



441 G St. N.W.
Washington, DC 20548

B-330471

September 23, 2019

The Honorable Michael R. Pence
President of the Senate

The Honorable Nancy Pelosi
Speaker of the House of Representatives

Subject: *Fiscal Year 2018 Antideficiency Act Reports Compilation*

Agencies that violate the Antideficiency Act must report the violation to the President and Congress and transmit a copy of the report to the Comptroller General at the same time. 31 U.S.C. §§ 1351, 1517(b). The report must contain all relevant facts and a statement of actions taken.

Since fiscal year 2005, GAO, in its role as repository for the Antideficiency Act reports that agencies submit, has produced and publicly released an annual compilation of summaries of the reports. We base the summaries on unaudited information extracted from the agency reports. Each summary includes a brief description of the violation and of remedial actions agencies report that they have taken. We also include copies of the agencies' transmittal letters. We post the summaries and the agency transmittal letters on our public Web site. In some cases, the agencies also sent us additional materials to accompany their transmittal letters. We will release these additional materials to Members and their staffs upon request.

Please find enclosed the compilation of summaries of Antideficiency Act violation reports and agency transmittal letters for fiscal year 2018. Agencies reported nine violations. Except for GAO-ADA-18-05 and GAO-ADA-18-09, reported in the Enclosure, GAO has not opined on the violations reported or the remedial actions taken.

If you have any questions, please do not hesitate to contact Shirley A. Jones, Managing Associate General Counsel, at (202) 512-8156, or Omari Norman, Assistant General Counsel for Appropriations Law, at (202) 512-8272.

A handwritten signature in black ink that reads "Thomas H. Armstrong".

Thomas H. Armstrong
General Counsel

Enclosure

Antideficiency Act Reports – Fiscal Year 2018

GAO No.: GAO-ADA-18-01

Agency No.: Army, 15-04

Date Reported to GAO: November 27, 2018

Agency: Department of the Army (Army)

Date(s) of Violation(s): Fiscal Years (FYs) 2013-2014

Account(s): Operations and Maintenance, Army Reserve
Amount Reported: \$136,443.04

Description: The Army, through the Department of Defense, reported that it violated the Antideficiency Act (ADA) when it obligated amounts to continue to pay salaries and benefits to two dual status Military Technicians after loss of membership in the Selected Reserve, which is a condition of employment as prescribed by 10 U.S.C. § 10216.

The Army reported that it paid salaries and benefits to a Maintenance Administration and Supply Technician (former Sergeant/E-5) and a Heavy Mobile Equipment Mechanic Inspector (former Staff Sergeant/E-6). The Army reported that both individuals' employment in their positions required membership in the Selected Reserve. However, the Army reported that both individuals declined to reenlist and accepted an honorable discharge from the Selected Reserve. Because the Army continued to employ the individuals as dual status Military Technicians despite their departure from the Selected Reserve, the Army reported that it incurred uncorrectable violations of the ADA.

Remedial Action Taken: The Army reported that one individual was identified as being responsible for the violation. The Army reported that it determined that no disciplinary action would be taken as the impact on the individual's promotion potential, future employment, and the stigma associated with the violations were sufficient punishment. Also, the Army reported that the violations contained no willful or knowing intent on the part of the responsible individual. Additionally, an Army official directed staff to run a quarterly report to verify conditions of employment for Military Technicians. On December 22, 2016, the U.S. Army Reserve Command's Civilian Personnel Management Office released a message reiterating the conditions of employment for dual status Military Technicians and providing guidance to assist subordinate commands with monitoring those conditions.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; for further information about a specific report, please contact the relevant agency.

Antideficiency Act Reports – Fiscal Year 2018

GAO No.: GAO-ADA-18-02

Agency No.: Army 17-01	Date Reported to GAO: February 22, 2018
Agency: Department of the Army (Army)	Date(s) of Violation(s): Fiscal Years (FYs) 2011-2015
Account(s): Operations and Maintenance, Army	Amount Reported: \$1,695,746.72

Description: The Army, through the Department of Defense, reported that it violated the Antideficiency Act (ADA) when it obligated funds for the development of a covered Defense business system without first obtaining the necessary certification and approval, as required by 10 U.S.C. § 2222.

The Army reported that 10 U.S.C. § 2222 requires certification and approval by an investment review board and the Defense Business Systems Management Committee for any systems development/modernization investments costing in excess of \$1 million for FY 2011 and costing in excess of \$1 million over the period of the current future-years defense program for FYs 2012-2015. The Army reported that the U.S. Army Sustainment Command (ASC) failed to obtain the certification and approval before obligating funds for development of a covered Defense business system. The Army reported that as a result, the ASC incurred an uncorrectable violation of 31 U.S.C. § 1341(a)(1)(A).

Remedial Action Taken: The Army reported that it identified four individuals responsible for the violations. The Army reported that three of the individuals are no longer employed by the U.S. Government, and discipline was not pursued. The Army reported that one individual was issued a formal memorandum of counseling from the ASC Commanding General. The Army reported that it determined that the violation contained no willful or knowing intent on the part of this individual to violate the ADA.

The Army reported that to prevent a recurrence of this type of violation the ASC has changed its internal procedures to ensure that appropriations are no longer used in this fashion.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; for further information about a specific report, please contact the relevant agency.

Antideficiency Act Reports – Fiscal Year 2018

GAO No.: GAO-ADA-18-03

Agency No.: None Reported	Date Reported to GAO: May 21, 2018
Agency: Department of Commerce (Commerce)	Date(s) of Violation(s): Fiscal Years (FYs) 2008 and 2009
Account(s): NOAA's Operations, Research, and Facilities and Procurement, Acquisition, and Construction	Amount Reported: \$35,167,000.00

Description: Commerce reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when the National Weather Service (NWS) in the National Oceanic and Atmospheric Administration (NOAA) reprogrammed funds in fiscal years (FY) 2008 and 2009 without providing advance notice to Congress as required by law. As a result, NWS incurred obligations in excess of available appropriations.

During FYs 2008 and 2009, Commerce reported that NWS misused a mechanism known as a Summary Level Transfer (SLT). Commerce states that, when properly used, an SLT allows financial officers to change the accounting codes of past expenses to correct errors in how expenses are charged. However, Commerce reported that NWS instead used SLTs to change the accounting codes of expenses which had been appropriately charged to a program, project, or activity (PPA) that was experiencing a shortfall, to a PPA that NWS perceived as having more funds than needed. Commerce also reported that, by doing so, additional funds were made available in the original PPA so that it could incur additional expenses.

Remedial Action Taken: Commerce and NOAA took corrective action in response to the violations that occurred in FY's 2010 and 2011 to prevent future violations of this nature. The corrective actions included conducting a comprehensive review of how SLTs are used across the agency, ensuring that costs of common services are appropriately assessed, changing the supervisory structure of NWS and other NOAA lines offices, and conducting a training program for key personnel that addresses appropriation law concepts, including reprogramming, the ADA, and the appropriate use of SLTs.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; for further information about a specific report, please contact the relevant agency.

Antideficiency Act Reports – Fiscal Year 2018

GAO No.: GAO-ADA-18-04

Agency No.: None Reported

Date Reported to GAO: June 15, 2018

Agency: Department of Commerce
(Commerce)

Date(s) of Violation(s): Fiscal Years (FYs)
2009-2012

Account(s): None Reported

Amount Reported: None Reported

Description: Commerce reported that it violated the Antideficiency Act (ADA) when employees made various purchase card transactions during fiscal years 2009 through 2012. Commerce reported that the transactions included vendor-provided terms and conditions containing open-ended indemnification provisions that violate the ADA.

Remedial Action Taken: Commerce reported that it found no evidence that the ADA violations were willfully or knowingly committed. Commerce did not report that any disciplinary action had been taken against the responsible parties involved. Commerce reported that it worked with the Office of Management and Budget's Office of Federal Procurement Policy and the Federal Acquisition Regulation (FAR) Council to draft revisions to the FAR to void these provisions as a matter of law starting in 2013. FAR, 48 C.F.R. §§ 12.216, 52.212-4(u). Additionally, Commerce reported that it has instituted a training program that addresses vendor terms that could cause an Antideficiency Act violation for key personnel across the agency. Commerce reported that this training was also incorporated in the agency's required purchase card policy and training curricula. In addition, Commerce reported that OMB has approved the internal financial management controls used by Commerce. Commerce did not report that any disciplinary action had been taken against the responsible parties involved.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; for further information about a specific report, please contact the relevant agency.

Antideficiency Act Reports – Fiscal Year 2018

GAO No.: GAO-ADA-18-06

Agency No.: USSOCOM 16-02	Date Reported to GAO: August 9, 2018
Agency: Department of Defense, U.S. Special Operations Command (USSOCOM)	Date(s) of Violation(s): Fiscal Years (FYs) 2000-2015
Account(s): Operation and Maintenance (O&M), Defense-Wide, Weapons Procurement, Navy (WPN), International Military Education and Training (IMET), and Foreign Military Sales (FMS)	Amount Reported: \$11,505,764.00

Description: USSOCOM, through the Department of Defense, reported that violations of the Antideficiency Act (ADA) occurred when the Naval Special Warfare Center, and the Navy Special Warfare Command's Naval Special Warfare Group 4 (NSWG-4) used appropriations for purposes for which they were not available. One example provided was that some O&M and WPN amounts were used to subsidize the cost of providing maritime training to foreign students. These appropriations were not available for this purpose. As a result, USSOCOM reported that it incurred uncorrectable violations of 31 U.S.C. § 1301(a) and 31 U.S.C. § 1341(a)(1)(A).

Remedial Action Taken: USSOCOM reported that it identified three individuals who were responsible for the violations; two of the individuals have retired from the U.S. Government, and discipline was not pursued. Further, USSOCOM reported that one individual received a letter of reprimand from the Commander Navy Special Warfare Command's Chief of Staff. USSOCOM reported that it determined that the violations contained no willful or knowing intent on the part of the responsible individual to violate the ADA.

To prevent a recurrence of these types of violations, USSOCOM reported that NSWG-4 has changed its internal procedures to ensure that appropriations are no longer used in this fashion.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; for further information about a specific report, please contact the relevant agency.

Antideficiency Act Reports – Fiscal Year 2018

GAO No.: GAO-ADA-18-07

Agency No.: None Reported

Date Reported to GAO: August 27, 2018

Agency: Department of Agriculture
(USDA)

Date(s) of Violation(s): Fiscal Years (FYs)
2015 and 2016

Account(s): Office of the Under Secretary for Rural Development; Office of the Under Secretary for Food, Nutrition, and Consumer Services; and Office of the Assistant Secretary for Civil Rights

Amount Reported: \$1,388,000.00

Description: USDA reported that it violated 31 U.S.C. § 1341 during FY 2015 and FY 2016 when, through Economy Act transfers, it obligated funding appropriated for Rural Development, Food and Nutrition Service, and the Office of Civil Rights to cover salary and benefits for personnel in their respective Office of the Secretary (OSEC) offices resulting in expenditures in excess of available funding.

Remedial Action Taken: USDA reported that it identified several individuals responsible for the violation, but determined that there was no willful or knowing intent on the part of those responsible to violate the ADA. USDA did not report that any disciplinary action was taken against the responsible individuals.

To prevent a recurrence of such violations, USDA reported that it will address deficiencies in the internal control process within the Office of Human Resources Management (OHRM) through an improved process that centralizes execution of all OSEC resources. USDA reported that the new process requires OHRM to obtain the Office of the Chief Financial Officer's approval of adequate funds and also requires each OSEC office to conduct upfront planning that limits the number of OSEC resources so that it remains within the OSEC budget.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; for further information about a specific report, please contact the relevant agency.

Antideficiency Act Reports – Fiscal Year 2018

GAO No.: GAO-ADA-18-08

Agency No.: None Reported	Date Reported to GAO: September 10, 2018
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Agency: Department of Veterans Affairs (VA)	Date(s) of Violation(s): Fiscal Year (FY) 2015
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Account(s): Medical Support & Compliance (MS&C)	Amount Reported: \$890,000
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Description: VA reported that a violation of 31 U.S.C. § 1502 and of 31 U.S.C. § 1341 occurred when the Durham VA Medical Center obligated FY 2015 funds to cover FY 2016 and potentially FY 2017 metered mail costs.

Remedial Action Taken: VA reported that the individual found responsible for the violation has since retired, and consequently no disciplinary action was taken. Further, VA reported that it determined that there was no knowing or willful intent by the responsible party to violate the Antideficiency Act.

In addition, VA reported that it will provide training to employees on the Antideficiency Act and on 31 U.S.C. § 1502.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; for further information about a specific report, please contact the relevant agency.

Antideficiency Act Reports – Fiscal Year 2018

GAO No.: GAO-ADA-18-09

Agency No.: None Reported	Date Reported to GAO: September 28, 2018
Agency: Department of Transportation (DOT)	Date(s) of Violation(s): Fiscal Year (FY) 2017
Account(s): None Reported	Amount Reported: None Reported

Description: DOT transmitted to the President of the Senate, the Speaker of the House, and the President a letter regarding our decision in which we concluded that DOT violated an anti-lobbying provision in the Financial Services and General Government Appropriations Act, 2017, as well as the Antideficiency Act (ADA), when it “retweeted” and “liked” a tweet originally posted on a third-party Twitter account urging followers to “[t]ell Congress to pass” pending legislation. [B-329368](#), Dec. 13, 2017. DOT sent a copy of its letter to GAO.

DOT disagreed with GAO and stated that it did not violate either the anti-lobbying provision or the ADA, and that “even if the actions in question were treated as an ADA violation, they involved no measurable cost in terms of the use of Federal funds.” However, as we noted in our decision, “there is no *de minimis* violation of grassroots lobbying,” and because DOT expended funds in violation of the anti-lobbying provision, it also violated the ADA. [B-329368](#).

Remedial Action Taken: Although DOT stated that it did not violate the ADA, it also stated that it, nonetheless, will not take such actions as led to the violation in the future.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; for further information about a specific report, please contact the relevant agency.



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

NOV 27 2017

Dear Mr. Dodaro:

This letter reports violations of the Antideficiency Act (ADA), Army case number 15-04 (enclosed), as required by 31 U.S.C. § 1351. The violations involved fiscal year 2013 Operations and Maintenance, Army Reserve (OMAR), funds. The violations totaled \$136,443.04 and occurred at the U.S. Army Reserve Command (USARC), 81st Regional Support Command (RSC), Fort Benning, Georgia. The 81st RSC continued payment of salaries and benefits to two dual status Military Technicians (MILTECHs) for more than a year after loss of membership in the Selected Reserve (SELRES), a Condition of Employment (COE) as prescribed by 10 U.S.C. § 10216. Consequently, the Army incurred uncorrectable violations of 31 U.S.C. 1341 (a)(1)(A)¹.

The 81st RSC paid salaries and benefits to a Maintenance Administration and Supply Technician (former Sergeant/E-5) and a Heavy Mobile Equipment Mechanic Inspector (former Staff Sergeant/E-6) in the amount of \$68,913.99 and \$67,529.05 respectively. Both individuals declined to reenlist and accepted an honorable discharge from the SELRES and should have been removed immediately. Employment in their non-competitive MILTECH positions requires membership in the SELRES. The Directorate of Logistics did not actively track the military status of their dual status MILTECH employees. This failure enabled the continued employment of both individuals and the outlay of OMAR funds. There was no combat-related injury that would warrant either of these employees being retained as a Non-Dual Status Technician.

The former Director of Logistics, 81st RSC was found responsible for the 31 U.S.C. § 1341(a)(1)(A) violation. The Commanding General, 81st Regional Support Command acknowledged the overall responsibility of the former Director of Logistics for causing the ADA, but determined the permanent stigma of being associated with these ADA violations and its impact on his promotion potential and future employment was sufficient punishment. No disciplinary action was taken. The violations contained no willful or

¹ Although the circumstances described herein constitute a violation of 10 U.S.C. § 2805, 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 (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. However, given the Government Accountability Office’s views to the contrary, consistent with section 145.8 of the 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 of the United States.



knowing intent on the part of the responsible individual to violate the ADA.

To prevent a recurrence of this type of violation, the current Chief of Staff at 81st RSC, issued a policy memorandum directing the 81st RSC Full-Time Support - Civilian Branch to run a quarterly report to verify COE for all MILTECHs and work with the Director/Section Chief or Supervisor of MILTECHs for verification. The 81st RSC supervisors are required to validate the continued Select Reserve affiliation of all dual status MILTECH employees in conjunction with the employee's annual civilian appraisal. On December 22, 2016, the USARC Civilian Personnel Management Office released a message to subordinate commands reiterating the COE requirements for dual status MILTECHs and provided additional guidance on use of the Human Resource Enterprise Management Tool System, the current tool to assist subordinate commands with monitoring COE.

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,

A handwritten signature in black ink, appearing to read "David L. Norquist". The signature is fluid and cursive, with the first name "David" being the most prominent.

David L. Norquist

Enclosure:
As stated



COMPTROLLER

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

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

FEB 22 2018

Dear Mr. Dodaro:

This letter reports a violation of the Antideficiency Act (ADA), Army case number 17-01 (enclosed), as required by 31 U.S.C. § 1351. The violation involved fiscal years (FYs) 2011- 2015 Operations and Maintenance, Army (OMA), funds. The violation totaled \$1,695,746.72 and occurred at the Headquarters (HQ), U.S. Army Sustainment Command (ASC), 1 Rock Island Arsenal, Rock Island, Illinois. 10 U.S.C. § 2222 requires certification and approval by an investment review board and the Defense Business Systems Management Committee for any systems development/modernization investments costing in excess of \$1 million for FY 2011 and costing in excess of \$1 million over the period of the current future-years defense program for FY 2012-2015. The ASC failed to obtain the certification and approval before obligating funds for development of a covered Defense business system in violation of 10 U.S.C. § 2222. Section 2222 carries with it, a provision that makes such failure an ADA violation. Consequently, the ASC incurred an uncorrectable violation of 31 U.S.C. 1341 (a)(1)(A).

The Enterprise Requirements Management System (ERMS) is a new, custom modular software program developed to integrate three Microsoft Access databases into a single robust, stable, user friendly enterprise tool for ASC to use for resource/requirements planning, management, and execution. The ASC believed that its initial FY 2011 \$407,000.00 costs for the new enterprise system development did not require an investment review board and a Defense Business Systems Management Committee certification and approval. From FY 2012 through FY 2015 ASC obligated an additional \$1,288,746.72 OMA funds to complete its ERMS development. While ASC did not create a life-cycle cost estimate, the total funding executed for the ERMS system exceeded \$1,000,000.00. The ASC wrongly considered ERMS to simply be an application conversion necessary to maintain current services, rather than a new system investment.

The former Chief of the Requirements Integration Division, was found responsible for causing the ADA violation. The ASC Commanding General issued him a formal memorandum of counseling. The former Deputy Commanding General, Assistant Deputy Chief of Staff for Information Management, and Deputy Chief of Staff for Resource Management were also found responsible for the violation, but are no longer employed by the United States Government and discipline was not pursued. The violation contained no willful or knowing intent on the part of the responsible individual to violate the ADA.



To prevent a recurrence of this type of violation, the ASC changed its Information Technology (IT) policies and procedures to improve visibility and accountability of all IT expenditures throughout the Army. The ASC changed its Program Objective Memorandum process to appropriately program and budget for all ERMS requirements. The ASC implemented a standard operating procedure to evaluate funding source recommendations and ensure financial regulatory compliance; and to determine if an IT project is denied or is approved and registered in the Army Portfolio Management System.

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,

A handwritten signature in black ink, appearing to read "David L. Norquist". The signature is fluid and cursive, with a large initial "D" and "N".

David L. Norquist

Enclosure:
As stated



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

May 21, 2018

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
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.

The National Weather Service (NWS), a line office of the National Oceanic and Atmospheric Administration (NOAA), violated 31 U.S.C. § 1341(a) by reprogramming funds in fiscal years 2008 and 2009 without providing advance notification to Congress as required by law, thereby incurring obligations in excess of available appropriations. These violations occurred in NOAA's Operations, Research, and Facilities and Procurement, Acquisition, and Construction accounts, Treasury Account Symbols 13 8/9 1450, 13 9/10 1450, 13 8/9 1460, and 13 9/10 1460.

In November 2012, the Department of Commerce reported that NWS had violated the Antideficiency Act in fiscal years 2010 and 2011 by engaging in practices designed to alleviate perceived shortfalls in the NWS budget. A subsequent investigation commissioned by NOAA revealed that the same impermissible accounting practices had taken place in fiscal years 2008 and 2009. The purpose of this letter is to notify you of the additional violations of the Antideficiency Act in fiscal years 2008 and 2009 discovered by this investigation and to supplement our November 2012 report.

During fiscal years 2008 and 2009, NWS used instruments known as Summary Level Transfers (SLTs) to alleviate perceived shortfalls in the NWS budget. SLTs are a legitimate tool used to correct errors in how expenses are charged by allowing financial officers the ability to change the accounting codes of past expenses. In this instance, however, NWS used SLTs to change the accounting codes of expenses appropriately charged to a program, project, or activity (PPA) experiencing a shortfall to instead reflect the cost as an expense of a PPA that NWS perceived as having more funds than needed. By doing so, additional funds were made available in the original PPA so that it could incur additional expenses. Moreover, the justifications for the movement of such expenses were not contemporaneously documented in a proper manner. As a result, and because SLTs are used to move expenses in batch rather than in relation to individual transactions, we cannot retroactively determine the exact extent to which expenses were moved, and, therefore, reprogrammed, from one PPA to another. Nevertheless, we estimate that in 2008, NWS augmented its Local Warnings and Forecasts (LWF) Base PPA by as much as \$10,930,000 and NWS Telecommunication Gateway Backup-Critical Infrastructure Protection PPA by as

The Honorable Gene L. Dodaro

Page 2

much as \$1,088,000, while reducing the money available to its Sustain Cooperative Observer Network, Automated Surface Observing System, and Complete and Sustain NOAA Weather Radio PPAs by at least 10%. In 2009, NWS augmented its LWF Base PPA by as much as \$23,149,000, while reducing the funds in its Sustain Cooperative Observer Network, Strengthen U.S. Tsunami Warning Network, Next Generation Weather Radar, and Weather Forecast Offices Construction PPAs by at least 10%. The use of funds from one PPA within an appropriation account to cover expenses attributable to another PPA constitutes a reprogramming of funds.

SLTs were also used to assess common services charges among PPAs in amounts that were not proportionate to the benefits received by each PPA. By not assessing common services costs among PPAs through the employment of a rational cost algorithm, NWS necessarily reprogrammed funds between PPAs, as some PPAs paid costs that should otherwise have been borne by others.

The Antideficiency Act prohibits agencies from incurring obligations in excess of available appropriations. Under Section 505 of the Department's fiscal year 2008 and 2009 appropriations acts, funds reprogrammed above a specified threshold are not available for any purpose until advance notice is provided to Congress. Because of this restriction, where, as here, an agency incurs obligations against reprogrammed funds where proper notice was not provided, it has incurred obligations in excess of available appropriations. Accordingly, by reprogramming funds in fiscal years 2008 and 2009 without giving proper notice, NWS incurred obligations in excess of available appropriations in violation of the Antideficiency Act.

The Department has concluded that the unauthorized reprogramming of funds in fiscal years 2008 and 2009 was systemic and therefore cannot fairly be attributed to specific individuals. In response to the violations that occurred in fiscal years 2010 and 2011, which were previously reported, the Department and NOAA implemented corrective actions to prevent future violations of this nature. These corrective actions included: conducting a comprehensive review of how SLTs are used across the Department to ensure that there are adequate administrative controls for their use; ensuring the costs of common services are appropriately assessed; changing the supervisory structure of NWS and other NOAA line offices such that line office CFOs are supervised by the NOAA CFO in addition to the line office assistant administrators; and conducting a training program for key personnel across the Department that addresses core appropriations law concepts, including reprogramming, the Antideficiency Act, and the appropriate use of SLTs.

Identical reports are being submitted to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

Respectfully,



Wilbur Ross



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

June 15, 2018

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report a series of violations of the Antideficiency Act, as required by section 1351 of Title 31, United States Code.

Various purchase card transactions made by Department of Commerce employees from fiscal year 2009 through fiscal year 2012 violated the Antideficiency Act because the transactions included vendor-provided terms and conditions containing open-ended indemnification provisions, which are common in commercial contracts for goods and services, end-user license agreements, and terms of services for software and online applications. The Department received clean audits for the fiscal years in which the violations occurred.

When a government officer or employee with authority to bind the government consents to an agreement containing an open-ended, unrestricted indemnification clause, such an agreement amounts to a *prima facie* violation of the Antideficiency Act. An open-ended indemnification provision creates an obligation that exceeds funds available in an appropriation because it can never be the case that sufficient funds have been appropriated to cover an unknown contingency.

The Department found no evidence that the Antideficiency Act violations were committed willfully and knowingly. The Department has, however, implemented corrective actions, in response to the violations that occurred, to prevent future violations of this nature. The Department worked proactively both internally and with the Office of Management and Budget's (OMB) Office of Federal Procurement Policy and the Federal Acquisition Regulation (FAR) Council to draft revisions to the FAR to void these provisions as a matter of law as of 2013 (FAR 12.216 and 52.212-4(u)). The Department also instituted a training program addressing vendor terms that could give rise to an Antideficiency Act violation for key personnel across the Department, and the training was subsequently incorporated into the Department's required purchase card policy and training curricula. OMB has approved the internal financial management controls employed by the Department.

Identical reports are being submitted to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

Sincerely,

A handwritten signature in black ink that reads "Wilbur Ross".
Wilbur Ross



U.S. Department of Justice

Washington, D.C. 20530

June 8, 2018

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
Washington, DC 20530

Dear Comptroller General:

On behalf of the Attorney General, enclosed is a letter transmitting to the President a report regarding the Government Accountability Office's (GAO's) findings of Antideficiency Act (ADA) violations in its 2016 Report titled "ATF Did Not Always Comply with the Appropriations Act Restrictions and Should Better Adhere to its Policies." (GAO-16-552). The Office of Management and Budget (OMB) Circular A-11, section 145.8, requires that the Department report to the President, Congress, and the Comptroller General on ADA violations reported by GAO. The Department is therefore reporting that GAO found violations of the Antideficiency Act, but the Department has concluded that no such violations occurred. I am also enclosing the Department's response to GAO's findings, explaining the Department's position.

The Department is also submitting copies of this report to the President of the Senate, the Speaker of the House of Representatives, and the Director of Office of Management and Budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee J. Lofthus".

Lee J. Lofthus
Assistant Attorney General
for Administration, and
Chief Financial Officer

Enclosures



COMPTROLLER

UNDER SECRETARY OF DEFENSE

1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

AUG 09 2018

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

Dear Mr. Dodaro:

This letter reports violations of the Antideficiency Act (ADA), U.S. Special Operations Command (USSOCOM) case number 16-02 (enclosed), as required by 31 U.S.C. § 1351. The violations involved fiscal years (FYs) 2000 through 2015 Operation and Maintenance (O&M), Defense-Wide, Weapons Procurement, Navy (WPN), International Military Education and Training (IMET), and Foreign Military Sales (FMS), funds. The amount of violations totaled \$11,505,764.00 and occurred at the Naval Special Warfare Center (NSW-CEN) (October 1999 – April 2008) and the Navy Special Warfare Command's Naval Special Warfare Group 4 (NSWG-4) (May 2008 – September 2015). The NSW-CEN and NSWG-4 improperly used O&M and WPN funds to cover costs incurred by Naval Small Craft Instruction and Technical Training School (NAVSCIATTS) to train foreign military students. In addition, the NSWG-4 improperly used O&M funds to subsidize the costs of the NAVSCIATTS cafeteria that provided food to U.S. service members, U.S. Government civilian employees, and foreign students. Consequently, the NSW-CEN and NSWG-4 incurred uncorrectable violations of title 31 U.S.C. § 1301(a), and the ADA 31 U.S.C. § 1341(a)(1)(A).

The NAVSCIATTS was established to provide maritime training to foreign students only. The NSW-CEN and NSWG-4, as the holders of funds, improperly obligated and expended an estimated \$9,706,734.00 O&M and WPN funds. The total cost of the maritime training should have been factored into the tuition rates and paid entirely with foreign assistance IMET, and/or FMS funds. However, from FY 2000 through FY 2015, in order to maintain a competitive edge over other Department of Defense (DoD) schools, NAVSCIATTS intentionally charged lower tuition rates by improperly subsidizing its rates with O&M and WPN funds.

The DoD O&M and WPN funds are generally not available for purposes of providing foreign assistance. The limited exceptions to the rule are permissible training (e.g., interoperability, familiarity, and safety training) and congressional legislation that authorizes training and other types of foreign assistance funded with Title 10 funds (e.g., Afghanistan Security Forces Fund, the Counter-Islamic State of Iraq and the Levant Train and Equip Fund, and 10 U.S.C. § 333). Outside of such exceptions, the use of operational funds for foreign assistance purposes is a violation of the Purpose Statute (31 U.S.C. § 1301) as well as the ADA (31 U.S.C. § 1341). There are no exceptions allowing the use of DoD O&M and WPN funds by NAVSCIATTS for such training services and that, as a result, the ADA was violated.

A separate violation of the ADA occurred when O&M funds were used by NSWG-4 to pay for cafeteria services for NAVSCIATTS. During FY 2011 through FY 2015, the NSWG-4

inappropriately obligated and expended \$1,799,030.00 O&M funds to cover the difference between prices charged to patrons and the costs of providing food service. The National Aeronautics and Space Administration (NASA), located at the Stennis facility where NAVSCIATTS has been located, had acquired cafeteria services for its own employees. The contract was modified to enable a separate cafeteria to be located in the NAVSCIATTS area. Eventually, the contractor providing the service found that it could not maintain the separate cafeteria based on the cost of meals that were provided without additional funds. Over a five-year period, O&M funds were paid to the contractor to keep the NAVSCIATTS cafeteria open.

The Government Accountability Office (GAO) has found in a number of situations that subsidizing a cafeteria in a federal facility for employees is permissible as a necessary expense, such as when it promotes the efficiency of the service and enhances the morale of employees. The situations addressed by the GAO include subsidizing the operation of a cafeteria for the evening and night shift employees of the Government Printing Office where suitable alternative restaurants were not available and tight production schedules did not allow employees to take an extended lunch period (B-216943 (1985)); and subsidizing the operation of a cafeteria in a new government high-rise building in an area devoid of restaurants and where the full complement of federal employees necessary to maintain reasonable prices would not be in place for an extended period of time (B-169141 (1970)).

Keeping the NASCIATTS cafeteria open would have certainly promoted employee morale in general, while on the other hand, the NASA cafeteria was located only 1.3 miles from the NAVSCIATTS area and a mini-mart was located across the street from it. The fact that the subsidy ended in FY 2015 without an apparent adverse effect on the operations of the school in performing its training mission or on the morale of NAVSCIATTS personnel proves that the presence of the cafeteria in the area of the school was unnecessary and that the 5-year subsidy was not a necessary expense. Accordingly, the cafeteria subsidy totaling \$1,799,030.00 constitutes a violation of both the Purpose Statute (31 U.S.C. §1301) and the ADA (13 U.S.C. §1341).

The Comptroller (current), NSWG-4, Comptroller (retired), NSWG-4, and Comptroller (retired), NSW-CEN, were found responsible for causing the ADA violations. The Commander, Navy Special Warfare Command's (NSWC), Chief of Staff issued the Comptroller (current), NSWG-4 a letter of reprimand. As the United States Government no longer employs the Comptroller (retired), NSWG-4, and the Comptroller (retired), NSW-CEN, discipline was not pursued. The violations contained no willful or knowing intent on the part of the responsible individual to violate the ADA.

To prevent a recurrence of these types of violations, NSWG-4 has included all relevant costs in setting tuition rates since 2015. In addition, it has instituted annual meetings to evaluate and analyze all costs for inclusion in tuition rates for the following fiscal year. The NSWC will develop an overarching policy to prescribe specific tuition rate establishment, processes and protocols, and tailored guidance to codify security cooperation expectations to all NSWC commands. Tuition rates are now provided to the Naval Education and Training Security Assistance Field Activity (NETSAFA) in advance of the annual Security Cooperation Education

and Working Groups meeting. The cost of all ammunition is now included in tuition rates in accordance with NETSAFA guidance. The dining facility is no longer in operation. However, NSWC sent a letter to Chief of Navy Installation Command requesting formal establishment of a Navy galley at Stennis for NASCIATTS personnel.

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,

A handwritten signature in black ink, appearing to read "David L. Norquist". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

David L. Norquist

Enclosure:
As stated



United States Department of Agriculture

Office of the Secretary
Washington, D.C. 20250**AUG 27 2018**

The Honorable Gene L. Dodaro
Comptroller General of the United States
United States Government Accountability Office
441 G Street, NW.
Washington, D.C. 20548

Dear Mr. Comptroller General:

This letter is to report violations of the Antideficiency Act (ADA), as required by Section 1351 of Title 31, United States Code. The violations of 31 U.S.C. §1341 occurred in the previous Administration in fiscal years 2015 and 2016, respectively, in the following Office of the Secretary (OSEC) Treasury Symbol accounts: 1250127, U.S. Department of Agriculture's (USDA) Office of the Under Secretary for Rural Development; 1260129, USDA's Office of the Under Secretary for Food, Nutrition, and Consumer Services; and 1260130, Office of the Assistant Secretary for Civil Rights.

OSEC and the subordinate agencies have separate appropriations. Through Economy Act transfers, USDA obligated funding appropriated for 1) Rural Development, 2) Food and Nutrition Service, and 3) Office of Civil Rights to cover salary and benefits for personnel in their respective OSEC offices. While the Economy Act allows for temporary movement of personnel and associated salary and benefits between agency and mission area accounts, it does not authorize supplementing one appropriated fund with another to cover costs of services not provided. An exchange of services must be provided, supported by corresponding documentation clearly outlining the duties and functions of said support or services. The personnel action processing for the involved offices was administered by the staff under the Director of the Office of Human Resources Management (OHRM).

Between October 2014 and September 2015, USDA's Rural Development obligated \$1.255 million for 13 Agency-level employees to perform in the Office of the Under Secretary for Rural Development. These accounts have been adjusted to charge the proper appropriations for the identified expenses, resulting in expenditures of \$790,000 in excess of available funding amounts.

Between October 2015 and September 2016, USDA's Food and Nutrition Service obligated \$497,000 for four Agency employees to perform in the Office of the Under Secretary for Food, Nutrition, and Consumer Services. These accounts have been adjusted to charge the proper appropriations for the identified expenses, resulting in expenditures of \$478,000 in excess of available funding amounts.

Between October 2015 and September 2016, the Office of Civil Rights obligated \$150,000 for one Agency employee to perform in the Office of the Assistant Secretary for Civil Rights. These accounts have been adjusted to charge the proper appropriations for the identified expenses, resulting in expenditures of \$120,000 in excess of available funding amounts.

The Honorable Gene Dodaro

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The previous Under Secretaries of Rural Development, Food and Nutrition Service, along with the previous Assistant Secretary for Civil Rights, previous Chief Financial Officer, and previous Director of OHRM all bear responsibility for the ADA violations. The Department has determined that there was no willful or knowing intent on the part of these individuals to violate the Antideficiency Act. Corrective actions will require coordination with both Treasury and the Office of Management and Budget, as well as our financial systems team. The OSEC reimbursable revenue billing and collections received in the financial system from the agency accounts will need to be reversed, resulting in refunds to the agencies and additional expenditures in OSEC. USDA is working through how to make the corrective measures in the accounting system and will complete this action before the end of the fiscal year.

USDA has historically used personnel actions and interagency agreements as Economy Act-compliant instruments for detailing employees between agencies and reimbursing for services provided. The two processes run parallel from OHRM and the Office of the Chief Financial Officer (OCFO). The deficient control was the lack of an internal control process within OHRM that ensured there was both adequate documentation clearly outlining the duties and functions of the support being provided, as well as sufficient funding to accommodate the number of desired positions.

Secretary Perdue and I have directed that this deficient control be addressed through an improved process that centralizes execution of all OSEC resources. The new process requires OHRM to obtain OCFO approval of adequate funds and also requires each OSEC office to conduct upfront planning that limits the number of OSEC resources so that it remains within the OSEC budget. By reengineering this process, we have remediated this risk going forward.

A similar letter is being sent to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

Sincerely,



Stephen L. Censky
Deputy Secretary

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

September 10, 2018

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

Dear Mr. Dodaro:

This letter reports a violation of the Antideficiency Act, as required by 31 United States Code (U.S.C.) 1351.

A violation of 31 U.S.C. 1341 occurred in the fiscal year (FY) 2015 Medical Support & Compliance (MS&C) account, 036-0152, in the total amount of \$890,000. The violation occurred on September 25, 2015, when the Durham Department of Veterans Affairs (VA) Medical Center (VAMC) Chief of Finance (CoF) obligated \$890,000 in FY 2015 MS&C funds to cover FY 2016 and potentially, FY 2017 metered mail costs. The Durham VAMC CoF was responsible for the violation.

The bona fide needs statute, 31 U.S.C. 1502, requires that agencies obligate annual appropriations only to meet a need arising in the fiscal year for which the appropriation was made. To comply with the bona fide needs statute, the Durham VAMC CoF should have obligated FY 2016 funds for metered mail costs arising in FY 2016 and FY 2017 funds for such costs arising in FY 2017. The violation of the bona fide needs statute also resulted in a violation of the Antideficiency Act because the Durham VAMC CoF entered into an obligation in advance of available appropriations.

The Veterans Health Administration will provide training to employees on the Antideficiency Act and the bona fide needs statute.

VA will not impose administrative discipline or further action with respect to the CoF because the individual has now retired. VA has determined that the responsible party did not knowingly or willfully intend to violate the Antideficiency Act.

Identical reports will be submitted to the President of the United States and the presiding officer of each House of Congress.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Wilkie".

Robert L. Wilkie



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

SEP 28 2018

The Honorable Gene L. Dodaro
Comptroller General
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

I am replying to an alleged violation of the Anti-Deficiency Act (ADA), as required by section 145.8 of the Office of Management and Budget (OMB) Circular A-11 (2018).

In an opinion dated December 13, 2017, the Government Accountability Office (GAO) concluded that the U.S. Department of Transportation (DOT) violated 31 U.S.C. 1341 when it “retweeted” and “liked” a tweet urging followers to “[t]ell Congress to pass” pending legislation.

The DOT’s Office of the General Counsel has thoroughly examined the matter and determined that DOT did not violate the ADA. The Office also concluded that, even if the actions in question were treated as an ADA violation, they involved no measurable cost in terms of the use of Federal funds. In a letter to GAO, dated November 30, 2017, the DOT General Counsel, Steven Bradbury, articulated the legal basis for the DOT’s determination. After reviewing the GAO opinion, the DOT General Counsel reiterated in the enclosed memorandum that DOT did not violate the ADA for the reasons articulated in the enclosed November 30 letter. That letter constitutes the explanation of DOT’s position required by OMB Circular A-11.

During the review of these actions, DOT did not take similar actions. Although the DOT Office of the General Counsel determined that the actions did not violate the ADA, DOT will not take such actions in the future.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Lana Hurdle'.

Lana Hurdle
Deputy Assistant Secretary for Budget and
Programs

Enclosures

10/25/18