



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

COMPTROLLER

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

JUL 23 2015

Dear Mr. Dodaro:

This letter reports a violation of the Antideficiency Act (ADA), Army case number 15-01 (enclosed), as required by 31 U.S.C. § 1351. The violation involved Fiscal Years (FYs) 2012 and 2013 Operation and Maintenance, Army (OMA) funds. The violation totaled \$6.2 million and occurred within the U.S. Army Office of the Deputy Chief of Staff for Intelligence, G-2 (G-2). The G-2 had been designated by the Secretary of the Army as the Executive Agent (EA) for the Korean War 60th Anniversary Commemoration (KWC60). The G-2 expended OMA funds in excess of the \$5 million legislative limit established for the KWC60 which resulted in a violation of 31 U.S.C. § 1341(a)(1)(A).

Section 574 of the FY 2011 National Defense Authorization Act (Public Law 111-383) authorized the Secretary of Defense to establish the KWC60 program. The legislation limited the Secretary of Defense's spending for the commemorative program to \$5 million in amounts appropriated to the Department of Defense.<sup>1,2</sup> Prior to enactment of section 574, the Director of the Army Staff (DAS) approved the funding level of \$8.3 million. The G-2 staff failed to both recognize that the \$5 million limit applied to the entire program, regardless of the fiscal year of funds that were used for the KWC60, and to ensure the \$5 million would replace the DAS authorized amount. In fact, the Army increased the funding level by \$1.9 million over the original \$8.3 million DAS approved funding level to cover the additional costs of the final event. The G-2 failed to curtail planned events, despite the congressionally-imposed ceiling, and continued to authorize obligations in support of the KWC60 program at the higher funding level approved by the DAS. Over the program life, the total amount expended in excess of the

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<sup>1</sup> The Government Accountability Office (GAO) takes the position that a violation of a funding restriction in an authorizing statute or authorizing legislation (Section 574 of the FY 2011 National Defense Authorization Act (Public Law 111-383)) results in a violation of the Antideficiency Act.

<sup>2</sup> Although the circumstances described herein constitute a violation of authorizing legislation, *Id. at* 124 Stat. 4223, 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](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. In this case, because sufficient funds were in the regular, annual OMA accounts to cover obligations for the KWC60 (at both the time of obligation and at the time the error was discovered) even though the entire obligation was not "authorized," there was no ADA violation. However, given GAO'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.



authorized limit was over \$6.2 million. Consequently, the Army incurred an uncorrectable violation of 31 U.S.C. § 1341(a)(1)(A). The congressional limitation of \$5 million on expenditures was never considered by the G-2 when funding the KWC60 requirements. The G-2 thereby failed to establish funding controls that would have prevented the limitation from being exceeded.

Mr. David J. Clark, Executive Director of the KWC60, and Mrs. Tammy S. Williams, Chief Budget and Execution Division were found responsible for the violation. The G-2, Lieutenant General Mary Legere, administered oral counseling emphasizing the need to assess congressional language carefully for impacts on funding levels and to obtain a legal review for any future activities they undertake or support. 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 Office of the Administrative Assistant to the Secretary of the Army is staffing a new Army regulation identifying key processes, roles, and responsibilities for EA resource management. The regulation will also establish a workgroup to convene periodically and assess the status and functionality of current Army EA initiatives, as well as provide enhanced oversight and support to new Army EA responsibilities.

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