



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

COMPTROLLER

SEP 30 2013

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 as required by 31 U.S.C. § 1351. The Department of the Air Force violation, case number 11-08, was in the amount of \$18.3 million. Enclosed is a copy of the Air Force's report of violation.

Copies of the report are also being submitted to the President, the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget.

Sincerely,

A handwritten signature in cursive script that reads "Robert F. Hale".

Robert F. Hale

Enclosures:  
As stated



COMPTROLLER

UNDER SECRETARY OF DEFENSE

1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

SEP 3<sup>0</sup> 2013

The Honorable Sylvia Mathews Burwell  
Director  
Office of Management and Budget  
Washington, DC 20503

Dear Ms. Burwell:

Enclosed is a letter to the President transmitting a report on a violation of the Antideficiency Act (ADA) (31 U.S.C. § 1341). The ADA violation, Air Force case number 11-08, totaled \$18.3 million. This report is required by 31 U.S.C. § 1351, and is to be submitted to the President through the Director of the Office of Management and Budget.

The Air Force did not receive a clean audit opinion during the fiscal year in which the violation occurred. It was determined that the violation contained no willful or knowing intent on the part of the responsible parties to violate the ADA.

Sincerely,

A handwritten signature in cursive script that reads "Robert F. Hale".

Robert F. Hale

Enclosures:  
As stated



UNDER SECRETARY OF DEFENSE

1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

COMPTROLLER

SEP 30 2013

The President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President:

This letter reports a violation of the Antideficiency Act (ADA), Air Force case number 11-08 (enclosed), as required by 31 U.S.C. § 1351. The violation involved Fiscal Year (FY) 2009 operations and maintenance (O&M) funds from the American Recovery and Reinvestment Act (ARRA) of 2009, and occurred at the United States Air Force Academy (USAFA), Colorado Springs, Colorado. In this case, a solar array construction project was improperly funded with O&M Air Force appropriations, account 57903404, instead of military construction (MILCON) appropriation funds. The violation totaled \$18.3 million.

The obligation of \$18.3 million of ARRA O&M funds for the construction of the solar array MILCON project on the USAFA violated 10 U.S.C. § 2805(b). Section 2805 permits the use of O&M funds to finance unspecified minor military construction projects that will not cost more than \$750,000. USAFA improperly characterized the expenditure as a service for payment of a connection charge. The Government Accountability Office (GAO) takes the position that a violation of a funding restriction in an authorizing statute (such as 10 U.S.C. § 2805(b)) results in a violation of the ADA (31 U.S.C. § 1341).<sup>1</sup>

O&M appropriations cannot be used to fund a major MILCON project. Under provisions of title 10, U.S.C., the Military Departments may only carry out new major construction projects (those exceeding \$2 million) that are specifically authorized by Congress (10 U.S.C. § 2802(a)). Once a military construction project is properly authorized, it must be funded from an appropriation available to pay for the cost of the project from funds available for that purpose. In general, MILCON appropriations are made available for specified major construction projects authorized by current law, namely those projects approved by Congress in the authorization acts for the same year as the appropriations acts. In this case, Congress did not authorize the project in the National Defense Authorization Act for FY 2009 (Pub. L. 110-417), and did not make funds available specifically for it in the Consolidated Security, Disaster Assistance, and Continuing

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<sup>1</sup> Although the circumstances described herein constitute a violation of 10 U.S.C. §§ 2802(a) and 2805(b), 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/olc/2007/epa-light-refreshments13.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. In this case, because there were sufficient funds in the regular, annual MILCON account to cover the obligation for the solar array project (at both the time of the obligation and at the time the error was discovered) even though the project was not "authorized," there was no ADA violation. However, given GAO's views to the contrary, consistent with section 145.8 of OMB Circular A-11, GAO is submitting this report in its entirety to the President, the Congress, and the Comptroller General.

Appropriations Act, 2009 (Pub.L. 110-329, Division E). In GAO's view, such failure resulted in an ADA violation as no appropriated funds were made available for obligation and expenditure for the project costs.

Congress also made MILCON funds available to the Department of Defense (DoD) by the ARRA (Pub. L. 111-5) for Energy Investment Conservation Program projects that it had not authorized. Although the solar array project would have been eligible for funding from this appropriation, it was not approved for funding by the DOD as it was not submitted by the Air Force as an energy savings project. Even though the Air Force had submitted the solar array project for funding under the ARRA appropriations, there remains insufficient unobligated funds from the ARRA supplemental appropriation to charge the project against, and thereby avoid an ADA violation in GAO's view.

Mr. Russell Hume, GS13, Chief Mechanical Engineer, 10th Civil Engineer Squadron, USAFA; Colonel Justin Davey, Commander, 10th Civil Engineer Squadron; USAFA; Lieutenant Colonel Mike Nelson (Retired), former Chief of the A7CPP; and Ms. Nancy Oliver, GS15, former Chief of the A7CPA and former acting Chief A7C, were found responsible for the violation. Two individuals received verbal and written counseling, one individual received a letter of concern, and the fourth individual, who is retired, received a letter of notification informing him that he would have been disciplined if he were still on active duty. There was no willful or knowing intent on the part of the responsible parties to violate the ADA.

To prevent a recurrence of this type of violation, the Air Force is reviewing current procedures regarding Utilities Privatization. Utilities Privatization projects must now be reviewed and approved by the Air Force Civilian Engineering Support Agency. In addition, guidance has been clarified on the use of "connection charges," including how these charges can be construed and how they should be funded with regard to utilities generation.

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

Respectfully yours,



Robert F. Hale

Enclosure:  
As stated



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WASHINGTON, DC 20301-1100

COMPTROLLER

SEP 30 2013

The Honorable Joseph R. Biden, Jr.  
President of the Senate  
United States Senate  
Washington, DC 20510

Dear Mr. President:

This letter reports a violation of the Antideficiency Act (ADA), Air Force case number 11-08 (enclosed), as required by 31 U.S.C. § 1351. The violation involved Fiscal Year (FY) 2009 operations and maintenance (O&M) funds from the American Recovery and Reinvestment Act (ARRA) of 2009, and occurred at the United States Air Force Academy (USAFA), Colorado Springs, Colorado. In this case, a solar array construction project was improperly funded with O&M Air Force appropriations, account 57903404, instead of military construction (MILCON) appropriation funds. The violation totaled \$18.3 million.

The obligation of \$18.3 million of ARRA O&M funds for the construction of the solar array MILCON project on the USAFA violated 10 U.S.C. § 2805(b). Section 2805 permits the use of O&M funds to finance unspecified minor military construction projects that will not cost more than \$750,000. USAFA improperly characterized the expenditure as a service for payment of a connection charge. The Government Accountability Office (GAO) takes the position that a violation of a funding restriction in an authorizing statute (such as 10 U.S.C. § 2805(b)) results in a violation of the ADA (31 U.S.C. § 1341).<sup>1</sup>

O&M appropriations cannot be used to fund a major MILCON project. Under provisions of title 10, U.S.C., the Military Departments may only carry out new major construction projects (those exceeding \$2 million) that are specifically authorized by Congress (10 U.S.C. § 2802(a)). Once a military construction project is properly authorized, it must be funded from an appropriation available to pay for the cost of the project from funds available for that purpose. In general, MILCON appropriations are made available for specified major construction projects authorized by current law, namely those projects approved by Congress in the authorization acts for the same year as the appropriations acts. In this case, Congress did not authorize the project in the National Defense Authorization Act for FY 2009 (Pub. L. 110-417), and did not make funds available specifically for it in the Consolidated Security, Disaster Assistance, and Continuing

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Appropriations Act, 2009 (Pub.L. 110-329, Division E). In GAO's view, such failure resulted in an ADA violation as no appropriated funds were made available for obligation and expenditure for the project costs.

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Sincerely,



Robert F. Hale

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COMPTROLLER

The Honorable John A. Boehner  
Speaker of the House  
U.S. House of Representatives  
Washington, DC 20515

SEP 30 2013

Dear Mr. Speaker:

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