

Antideficiency Act Reports - Fiscal Year 2009

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
<u>09-01</u>	05-17	Department of the Army	Operation and Maintenance, Army (OMA)	11/3/2008	7/16/2004; 10/8/2004	\$16,802,792	31 U.S.C. § 1517(a)	Third United States Army, U.S. Army Central Command improperly obligated FY 2004 OMA funds for the construction of two phases of an internment facility at Camp Bucca, Iraq. The Command should have obligated the FY 2004 Military Construction, Army appropriation. A violation of 31 U.S.C. § 1517(a) occurred when no appropriations were available to cover the obligations. The Command could not obligate OMA appropriations under 10 U.S.C. § 2805 because the obligated amount exceeded the statute's obligation amount limitation. Neither could the Command utilize authority provided in the National Defense Authorization Act that authorizes OMA appropriations for construction outside the U.S. under certain conditions because the Secretary of Defense did not make the requisite determination that the conditions were present.	The Vice Chief of Staff of the Army issued memoranda of concern to the responsible officers. The Department of Defense (DOD) Office of General Counsel issued a legal opinion clarifying fiscal law principles. DOD issued guidance on the use of OMA appropriations for construction. The Office of the Under Secretary of Defense (Comptroller) issued guidance on the use of OMA appropriations to fund construction projects. Army management provided training to Army fiscal personnel on current fiscal law regarding funding of construction.

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<u>09-02</u>		Department of Veterans Affairs	Direct Loan Financing	11/13/2008	9/28/2007	\$27,509,201	31 U.S.C. § 1341(a)	The Veterans Benefit Administration (VBA) uses a formula to estimate cash on deposit in the direct loan financing account, as well as to estimate the total funding available to repay debt owed to the Treasury. A FY 2007 revision to the formula erroneously failed to account for prior-year unpaid obligations, which resulted in VBA returning too much money to the Treasury. This reduced total budgetary resources in the fund below the amount of obligations incurred.	One individual was found responsible but no disciplinary action was reported. VBA revised the formula to include unpaid prior year obligations. VBA will review unpaid prior year obligations to determine why lenders have not billed VA for the payments. VBA will submit its calculations and transactions to VA's Office of Finance and Office of Budget for review prior to execution. VA will require that actual account balances and calculations be reviewed before any Treasury transactions are executed.
<u>09-03</u>	F06-02	Department of the Air Force	Operation and Maintenance, Air Force (OMAF)	12/3/2008	Fys 1999, 2000, 2001, 2003, and 2005	\$21,730.76	31 U.S.C. § 1341(a)(1)(A)	Air Warfare College (AWC) personnel at Air University (AU), Maxwell Air Force Base made unauthorized purchases of light refreshments during fiscal years 1999, 2000, 2001, 2003 and 2005 in connection with a regional studies event hosted by AWC. OMAF funds were used to make the purchases, although OMAF funds were not available for the purchase of light refreshments under these circumstances.	Two individuals were found responsible for the violations. One received a letter of counseling and the other retired without any disciplinary action being taken. To prevent future violations AU implemented several changes, including the assignment of a specific budget analyst and accounting officer to each AU unit, and ensuring the AWC regional studies budget guidelines clearly state that O&M funds are not authorized for regional studies social events.

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09-04	08-05	Department of the Army	Operation and Maintenance, Army (OMA)	1/12/2009	FY 2006	\$2,183,000	31 U.S.C. § 1517(a)	U.S. Southern Command authorized the National Institutes of Health (NIH) to contract for information technology services. Under an interagency agreement, the Army issued Military Interdepartmental Purchase Requests (MIPRs) to NIH for task orders pursuant to an NIH contract funded in fiscal year 2002 with four option years. At the conclusion of each contract and option period, excess fiscal year funding was not identified or returned to the Army. Rather, NIH "rolled over" the excess funds into the next fiscal year and used these funds to cover new Army obligations and expenditures in later years, thereby violating the <i>bona fide</i> needs rule (31 U.S.C. § 1502). When the Army tried to correct the <i>bona fide</i> needs violation by adjusting its obligations, there were insufficient amounts in the fiscal year 2006 appropriation at the suballotment level. Funds were available at the next higher level of funding to correct the violation.	Two individuals were found responsible but based on mitigating factors, no disciplinary action was taken. The Under Secretary of Defense (Comptroller) has issued clarifying guidance for all components of the Department of Defense (DOD) regarding interagency transactions conducted under authority other than the Economy Act. DOD and NIH signed a Memorandum of Agreement on the Use of NIH Government-Wide Acquisition Contracts, including a statement that NIH will ensure that funds provided in excess of contract requirements are deobligated and returned to DOD customers in a timely manner. The Southern Command developed a comprehensive policy which provides guidance, assigns responsibilities, and establishes procedures for sending MIPRs. The Army made funding adjustments, providing funding to cover the overobligation. Finally, the Southern Command has provided additional and refresher fiscal law training to budget and contracting personnel.

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<u>09-05</u>	08-01	Department of the Army	Operation and Maintenance, Army (OMA)	2/27/2009	9/29/2000	\$3,440	31 U.S.C. § 1341(a)(1)(A)	The U.S. Army Information Technology Agency transferred OMA funds to the Department of the Interior (DOI) Minerals Management Service Procurement Operations Branch Franchise Fund Program (GovWorks) to acquire goods and services to support the operations of the Pentagon Telecommunications Center. At the end of the fiscal year unused OMA funds were not returned to the Army but were retained and in 95 instances were used for the needs of subsequent fiscal years in violation of the <i>bona fide</i> needs rule (31 U.S.C. § 1502) and 31 U.S.C. § 1341(a)(1)(A). This was discovered during a Department of Defense Inspector General audit in 2006.	In 94 instances, corrective action was taken by substituting funds from the correct fiscal year. One improper obligation of FY 2000 funds (\$3,440.00) used in FY 2001 could not be corrected because the FYs 2000 and 2001 appropriations had closed. The responsible official was issued a letter of admonishment. DOD and DOI signed a Memorandum of Agreement under which DOI will ensure funds provided in a fiscal year in excess of contract requirements for that year are deobligated and returned to DOD customers, and DOI will provide reports on the status of excess funding. DOD and the Army issued clarifying guidance to prevent a recurrence of this problem.

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09-06		Department of Transportation (DOT), Maritime Administration (MARAD), U.S. Merchant Marine Academy (USMMA)	Operation and Training	3/9/2009	FY 2006	\$524,546	31 U.S.C. §§ 1341(a), 1517(a)(2)	USMMA incurred obligations in excess of appropriations and allotments for the pay and benefit program of USMMA.	Two responsible officials retired and are not subject to administrative action; one responsible official has been officially reprimanded, and is being removed from his position; another employee has been counseled and will receive additional training. USMMA will convert the majority of the NAFI personnel to federal employment. USMMA now has temporary, specific legal authority to hire adjunct professors under personal services contracts without regard to Title 5; however, adjunct professor contracts were modified to establish the adjunct professors as independent contractors, not as operating under personal services contracts. MARAD and USMMA have revised internal control procedures. USMMA will revisit internal administrative funds control guidance. USMMA hired new financial officers who are retraining staff to prevent future deficiencies. A USMMA oversight board will help make improvements to USMMA's financial and administrative practices.
					FY 2005 to FY 2007	\$397,740	31 U.S.C. § 1341(a)(1)(B)	USMMA engaged in a series of end-of-year transactions with one of its non-appropriated fund instrumentalities (NAFIs), Fiscal Control Office, for the purpose of unlawfully extending the availability of funds beyond the fiscal year for future needs (unspecified goods and services). In addition to a violation of 31 U.S.C. § 1341(a)(1)(B), these acts also violated the <i>bona fide</i> needs rule (31 U.S.C. § 1502). Although the transactions were structured differently between fiscal years, none of the funds was available for the purposes for which they were obligated.	
					FY 2007	\$4,100,000	31 U.S.C. § 1342	USMMA used personal services contracts with one of its NAFIs, for the use of the NAFI staff, to carry out the government's business, without express authority, thus violating 31 U.S.C. § 1342.	
					FY 2004 to FY 2007	Approximately \$2,400,000	31 U.S.C. § 1342	To supplement the capabilities of USMMA's full-time teaching staff, USMMA employed approx. 50 part-time teaching staff through 96 adjunct professor contracts (some individuals had more than 1 contract), which constituted personal services contracts in excess of those authorized by law, in violation of 31 U.S.C. § 1342.	

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<u>09-07</u>		Appalachian Regional Commission	Appalachian Regional Development Programs	1/15/2009 (reported to the President), 3/2/2009 (reported to Congress)	FY 2007 and FY 2008	\$1,076,383	31 U.S.C. § 1517(a)	At the beginning of fiscal years 2007 and 2008, Appalachian Regional Commission staff did not include carryover of unobligated balances when calculating the balance of an account which held no-year funds. These miscalculated balances were used to compute the apportionments for the account; therefore, the apportionment was too low, resulting in an over-obligation of funds. Separately, at the end of the third quarter of 2008, staff obligated funds from an account prior to a scheduled transfer of funds into the account, resulting in an over-obligation of funds.	Responsible individuals were admonished. Staff will update the Agency Control of Funds document, will work with OMB to ensure the document reflects appropriate internal controls, and will receive additional training on new procedures and requirements.
<u>09-08</u>		Department of Housing and Urban Development	Salaries and Expenses, Management and Administration; Office of Inspector General, Management and Administration	12/31/2008	8/4/2003 to 9/30/2003; Sept. 2006	\$66,896; \$7,128	31 U.S.C. §§ 1341(a)(1)(B), 1517(a)	In FY 2003, HUD offices of Administration, Public and Indian Housing, Chief Financial Officer, and Inspector General made a total of 50 obligations of FY 2003 funds for training to be conducted in FY 2004. The Director of Administrative Support Services Division in the Office of Housing similarly obligated funds in advance of an appropriation in FY 2006. These violations were detected and the training was canceled.	HUD did not designate specific individuals responsible because it determined that the violations resulted from widespread misconceptions and inadequate guidance and training. HUD has adopted and distributed procedures governing the processing of year-end obligations for training activities and included the procedures in its guidance and training.

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<u>09-09</u>		Department of Housing and Urban Development	Public Housing Operating Fund	12/31/2008	3/12/2003	\$250,000,000	31 U.S.C. § 1517(a)(2)	In FY 2002, HUD's Public Housing Operating Fund incurred a \$250 million shortfall in funds to be distributed to public housing agencies. During FY 2003, HUD was initially funded under a continuing resolution. The HUD Office of Public and Indian Housing obligated funds after HUD received its annual appropriation and after apportionment by OMB, but before allotment of the funds to the shortfall.	HUD counseled the responsible official. The department informed staff that certain situations may necessitate expeditious obligation of funds and subsequent adjustment. Deviations from approved funds control procedures must be approved in advance in writing by senior officials to ensure that sufficient interim funds control procedures are established and followed to control exigent funding needs and avoid Antideficiency Act violations.
<u>09-10</u>		Federal Housing Administration, Department of Housing and Urban Development	General Insurance and Special Risk Insurance Guaranteed Loan Financing	12/31/2008	FY 2004	\$1,529,229,523	31 U.S.C. § 1341(a)(1)(A)	The subject account includes several loan guarantee programs. HUD's Appropriations Act sets a loan commitment level for these programs based on the total loan principal. At the beginning of fiscal year 2004, Congress enacted a Continuing Resolution that set a commitment level of \$3.8 billion for these programs. By December 2, 2003, HUD made commitments that exceeded the \$3.8 billion level by \$1,529,229,523. Subsequently, in a December 16, 2003 Continuing Resolution, Congress did, in fact, increase the level to more than \$7 billion. In January 2004, Congress again increased the level for the entire fiscal year to \$25 billion as part of the fiscal year 2004 Omnibus Appropriations Act. No deficiency appropriation was needed because all commitments made in fiscal year 2004 were charged against, and remained below, the \$25 billion level.	No formal disciplinary action was taken for HUD officials or staff involved with making the commitments in excess of the \$3.8 billion. None of the participants willfully intended to violate the Antideficiency Act, and they suspended program activity when they became aware of the violation. To prevent future violations, HUD staff has been directed to give particular attention to levels established under Continuing Resolutions.

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09-11		Department of Housing and Urban Development	Project-Based Rental Assistance, Public and Indian Housing	12/31/2008	FY 2007	\$400,000,000	31 U.S.C. § 1517(a)	HUD's initial contracts under this program were long-term 20- to 40-year agreements that were funded with contract authority or budget authority upon execution during the 1970s and 1980s. When the original contracts began to expire, HUD made a practice of renewing funding on an annual basis. But, HUD failed to properly structure and apply the incremental funding clause in its Housing Assistance Payment contracts so as to limit HUD's legal liability to the amount of funds available at the time many annual contract renewal actions were executed. As a result, HUD executed contract actions that obligated the government for 12 months of housing assistance payments when HUD often did not have sufficient funding to cover the full 12-month period.	All initial contracts or annual funding renewals that were executed without 12 months of funding were provided with 12 months of funding and obligations were recorded in their full amounts. For instances where HUD had insufficient funds for full renewal, remaining balances were made subject to availability of sufficient appropriations and written notice. HUD now requires future processing of such instruments to have sufficient funding at the time of execution to cover the full extent of HUD's obligations to the owners. HUD did not discipline the individuals found responsible and has educated their successors about proper fiscal controls.
09-12	06-07	Department of the Army	Operation and Maintenance, Army (OMA)	4/30/2009	FY 2002 through FY 2005	\$32,144,000.00	31 U.S.C. § 1341(a)(1)(A)	Army Materiel Command (AMC) personnel at Fort Belvoir, Virginia, obligated funds for a major military construction project without congressional authorization and without sufficient funds of the correct appropriation in fiscal years 2002 through 2005. Specifically, AMC improperly obligated Operation and Maintenance, Army (OMA) funds instead of Military Construction, Army (MCA) funds. The violation was discovered during a DoD Inspector General audit on July 29, 2005.	The Army found three individuals responsible for the violations. All three received a memorandum of concern during the summer of 2008. To help prevent future violations, the Army revised its facilities management regulation and relocatable building policy.

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