

Antideficiency Act Reports - Fiscal Year 2010

The United States Government Accountability Office provides this information from reports required by section 1401 of the Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, 3192 (Dec. 8, 2004). Please visit the GAO Antideficiency Act violation report Web site (www.gao.gov/legal/antideficiency.html) for more information regarding the Antideficiency Act and reporting requirements.

GAO No.	Agency No.	Agency	Account(s)	Date Reported	Date(s) of Violation(s)	Amount Reported	Type of Violation	Description	Remedial Action Taken
10-01	None	District of Columbia Courts	Federal Payment to the District of Columbia Courts	10/23/2009	FY 2001 - FY 2008	\$134,000,000	31 U.S.C. § 1517(a)(1)	District of Columbia (D.C.) Courts receives a two-year capital appropriation. From fiscal year 2001 to 2008, D.C. Courts requested and received an Office of Management and Budget (OMB) apportionment in the appropriation's first year of availability, but did not request and receive an OMB apportionment for the carry-over balance in the second year of availability. When D.C. Courts obligated funds in the second year of availability, in excess of any fiscal year apportionment, D.C. Courts concluded it violated 31 U.S.C. § 1517(a)(1). D.C. Courts reports that the violation totaled "more than \$134 million." General Services Administration (GSA), which provides financial services for D.C. Courts, only maintains accounting records for five years. The total of the violations since 2004 is approximately \$134 million.	No individuals were found responsible for the violation, because D.C. Courts determined that the violations were due to inadvertent error and inadequate guidance on apportionment of two-year appropriations. To prevent future violations, D.C. Courts revised its operational procedures to reflect guidance in OMB Circular A-11. GSA will also review D.C. Courts' apportionment schedules prior to submission to OMB. Finally, D.C. Courts will provide training to its staff from OMB budget officials on federal appropriations law and the budget process.

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<u>10-02</u>	07-07	Department of the Air Force	Research, Development, Test, and Evaluation	11/6/2009	10/1/2004 to 9/14/2006	\$509,335.71	31 U.S.C. § 1517	In fiscal year 2003, the Air Force issued a Military Interdepartmental Purchase Request to the Department of Energy. In fiscal year 2006, the Air Force improperly charged \$509,335.71 of services under this MIPR to an expired FY04 RDT&E appropriation. The violation was discovered during an audit performed by the Air Force Audit Agency on January 27, 2007.	One individual was found responsible for the violation. No disciplinary action was taken because the individual had retired from government service, but the individual would have received a letter of admonishment if still actively employed. The Air Force concluded that the individual did not knowingly or willfully violate the Antideficiency Act. To correct the violation, the Air Force credited its FY04 RDT&E account and debited the FY05 and FY06 funding lines. To help prevent future violations, the Air Force instituted a management control program and provided training to its staff.

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<u>10-03</u>	06-01	Defense Information Systems Agency	Operation and Maintenance, Defense-Wide; Defense Working Capital Fund	11/12/2009	FY 2003 to FY 2005	\$1,923,460.07	31 U.S.C. § 1341(a)(1)(A)	<p>Defense Information Systems Agency (DISA) funded a construction project at Scott Air Force Base. DISA improperly split the single construction project into five increments, which kept the cost for each increment artificially low and below a \$750,000 statutory limitation in 10 U.S.C. § 2805(c)(1) for unspecified minor military construct projects. DISA funded the various increments with the Operation and Maintenance and the Defense Working Capital Fund accounts.</p> <p>DISA should have executed these increments as phases of a single project, the combined cost of which exceeded the title 10 statutory limitation. Therefore, the entire project should have been financed using Military Construction, Defense-Wide appropriations. Because no Military Construction, Defense-Wide appropriations were available for this construction project, DISA violated the Antideficiency Act.</p>	<p>Four individuals were found responsible for the violation. One individual was separated from duties for five days without pay, one was issued a letter of counseling, and the other two received no disciplinary action because they are no longer on active duty. DISA concluded that the individuals did not knowingly or willfully violate the Antideficiency Act, or have specific intent to circumvent the statutory limitation on minor military construction projects. DISA was unable to correct this violation because no Military Construction, Defense-Wide appropriations were available for this construction project. To prevent a recurrence of this type of violation, Defense Information Systems Agency strengthened internal control procedures to provide greater oversight and management visibility over field commands, established senior positions at field commands to increase institutional knowledge and leadership in fiscal issues, and provided fiscal law training for employees with program and financial duties.</p>

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<u>10-04</u>	08-03	National Geospatial-Intelligence Agency	Operation and Maintenance, Defense-Wide	12/15/2009	8/18/2003	\$8,633,146.00	31 U.S.C. § 1517	In fiscal year 2003, NGA signed a Military Interdepartmental Purchase Request (MIPR) to fund the recapitalization of its Web-based Access and Retrieval Portal (WARP) system. A budget analyst certified that Operation and Maintenance (O&M) funds were available on the MIPR for the WARP system. NGA later determined that the \$8,633,146 used for equipment, software, and commercial imagery was an investment cost and therefore Procurement, Defense-Wide (PDW) funds should have been used for those expenses. By the time the improper expenditure was discovered, NGA had exhausted its apportionment of PDW funds and was unable to correct the error. The violation was discovered as a result of a Department of Defense (DOD) Office of the Inspector General audit on the use of MIPRs at NGA.	A budget analyst was found responsible for the violation. The analyst received an oral admonishment and remedial training. DOD implemented accounting adjustments to make sufficient PDW funds available to correct the improper expenditure. To prevent a recurrence of another violation, NGA instituted changes in its policies and procedures to strengthen controls over MIPRs.

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<u>10-05</u>	08-06	Department of the Army	Operation and Maintenance, Army (OMA)	1/15/2010	7/7/2004, 7/8/2004	\$914,595.83	31 U.S.C. § 1341(a)(1)(A)	The United States Army (Army) Garrison at Fort Stewart, Georgia, violated the Antideficiency Act when it obligated funds for building site preparation in excess of a statutory limit for such projects funded with OMA appropriations. Though Army identified the proper account to charge as the Military Construction, Army appropriation, sufficient funds were unavailable to correct the violation. The persons found responsible claimed that the site preparation related to two separate buildings, and therefore, each individual project fell below the threshold. Army found that argument unconvincing, in part because the buildings were to be adjoining and because Army entered into contracts to build one concrete slab upon which the facilities would be erected.	Army determined a funding correction was not possible. Three persons were found responsible for the violation; one received a letter of counseling, one received a verbal reprimand, and no action was taken against the third individual because the person had retired.
<u>10-06R</u>	07-01	Defense Advanced Research Projects Agency	Research, Development, Test, and Evaluation (RDT&E)	2/13/2010	9/9/2005	\$2,650,000	31 U.S.C. § 1517(a)	DARPA resubmitted a report previously filed on September 11, 2008, following a request by the Office of Management and Budget for an independent review of the original investigation. In its resubmission, DARPA confirmed the findings of the original report. DARPA modified a contract with Boeing Aerospace; due to a failure to properly record the obligation, DARPA issued a duplicate contract modification, obligating agency funds in excess of an administrative subdivision of funds. See GAO-ADA-08-20.	See GAO-ADA-08-20. DARPA made funding corrections, revised internal controls, and verbally reprimanded the person found responsible for the violation.

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<u>10-07</u>	06-04	Department of the Army	Operation and Maintenance, Army (OMA)	4/28/2010	5/25/2005	\$11,806,993.00	31 U.S.C. § 1341(a)(1)(A)	The United States Army (Army) Garrison at Fort Lee, Virginia, violated the Antideficiency Act when it obligated funds for building site preparation in excess of a statutory limit for such projects funded with OMA appropriations. The Army determined that the violation was uncorrectable, both because OMA appropriations were unavailable for a project of that size and because a proper authorization of the correct account, Military Construction, Army, had not been made. Fort Lee personnel had obligated OMA funds by subdividing the site preparation into multiple discrete projects, each below the statutory threshold. However, Army determined that though the sites were independent, they were not distinct projects, and did not fulfill independent mission functions; therefore, the Army violated the act.	Army determined that the violation was uncorrectable. Army overhauled its regulations dealing with facilities management to properly account for such mistakes. Further, Army issued policy guidance on relocatable buildings, and on project approval authority for repair and construction. The person found responsible was issued a letter of reprimand.

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10-08	None	American Battle Monuments Commission	Salaries and Expenses; Trust Fund	4/16/2010	6/1/2004	\$0	31 U.S.C. § 1341(a)	In June 2004, the Commission entered into a contract to support the National World War II Memorial. The contract included an open-ended indemnification clause that could exceed available appropriations. The Commission did not report a dollar amount because no liability claims were filed under the contract. The violation was discovered during a GAO audit of the Commission for fiscal year 2009. GAO, Financial Audit: American Battle Monument Commission's Financial Statements for Fiscal Years 2009 and 2008, GAO-10-399 (Washington, D.C.: March 2010).	<p>The staff who wrote and approved the contract are no longer employed with the Commission. At the time of the violation, the Commission erroneously believed that an open-ended indemnification clause did not give rise to an Antideficiency Act violation. The Commission found that the violations were not willful or knowing.</p> <p>To prevent future violations, the Secretary of the Commission directed the following actions: a review of all contracts, training for appropriate staff, a new system of administrative funds control to be approved by the Office of Management and Budget, a staffing review on the Commission's contracting and purchasing policies, and status reports to the Commission's Chief of Staff on these actions.</p>

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<u>10-09</u>	09-01	Department of the Navy	Procurement, Marine Corps	5/24/2010	3/30/2010	\$810,981.71	31 U.S.C. § 1517	Marine Corps Depot Maintenance Center in Albany, Georgia, contracted to build and install a prefabricated building using the Marine Corps procurement appropriation. Doing so was a violation of the purpose statute, 31 U.S.C. § 1301, because procurement funds are not available for the type of military construction at issue here. The value of the contract also violated the unspecified minor construction threshold established by statute, 10 U.S.C. § 2805. When the threshold is exceeded, military components must obligate construction appropriations, Military Construction, Navy (MCN) in this case. MCN appropriations are properly obligated by Naval Facilities Engineering Command, not the Marine Corps Depot, and therefore, Navy determined that there was a violation of the Antideficiency Act because the depot improperly exceeded an administrative subdivision of funds.	Navy made the appropriate funding corrections so that the right appropriation was charged for the project. The depot's funding document and approval process was revised. Marine Corps Logistics Command now provides annual training for financial and business managers to discuss military construction law, policy, and guidance. Three employees were found responsible. Two employees were counseled and received letters of caution, one of whom was also removed from his duties as Supervisory Engineering Technician. The other employee has retired, and so no administrative discipline was imposed.

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<u>10-10</u>	06-03; 0703	Department of the Army	Operation and Maintenance, Army (OMA)	6/28/2010	FY 2004 and FY 2005	\$15,449,992.49	31 U.S.C. § 1341(a)(1)(A)	<p>Army reports two violations of the Antideficiency Act in its OMA account. The U.S. Army Intelligence Center and School (USAIC) obligated FY 2004 OMA funds for the purchase, delivery, and assembly of 431 tactical shelters and FY 2005 OMA funds for site preparation work. These actions resulted in construction of a multiple-building training complex.</p> <p>The entire project constituted a single major military construction project and should have been funded with a Military Construction, Army appropriation. USAIC improperly purchased each shelter separately even though the planners intended to configure all of the shelters into one facility. USAIC also improperly scoped the site preparation work as three projects as part of an effort to make each project appear to stay below the OMA construction threshold.</p>	<p>Two individuals were found responsible for the violations. One individual received a formal written reprimand and counseling. USAIC determined that discipline for the other individual was unwarranted. After discovering the violation, Army revised its facilities management regulations and its relocatable building policy. The command also continues to provide training on military construction and fiscal law.</p>

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<u>10-11</u>	None	Indian Health Service (IHS)	Indian Health Facilities, Recovery Act	6/30/2010	8/19/2009	\$240,505	31 U.S.C. § 1517	IHS violated the Antideficiency Act when it awarded a construction contract for an amount that exceeded an apportionment. Whereas prior apportionments for health facilities may have been consolidated, apportionment for Recovery Act funds were divided by project, in this case for facilities in Nome, Alaska, and Eagle Butte, South Dakota. IHS issued a contract exceeding the apportionment under the mistaken belief that it could adjust account levels within the fiscal quarter, when it should have requested a reapportionment.	IHS reduced the amount of the obligation to match that of the apportionment. IHS has abandoned the practice of self-approvals of allotment level transactions and now requires approval from managers. Apportionment preparers must request specific guidance for apportionment anomalies, and staff must identify apportionment pattern differences. IHS staff will be alerted to training opportunities and department-level budget office personnel will provide training directly. The Department of Health and Human Services determined that the problem was systemic and that the violation could not be attributed to any individual; as such, no discipline was imposed.

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10-12	None	Environmental Protection Agency	Science and Technology	7/14/2010	8/25/2004	\$193,545	31 U.S.C. § 1341(a)(1)(B)	<p>EPA awarded a contract to a company to analyze 750 drinking-water samples on August 25, 2004. The contractor had until August 24, 2006, to complete performance.</p> <p>The period of performance on the contract crossed three fiscal years – FY 2004, FY 2005, and FY 2006. At the time of contract award, EPA obligated Science and Technology funds that were only legally available for FY 2004 and FY 2005. EPA had not yet received an appropriation that would cover the FY 2006 obligation created by the contract award. Therefore, EPA violated 31 U.S.C. § 1341(a)(1)(B), which states that the government shall not incur an obligation for the payment of money before an appropriation is made.</p>	<p>An EPA contracting officer was found responsible for the violation. However, the contracting officer had retired by the time the violation was discovered. Therefore, EPA did not discipline any of its employees for the violation.</p> <p>In response to the violation, EPA provided training on characterizing and funding service contracts. EPA also conducted internal training courses on appropriations law. EPA is currently reviewing its contract and finance guidance. In addition, EPA's Office of Acquisition Management is exercising increased oversight on all new service contracts.</p>

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<u>10-13</u>	09-06	Department of the Navy	Operation and Maintenance, Navy (OMN)	9/14/2010	FY 2003, 2004, 2005, 2007	\$285,987.00	31 U.S.C. §§ 1517(a)(2), 3302(b)	Naval Oceanographic Office (NOO) collects oceanographic and hydrographic data to provide various products and services to the Department of Defense. NOO collected payment from various private entities that should have been deposited into the miscellaneous receipts account of the Treasury. Navy determined that NOO violated the Antideficiency Act, specifically at the agency subdivision of funds level, when NOO obligated and expended improperly retained funds.	NOO transferred Operations and Maintenance, Navy funds to the miscellaneous receipts account of the Treasury in an amount equal to the improper payments retained. Naval Meteorology and Oceanographic Command (NMOC), NOO's parent command, established a policy for managing and executing reimbursable funding. Such funding must be reviewed and cleared by the NMOC general counsel. Four individuals were found responsible. One of the individuals found responsible is deceased; the others received letters of caution.

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<u>10-14</u>	09-05	Department of the Navy	Operation and Maintenance, Navy (OMN)	9/14/2010	FY 2004 to FY 2007	\$842,857.00	31 U.S.C. § 1517	<p>The U.S. Naval Observatory (USNO) received funds from private parties for astronomical data and related services. USNO improperly credited these funds to its O&M,N account without statutory authority and subsequently expended the funds on various USNO requirements. These funds should have been deposited into the U.S. Treasury in accordance with the miscellaneous receipts statute, 31 U.S.C. § 3302(b). USNO improperly augmented its O&M,N account from FY 2004 to FY 2008, leading to an overobligation of its accounts and a violation of 31 U.S.C. § 1517.</p>	<p>Three individuals were found responsible for the violation. One individual was administratively disciplined, issued a letter of caution, and required to complete fiscal law training. The other two individuals have since retired from the Navy. Navy determined that the violation contained no willing or knowing intent by the responsible parties to violate the Antideficiency Act.</p> <p>Navy deposited unobligated balances from improperly retained funds into the miscellaneous receipts account of the Treasury. Navy adjusted its accounts so that properly chargeable funds were made available to USNO and transferred to the miscellaneous receipts account to cover the amount of the improper obligations and expenditures. Navy also implemented a new policy to prevent a recurrence of this type of violation. The general counsel of USNO's parent command now reviews and approves all reimbursable work agreements.</p>

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<u>10-15</u>	09-03	Department of the Navy	Operation and Maintenance, Marine Corps (OMMC)	9/21/2010	9/9/2005, 8/28/2007	\$87,492	31 U.S.C. §§ 1341(a), 1502(a)	The Command, Control, Communication, and Computers Division (C4) of the Marine Corps Logistics Command (MCLC) in Albany, Georgia, provides various information technology services. In the latter part of fiscal years 2005 and 2007, C4 purchased training from a vendor without establishing the content or dates of the courses. The training was provided, in each case, in the subsequent fiscal year. Obligating current year funds for future year needs is a violation of the bona fide needs rule and the time statute, 31 U.S.C. § 1502. Navy determined that C4 violated the Antideficiency Act because funds in the proper account were unavailable at the time of obligation to correct the erroneous obligation.	Navy made accounting corrections to charge the appropriation accounts available at the time of training delivery. Refunds from the vendor decreased the amount of the violation. MCLC issued guidance requiring prior approval for all training and training funds are now centrally managed by MCLC's Program and Resources department. Directors and fund managers were instructed to attend fiscal law courses. Three people were found responsible for the violation. Two were counseled and received letters of caution. A third person has retired and was not disciplined.

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10-16	None	Election Assistance Commission	Salaries and Expenses	9/29/2010	FY 2004	No amount reported	No type reported	<p>For fiscal year 2004, Congress appropriated \$500,000,000 to the Election Assistance Commission (EAC) to carry out a program of requirements payments to the States as authorized by the Help America Vote Act of 2002. Because of language in an accompanying conference report and the Office of Management and Budget apportionment, EAC obligated funds from the requirements payments account for other purposes, including poll worker and mock election grants.</p> <p>EAC agreed with GAO's conclusion in B-318831, Apr. 28, 2010.* When EAC adjusted its account to correct the purpose violation, its salaries and expenses account became overobligated. Therefore, EAC violated 31 U.S.C. § 1341(a).</p>	<p>EAC concluded that the violation was not knowing or willful and decided not to administratively discipline any of the staff involved with the violation. EAC explained that the agency had only been in existence for seven months at the time of the violation and relied on the General Services Administration (GSA) for financial services support. EAC was also operating without a Chief Financial Officer, an Inspector General, a budget director, or federally-experienced financial staff. EAC has since filled these positions.</p> <p>To ensure that the violation does not recur, EAC's financial staff now ensures that apportionment requests are consistent with appropriations language, works closely with GSA to ensure that obligations are properly recorded in its funds control system, checks Treasury warrants for accuracy, and reviews OMB guidance each quarter.</p>

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* In B-318831, Apr. 28, 2010, GAO concluded that EAC violated the purpose statute, 31 U.S.C. § 1301(a), because the requirements payments account was not legally available for poll worker and mock election grants. GAO explained that EAC should have used its fiscal year 2004 salaries and expenses account for these grant expenditures.