 2010-2014 to fund HCPS design, governance, acquiring IT infrastructure, HCPS, and system development was a violation of the Purpose Statute. VA received a clean audit opinion during the fiscal years in which the violation occurred.

The VHA DCBO, who served from FYs 2010 – 2012, obligated approximately \$21.3 million of MS&C appropriations, and the VHA DCBO for Purchased Care, who served from FYs 2012 – 2014, obligated approximately \$71.2 million of MS&C appropriations for HCPS. These funds were obligated in the MS&C account in an effort to hasten the delivery of the claims processing capability of HCPS and, therefore,

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manage Veterans medical care services more efficiently. There is no evidence that these employees knowingly or willfully violated the law.

In its March 2, 2015, report entitled "Veterans Health Administration: Review of Alleged Misuse of VA Funds to Develop the Health Care Claims Processing System" (14-00730-126), VA's Office of Inspector General found that the VHA CBO violated appropriations law and recommended that the VA Under Secretary for Health establish oversight mechanisms, seek the return all MS&C appropriations, deobligate all current MS&C funds, and obtain appropriate funding for HCPS development. VA attempted to adjust its accounts to charge the HCPS development costs to the IT Systems account, rather than the MS&C account. However, the proper fiscal year IT Systems accounts lacked sufficient funds for the time periods in question to fully correct the error. As a result, VA violated both the Purpose Statute and the Antideficiency Act.

At this time, VA's Office of Information and Technology, with input from all affected VA Administrations and Staff Offices, including the Office of General Counsel, is updating policy guidance to clearly identify what constitutes IT and non-IT expenditures, to include a definition in accordance with appropriations law for staff to use when obligating funds. This guidance will update and replace current guidance and various memoranda that have been issued over the past ten years. It will be used by VA finance and contracting staff as obligations are incurred. In addition, the VA Office of Management is in the process of updating the Department's fund control regulations to provide greater clarity and ensure proper guidance is available for operational fiscal staff. Also, the VHA Chief Financial Officer will establish oversight mechanisms to ensure that VHA complies with the updated Departmental guidance and obligates all MS&C funds in accordance with appropriation law and VA policy.

The VA Under Secretary for Health has referred this matter to the VA Office of Accountability Review to determine if administrative action should be taken against any current staff in CBO.

Identical reports will be submitted to the President, the President of the Senate, and the Speaker of the House of Representatives.

Sincerely,



Robert A. McDonald

Enclosure