



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

B-334682

February 8, 2023

The Honorable Kamala Harris
President of the Senate

The Honorable Kevin McCarthy
Speaker of the House of Representatives

Subject: *Fiscal Year 2022 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 we extract from the agency reports. Each summary includes a brief description of the violation, as reported by the agency, 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 website. In some cases, the agencies also send us additional materials with their transmittal letters. We make these additional materials available to Members and their staffs upon request.

Please find enclosed the compilation of summaries of the ten Antideficiency Act violation reports and agency transmittal letters submitted to GAO in fiscal year 2022. The Department of Veterans Affairs submitted six reports, while the Department of Housing and Urban Development, the Department of Defense, the Department of the Treasury, and the Chemical Safety and Hazard Investigation Board each submitted one report.

While GAO has not opined on the agency reports or the remedial actions taken, we do note that many of the reported violations resulted from similar agency actions. For example, six of the reported violations resulted from government officials or employees obligating or expending funds in violation of statutory spending restrictions.

If you have any questions, please contact Shirley A. Jones, Managing Associate General Counsel, at (202) 512-8156, or Charlie McKiver, Assistant General Counsel for Appropriations Law, at (202) 512-5992.

A handwritten signature in black ink that reads "Edda Emmanuelli Perez". The signature is written in a cursive style with a large, stylized initial 'E'.

Edda Emmanuelli Perez
General Counsel

Enclosure

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-01

Agency No.: None Reported	Date Reported to GAO: October 1, 2021
Agency: Department of Veterans Affairs (VA)	Date(s) of Violation(s): Fiscal Year (FY) 2000
Account(s): General Operating Expenses, Veterans Benefits Administration	Amount Reported: None Reported

Description: VA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), on March 31, 2000, when it entered into an Insurance Service Agreement (ISA) for FYs 2000 through 2020 that included an open-ended, uncapped indemnification clause.

According to VA, the ISA included provisions that would authorize the disclosure of confidential information requested by VA and would require VA to indemnify a third party for any damages associated with these disclosures. VA reported that these violations were discovered in August 2020, when VA's Office of General Counsel (VA OGC) reviewed the agreement and opined that the open-ended indemnification clause violated the ADA, regardless of whether the clause was exercised. The current Director of Insurance terminated the agreement on September 11, 2020.

Remedial Action Taken: To prevent a recurrence of this type of violation, VA is sending all relevant agreements to VA OGC for legal sufficiency. Additionally, VA reported that it is working with the Office of Management and Budget to update and get approval of its administrative funds control policy. According to VA, the former Director of Insurance was responsible for the violation, and there was no willful or knowing intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-02

Agency No.: Army 19-02	Date Reported to GAO: February 2, 2022
Agency: Department of the Army (Army)	Date(s) of Violation(s): Fiscal Years (FYs) 2015–2019
Account(s): Research, Development, Test and Evaluation (RDT&E)	Amount Reported: \$3,441,220

Description: Army, through the Department of Defense (DOD), reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it obligated and expended funds in its RDT&E account to pay for education expenses of Marshallese schoolchildren attending the U.S. Army Kwajalein Atoll (USAKA) Garrison School, where neither those funds nor any other DOD funds were available for this purpose.

According to Army, in 1986, USAKA established a scholarship program, known as the Ri'katak Program, which paid the tuition of several Marshallese children to attend the base school in the Republic of the Marshall Islands, with hopes that the Program would foster increased trust between the Army and the local population. According to Army, the USAKA operations, including its base schools, are funded exclusively with RDT&E appropriations. However, according to Army, RDT&E appropriations were not available for the purpose of paying tuition of Marshallese children, and therefore, Army violated the purpose statute, 31 U.S.C. § 1301(a), when it used these appropriations to do so. Moreover, Army reported that because neither RDT&E appropriations nor any other DOD appropriations were available for this purpose, Army also violated the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, Army reported that legislation was included in the FY 2020 National Defense Authorization Act¹, to authorize the Ri'katak Program on a space-available basis. According to Army, four USAKA Garrison commanders were responsible for the violations. However, Army reported that disciplinary action against the commanders was not appropriate because the Program had been in existence for decades and was believed to be legally permissible. Further, Army determined that there was no willful or knowing intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

¹ Pub. L. No. 116-92, 133 Stat. 1198 (Dec. 20, 2019).

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-03

Agency No.: None Reported

Date Reported to GAO: April 15, 2022

Agency: U.S. Chemical Safety and Hazard Investigation Board (CSB)

Date(s) of Violation(s): September 17, 2020

Account(s): Salaries and Expenses

Amount Reported: \$4,690.38

Description: CSB reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it incurred obligations without providing advance congressional notification in violation of a statutory prohibition.²

CSB reported that on September 17, 2020, it issued a task order for \$9,690.38 to purchase office furniture for the Chairman’s office. According to CSB, when it issued the task order, it was subject to a statutory provision requiring CSB to notify Congress in advance of obligating in excess of \$5,000 to furnish the Chairman’s office.³ CSB failed to notify Congress in advance of issuing the task order, violating both this provision and the ADA. The violation was discovered on November 29, 2021, when the Office of Inspector General (OIG) for the Environmental Protection Agency, which also serves as the OIG for CSB, informed CSB of an administrative investigation into matters, including this task order.

CSB reported that the violation occurred, in part, because career staff, including the responsible legal, contracting, and finance staff, were unaware of the statutory

² While CSB initially reported that it violated 31 U.S.C. § 1517(a)(1), it appeared to GAO that the violation at issue was of 31 U.S.C. § 1341(a)(1)(A) so GAO reached out to CSB to confirm whether this was the case. Email from Staff Attorney, GAO, to Acting General Counsel, CSB (Nov. 28, 2022). CSB confirmed by e-mail that the violation at issue was of 31 U.S.C. § 1341(a)(1)(A). Email from Acting General Counsel, CSB, to Staff Attorney, GAO (Dec. 2, 2022).

³ The relevant provision states that “no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations of the House and Senate.” Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, div. C, tit. 7, § 710 (Dec. 20, 2019).

provision. Additionally, CSB reported that the statutory provision was not included in agency guidance, or agency onboarding and training materials for new political appointees.

Remedial Action Taken: To prevent a recurrence of this type of violation, CSB revised its onboarding documents for new political appointees and issued policy guidance to current Board Members and relevant staff regarding the statutory provision. According to CSB, the employee responsible for the violation was a Contract Specialist, who is no longer with the agency. CSB determined that there was no willful or knowing intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; Email from Acting General Counsel, CSB, to Staff Attorney, GAO (Dec. 2, 2022).

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-04

Agency No.: None Reported	Date Reported to GAO: May 11, 2022
Agency: Department of the Treasury (Treasury)	Date(s) of Violation(s): Fiscal Years (FYs) 2020, 2021
Account(s): Guam World War II Claims Fund	Amount Reported: \$3,478,000; \$2,086,472.33; \$2,078,541.12

Description: Treasury reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1517(a), three times in FYs 2020 and 2021. The first violation occurred when Treasury incurred an obligation in advance of an apportionment, the second violation when it incurred an obligation in excess of an apportionment, and the final violation when it incurred an obligation and made an expenditure in advance of an apportionment.

According to Treasury, it first violated the ADA between March 26, 2020, and May 19, 2020, when the Department of Justice’s Foreign Claims Settlement Commission (Commission) certified Guam’s claims under the Guam World War II Loyalty Recognition Act (Act). Treasury reported that the Commission’s certification of Guam’s claims required Treasury to incur an obligation⁴ in the Guam World War II Claims Fund (Fund) in advance of having an approved apportionment for the Fund. Treasury reported that the violation occurred because neither Fiscal Service nor the Commission were aware that an obligation was incurred when the Commission certified a claim, and therefore, did not seek an apportionment prior to the certification of claims.

According to Treasury, it also violated the ADA when it obligated funds in excess of its approved apportionment for the Fund. Treasury reported that this overobligation occurred because agency officials were not aware of the timing of obligations for

⁴ Treasury reported that under the Act, the Commission’s certification serves as the point of obligation, which creates the government’s liability to pay the claimant through the Treasury’s Bureau of the Fiscal Service (Fiscal Service). According to Treasury, after the Chairman of the Commission certifies claims under the Act, the Fiscal Service is required to make payment on the full amount certified. Guam World War II Loyalty Recognition Act, Pub. L. No. 114-328, 130 Stat. 2000, 2641–47 (2016), Pub. L. No. 116-132, 134 Stat. 273 (2020).

Guam's claims as well as the lack of controls associated with the Guam Claims Program.

Lastly, Treasury reported that it violated the ADA again when the Commission obligated and Fiscal Service expended funds in advance of an approved apportionment for the Fund. Treasury reported that Fiscal Service did not request an apportionment for available carryover funds in the Fund prior to the Commission incurring an obligation for Guam's claims, even though it had incorrectly recorded the unapportioned carryover funds as being available in its financial system. According to Treasury, these actions took place due to a lack of controls associated with the Guam Claims Program and lack of awareness by officials as to when obligations for the claims are incurred.

Fiscal Service and Treasury's Departmental Offices identified all three of these violations as part of a quarterly financial review on January 22, 2021.

Remedial Action Taken: To prevent a recurrence of this type of violation, Treasury established a process whereby the Commission and Fiscal Service would coordinate before claims are certified so that Fiscal Service can ensure sufficient funds are available and apportioned for the claims. Additionally, Treasury reported that Fiscal Service's systems no longer show that funds are available until the funds are apportioned, and Fiscal Service updated its procedures to ensure apportionments are requested in a timely manner.

Treasury did not identify any specific individuals as being primarily responsible for these violations. According to Treasury, there was also no knowing or willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; Email from Deputy Director, Office of Performance Budgeting, Treasury, to Staff Attorney, GAO, *Subject: RE: Treasury ADA violations in the Guam World War II Loyalty Recognition Act Fund* (Oct. 25, 2022).

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-05

Agency No.: None **Date Reported to GAO:** May 25, 2022

Agency: Department of Housing and Urban Development (HUD) **Date(s) of Violation(s):** July 27, 2017

Account(s): Rental Housing Assistance Program (RAP) **Amount Reported:** \$8,887,481.61

Description: HUD reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it recorded an obligation for the execution of an Interest Reduction Payment (IRP) decoupling agreement in excess of amounts available.

According to HUD, on July 27, 2017, it executed an IRP decoupling approval letter. The execution of this letter resulted in an obligation of \$10,596,121.50, although only \$1,708,639.89 was available for this agreement. HUD reported that this overobligation occurred because the financial and program staff used incorrect project information when identifying what was legally available for the agreement. According to HUD, agency officials attempted to correct the violation on October 5, 2017.

HUD reported that it attempted to correct the violation by executing an amended IRP decoupling approval letter. However, HUD reported that by amending the letter, it also obligated in excess of what was legally available for the agreement. According to HUD, this error occurred because staff relied on inaccurate numbers in the payment schedule without verifying how much was available for the agreement.

Remedial Action Taken: To prevent a recurrence of this type of violation, HUD reported that it has reinforced the need to verify available amounts against underlying legal agreements and system data before execution of IRP decoupling approval letters. Additionally, HUD reported that it created standard operating procedures for funds control and internal control processes relating to IRP decoupling approval letters to prevent future data discrepancies. According to HUD, it revised the Department's Funds Control Handbook, which was reviewed and approved by OMB. HUD reported that the violation occurred due to systemic failures and therefore, no responsible employees were identified. According to HUD, there was no knowing or willful intent to violate the ADA. Finally, HUD noted that because there are no amounts available to liquidate the obligation at issue, they requested authority from Congress to do so.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports; Telephone Conversation with Appropriations Law Staff, HUD, and Staff Attorney, GAO (Nov. 7, 2022) (confirming that HUD was reporting only one ADA violation).

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-06

Agency No.: None Reported **Date Reported to GAO:** September 6, 2022

Agency: Department of Veterans Affairs (VA) **Date(s) of Violation(s):** Fiscal Year (FY) 2011

Account(s): Construction, Major Projects **Amount Reported:** \$18,147,048

Description: VA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it obligated funds in its Construction, Major Projects (Major Construction) account to finance a major construction project at the VA Medical Center (VAMC) in American Lake, Washington, in violation of a statutory spending restriction.

VA reported that in FY 2011, it incurred obligations for a major construction project at the VAMC in American Lake in its FY 2011 Construction, Minor Projects and Veterans Health Administration (VHA) Medical Facilities (MF) accounts. According to VA, the construction work at this VAMC was originally characterized as two minor construction projects and one Non-Recurring Maintenance (NRM) project, but the projects were later combined into a single project, which cost \$18,147,048. According to VA, at the time it incurred the obligation for this project, projects in excess of \$10 million were required to be charged to the Major Construction account.

According to VA, in FY 2022, it corrected its error and charged the project at the VAMC in American Lake to its no-year Major Construction account. VA reported that while the account had sufficient funds to cover the obligation, such account was subject to a statutory restriction that prohibited VA from using funds in the account for projects that had not been approved by Congress. According to VA, this project had not been approved by Congress, and therefore, VA reported that it violated the statutory restriction and the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, VA modified its major and minor construction and NRM program processes, including its oversight program. For example, VA reported that Chief Engineers must certify that minor construction projects are stand-alone projects, and minor construction projects that are accomplished in phases are not allowed to proceed with construction until the preceding phase is 95% complete. Additionally, contiguous construction activity, such as NRM projects, are reviewed for project independence by incorporating new review processes between phases, which ensures that initial phases of projects are not dependent on subsequent phases or any other construction projects. VA also reported that total minor

construction project costs are controlled through a cost-increase and scope deviation approval process.

VA reported that the former VAMC Director was the senior executive officer responsible for the violation, and he has since retired from office. VA determined that there was no knowing or willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-07

Agency No.: None Reported **Date Reported to GAO:** September 6, 2022

Agency: Department of Veterans Affairs (VA) **Date(s) of Violation(s):** Fiscal Year (FY) 2009

Account(s): Construction, Major Projects **Amount Reported:** \$13,324,051

Description: VA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it obligated funds in its Construction, Major Projects (Major Construction) account to finance a major construction project at the VA Medical Center (VAMC) in Palo Alto, California, in violation of a statutory spending restriction.

VA reported that in FY 2009, it incurred obligations for a major construction project at the VAMC in Palo Alto in its FY 2009 Construction, Minor Projects and Veterans Health Administration (VHA) Medical Facilities (MF) accounts. According to VA, the construction work at this VAMC was originally characterized as one minor construction project and three Non-Recurring Maintenance (NRM) projects, but the four projects were later combined into a single project, which cost \$13,324,051. According to VA, at the time it incurred the obligation for this project, projects in excess of \$10 million were required to be charged to the Major Construction account.

According to VA, in FY 2022, it corrected its error and charged the project at the VAMC in Palo Alto to its no-year Major Construction account. VA reported that while the account had sufficient funds to cover the obligation, such account was subject to a statutory restriction that prohibited VA from using its funds in the account for projects that had not been approved by Congress. According to VA, this project had not been approved by Congress, and therefore, VA reported that it violated the statutory restriction and the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, VA modified its major and minor construction and NRM program processes, including its oversight program. For example, VA reported that Chief Engineers must certify that minor construction projects are stand-alone projects, and minor construction projects that are accomplished in phases are not allowed to proceed with construction until the preceding phase is 95% complete. Additionally, contiguous construction activity, such as NRM projects, are reviewed for project independence by incorporating new review processes between phases, which ensures that initial phases of projects are not dependent on

subsequent phases or any other construction projects. VA also reported that total minor construction project costs are controlled through a cost-increase and scope deviation approval process.

VA reported that the former VAMC Director was the senior executive officer responsible for the violation, and he has since retired from office. VA determined that there was no knowing or willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-08

Agency No.: None Reported **Date Reported to GAO:** September 6, 2022

Agency: Department of Veterans Affairs (VA) **Date(s) of Violation(s):** Fiscal Year (FY) 2010

Account(s): Construction, Major Projects **Amount Reported:** \$10,333,337

Description: VA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it obligated funds in its Construction, Major Projects (Major Construction) account to finance a major construction project at the VA Medical Center (VAMC) in West Haven, Connecticut, in violation of a statutory spending restriction.

VA reported that in FY 2010, it incurred obligations for a major construction project at the VAMC in West Haven in its FY 2010 Veterans Health Administration (VHA) Medical Facilities (MF) account. According to VA, its obligation for this project totaled \$10,333,337, and, at the time it incurred the obligation for this project, projects in excess of \$10 million were required to be charged to the Major Construction account.

According to VA, in FY 2022, it corrected its error and charged the project at the VAMC in West Haven to its no-year Major Construction account. VA reported that while the account had sufficient funds to cover the obligation, such account was subject to a statutory restriction that prohibited VA from using its funds in the account for projects that had not been approved by Congress. According to VA, this project had not been approved by Congress, and therefore, VA reported that it violated the statutory restriction and the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, VA modified its major and minor construction and NRM program processes, including its oversight program. For example, VA reported that Chief Engineers must certify that minor construction projects are stand-alone projects, and minor construction projects that are accomplished in phases are not allowed to proceed with construction until the preceding phase is 95% complete. Additionally, contiguous construction activity, such as NRM projects, are reviewed for project independence by incorporating new review processes between phases, which ensures that initial phases of projects are not dependent on subsequent phases or any other construction projects. VA also reported that total minor construction project costs are controlled through a cost-increase and scope deviation approval process.

VA reported that the former VAMC Director was the senior executive officer responsible for the violation, and he has since retired from office. VA determined that there was no knowing or willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-09

Agency No.: None Reported **Date Reported to GAO:** September 6, 2022

Agency: Department of Veterans Affairs (VA) **Date(s) of Violation(s):** Fiscal Year (FY) 2015

Account(s): Construction, Major Projects **Amount Reported:** \$15,615,147

Description: VA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it obligated funds in its Construction, Major Projects (Major Construction) account to finance a major construction project at the VA Medical Center (VAMC) in Oklahoma City, Oklahoma, in violation of a statutory spending restriction.

VA reported that in FY 2015, it incurred obligations for a major construction project at the VAMC in Oklahoma City in its FY 2015 Minor Construction and Veterans Health Administration (VHA) Medical Facilities (MF) accounts. According to VA, the construction work at this VAMC was originally characterized as one minor construction project and one Non-Recurring Maintenance (NRM) project, but the two projects were later combined into a single project, which cost \$15,615,147. According to VA, at the time it incurred the obligation for this project, projects in excess of \$10 million were required to be charged to the Major Construction account.

According to VA, in FY 2022, it corrected its error and charged the project at the VAMC in Oklahoma City to its no-year Major Construction account. VA reported that while the account had sufficient funds to cover the obligation, such account was subject to a statutory restriction that prohibited VA from using its funds in the account for projects that had not been approved by Congress. According to VA, this project had not been approved by Congress, and therefore, VA reported that it violated the statutory restriction and the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, VA modified its major and minor construction and NRM program processes, including its oversight program. For example, VA reported that Chief Engineers must certify that minor construction projects are stand-alone projects, and minor construction projects that are accomplished in phases are not allowed to proceed with construction until the preceding phase is 95% complete. Additionally, contiguous construction activity, such as NRM projects, are reviewed for project independence by incorporating new review processes between phases, which ensures that initial phases of projects are not dependent on

subsequent phases or any other construction projects. VA also reported that total minor construction project costs are controlled through a cost-increase and scope deviation approval process.

VA reported that the former VAMC Director was the senior executive officer responsible for the violation, and he has since retired from office. VA determined that there was no knowing or willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.

Antideficiency Act Reports – Fiscal Year 2022

GAO No.: GAO-ADA-22-10

Agency No.: None Reported **Date Reported to GAO:** September 6, 2022

Agency: Department of Veterans Affairs (VA) **Date(s) of Violation(s):** Fiscal Year (FY) 2009

Account(s): Construction, Major Projects **Amount Reported:** \$21,068,704

Description: VA reported that it violated the Antideficiency Act (ADA), 31 U.S.C. § 1341(a)(1)(A), when it obligated funds in its Construction, Major Projects (Major Construction) account to finance a major construction project at the VA Medical Center (VAMC) in Providence, Rhode Island, in violation of a statutory spending restriction.

VA reported that in FY 2009, it incurred obligations for a major construction project at the VAMC in Providence in its FY 2009 Minor Construction account. According to VA, the construction work at this VAMC was originally characterized as five minor construction projects, but these projects were later combined into a single project, which cost \$21,068,704. According to VA, at the time it incurred the obligation for this project, projects in excess of \$10 million were required to be charged to the Major Construction account.

According to VA, in FY 2022, it corrected its error and charged the project at the VAMC in Providence to its no-year Major Construction account. VA reported that while the account had sufficient funds to cover the obligation, such account was subject to a statutory restriction that prohibited VA from using its funds in the account for projects that had not been approved by Congress. According to VA, this project had not been approved by Congress, and therefore, VA reported that it violated the statutory restriction and the ADA.

Remedial Action Taken: To prevent a recurrence of this type of violation, VA modified its major and minor construction and NRM program processes, including its oversight program. For example, VA reported that Chief Engineers must certify that minor construction projects are stand-alone projects, and minor construction projects that are accomplished in phases are not allowed to proceed with construction until the preceding phase is 95% complete. Additionally, contiguous construction activity, such as NRM projects, are reviewed for project independence by incorporating new review processes between phases, which ensures that initial phases of projects are not dependent on subsequent phases or any other construction projects. VA also reported that total minor construction project costs are controlled through a cost-increase and scope deviation approval process.

VA reported that the former VAMC Director was the senior executive officer responsible for the violation, and he has since retired from office. VA determined that there was no knowing or willful intent to violate the ADA.

Source: Unaudited information GAO extracted from agency Antideficiency Act reports.



**THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON**

September 28, 2021

The Comptroller General of the United States
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351. A violation of 31 U.S.C. § 1341 occurred in account 036-0151 General Operating Expenses, Veterans Benefits Administration for an indeterminate amount. The violation occurred on March 31, 2000, in connection with an Insurance Service (Insurance) agreement for fiscal years 2000 through 2020, that included an open-ended, uncapped indemnification clause. The then-Director of Insurance was responsible for the violation.

The Confidentiality and Hold Harmless Agreement signed by the Director of Insurance included provisions that Prudential Insurance Company of America would disclose confidential information requested by the Department of Veterans Affairs (VA) and would indemnify Prudential for any damages resulting from these disclosures. In August 2020, VA's Office of General Counsel (OGC) opined that the open-ended indemnification, unrestricted clause violated the ADA and was unenforceable, and recommended terminating the Agreement or renegotiating and revising the Agreement to remove the clause. The current Director of Insurance terminated the Agreement on September 11, 2020. In April 2021, OGC confirmed that the prior Director's agreement to the open-ended, unrestricted indemnification clause, without statutory authorization or some other exception, constituted a per se violation of the ADA, 31 U.S.C. § 1341, whether or not the clause was ever exercised.

The indemnification clause was never exercised. Insurance's current policy is to send all current Prudential agreements to OGC to review for legal sufficiency. VA is working with Office of Management and Budget to update and get approval for its administrative funds control policy. VA is in the process of bolstering current administrative funds control policy and procedures.

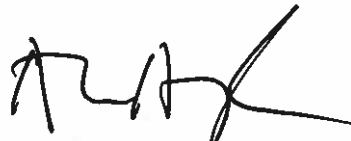
The Director of Insurance, who signed the Agreement, retired from Federal service in 2011. VA has determined that the responsible party had no knowing nor willful intent to violate the ADA. A copy of this letter and reports are being submitted to the President, President of the Senate, and the Speaker of the House of Representatives.

Page 2.

The Comptroller General

Thank you for your continued support of our mission.

Respectfully,

A handwritten signature in black ink, appearing to read 'DMcDonough', with a long horizontal stroke extending to the right.

Denis McDonough

Enclosures



COMPTROLLER

UNDER SECRETARY OF DEFENSE1 100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1 100

FEB 0 1 2022

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), contained in Army case number 19-02 (enclosed), as required by 31 U.S.C. § 1351. The violations involved fiscal years (FYs) 2015 through 2019 Research, Development, Test, and Evaluation (RDT&E), Army funds. The violations totaled \$3,441,220 and occurred at the U.S. Army Kwajalein Atoll (USAKA) Garrison in the Republic of the Marshall Islands. The USAKA improperly obligated and expended RDT&E funds to pay the educational expenses of Marshallese schoolchildren attending the USAKA school, known as the Ri'katak Program. RDT&E appropriations were not available for this purpose, thereby violating the Purpose Statute (31 U.S.C. 1301). As no Department of Defense (DoD) appropriations were available at the time for what was a foreign assistance program, the Army violated the ADA (31 U.S.C. § 1341(a)(1)(A)) several times.

The USAKA has supported missile and radar testing and research. In 1985, neighboring island land owners' distrust of the U.S. military presence led to mass protests threatening future use of the base. The USAKA and higher headquarters commanders started negotiations with the various factions to safeguard U.S. interests and lower tensions. As a result of the negotiations, USAKA established a scholarship program that would pay for several Marshallese children to attend the base school. It was hoped that the program would foster increased trust between the Army and the local population. The Ri'katak program was established and commenced operations in 1986.

The USAKA operations, including its base schools, are funded exclusively with RDT&E appropriations, and operated by a contractor. The schools were established only for the dependents of Department of the Army personnel and base operations contractor employees.

RDT&E appropriations are specific to the purposes for which the funds may be used. As a general rule, USAKA possessed a degree of discretion for how to carry out activities authorized by the RDT&E appropriation. However, RDT&E expenditures had to fall within its legitimate range of discretion, or the purpose could not be so attenuated as to take it beyond that range. The purposes for which RDT&E appropriations were available did not include satiating complaints of Marshallese citizens. The making of tuition payments for foreign students was not reasonably related to any purpose for which RDT&E, as well as any DoD appropriations, were legally available at the time, and accordingly both the Purpose Statute and the ADA were violated.

Four USAKA Garrison Commanders were found responsible for causing the ADA violations as they tacitly permitted the use of RDT&E funds to pay for the tuitions of foreign

students. However, the Program had been in existence since 1985 when these commanders took command of the USAKA garrison. As the program had been in existence for several decades and believed to be legally permissible, the Army decided that disciplinary action against the commanders was not appropriate. The violations contained no willful or knowing intent on the part of the responsible individuals to violate the ADA.

To prevent a recurrence of this type of violation, legislation was included in the National Defense Authorization Act for FY 2020 to authorize the Ri'katak Program on a space-available basis. This authorization allows assistance for education, including student meals and transportation.

Identical reports are 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,



Michael McCord

Enclosure:
As stated

**Department of the Army
Antideficiency Act Violation
Army Case No. 19-02 (Ri'katak Program)**

1. Appropriations Involved/Title/Symbol and Apportionment Status.

2152040, Fiscal Year 2015, Research, Development, Test and Evaluation - Army
2162040, Fiscal Year 2016, Research, Development, Test and Evaluation - Army
2172040, Fiscal Year 2017, Research, Development, Test and Evaluation - Army
2182040, Fiscal Year 2018, Research, Development, Test and Evaluation - Army
2192040, Fiscal Year 2019, Research, Development, Test and Evaluation - Army

2. Where Violation Occurred.

U.S. Army Garrison Kwajalein

3. Name and Location of Activity Issuing the Fund Authorization.

Installation Management Command (IMCOM), Joint Base San Antonio, Fort Sam Houston, Texas

4. Amount of Violation.

FY 2015 - \$615,164

FY 2016 - \$576,978

FY 2017 - \$514,546

FY 2018 - \$562,507

FY 2019 - \$1,172,025

Note: violation amount includes costs of tuition, food and transportation attributable to the Ri'katak program.

5. Date Violation Occurred.

The quantifiable potential violations occurred between 1 October 2013 and 30 September 2019.

Note: it is suspected that potential violations likely occurred earlier, but poor documentation and lack of access to witnesses from that time made them difficult to substantiate to the degree required.

6. Types of Violation.

31 U.S.C. §1301

31 U.S.C. §1341

The education of Marshallese children under the Ri'katak program fails the Necessary Expense test; consequently, no appropriated funds are available to correct the transactions.

7. Effect of Violation on the Next Higher Level of Funding.

None

8. Responsible Officials.

Colonel Jeremy A. Bartel,
Cdr, U.S. Army Garrison Kwajalein (20190706-Present)

Colonel James A. DeOre, Jr
Cdr, U.S. Army Garrison Kwajalein (20170711-20190715)

Colonel Michael M Larsen
Cdr, U.S. Army Garrison Kwajalein (20150805-20170710)

Colonel Nestor A. Sadler (Ret)
Cdr, U.S. Army Garrison Kwajalein (20130802-20150804)

9. Statement of Responsible Individual(s).

COL Bartel submitted a rebuttal to on 14 November 2020. His predecessors did not submit statements. A summary of COL Bartel's statement follows:

“Since its implementation by Lieutenant General John Wall in 1985, the Ri'katak program was executed pursuant to the same international agreements and authorizations until 1 October 2019. Since then, the National Defense Authorization Act (NDAA) specifically provided the funds for the program. A letter written by the Marshallese president to President Barack Obama in 2016 demonstrates the significance, support, and awareness of the program in the highest levels of both countries' governments.

In August 2018, the Commanding General of Space and Missile Defense Command (SMDC) signed the implementing instructions that authorized the continuation of the Ri'katak program. The 2018 implementing instructions remained in effect when I took command of USAG-KA in July 2019.

The IO named me as responsible official solely because I was one of the commanders from the arbitrary time period beginning August 2013 to the present.

The Ri'katak program existed for almost 35 years of existence. When I became aware of the potential ADA violations during my command, I was told we were to continue the program until the draft NDAA language was enacted.

When I took command, it was clear the Ri'katak program was believed to be essential to American/Marshallese relations and that the NDAA language was in the final stages of approval to legitimize any previous concerns.

Senior commanders and supporting staff elements endorsed the program for decades because of the result of the reality of accomplishing the mission, and maintaining positive relations with the Marshallese.

Before and during my assumption of command, I spoke with IMCOM and SMDC leadership about the different issues I was inheriting. At no point did they warn me that I was personally at risk for executing the ongoing program. Instead they encouraged and expected me to execute the program with the anticipated NDAA language being in the final stages of approval.”

10. Date and Description of How Violation Was Discovered.

On 7 April 2016, the IMCOM Judge Advocate General issued a legal opinion that stated the Ri'katak program should not continue as it was currently structured. A flash report of a potential ADA violation was subsequently generated.

11. Causes and Circumstances Surrounding the Violation.

From its creation in the early 1960s, the U.S. base on Kwajalein Atoll supported missile testing and research.

Kwajalein land owners' simmering distrust of the Republic of Marshall Islands government erupted in mass protests in 1985, threatening the future use of the base by U.S. forces. In a letter to the Under Secretary of the Army, the Assistant Secretary of Defense, East Asia and Pacific Affairs, the Vice Chief of Staff of the Army, and CINCPAC, LTG Wall, Commander, U.S. Army Strategic Defense Command, outlined the deteriorating political situation on the islands and the measures he was taking to stabilize the situation, noting that "he could only treat a small symptom of the larger problem. Even if the present difficulties are resolved, the potential remains for more serious incidents."

In December 1985, LTG Wall, entered into negotiations with the various factions to safeguard U.S. interests, and lower tensions. President Amata Kabua suggested that a scholarship program that would enable several Marshallese children to attend the Kwajalein Base School would foster increased trust between the Army and the local population. The agreement signed on January 31, 1986 established what would later be known as the Ri'katak Program. On February 6, 1986, President Kabua celebrated this agreement as one that would greatly contribute to closer partnership between the U.S. Army and the people of Kwajalein.

On March 11, 1986 an Interim Use Agreement (IUA) extension for use of the Kwajalein Missile Range was signed, continuing the terms of the 1982 IUA, while also providing for various nonmonetary provisions agreed to by the two governments on January 31, 1986, which "shall be expeditiously implemented."

In May 1986, the first group of five Marshallese children entered kindergarten. Since that time, five Marshallese children would be permitted to enter kindergarten each year, while children from the previous year advanced in grade and continued their schooling on Kwajalein, until graduation from high school.

Implementing instructions signed in February 1994 fixed the number of RMI students to be allowed to attend the Kwajalein schools on an annual basis, and directed local government reimbursement to the U.S. at a negotiated rate. The most recent implementation instructions signed on November 6, 2013 provided for the student's parent or sponsor to make payment for this service to the Finance Office at the negotiated tuition rate in advance of attendance. The negotiated rate as stated in the Financial Policy and Rate Manual was \$50/month for grades 1 thru 12, and \$35/month for Kindergarten.

Contracted Kwajalein School System:

The Kwajalein schools are government owned and contractor operated (GOCO) facilities and are a Non-Department of Defense School Program (NDSP).

The George Seitz Elementary School serves children from kindergarten through the sixth grade. Kwajalein Junior/Senior High School serves students from Grades 7 through 12. Both schools were fully accredited by the North Central Association of Colleges and Schools through 2014. The North Central Association of Colleges and Schools was dissolved in 2014.

Due to the remote and isolated location of USAG-KA and the lack of infrastructure in the RMI, USAG-KA is responsible for many base operations functions that are not normally present at other installations. Base operations, logistics, and other mission functions at USAG-KA are operated pursuant to a cost-reimbursement base operations contract. The contract includes maintenance and operations of base facilities, including an international airport, harbor, power plant, water treatment plant, schools, grocery store, recreational facilities and many other facilities similar to those that would be found in a small town. Pursuant to the contract, the contractor operates a kindergarten through twelfth grade school. The costs of operating the school are reimbursed as allowable costs under the contract.

Analysis:

Kwajalein operations, including its base schools, are funded exclusively using Research, Development, Testing, and Experimentation (RDT&E) appropriation. The schools were clearly established for dependents of DoD personnel, and base operations contractor employees.

Congress authorizes the use of RDT&E funding for "expenses necessary for basic and applied scientific research, development, test and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment. . . ." Thus, Congress provides R&D organizations with this appropriation to fund not only the scientific research and military development of new technologies, but also their normal operations and maintenance expenses.

The flash report from SMDC/ARSTAT notes:

""[T]he Ri'katak program was seen as a way to break down cultural barriers and heal the divide between the Army and the local community because of the contentious and violent debate over the adoption of the 1986 Compact of Free Association. The Anny is just now harvesting the fruits of this initiative as it deals with a new generation of Marshallese leaders, many of which have matriculated from the program. These graduates understand the tangible benefits of our presence in the Atoll and reinforce our message of respect, cooperation, and mutual benefit."

Subsidizing the educational expenses of local school-children was not simply the "cost of doing business" in the RMI. While the record indicates this program was established with the honorable intention of safeguarding our strategic access to the site and to alleviate tensions with the local population, there is only a weak nexus to an authorized agency function. This justification is simply too attenuated from the actual operation of the installation to find the expenditure is necessary.

It should be noted that the Garrison Commander is empowered to negotiate and conclude "international arrangements" such as the Ri'katak Program. However, the Ri'katak Program was not fundamental, or necessary to installation operations. Without an essential, operational tether, the program is simply altruistic. It does not serve to advance the purpose of the RDT&E appropriation in any material, defensible way.

12. Evidence of Willful Intent to Violate.

None. Current and previous Garrison Commanders followed guidance that the program was allowed under their authorization to enter into international arrangements and that the program was necessary to ensure access to the base. This guidance, while wrong, was endorsed by Senior Commanders and supporting staff elements for decades.

13. Disciplinary Action Taken.

In the absence of criminal wrongdoing or aggravating factors, retired personnel are not typically recalled to duty or subjected to disciplinary action. Consequently, Colonel Sadler cannot be disciplined. With respect to the other three commanders, it must be noted that there is significant, frequently career ending, stigma associated with being named responsible for a ADA violation. As a result, the Army does not support additional disciplinary actions be taken against the final three commanders who are facing retirement. Their degree of responsibility is mitigated by the absence of any intent to violate the ADA, a longstanding belief the program was thoroughly vetted over the course of four decades, and subsequent Congressional authorization of the Ri'katak Program in the FY 2020 National Defense Authorization Act (NDAA).

14. Corrective Action Taken.

Legislation was included in the FY 2020 NDAA to authorize the Ri'katak Program on a space-available basis. This authorization allows assistance for education including student meals and transportation.

15. Name and Title of Holder of the Funds Subdivision.

Commander, U.S. Army Installation Management Command (IMCOM), Joint Base San Antonio, Fort Sam Houston, Texas. There is no evidence that IMCOM directly contributed to this violation.

**U.S. Chemical Safety and
Hazard Investigation Board**1750 Pennsylvania Avenue NW, Suite 910 | Washington, DC 20006
Phone: (202) 261-7600 | Fax: (202) 261-7650
www.csb.govKatherine A. Lemos
Chairman and CEO

April 15, 2022

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

Dear Mr. Dodaro:

This letter is to report a violation of the Anti-Deficiency Act (ADA), 31 U.S.C. 1517(a)(1), on behalf of the U.S. Chemical Safety and Hazard Investigation Board (CSB) in account 510. The violations occurred on September 17, 2020 when a task order was issued to provide office furniture for the office of the Chairman, at the CSB's headquarters building. The total cost for the furniture was \$9,690.38, \$4,690.38 above the \$5,000 limit established by the Treasury, Postal Service, and General Government Appropriations Act, 1992, P.L. 102-141, section 618 (Oct. 28, 1991); P.L. 101-609, section 014 (Nov. 5, 1990); P.L. 101-136, section 614 (Nov. 3, 1989); P.L. 100-440, section 614 (Sept. 22, 1988); P.L. 100-202, section 616 (Dec. 22, 1987); and P.L. 99-591, section 616 (Oct. 30, 1986).

On 29 November 2021, the Office of Inspector General for the U.S. Environmental Protection Agency—which also serves as the OIG for the U.S. Chemical Safety and Hazard Investigation Board— notified the Agency of an administrative investigation that included on the topic of the subject task order. Since the personnel responsible for the order were no longer with the agency and current personnel were unaware of any issues associated with the purchase, CSB's new contracting officer reviewed the order and confirmed the ADA violation.

Several circumstances contributed to the violation. First, CSB career staff, including legal, contracting and finance staff were unaware of the limits of expenditures on office furniture and related improvements for political appointees. Second, there was no agency guidance that documented the limits. Finally, there was no mention of the limit in the agency's onboarding or training materials for new political appointees.

To prevent a reoccurrence of this type of violation, the CSB recently revised onboarding/orientation documents for new political appointees and issued policy guidance to current Board Members, finance and contracting staff regarding the \$5,000 limit on office furniture and other improvements in accordance with federal law.

**U.S. Chemical Safety and
Hazard Investigation Board**

There is no evidence of willful or knowing intent to violate the Anti-Deficiency Act. Key employees involved in this action are no longer with the agency therefore no disciplinary action against any employee was taken.

Identical reports pertaining to this matter are being submitted to the President, the Speaker of the House and the President of the Senate.

Respectfully,

A handwritten signature in black ink, reading "Katherine Lemos", with a long horizontal flourish extending to the right.

Katherine Andrea Lemos, Ph.D.
Chairman and Chief Executive Officer
U.S. Chemical Safety and Hazard
Investigation Board



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

May 6, 2022

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 Comptroller Dodaro:

This letter is to report three violations of the Antideficiency Act, as required by 31 U.S.C. § 1517(b). These violations occurred in 2020 and January of 2021 and resulted in part from the complexity of coordinating claims payments with numerous account stakeholders.

All three violations of 31 U.S.C. § 1517(a) occurred in account 20X5680, Guam World War II Claims Fund, Treasury, in the amounts of \$3,478,000.00, \$2,086,472.33, and \$2,078,541.12. The first violation occurred from March to May of Fiscal Year 2020, the second from July to August of Fiscal Year 2020, and the third from October to January of Fiscal Year 2021. All three instances were solely the result of obligations exceeding the applicable apportionment, although one also resulted in expenditures exceeding the apportionment.

The first violation occurred when the Department of Justice's Foreign Claims Settlement Commission (Commission) certified Guam claims under the Guam World War II Loyalty Recognition Act (Act)¹ after the appropriation providing funding was enacted on March 26, 2020² and before the apportionment was obtained on May 19, 2020. The Guam claims program has unique statutory requirements for certification of payments. Specifically, the Commission adjudicates and certifies Guam claims awards to the Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) for payment to claimants. The Commission's certification is the point of obligation that creates the Government's liability to pay the claimant because the claimant is assured of receiving the full amount of the Guam award at that time.³

¹ On December 23, 2016, the Guam World War II Loyalty Recognition Act, Public Law 114-328, 130 Stat. 2000, 2641-2647 (2016) was enacted for the purpose of making payments to Guam citizens who suffered death, personal injury, forced labor and other acts during World War II.

² Public Law 116-132, 134 Stat. 273 (March 26, 2020) (technical correction to the Act providing funding).

³ Pursuant to section 1705(a) of the Act, the Commission is authorized to adjudicate claims and determine the eligibility of individuals for payments under the Act. Section 1704(a) provides that "[a]fter the Secretary of the Treasury receives the certification from the Chairman of the ... Commission as required under section 1705(b)(8), the Secretary of the Treasury shall make payments." Hence, Fiscal Service is required to make payment on the full amount certified.

Unlike the case with other claims programs administered by the Commission,⁴ the Guam claimants are assured of receiving 100% of their awards upon the Commission's certification of the claim to Fiscal Service. Both Fiscal Service and the Commission were unaware during this period that the obligations occurred at the time of the Commission's certifications, and therefore, did not obtain an apportionment before the certifications. Additionally, there was a lack of sufficient controls in place to prevent these obligations from occurring prior to apportionment.

Consequently, the violation was not of a congressional authorization or appropriation, but of an apportionment, or lack thereof.

The second violation occurred while there was an apportionment in place, but the amount of claims certified by the Commission resulted in obligations that exceeded the funding available under the May 19, 2020 apportionment. Here also, the cause of the violation was that the Commission and Fiscal Service were unaware during this period of the timing of the obligations in the Guam Claims Program and related lack of controls.

The third violation occurred when the Commission obligated and Fiscal Service expended funds in advance of the February 1, 2021 apportionment. Again, the Commission and Fiscal Service were unaware during this period of the timing of the obligations in the Guam Claims Program and related lack of controls. This also affected the timing of expenditures in advance of apportionment. Additionally, Fiscal Service did not request a carryover apportionment for FY 2021 prior to the obligation of funds. Because this was a new account in FY 2020, Fiscal Service failed to add this account to the list of accounts reviewed internally for apportionment. Fiscal Service also incorrectly recorded the unapportioned carryover funds as "available" in the financial system, thereby allowing obligations and expenditures to proceed without apportionment. Fiscal Service has revised its procedures and introduced additional controls for account review as well as for making funds available in the financial system to address these issues.

Due to the complexity of the timing of these obligations, there was not an awareness of when such obligations occurred until after Fiscal Service, in conjunction with Treasury's Departmental Offices, identified the violations as part of a quarterly financial review on January 22, 2021. After identifying these violations Fiscal Service took prompt actions to ensure that such violations will not reoccur. First, because both Fiscal Service and Commission personnel are now aware of the point of obligations under this program, they have established a process to coordinate before the Commission certifies claims to Fiscal Service to ensure that sufficient funds are available and apportioned. Second, Fiscal Service systems no longer indicate that funds are available until a necessary apportionment is received. Finally, procedures for apportioning funds have been updated to add additional controls to ensure that apportionments for all accounts are requested in a timely manner.

⁴ In other programs, the Commission approves claims subject to the availability of funds, and the Fiscal Service records an obligation once it makes an administrative determination that funds are available.

The Department of the Treasury determined that the violations contained no willful or knowing intent to violate the Antideficiency Act. Since these violations came to light, Fiscal Service involved personnel have received additional training, and discussions have occurred with the Commission to ensure that these violations do not reoccur.

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

Respectfully,

A handwritten signature in black ink that reads "Janet L. Yellen". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Janet Yellen

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000OFFICE OF THE CHIEF FINANCIAL OFFICER

May 25, 2022

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

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351.¹

A violation of 31 U.S.C. § 1341(a) occurred in the Rental Housing Assistance Program (RAP) account (86-X-0148) in the amount of \$8,887,481.61 during fiscal year 2017. This error occurred on July 27, 2017, in connection with the execution of a Section 236 Interest Reduction Payment (IRP) decoupling agreement.

HUD executed an IRP decoupling approval letter on July 27, 2017, obligating funds in a total amount of \$10,596,121.50. However, at the time the approval letter was signed, only \$1,708,639.89 was legally available for this agreement. This overobligation occurred because program and financial staff in the Office of Housing used incorrect project information when entering the available amounts on the decoupling approval letter. When the violation was identified, an attempt to correct the violation was made on October 5, 2017 (during fiscal year 2018) by executing an amended decoupling approval letter obligating funds in a total amount of \$2,997,190.55. However, this fiscal year 2018 obligation was also in excess of the legally available amount. This second violation occurred because staff relied on the payment schedule as it appeared to them without verifying the available amounts against the owner's application or against the underlying documentation showing the original amortization schedule and maturity date. Insufficient communication regarding the status of a reconciliation effort between the underlying documentation and the corresponding system data further contributed to this violation.

To avoid the recurrence of this issue, the Department has reinforced the need to verify available amounts against the underlying legal agreements and validated system data before the execution of IRP decoupling agreements. In addition, a standard operating procedure (SOP) documenting the funds control and internal control processes for executing any future IRP

¹ This letter is signed by HUD's Chief Financial Officer pursuant to the Department of Housing and Urban Development's (HUD) Fiscal Year (FY) 2003 Appropriations Act (Salaries and Expenses (S&E) Account; Public Law 108-7; 42 U.S.C. § 3549).

decoupling agreements has been developed to ensure accurate processing and execution and prevent any future data discrepancies.

The Department has been undergoing a significant financial transformation over the past few years, and continues to enhance its internal controls, training, and technical accuracy as additional opportunities to improve are identified. To specifically help prevent ADA violations, the Department's system of administrative control of funds was updated in fiscal years 2017 and 2018, which included a revision of the Department's Funds Control Handbook that was reviewed and approved by OMB. We have also undertaken the corrective actions identified in the previous paragraph specifically relevant to this issue.

The Department has determined that this violation occurred due to systemic failures and that there was no knowing or willful intent to violate the ADA. As a result, no responsible officials have been identified. Because no existing budget authority is available to liquidate this obligation, the Department has requested from Congress the authority to liquidate this obligation.

Identical reports are being submitted to the President (through the Director of the Office of Management and Budget) and the presiding officers of each House of Congress.

Sincerely,

George Tomchick

Digitally signed by George Tomchick
Date: 2022.05.25 15:12:01 -04'00'

George J. Tomchick, III, Deputy Chief Financial Officer
Department of Housing and Urban Development



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

September 6, 2022

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

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351. A violation of 31 U.S.C. § 1341(a) occurred in the Department of Veterans Affairs (VA) Construction, Major Projects account (36x0110) in the amount of \$18,147,048.

The ADA violation occurred as a consequence of an adjustment made for obligations that were erroneously incurred in fiscal year (FY) 2011 in the Construction, Minor Projects account (36x0111) and the Veterans Health Administration (VHA) Medical Facilities (MF) account (36x0162). The obligations were incurred to finance a Major Construction project at the VA medical center (VAMC) in American Lake, Washington. The Major Construction account (36x0110) was the proper funding source for the Major Construction project, but VA failed to comply with the appropriation act restrictions regarding the use of the Major Construction account, resulting in a violation of the ADA.

The Minor Construction account funds construction projects with a total cost less than or equal to the threshold amount identified at 38 U.S.C. § 8104(a), while the Major Construction account funds construction projects exceeding the section 8104(a) threshold. The Medical Facilities account funds all medical facility Non-Recurring Maintenance (NRM) projects. NRM projects can fall into one of two categories, infrastructure improvements and sustainment. Consistent with VA's budget submission definition, sustainment projects may add up to 1,000 square feet of new space and must have a total estimated cost less than or equal to the Major Construction project threshold amount identified at 38 U.S.C. § 8104(a). A violation of the Purpose Statute, 31 U.S.C. § 1301(a), occurred in FY 2011 when the Minor Construction and MF accounts were used to fund what constituted a Major Construction project at the American Lake VAMC with a cost greater than \$10 million, the statutory threshold for Major Construction projects at the time of the violation. The construction work had originally been characterized as two Minor Construction projects and an NRM project. The projects were combined resulting in a single project which seismically mitigated and renovated a building that houses Blind Rehabilitation, Clinics and the Canteen. The obligations for the combined project totaled \$18,147,048. The project has been completed and no additional funding will be requested.

The Honorable Gene Dodaro

In FY 2022, VA cured the Purpose Statute violation by adjusting its accounts to charge the American Lake VAMC Major project expenses to the no-year Major Construction account. Although the account contained sufficient funds to fully correct the error, VA violated a statutory restriction on VA's use of the no-year Major Construction account in the appropriations act for FY 2011 (P.L. 112-10). Specifically, the appropriations act for FY 2011 contained a requirement that "none of the funds made available under this heading shall be used for any project which has not been approved by the Congress in the budgetary process." Similar provisions were included in Major Construction account language in prior and subsequent appropriations acts. This condition was not met with respect to the American Lake VAMC Major Construction project. As a result of violating this appropriations act restriction on the use of Major Construction account appropriations, VA violated the ADA.

VA has determined that the responsible party had no knowing or willful intent to violate the ADA. The former VAMC Director was the senior executive officer responsible for the violation; however, he has since retired from VA. Office of Management and Budget (OMB) is currently reviewing VA's system of administrative control of funds.

To prevent similar violations from occurring in the future, VA modified its Major and Minor construction and NRM program processes and believes these actions will prevent future violations. These actions, which began in 2012, included modifications to the oversight program, and are detailed below.

- Any Minor Construction projects that are accomplished in phases will not be allowed to proceed with subsequent construction until the preceding construction phase is at least 95% complete. Contiguous construction activity, such as NRM projects, will also be reviewed for project independence to ensure each project is fully functional and not reliant any another investment(s). This procedure inserts a review process between phases to ensure the initial phase is not dependent on the succeeding phase, or any other construction project(s). Such a dependency could lead to an ADA violation if the projects are allowed to proceed.
- Chief Engineers are required to certify that their respective Minor Construction projects are stand-alone and independent of any other project. Certification is to be included with the project's documentation in VHA's Capital Asset database.
- All Minor Construction projects are reviewed for compliance with the approved business cases prior to obligation of design funds and prior to the

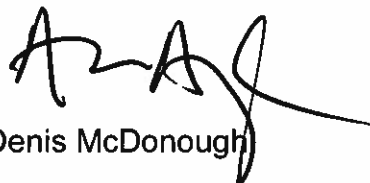
The Honorable Gene Dodaro

obligation of construction funds. This review is done during the project planning phase and is intended to resolve any potential associations with other construction project(s) which may relate to the proposed Minor Construction project. Work that may cause ADA concerns can be resolved at this point.

- Total Minor Construction project costs are controlled at VHA's program level through a cost-increase and scope deviation approval process. This review and control provide a second check of the total project cost, providing an opportunity for intervention prior to the obligation of funds, preventing any potential ADA violations.
- The NRM/Clinical Specific Initiative (CSI) program policy has been updated to codify the requirement to remain separate and independent of Minor Construction projects. This reminder is also provided in the recurring training program for capital-related positions.
- Contracting Officer Representative (COR) training covering roles, responsibilities and authority is required before project managers can be assigned to the COR role. The training is required to be completed on a recurring basis.
- Training is provided for all VHA employees that have a role in managing and executing NRM, CSI and Minor Construction projects. This training is specific to VA's policies, laws, responsibilities, requirements and lessons learned for VHA's construction programs. Efforts are being made to ensure this training is mandatory for all project managers on a recurring basis.
- Competencies are required for all construction project management personnel. Documentation of training and education for these competencies are reviewed and approved by Program Director-level personnel within VHA Healthcare Environment and Facility Programs.

Identical reports will be submitted to the President of the Senate, the Speaker of the House and OMB's Director.

Sincerely,



Denis McDonough



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

September 6, 2022

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

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351. A violation of 31 U.S.C. § 1341(a) occurred in the Department of Veterans Affairs (VA) Construction, Major Projects account (36X0110) in the amount of \$13,324,051.

The ADA violation occurred because of an adjustment made for obligations that were erroneously incurred in fiscal year (FY) 2009 in the Construction, Minor Projects account (36X0111) and the Veterans Health Administration (VHA) Medical Facilities (MF) account (36x0162 and 36-09/10-0158) to finance a Major Construction project at the VA medical center (VAMC) in Palo Alto, California. The Major Construction account (36X0110) was the proper funding source for the Major Construction project, but VA failed to comply with the appropriation act restrictions regarding the use of the Major Construction account, resulting in a violation of the ADA.

The Minor Construction account funds construction projects with a total cost less than or equal to the threshold amount identified at 38 U.S.C. § 8104(a), while the Major Construction account funds construction projects exceeding the section 8104(a) threshold. The Medical Facilities account funds all medical facility Non-Recurring Maintenance (NRM) projects. NRM projects can fall into one of two categories, infrastructure improvements and sustainment. Consistent with VA's budget submission definition, sustainment projects may add up to 1,000 square feet of new space and must have a total estimated cost less than or equal to the Major Construction project threshold amount identified at 38 U.S.C. § 8104(a). A violation of the Purpose Statute, 31 U.S.C. § 1301(a), occurred in FY 2009 when the Minor Construction and MF accounts were used to fund what constituted a Major Construction project at the Palo Alto VAMC with a cost of more than \$10 million, the statutory threshold for Major Construction projects at the time of the violation. The construction work had originally been characterized as one Minor Construction project and three NRM projects, but the projects were combined during the design and construction phases of portions of the four projects. The obligations for the combined project totaled \$13,324,051. The project has been completed and no additional funding will be requested.

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In FY 2022, VA cured the Purpose Statute violation by adjusting its accounts to charge the Palo Alto VAMC Major project expenses to the no-year Major Construction account. Although the account contained sufficient funds to fully correct the error, VA violated a statutory restriction on VA's use of the no-year Major Construction account in the appropriations act for FY 2009 (P.L. 110-329). Specifically, the appropriations act for FY 2009 contained a requirement that "none of the funds made available under this heading shall be used for any project which has not been approved by the Congress in the budgetary process." Similar provisions were included in Major Construction account language in prior and subsequent appropriations acts. This condition was not met with respect to the Palo Alto VAMC Major Construction project. As a result of violating this appropriations act restriction on the use of Major Construction account appropriations, VA violated the ADA.

VA determined that the responsible party had no knowing or willful intent to violate the ADA. The former VAMC Director was the senior executive officer responsible for the violation; however, he has since retired from VA. The Office of Management and Budget (OMB) is currently reviewing VA's system of administrative control of funds.

To prevent similar violations from occurring in the future, VA modified its Major and Minor construction and NRM program processes and believes these actions will prevent future violations. These actions, which began in 2012, included modifications to the oversight program, and are detailed below.

- Any Minor Construction projects that are accomplished in phases will not be allowed to proceed with subsequent construction until the preceding construction phase is at least 95% complete. Contiguous construction activity, such as NRM projects, will also be reviewed for project independence to ensure each project is fully functional and not reliant on another investment(s). This procedure inserts a review process between phases to ensure the initial phase is not dependent on the succeeding phase, or any other construction project(s). Such a dependency could lead to an ADA violation if the projects are allowed to proceed.
- Chief Engineers are required to certify that their respective Minor Construction projects are stand-alone and independent of any other project. Certification is to be included with the project's documentation in VHA's Capital Asset database.
- All Minor Construction projects are reviewed for compliance with the approved business cases prior to obligation of design funds and prior to the

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obligation of construction funds. This review is done during the project planning phase and is intended to resolve any potential associations with other construction project(s) which may relate to the proposed Minor Construction project. Work that may cause ADA concerns can be resolved at this point.

- Total Minor Construction project costs are controlled at the VHA program level through a cost-increase and scope deviation approval process. This review and control provide a second check of the total project cost, providing an opportunity for intervention prior to the obligation of funds, preventing any potential ADA violations.
- The NRM/Clinical Specific Initiative (CSI) program policy has been updated to codify the requirement to remain separate and independent of Minor Construction projects. This reminder is also provided in the recurring training program for capital-related positions.
- Contracting Officer Representative (COR) training covering roles, responsibilities and authority is required before project managers can be assigned to the COR role. The training is required to be completed on a recurring basis.
- Training is provided for all VHA employees that have a role in managing and executing NRM, CSI and Minor Construction projects. This training is specific to VA's policies, laws, responsibilities, requirements and lessons learned for VHA's construction programs. Efforts are being made to ensure this training is mandatory for all project managers on a recurring basis.
- Competencies are required for all construction project management personnel. Documentation of training and education for these competencies are reviewed and approved by Program Director-level personnel within VHA Healthcare Environment and Facility Programs.

Identical reports will be submitted to the President of the Senate, the Speaker of the House and OMB's Director.

Sincerely,

A handwritten signature in black ink, appearing to read "DMcDonough", written in a cursive style.

Denis McDonough



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

September 6, 2022

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

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351. A violation of 31 U.S.C. § 1341(a) occurred in the Department of Veterans Affairs (VA) Construction, Major Projects account (36X0110) in the amount of \$10,333,337.

The ADA violation occurred as a consequence of an adjustment made for obligations that were erroneously incurred in fiscal year (FY) 2010 in the Veterans Health Administration (VHA), Medical Facilities (MF) account (36X0162 and 36-09/10-0158) to finance a Major Construction project at the VA medical center (VAMC) in West Haven, Connecticut. The Major Construction account (36X0110) was the proper funding source for the Major Construction project, but VA failed to comply with appropriations act restrictions regarding the use of the Major Construction account, resulting in a violation of the ADA.

The Medical Facilities account funds all medical facility Non-Recurring Maintenance (NRM) projects. NRM projects can fall into one of two categories, infrastructure improvements and sustainment. Consistent with VA's budget submission definition, sustainment projects may add up to 1,000 square feet of new space and must have a total estimated cost less than or equal to the Major Construction project threshold amount identified at 38 U.S.C. § 8104(a). A violation of the Purpose Statute, 31 U.S.C. § 1301(a), occurred in FY 2010 when the MF account was used to fund what constituted a Major Construction project at the West Haven VAMC that added 3,000 square feet of new space and incurred a cost of more than \$10 million, the statutory threshold for Major Construction projects at the time of the violation.

In FY 2022, VA cured the Purpose Statute violation by adjusting its accounts to charge the West Haven VAMC Major Construction project expenses to the no-year Major Construction account. Although the account contained sufficient funds to fully correct the error, the correction resulted in a violation of a statutory restriction on VA's use of the no-year Major Construction account in the appropriations act for FY 2010 (P.L. 111-117). Specifically, the appropriations act for FY 2010 contained a requirement that "none of the funds made available under this heading shall be used for any project

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which has not been approved by the Congress in the budgetary process.” Similar provisions were included in Major Construction account language in prior and subsequent appropriations acts. This condition was not met with respect to the West Haven VAMC Major Construction project. As a result of violating this appropriations act restriction on the use of Major Construction account appropriations, VA violated the ADA. No additional funding is required to complete the project.

VA determined that the responsible party had no knowing or willful intent to violate the ADA. The former VAMC Director was the senior executive officer responsible for the violation and has since retired from VA. The Office of Management and Budget (OMB) is currently reviewing VA's system of administrative control of funds.

To prevent similar violations from occurring in the future, VA modified its Major and Minor Construction and NRM program processes and believes these actions will prevent future violations. These actions, which began in 2012, included modifications to the oversight program and are detailed below.

- Any Minor Construction projects that are accomplished in phases will not be allowed to proceed with subsequent construction until the preceding construction phase is at least 95% complete. Contiguous construction activity, such as NRM projects, will also be reviewed for project independence to ensure each project is fully functional and not reliant on another investment(s). This procedure inserts a review process between phases to ensure the initial phase is not dependent on the succeeding phase, or any other construction project(s). Such a dependency could lead to an ADA violation if the projects are allowed to proceed.
- Chief Engineers are required to certify that their respective Minor Construction projects are stand-alone and independent of any other project. Certification is to be included with the project's documentation in VHA's Capital Asset database.
- All Minor Construction projects are reviewed for compliance with the approved business cases prior to obligation of design funds and prior to the obligation of construction funds. This review is done during the project planning phase and is intended to resolve any potential associations with other construction project(s) which may relate to the proposed Minor Construction project. Work that may cause ADA concerns can be resolved at this point.
- Total Minor Construction project costs are controlled at the VHA program level through a cost-increase and scope deviation approval process. This review and control provide a second check of the total cost of the total project

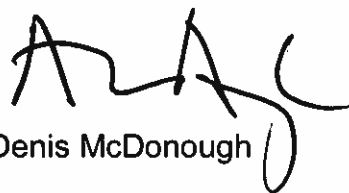
The Honorable Gene Dodaro

cost, providing an opportunity for intervention prior to the obligation of funds preventing any potential ADA violations.

- The NRM/Clinical Specific Initiative (CSI) program policy has been updated to codify the requirement to remain separate and independent of Minor Construction projects. This reminder is provided in the recurring training program for capital-related positions.
- Contracting Officer Representative (COR) training covering roles, responsibilities and authority is required before project managers can be assigned to the COR role. The training is required to be completed on a recurring basis.
- Training is provided for all VHA employees that have a role in managing and executing NRM, CSI and Minor Construction projects. This training is specific to VA's policies, laws, responsibilities, requirements and lessons learned for VHA's construction programs. Efforts are being made to ensure this training is mandatory for all project managers on a recurring basis.
- Competencies are required for all construction project management personnel. Documentation of training and education for these competencies are reviewed and approved by Program Director-level personnel within VHA Healthcare Environment and Facility Programs.

Identical reports will be submitted to the President of the Senate, the Speaker of the House and OMB's Director.

Sincerely,



Denis McDonough



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

September 6, 2022

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

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351. A violation of 31 U.S.C. § 1341(a) occurred in the Department of Veterans Affairs (VA) Construction, Major Projects account (36x0110) in the amount of \$15,615,147.

The ADA violation occurred as a consequence of an adjustment made for obligations that were erroneously incurred in fiscal year (FY) 2015 in the Construction, Minor Projects account (36x0111) and the Veterans Health Administration (VHA) Medical Facilities (MF) account (36x0162). The obligations were incurred to finance a Major Construction project at the VA medical center (VAMC) in Oklahoma City, Oklahoma. The Major Construction account (36x0110) was the proper funding source for the Major Construction project, but VA failed to comply with the appropriation act restrictions regarding the use of the Major Construction account, resulting in a violation of the ADA.

The Minor Construction account funds construction projects with a total cost less than or equal to the threshold amount identified at 38 U.S.C. § 8104(a), while the Major Construction account funds construction projects exceeding the section 8104(a) threshold. The Medical Facilities account funds all medical facility Non-Recurring Maintenance (NRM) projects. NRM projects can fall into one of two categories, infrastructure improvements and sustainment. Consistent with VA's budget submission definition, sustainment projects may add up to 1,000 square feet of new space and must have a total estimated cost less than or equal to the Major Construction project threshold amount identified at 38 U.S.C. § 8104(a). A violation of the Purpose Statute, 31 U.S.C. § 1301(a), occurred in FY 2015 when the Minor Construction and MF accounts were used to fund what constituted a Major Construction project at the Oklahoma City VAMC with a cost greater than \$10 million, the statutory threshold for Major Construction projects at the time of the violation. The construction work had originally been characterized as one Minor Construction project to construct a new Surgical Intensive Care Unit and an NRM project to renovate the operating rooms. However, after review, it was determined that the projects could not have operated successfully independently and therefore, had to be combined into a single project. The total amount of obligations that have been incurred for the combined project to date is

The Honorable Gene Dodaro

\$15,615,147 and an additional \$28,900,000 is required to complete the project. This does not include anticipated claims. The project is currently on hold and requires additional major construction funds to be completed. These funds are included in the FY 2022 capital budget request.

In FY 2022, VA cured the Purpose Statute violation by adjusting its accounts to charge the Oklahoma City VAMC project expenses to the no-year Major Construction account. Although the account contained sufficient funds to fully correct the error, VA violated a statutory restriction on VA's use of the no-year Major Construction account in the appropriations act for FY 2015 (P.L. 113-235). Specifically, the appropriations act for FY 2015 contained a requirement that "none of the funds made available under this heading shall be used for any project which has not been approved by the Congress in the budgetary process." Similar provisions were included in Major Construction account language in prior and subsequent appropriations acts. This condition was not met with respect to the Oklahoma City VAMC Major Construction project. As a result of violating this appropriations act restriction on the use of Major Construction account appropriations, VA violated the ADA.

VA determined that the responsible party had no knowing or willful intent to violate the ADA. The former VAMC Director was the senior executive officer responsible for the violation; however, he has since retired from VA. The Office of Management and Budget (OMB) is currently reviewing VA's system of administrative control of funds.

To prevent similar violations from occurring in the future, VA modified its Major and Minor Construction and NRM program processes and believes these actions will prevent future violations. These actions, which began in 2012, included modifications to the oversight program and are detailed below.

- Any Minor Construction projects that are accomplished in phases will not be allowed to proceed with subsequent construction until the preceding construction phase is at least 95% complete. Contiguous construction activity, such as NRM projects, will also be reviewed for project independence to ensure each project is fully functional and not reliant on another investment(s). This procedure inserts a review process between phases to ensure the initial phase is not dependent on the succeeding phase, or any other construction project(s). Such a dependency could lead to an ADA violation if the projects are allowed to proceed.
- Chief Engineers are required to certify that their respective Minor Construction projects are stand-alone and independent of any other project. Certification is to be included with the project's documentation in VHA's Capital Asset database.

The Honorable Gene Dodaro

- All Minor Construction projects are reviewed for compliance with the approved business cases prior to obligation of design funds and prior to the obligation of construction funds. This review is done during the project planning phase and is intended to resolve any potential associations with other construction project(s) which may relate to the proposed Minor Construction project. Work that may cause ADA concerns can be resolved at this point.
- Total Minor Construction project costs are controlled at the VHA program level through a cost-increase and scope deviation approval process. This review and control provide a second check of the total project cost, providing an opportunity for intervention prior to the obligation of funds, preventing any potential ADA violations.
- The NRM/Clinical Specific Initiative (CSI) program policy has been updated to codify the requirement to remain separate and independent of Minor Construction projects. This reminder is also provided in the recurring training program for capital-related positions.
- Contracting Officer Representative (COR) training covering roles, responsibilities and authority is required before project managers can be assigned to the COR role. The training is required to be completed on a recurring basis.
- Training is provided for all VHA employees that have a role in managing and executing NRM, CSI and Minor Construction projects. This training is specific to VA's policies, laws, responsibilities, requirements and lessons learned for VHA's construction programs. Efforts are being made to ensure this training is mandatory for all project managers on a recurring basis.
- Competencies are required for all construction project management personnel. Documentation of training and education for these competencies are reviewed and approved by Program Director-level personnel within VHA Healthcare Environment and Facility Programs.

Page 4.

The Honorable Gene Dodaro

Identical reports will be submitted to the President of the Senate, the Speaker of the House and OMB's Director.

Sincerely,

A handwritten signature in black ink, appearing to read "DMcDonough", written in a cursive style.

Denis McDonough



THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

September 6, 2022

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

Dear Mr. Dodaro:

This letter is to report a violation of the Antideficiency Act (ADA), as required by 31 U.S.C. § 1351. A violation of 31 U.S.C. § 1341(a) occurred in the Department of Veterans Affairs (VA) Construction, Major Projects account (36X0110) in the amount of \$21,068,704.

The ADA violation occurred as a consequence of an adjustment made for obligations that were erroneously incurred in fiscal year (FY) 2009 in the Construction, Minor Projects account (36X0111) to finance a Major Construction project at the VA medical center (VAMC) in Providence, Rhode Island. The Major Construction account (36X0110) was the proper funding source for the Major Construction project, but VA failed to comply with appropriations act restrictions regarding the use of the Major Construction account, resulting in a violation of the ADA.

The Minor Construction account funds construction projects with total cost less than or equal to the threshold amount identified at 38 U.S.C. § 8104(a), while the Major Construction account funds construction projects exceeding the section 8104(a) threshold. A violation of the Purpose Statute, 31 U.S.C. § 1301(a), occurred at the Providence VAMC in FY 2009 when the Minor Construction account was used to fund what constituted a Major Construction project that cost more than \$10 million, the statutory minor threshold at the time of the violation. The construction work had originally been characterized as five Minor Construction projects, but the projects were combined during the design and construction phases of portions of the five projects. The obligations for the combined project totaled \$21,068,889. The project has been completed, and no additional funding will be requested.

In FY 2022, VA cured the Purpose Statute violation by adjusting its accounts to charge the Providence VAMC Major project expenses to the no-year Major Construction account. Although the account contained sufficient funds to fully correct the error, VA violated a statutory restriction on VA's use of the no-year Major Construction account in the appropriations act for FY 2009 (P.L. 110-329). Specifically, the appropriations act for FY 2009 contained a requirement that "none of the funds made available under this heading shall be used for any project which has not been approved by the Congress in the budgetary process." Similar provisions were included in Major Construction account language in prior and subsequent appropriations acts. This condition was not met with

The Honorable Gene Dodaro

respect to the Providence VAMC Major Construction project. As a result of violating this appropriations act restriction on the use of Major Construction account appropriations, VA violated the ADA.

VA determined that the responsible party had no knowing or willful intent to violate the ADA. The former VAMC Director was the senior executive officer responsible for the violation; however, he has since retired from VA. The Office of Management and Budget (OMB) is currently reviewing VA's system of administrative control of funds.

To prevent similar violations from occurring in the future, VA modified its Major and Minor Construction and Non-Recurring Maintenance (NRM) program processes and believes these actions will prevent future violations. These actions, which began in 2012, included modifications to the oversight program and are detailed below.

- Any Minor Construction projects that are accomplished in phases will not be allowed to proceed with subsequent construction until the preceding construction phase is at least 95% complete. Contiguous construction activity, such as NRM projects, will also be reviewed for project independence to ensure each project is fully functional and not reliant on another investment(s). This procedure inserts a review process between phases to ensure the initial phase is not dependent on the succeeding phase or any other construction project. Such a dependency could lead to an ADA violation if the projects are allowed to proceed.
- Chief Engineers are required to certify that their respective Minor Construction projects are stand-alone and independent of any other project. Certification is to be included with the project's documentation in Veterans Health Administration's (VHA) Capital Asset database.
- All Minor Construction projects are reviewed for compliance with the approved business cases prior to obligation of design funds and prior to the obligation of construction funds. This review is done during the project planning phase and is intended to resolve associations with other construction project(s) which may relate to the proposed Minor Construction project. Work that may cause ADA concerns can be resolved at this point.
- Total Minor Construction project costs are controlled at VHA's program level through a cost-increase and scope deviation approval process. This review and control provide a second check of the total project cost, providing an opportunity for intervention prior to the obligation of funds, preventing any potential ADA violations.

The Honorable Gene Dodaro

- The NRM/Clinical Specific Initiative (CSI) program policy has been updated to codify the requirement to remain separate and independent of Minor Construction projects. This reminder is provided in the recurring training program for capital-related positions.
- Contracting Officer Representative (COR) training covering roles, responsibilities, and authority is required before project managers can be assigned to the COR role. The training is required to be completed on a recurring basis.
- Training is provided for all VHA employees that have a role in managing and executing NRM, CSI and Minor Construction projects. This training is specific to VA's policies, laws, responsibilities, requirements and lessons learned for VHA's construction programs. Efforts are being made to ensure this training is mandatory for all project managers on a recurring basis.
- Competencies are required for all construction project management personnel. Documentation of training and education for these competencies are reviewed and approved by Program Director-level personnel within VHA Healthcare Environment and Facility Programs.

Identical reports will be submitted to the President of the Senate, the Speaker of the House and OMB's Director.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis McDonough". The signature is stylized and cursive.

Denis McDonough