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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

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June 22, 2010

The Honorable David R. Obey
Chairman
The Honorable Jerry Lewis
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Norman D. Dicks
Chairman
The Honorable C.W. Bill Young
Ranking Member
Subcommittee on Defense
Committee on Appropriations
House of Representatives

Subject: *Department of the Army—The Fiscal Year 2008 Military Personnel, Army Appropriation and the Antideficiency Act*

A House of Representatives Committee on Appropriations report[1] directed GAO to determine whether the Department of the Army (Army) violated the Antideficiency Act in its fiscal year 2008 Military Personnel, Army (FY 2008 MPA) appropriation. The Committee became concerned after the Army transferred $200 million from the Defense Working Capital Fund, Army appropriation to the FY 2008 MPA appropriation in December 2008. The Army explained that the transferred funds were necessary to cover unanticipated increases in costs related to bonuses and Permanent Change of Station (PCS) moves. In particular, the Committee asked GAO to determine whether the Army had sufficient funds in the FY 2008 MPA account for these expenses. For the reasons set out below, we conclude that the Army did not have adequate funds to cover fiscal year 2008 obligations and thus violated the Antideficiency Act. *See* 31 U.S.C. § 1341.

[1] H.R. Rep. No. 111-230, at 8 (2009), accompanying the Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118, 123 Stat. 3409 (Dec. 19, 2009).

Our practice when rendering opinions is to obtain the views of the relevant agency to establish a factual record and the agency's legal position on the matter. GAO, *Procedures and Practices for Legal Decisions and Opinions,* GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/congress.html. In this regard, we received the Army's views in its preliminary report on whether the Army violated the Antideficiency Act.[2] We also conducted meetings with Army officials, requesting and receiving information about the Army's practices for recording obligations in its FY 2008 MPA appropriation, and we reviewed relevant Army financial reports and transfer requests.

BACKGROUND

The MPA appropriation is a 1-year appropriation available for the pay, benefits, incentives, allowances, housing, subsistence, travel, and training of Army servicemembers on active duty. Congress appropriated more than $44.5 billion for the MPA account for fiscal year 2008.[3] Army Budget Office (Army Budget) is responsible for managing the MPA appropriation to ensure that obligations and expenditures do not exceed amounts available in the appropriation, but Army Budget does not actually execute the activities under the account. Rather, program managers in other offices incur obligations against the appropriation and forward the information to Defense Finance and Accounting Service (DFAS) for payment.[4] For instance, program managers in the U.S. Army Human Resources Command —

- sign enlistment and reenlistment contracts, which provide specified bonuses to servicemembers; and
- issue PCS travel orders, which entitle a servicemember to various allowances, such as per diem and temporary lodging expenses when the Army moves a servicemember from one duty station to another duty station.

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[2] Department of the Army, *Preliminary Report of Antideficiency Act Violation, FY 2008 Military Personnel, Army (MPA) Appropriation,* Case Number 09-26 (Nov. 19, 2009) (Preliminary Report). Although the preliminary report is dated November 19, 2009, the Army did not provide GAO with the report until March 24, 2010. For more information on the Department of Defense's process for investigating potential Antideficiency Act violations, see Department of Defense Financial Management Regulation 7000.14-R (DOD-FMR 7000.14-R), vol. 14, *Administrative Control of Funds and Antideficiency Act Violations,* available at http://comptroller.defense.gov/fmr/14/index.html (last visited June 21, 2010).

[3] Department of Defense Appropriations Act, 2008, Pub. L. No. 110-116, div. A, title I, 121 Stat. 1295, 1295–96 (Nov. 13, 2007); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. L, title I, 121 Stat. 1844, 2446 (Dec. 26, 2007); Supplemental Appropriations Act, 2008, Pub. L. No. 110-252, title IX, ch. 1, 122 Stat. 2323, 2397 (June 30, 2008).

[4] DFAS provides disbursing and accounting services for the Army.

Army Budget never receives documentation of payment entitlement data that would support the recording of an actual obligation from the program managers. Instead, Army Budget, for obligational accounting purposes, uses estimated obligations and then adjusts the estimates based on actual disbursement data provided by DFAS weeks or months later.

In October 2008, Army Budget became concerned about the adequacy of funds in the FY 2008 MPA appropriation when the actual disbursement data DFAS reported exceeded Army Budget's estimated obligations, specifically with regard to costs for bonuses and PCS moves. In November 2008, Army Budget identified a $200 million shortfall in the appropriation. Army Budget prepared and forwarded a transfer notification to the appropriate committees[5] in December 2008, regarding a transfer of $200 million from the Defense Working Capital Fund, Army appropriation to the FY 2008 MPA appropriation.[6] The committees did not object to the transfer, and the FY 2008 MPA appropriation received the transferred funds on December 22, 2008. It is this $200 million shortfall that is at issue in this opinion.

DISCUSSION

The question presented is whether the Army violated the Antideficiency Act in its FY 2008 MPA account. The Antideficiency Act provides, in relevant part: "An officer or employee of the United States Government . . . may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation . . . ." 31 U.S.C. § 1341(a)(1)(A). If Army incurred obligations in excess of the amounts available to it in its FY 2008 MPA appropriation, it violated the act. *See* B-319009, Apr. 27, 2010; B-317450, Mar. 23, 2009.

The facts here clearly establish that the Army violated the Antideficiency Act. The Army's total obligations in the FY 2008 MPA appropriation exceeded the amount available in the account, as evidenced by the Army's need to transfer $200 million from the Defense Working Capital Fund, Army appropriation to cover the shortfall. The Army itself acknowledged that the account was overobligated in its preliminary

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[5] Army submitted the notification to the appropriate committees consistent with 10 U.S.C. § 2208(r). The Army forwarded the notification to the House Appropriations Subcommittee on Defense, the House Committee on Armed Services, the Senate Appropriations Subcommittee on Defense, and the Senate Committee on Armed Services. All of the committees and subcommittees responded favorably to the notification between December 17 and 19, 2008.

[6] Section 1001 of the National Defense Authorization Act for Fiscal Year 2008 and Section 8005 of the Department of Defense Appropriations Act, 2008, provided authority to the Department for the transfer, subject to certain limitations and requirements. Pub. L. No. 110-181, div. A, title X, subtitle A, 122 Stat. 3, 299–300 (Jan. 28, 2008); Pub. L. No. 110-116, title VIII, 121 Stat. at 1313.

report. Preliminary Report, at 1.[7] We reviewed Army obligation and expenditure reports and confirmed that the Army had less than $200 million available in the FY 2008 MPA appropriation at the end of fiscal year 2008. Army officials also explained to us that, as of fiscal year 2008 end, the Army did not record obligations for the $200 million in bonuses and PCS moves until it made the transfer from the Defense Working Capital Fund, Army account to the FY 2008 MPA appropriation.

This overobligation likely stemmed, in part, from a lack of communication between Army Budget and program managers. As a result, Army Budget's accounting records, for a period of time, reflected estimated obligations instead of actual obligations until it was too late to control the incurrence of obligations in violation of the Antideficiency Act. For example, each time a servicemember and program manager signs an enlistment or reenlistment contract, the Army incurs a legal obligation to pay a bonus. At that point, the program manager sends the obligation data to DFAS for payment, but does not simultaneously forward it to Army Budget. Therefore, Army Budget is not informed when an enlistment or reenlistment contract is signed or provided the actual amount of the bonus. Instead, Army Budget estimates its MPA obligations and adjusts the account based on actual disbursement data from DFAS, which is often weeks or even months after the Army incurs each obligation. Thus, at any given time throughout the fiscal year, Army Budget does not know the actual obligations and expenditures of the account.

The point of obligation for bonuses and PCS moves is not in dispute. The Army incurs a legal obligation for the amount of a bonus when it enters into an enlistment or reenlistment contract providing for a bonus, or when the Army makes an administrative determination to provide a bonus to a servicemember. Department of Defense Financial Management Regulation 7000.14-R, vol. 3, ch. 8, ¶ 0809, *Personal Services and Benefits* (Sept. 2009). The amount of the bonus is definite at the time of contract or the administrative determination. PCS move expenses should generally be obligated at the time the Army issues travel orders for the servicemember. *See* 64 Comp. Gen. 45, 48 (1984); DOD-FMR 7000.14-R, vol. 3, ch. 8, ¶ 0810, *Permanent Change of Station* (Sept. 2009).[8] While all PCS move costs are not

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[7] The Army's preliminary investigation concluded that the Army violated the Antideficiency Act in its FY 2008 appropriation. The Army is in the process of identifying the date of the initial overobligation and the exact amount of the overobligation. During its preliminary investigation, the Army also identified an invoice from the Department of Labor for unemployment compensation benefits, chargeable to fiscal year 2008, which may also affect the status of the FY 2008 MPA appropriation. Preliminary Report, at 4–5. In accordance with DOD-FMR 7000.14-R, volume 14, the Army has initiated a formal investigation and will determine how the violation occurred, who the responsible parties are, and what corrective actions should be taken to prevent recurrence.

[8] The only major exception to this rule is where the government arranges for the shipment of household goods. For that expense, the obligation occurs and should be

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definite at the point of obligation, nearly all costs are capped by law or regulation.[9] Thus, Army Budget has available to it either the exact amount or ceiling of an obligation at the time it is incurred.

Army Budget explained that it continues to rely on estimated obligations, despite the availability of actual data from program managers that could be used to record the initial obligation or adjust the estimated obligation, because of inadequate financial management systems. The Army's decision to rely on estimates instead of actual obligation data, even though, as described above, such data does exist, does not relieve the Army of responsibility for complying with the Antideficiency Act. The Army acknowledges as much in its preliminary report.

We note that the MPA appropriation has been the subject of several audit reports in recent years by the Department of Defense Office of Inspector General (DOD IG) and Army Audit Agency.[10] In September 2006, the DOD IG addressed a similar factual situation to the one addressed in this opinion when it evaluated the Army's use of its fiscal year 2005 MPA appropriation. DOD IG explained that while Army Budget developed obligation plans and centrally managed the MPA appropriation, other Army components were "directly responsible for executing programs funded by the MPA appropriation." Department of Defense, Office of Inspector General, *Selected Controls Over the Military Personnel, Army Appropriation*, Report No. D-2006-112 (Sept. 22, 2006), at 4. The DOD IG found that the fiscal year 2005 MPA appropriation was potentially overobligated because program managers operated without established funding targets. *Id.,* at 4. DOD IG recommended, among other things,

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recorded when a carrier picks up the goods pursuant to a government bill of lading. DOD-FMR 7000.14-R, ¶ 0810. A government bill of lading is "an accountable transportation document, authorized and prepared by a Government official." Federal Acquisition Regulation, 48 C.F.R. § 47.001.

[9] *See* Department of Defense, Per Diem, Travel, and Transportation Allowance Committee, *PCS/Relocation Allowances FAQs for DoD Civilians and Uniformed Members*, *available at* http://www.defensetravel.dod.mil/perdiem/faqpcs.html (last visited June 21, 2010).

[10] *See* Department of the Army, U.S. Army Audit Agency, *Budgeting for the Military Personnel, Army Appropriation*, Report No. A-2010-0028-FFM (Jan. 6, 2010); Department of the Army, U.S. Army Audit Agency, *Military Personnel, Army FY 05 Subsistence Charges,* Report No. A-2008-0037-FFM (Feb. 12, 2008); Department of Defense, Office of Inspector General, *Controls Over Military Personnel, Army Appropriation Permanent Change of Station Travel Advances and Suspense Accounts*, Report No. D-2007-097 (May 16, 2007); Department of Defense, Office of Inspector General, *Selected Controls Over the Military Personnel, Army Appropriation*, Report No. D-2006-112 (Sept. 22, 2006) (DOD IG Report).

that Army Budget implement a formal process to develop and distribute funding targets to hold program managers accountable to an approved budget. *Id.,* at 9.[11]

Nevertheless, Army Budget continues to manage the MPA appropriation by relying on estimated obligations. Further, Army Budget has not provided the program managers, who incur obligations against the MPA appropriation, with administrative subdivisions of the account that carry Antideficiency Act consequences if exceeded.[12] Our review of Army budget execution procedures indicates that Army Budget's funds control process does not provide the ongoing assurance that obligations and expenditures do not exceed available funds in the MPA appropriation. Army Budget may wish to consider requiring program managers to send actual obligation data to it on a timely basis. Army Budget may also wish to consider providing program managers with administrative subdivisions of the account that may not be exceeded to help ensure it complies with the Antideficiency Act.

The Antideficiency Act requires that the agency head "shall report immediately to the President and Congress all relevant facts and a statement of actions taken." 31 U.S.C. § 1351. In addition, the agency must send a copy of the report to the Comptroller General on the same date it transmits the report to the President and Congress. *Id.*

Sincerely yours,

Lynn H. Gibson
Acting General Counsel

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[11] The Assistant Secretary of the Army (Financial Management and Comptroller) responded to the audit findings in this DOD IG report on August 22, 2006. DOD IG Report, at 27. The Assistant Secretary explained that the Army would postpone adjusting its accounts and potentially reporting an Antideficiency Act violation in its fiscal year 2005 MPA appropriation pending the receipt of additional information. *Id.*, at ii. As of June 21, 2010, the Army has not reported a violation in the fiscal year 2005 MPA appropriation.

[12] *See* 31 U.S.C. §§ 1514(a)(2), 1517(a)(2).