



THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

April 14, 2014

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

Dear Mr. Dodaro:

This letter is to report violations of the Antideficiency Act, as required by section 1351 of Title 31, United States Code (U.S.C.).

Violations of 31 U.S.C. § 1341 occurred in multiple Treasury accounts over an extended period of time in the National Institutes of Health, Centers for Disease Control and Prevention, Agency for Healthcare Research and Quality, Substance Abuse and Mental Health Services Administration, and Health Resources and Services Administration. During the period from fiscal year (FY) 1997 through FY 2012, approximately 950 individuals appointed under sections 207(f) and 207(g) of the Public Health Service Act (PHSA, 42 U.S.C. § 209(f) and § 209(g), respectively) were paid a total of approximately \$125 million in excess of a cap included in the 1993 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, P.L. 102-394 (1993 Appropriations Act).

Sections 207(f) and 207(g) of the PHSA authorize the Public Health Service (PHS) to appoint individuals to assist and advise in the operations of the PHS, or to serve as fellows, without regard to the civil service laws, and to fix their compensation without regard to the Classification Act of 1923. Section 202 of the 1993 Appropriations Act put in place a permanent cap on salaries for individuals appointed to limited terms under sections 207(f) and 207(g) of the PHSA, whose salaries were funded by any appropriations act in 1993 and any subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, at the rate for Level IV of the Executive Schedule.

In FY 2012, the Department became aware of potential violations of section 202 of the 1993 Appropriations Act after discussions with the Government Accountability Office on appointment authorities. The Department assessed compliance with that section and discovered that the PHS agencies funded by the annual appropriations act did not adhere to the cap when setting rates of pay for recruitment, hiring, and promotion actions for section 207(f) and 207(g) appointees. Pay levels had been established in the payroll system that frequently exceeded the 1993 Appropriations Act cap, and obligations were subsequently incurred and payments made at the rates established in the payroll system. Although the Department performed a diligent search of its records relating to its implementation of the cap, given the passage of time, the Department is unable at this time to determine what caused the cap to be exceeded.

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Since the violations were systemic, the Department has concluded that responsibility for the violations cannot fairly be attributed to specific individuals. In addition, the Department found no evidence that the violations were committed willfully and knowingly.

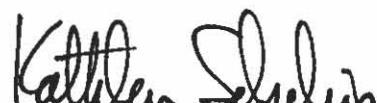
In order to ensure that all employees are being paid in accordance with the aforementioned statutory salary cap, the Department appointed affected current employees to appropriate hiring authorities pursuant to which all employees' salaries would be in compliance with all legal requirements. Furthermore, any indebtedness incurred by employees that had been paid in excess of the statutory cap was waived in accordance with 5 U.S.C. § 5584.

The Department's system of administrative control of funds has been approved by the Office of Management and Budget and is available on the Department's website. The Department has taken the following actions to strengthen human resources management practices and internal controls to ensure that time-limited appointments made pursuant to sections 207(f) and 207(g) of the PHSA and funded by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act fully comply with the statutory cap:

- Conducted a data review to correct inaccuracies in the current HHS Human Resources (HR) database to ensure consistency in the coding of section 207(f) and 207(g) appointments;
- Developed, published, and mandated the use of a new data processing guide for HR specialists and others with HR data entry responsibilities;
- Established a process by which the Office of Human Resources (OHR) runs regular reports to identify any irregularities, including any payments in excess of the cap. If such irregularities are identified, OHR works with the Operating Division administrative staff to resolve the problem; and
- Updated Departmental policies relating to sections 207(f) and 207(g) to include a citation to the statute mandating the cap and an instruction that provides base salary for employees on time limited appointments must be in compliance with the cap.

Identical letters are being submitted to the President, President of the Senate, and the Speaker of the House of Representatives.

Sincerely,



Kathleen Sebelius