



OFFICE OF INSPECTOR GENERAL

U.S. Department of Energy

SPECIAL REPORT

DOE-OIG-18-29

April 2018

**INQUIRY INTO AN ALLEGED ANTI-
DEFICIENCY ACT VIOLATION AT THE
DEPARTMENT OF ENERGY**



Department of Energy
Washington, DC 20585

April 26, 2018

MEMORANDUM FOR THE SECRETARY

April Stephenson

FROM: April Stephenson
Principal Deputy Inspector General

SUBJECT: INFORMATION: Special Report on the “Inquiry into an Alleged Anti-Deficiency Act Violation at the Department of Energy”

BACKGROUND

The Department of Energy’s Office of the Chief Financial Officer (OCFO) is to assure the effective management and financial integrity of Department programs, activities, and resources by developing and implementing policies and information systems in areas such as budget administration and finance and accounting. Within the OCFO, the Office of Finance and Accounting and the Office of Budget provide financial accounting and support services. The Chief Financial Officer is also responsible for making representations related to the integrity of the Department’s financial statements, including whether there are any known *Anti-Deficiency Act* violations. The *Anti-Deficiency Act* requires, among other things, a system of administrative controls within each agency and prohibits incurring obligations or making expenditures in excess of an apportionment. Violations of the *Anti-Deficiency Act* must be reported to the President, Congress, and the Comptroller General of the United States.

In October 2017, the Office of Inspector General (OIG) received allegations that the Department obligated more funds than permitted by existing apportionments, which resulted in an *Anti-Deficiency Act* violation. It was also alleged that the OCFO attempted to hide the violation from external auditors. Specifically, it was alleged that the Deputy Chief Financial Officer instructed staff to correct the issue and make the matter go away, and did not follow procedures for assessing the violation and notifying General Counsel. We initiated this inspection to determine the facts and circumstances surrounding the alleged *Anti-Deficiency Act* violation and whether there was an attempt to hide any potential violations from external auditors.

RESULTS OF INQUIRY

We substantiated the allegation that the Department obligated more funds than were apportioned for the specific account reviewed. In particular, while the OIG is not the Department’s authority for determining whether an *Anti-Deficiency Act* violation occurred, our test work confirmed that the Department obligated approximately \$16 million more than was apportioned in fiscal year 2017 for direct funding in the Electricity Delivery and Energy Reliability (EDER account)

activities account reviewed. We received conflicting responses on whether the OCFO completed an evaluation of the potential *Anti-Deficiency Act* violation. While the Deputy Chief Financial Officer stated in writing on December 8, 2017, that the OCFO completed a thorough review of the alleged violation and determined a violation did not occur, subsequent discussions with OCFO officials indicated a comprehensive assessment of the potential violation was not completed. The Chief Financial Officer also commented in response to the draft report (Attachment 2) that the assessment had not been completed. We confirmed with General Counsel that the OCFO had not discussed the results of an OCFO assessment or any aspect of the potential violation beyond an initial discussion in October 2017. We were unable to substantiate that the Deputy Chief Financial Officer and/or OCFO management willfully attempted to cover up the potential violation to prevent the Department's external auditors and oversight authorities from becoming aware of the issue. In conducting our review, we also identified opportunities for improvement related to communication within the Department.

In comments on our report, management agreed in principle with the recommendations but indicated that it had serious concerns regarding the report and the delay in finalizing the Department's Fiscal Year 2017 Consolidated Financial Statement Audit. Management provided limited corrective actions and no completion dates to address the recommendations. Management stated that it was unclear why the OIG combined its criminal investigation of alleged wrongdoing with the more time-consuming review of a possible *Anti-Deficiency Act* violation. Management also commented that it was troubling that the OIG would not complete work on the financial statement audit based on an inaccurate allegation. In addition, management asserted that the failure to complete the financial statement audit negatively impacted Governmentwide financial reporting, was costly to the Department, and was disruptive to OCFO activities.

We acknowledge that the inspection involved significant resources and, unfortunately, the timing of the allegations resulted in a delay in issuing the financial statement audit report. However, we stand by our action as appropriate and necessary under the circumstances. Auditing standards required the external auditor to understand the scope, findings, conclusions, and planned remedial actions prior to completing the financial statement audit due to the serious nature of the allegations involving potential integrity issues with key members of Department financial management. As a result of the serious nature of the allegations and the fact that we confirmed the validity of the documentation submitted with the allegation demonstrating the Department obligated more funds than apportioned for a specific account, the external auditor determined that it could not complete the financial statement audit until the OIG completed the evaluation of the allegations regarding the alleged cover-up of the potential violation. While we did reach a level of comfort in determining that allegations related to the integrity of management could not be substantiated, we chose not to prematurely report on that one component of the allegations due to the potential issues that may have risen during the remainder of our test work.

We are disappointed by management's assertion that the allegations made to the OIG were baseless, and we are concerned about, what is in our opinion, OCFO senior leadership's dismissive view of complaints received by the OIG Hotline. In fact, one of the two allegations was made in person by a credible source that provided supporting documentation. The second complaint was anonymous but contained details that were consistent with the first allegation. It

is equally notable that we did not share details of the complainant or the documentation with the OCFO; therefore, any comments from management related to the lack of credibility of the sources is conjecture. Given the accuracy of some of the complainants' allegations, due diligence required that we conduct adequate test work related to all portions of the allegation and report accordingly.

Obligation Against Apportioned Funds

According to the *Anti-Deficiency Act* (31 U.S.C. § 1517(a)), a violation can occur in a variety of ways, including when an agency obligates or expends more funds than have been apportioned¹ for an account. In addition, the *Anti-Deficiency Act* requires that any violations must be reported to the President, Congress, and the Comptroller General of the United States. In response to the discovery of a clerical error that resulted in an over-obligation of funds and a potential *Anti-Deficiency Act* violation, OCFO officials worked to identify the cause of the error and implement corrective actions. It was determined that the OCFO made a clerical error to the EDER account, which resulted in continued obligations over the fiscal year 2017 apportionment threshold. To correct the error, the OCFO worked with the Office of Electricity Delivery and Energy Reliability (OE) and officials at the National Energy Technology Laboratory – the location responsible for managing certain transactions within the EDER account – to make adjusting entries to OE accounts because those accounts had available funding; specifically, those accounts could be used to de-obligate funds to get under the apportionment limit. We noted that the OCFO requested that the National Energy Technology Laboratory attach supporting documentation to the entries in the Department's accounting system. Based on our review, we determined that while OE was the program that obligated the funds, it was not at fault for the potential violation because of its reliance on OCFO controls. We determined that the following events occurred that may have resulted in a potential *Anti-Deficiency Act* violation:

- September 5, 2017 – The Office of Management and Budget (OMB) approved the Apportionment and Reapportionment Schedule (SF-132) submitted by the OCFO for Treasury Appropriation Fund Symbol account 89X0318, Electricity Delivery and Energy Reliability. However, the schedule submitted by the OCFO was inaccurate. Due to a clerical error, approximately \$23 million was requested in a line for reimbursable work rather than the intended line for direct funding. This left the direct funding line of the account at approximately \$198 million rather than the intended amount of approximately \$221 million. On this date, the OCFO's Office of Budget issued an Advice of Allotment to OE that incorrectly reflected the intended request to OMB for direct funding and thus exceeded the actual apportionment authority. The effect of the allotment error granted authority to OE to over-obligate the apportioned funds in account 89X0318, Electricity Delivery and Energy Reliability.
- September 26, 2017 – As indicated in the table below, OE obligated \$3,548,621 to account 89X0318, Electricity Delivery and Energy Reliability, which exceeded the

¹ An apportionment divides amounts available for obligation by specific time periods (usually quarters), activities, projects, objects, or a combination thereof. The amounts so apportioned limit the amount of obligations that may be incurred.

approved apportionment threshold of \$198,373,258 by \$2,379,952. OE officials continued to obligate funds against this account for the remainder of the fiscal year, ultimately obligating about \$214 million, or approximately \$16 million more than permitted by the approved threshold.

Transaction Date	Obligations Incurred	Total Ending Balance	Approved Apportionment Variance
September 23, 2017		\$190,550,949	\$7,822,309
September 25, 2017	\$6,653,640	\$197,204,589	\$1,168,669
September 26, 2017	\$3,548,621	\$200,753,210	\$(2,379,952)
September 27, 2017	\$11,107,540	\$211,860,750	\$(13,487,492)
September 28, 2017	\$873,000	\$212,733,750	\$(14,360,492)
September 29, 2017	\$1,658,374	\$214,392,124	\$(16,018,866)

*Red text indicates that obligations exceeded apportionments.

- October 12, 2017 – During the Governmentwide Treasury Account Symbol Adjusted Trial Balance System (GTAS) reconciliation process, an individual within the OCFO’s Office of Finance and Accounting determined that the EDER account was over-obligated by approximately \$16 million and informed the OCFO’s Office of Budget.
- October 13, 2017 – The OCFO contacted OMB to determine whether it could resubmit an updated Apportionment and Reapportionment Schedule (SF-132) that would have corrected the clerical error by reapportioning funding between direct funds and reimbursable work to remedy the \$16 million over-obligation in the EDER account. OMB informed the OCFO that it could not accept updated information because the accounting period was closed. According to OMB Circular A-11, *Preparation, Submission, and Execution of the Budget*, apportionments are never subject to change after the period for which the apportionment is made.
- October 17, 2017 – The OCFO contacted General Counsel to informally discuss the matter. Following initial conversations, the OCFO provided additional documentation to describe its actions. A General Counsel official indicated that, at that time, he verbally advised the OCFO that there was a potential *Anti-Deficiency Act* violation and suggested that the OCFO further investigate to determine how and when the error occurred. However, an OCFO official indicated to us that he did not recollect the General Counsel official’s suggestions and commented that General Counsel was going to conduct further review. A General Counsel official stated that the OCFO made no further contact after this discussion.
- October 18, 2017 – In accordance with OMB Circular A-11, the OCFO was required to correct the difference between Apportionment and Reapportionment Schedule (SF-132) and the Reports on Budget Execution and Budgetary Resources (SF-133). To correct the error, the OCFO coordinated with OE and National Energy Technology Laboratory officials to de-obligate four transactions to reduce the amount of funds in the EDER account below the approved apportionment threshold. As a result, National Energy

Technology Laboratory officials adjusted the accounts as advised, which resulted in the creation of carryover funds that were re-obligated 4 business days later in the subsequent fiscal year's balances. Both OCFO and National Energy Technology Laboratory officials told us that this type of adjusting entry was very unusual and out of the ordinary.

In summary, the facts identified during our inquiry indicated that on September 26, 2017, funds were obligated in excess of approved direct funding apportionments for account 89X0318, Electricity Delivery and Energy Reliability. Ultimately, the Department over-obligated the direct funding apportionment by more than \$16 million before the error was eventually identified and corrected. While our review identifies and summarizes the facts surrounding the accounting entries, the decision as to whether an *Anti-Deficiency Act* violation occurred, as alleged, rests with the OCFO and General Counsel in accordance with Department policies².

Anti-Deficiency Act Analysis and Resolution

At the time of our review, the OCFO had not yet completed a comprehensive assessment of its findings of the potential violation. In response to questions during our inquiry, the Deputy Chief Financial Officer stated on December 8, 2017, that the OCFO conducted a thorough review and did not believe an *Anti-Deficiency Act* violation occurred but noted that it would make a final determination in conjunction with General Counsel. However, on February 15, 2018, the OCFO re-emphasized that it had not yet evaluated the details of the potential violation and noted that such evaluations can take significant time. We did not resolve these conflicting OCFO assertions during our review. Furthermore, an individual within General Counsel stated that the OCFO had not contacted General Counsel since the October 17, 2017, initial discussion and was still awaiting the required analysis from the OCFO. At the end of our review, OCFO officials explained that they had completed the first part of their review of the potential *Anti-Deficiency Act* violation and had drafted a report detailing how the clerical error occurred. They commented, however, that they were still in the process of determining whether they believed the error resulted in an *Anti-Deficiency Act* violation.

During our review, we discovered that individuals within the OCFO had not reported the potential violation to the Office of Internal Review. Specifically, OCFO staff involved in the input, detection, and resolution of the error commented that they were unaware of their responsibilities related to identifying and reporting the potential *Anti-Deficiency Act* violation. Based on our interviews and review of documentation, we determined that one individual did report the error to their supervisor and expressed concerns about the issue. According to the Department's *Financial Management Handbook*, Chapter 2, *Administrative Control of Funds* (September 12, 2007), any person who knows about a possible violation is responsible for forwarding a report on it to the cognizant Field Chief Financial Officer/Financial Manager. The *Financial Management Handbook* also instructs that any potential violation shall result in a memorandum to the OCFO's Office of Internal Review. In circumstances where an apparent violation was caused by an accounting error, a memorandum shall be prepared explaining the circumstances, the violation, and the corrective actions taken or planned. When interviewing a senior OCFO official regarding the reporting of the possible *Anti-Deficiency Act* violation, the

² Department Order 534.1B, *Accounting*, requires that the OCFO, in conjunction with General Counsel, review and take appropriate action on potential *Anti-Deficiency Act* violations.

official indicated that the normal process would have been to contact the Assistant Director, Office of Financial Policy and Internal Controls, to conduct a review of any potential *Anti-Deficiency Act* violation. However, the individual noted that, due to involvement by the OIG, a review had not been performed. We are unaware of any requirements within the OCFO's internal policies that an OIG review would inhibit the Department from following normal practices of determining whether an *Anti-Deficiency Act* violation had occurred.

Management asserted in comments to our report that the OIG believed the OCFO should have expedited its normal operational processes after a possible *Anti-Deficiency Act* violation was identified and erroneously stated that the OIG concluded that the OCFO was not planning to coordinate with General Counsel. In addition, management commented that senior leadership did not take any action that could have been perceived as hindering an OIG criminal investigation.

Contrary to management's comments, the OIG did not suggest that officials expedite their normal process for addressing potential *Anti-Deficiency Act* violations, nor did the OIG make any conclusion that the OCFO would not have coordinated with General Counsel in the future. In fact, nowhere in our report do we state that management should have completed a review within a specified period of time. We are aware that reviews related to potential *Anti-Deficiency Act* violations can take significant time, as indicated annually by the Government Accountability Office. However, Department officials made an assumption that they should stop work on the potential violation when we began our inquiry. While we acknowledge that criminal investigators were present for some of the initial discussions with Department management and staff, we did not communicate to officials to stop what they were doing related to reviewing the potential *Anti-Deficiency Act* violation. In addition, at no time did anyone from OCFO management inquire from the OIG whether they could continue conducting their review due to the importance of resolving the potential violation.

Alleged Anti-Deficiency Act Violation Cover-Up

Based on our test work, including interviews and reviews of documentation/accounting records, we were unable to substantiate the allegation that management attempted to hide the potential *Anti-Deficiency Act* violation from external auditors and oversight organizations. While our discussions with officials and review of emails indicated the unusual nature of the transactions and a significant desire to correct the clerical error due to the GTAS reporting deadline and year-end financial reporting, we did not identify emails that indicated intentions to deliberately cover up the potential violation. One email reviewed indicated that OCFO management did not want the entries to appear on an adjusting entry report created after the first draft of the Department's financial statements were provided to the external auditors. When asked, OCFO personnel indicated they did not know why there was a desire not to have the entries on the report or stated that they were unaware of the report. Officials also indicated that, in accordance with OMB Circular A-11, the correcting entries were to be processed in time for the Department of the Treasury to process the required GTAS data.

To mitigate the concerns of a potential cover-up noted in the allegation, we found that the OCFO had taken action to notify General Counsel and OMB within days of identifying the potential *Anti-Deficiency Act* violation. Specifically, we noted that the clerical error was discovered on October 12, 2017, OMB was contacted the following day, and General Counsel was contacted within 4 business days of discovery.

Policy and Procedures

We determined that weaknesses related to the Department's internal control environment contributed to the issues identified surrounding the potential *Anti-Deficiency Act* violation. While the issues identified would not have prevented the clerical error, we found that policy and procedures weaknesses existed that impacted the Department's ability to identify and resolve the clerical error that led to the potential violation in a timely manner.

We determined that policies and procedures were not always adequate to address resolving/reporting potential *Anti-Deficiency Act* violations. In particular, Department Order 534.1B, *Accounting*, has not been updated since 2003 and did not fully address how potential *Anti-Deficiency Act* violations should be resolved. For instance, the existing directive states that the OCFO is responsible for reviewing, in coordination with General Counsel, all reports of potential *Anti-Deficiency Act* violations. However, the directive did not address how consideration should be given to the OCFO reviewing potential *Anti-Deficiency Act* violations within its own office, seemingly creating a potential conflict of interest in this instance by having the OCFO reviewing its own error. While the OCFO did not dispute the contents of the directive, it commented that review of all *Anti-Deficiency Act* violations are an inherent OCFO authority and responsibility and the level of independence is the Chief Financial Officer's judgement. Furthermore, our review of the Department's *Financial Management Handbook* identified that reporting requirements related to possible *Anti-Deficiency Act* violations were focused on Field Chief Financial Officers/Financial Managers and did not include explicit instructions on violations involving the OCFO were to be reported. During our interviews, individuals also expressed similar concerns regarding the lack of procedures for determining and reporting potential *Anti-Deficiency Act* violations.

We found that procedures within the OCFO were not always effective to identify and address potential *Anti-Deficiency Act* violations. Specifically, we determined that the primary cause of the over-obligation of funds was a clerical error within the Office of Budget. However, our test work revealed that detection controls related to reviews of manual apportionments conducted by the Office of Budget were not always adequate or conducted in a timely manner. An effective process should have identified the clerical error before it was submitted to OMB and ensured that obligations did not exceed apportionments for the account in question. The OCFO indicated that it has since automated the generation of apportionments submitted to OMB so that clerical errors such as those included in our inquiry will not happen in the future. Due to the timing of our report, we did not evaluate the effectiveness of the new process implemented by the OCFO.

Contributing to this control weakness were indications that budget officials within the OCFO were not always adequately trained and/or had the necessary experience. For instance, we identified through emails and interviews that concerns were raised regarding the amount of staff

turnover within the Office of Budget and the related lack of knowledge within the organization. During conversations with staff, it was also noted that a lack of formal training for budget staff may have contributed to the failure to identify the clerical error in a timely manner. According to OMB Circular A-11, an agency's internal control environment should include objectives specific to compliance with the *Anti-Deficiency Act* by ensuring that staff are adequately trained and knowledgeable about the current status of apportionments or other limitations of funds. In comments on our report, management indicated that the OCFO has implemented many staff suggestions and that the staff has led multiple initiatives to automate and streamline Department financial management. We agree that OCFO staff has an excellent record in performing its duties. For instance, through our conduct of the Department's annual financial statement audit, we have continued to be impressed by the dedication and professionalism of various levels of staff within the OCFO. However, it was members of the OCFO staff that indicated to us the need for additional training given the amount of turnover within parts of the organization. Consequently, we are puzzled by management's response to our recommendation to provide OCFO staff additional training.

To improve the Department's internal control environment over financial management, we recommend that the Chief Financial Officer:

1. In coordination with General Counsel, revise existing Department directives and procedures, including Department Order 534.1B, *Accounting*, and the Department's *Financial Management Handbook*, as appropriate, to ensure that potential *Anti-Deficiency Act* violations are reviewed by a party independent of the organization that may have been responsible for the violation;
2. Ensure that individuals have adequate knowledge and training related to procedures necessary to perform their job duties, including those related to defining, identifying, and reporting potential *Anti-Deficiency Act* violations; and
3. Coordinate to ensure that the facts surrounding the potential *Anti-Deficiency Act* violation discussed in our report are resolved in a timely manner, including making a formal determination, ensuring corrective action plans are developed as necessary, disciplinary actions are taken as appropriate, and that any identified violations are reported to the appropriate oversight authorities.

Other Matters

We identified opportunities for improvement related to communication within the Department. In particular, we noted that communication may not have been adequate between the OCFO and General Counsel to resolve/report the potential *Anti-Deficiency Act* violation. For instance, while the OCFO verbally reported the clerical error to General Counsel on October 17, 2017, our review determined that there were no followup communications between the OCFO and General Counsel related to making a determination whether an *Anti-Deficiency Act* violation occurred and how it should be reported to the appropriate authorities. An individual from General Counsel indicated that he held discussions with OCFO officials and told them that a potential violation occurred, noting that correcting the error would not erase the *Anti-Deficiency Act*

violation or eliminate the Department's requirement to report it. The individual also indicated that he suggested the OCFO further investigate the error and potential violation but had not received any followup information from the OCFO since the October 2017 discussion. However, as previously indicated in our report, an OCFO official commented that he did not recollect the General Counsel official's suggestions and stated that General Counsel was going to conduct further review. As a result of the conflicting comments, we determined that there was a lack of understanding between the two offices related to what actions needed to be taken to resolve the potential *Anti-Deficiency Act* violation.

During our inquiry, we were also made aware of concerns related to potential communication barriers within the OCFO that may have led to weaknesses in the internal control and reporting process. For instance, various individuals indicated that they lacked an understanding of why activities related to the potential *Anti-Deficiency Act* violation had occurred and why there appeared to be such a rush to make the corrections. While we understand that situations exist where all details cannot be readily explained due to time constraints, enhanced followup communication explaining why processes occurred could have resolved many of the questions we encountered during our review. In addition, individuals we spoke with were concerned about OCFO management's receptiveness to feedback from employees. For example, individuals within the OCFO indicated that senior management did not value or want feedback from employees on potential weaknesses or process changes. As a result, we concluded this may have led to an environment in which employees were hesitant to communicate their concerns regarding errors or the need for process improvements. These concerns are consistent with a trend we have observed during OIG activities related to the OCFO.

To enhance communication within the organization, we recommend that the Chief Financial Officer:

4. Conduct an assessment, with consideration given to utilizing an independent entity, that focuses on potential improvements within the OCFO, including but not limited to any potential improvements in communication processes and resource management.

Impact and Path Forward

Without effective controls, including adequate policies and procedures, the Department may be unable to identify, evaluate, and report potential *Anti-Deficiency Act* violations, as appropriate. Furthermore, the circumstances surrounding the allegations relevant to this potential *Anti-Deficiency Act* violation delayed the ability of the Department's external auditor and the OIG to issue a report on the Department's Fiscal Year 2017 Consolidated Financial Statement Audit. In particular, the serious nature of the allegations involving potential integrity issues with key members of Department financial management required the external auditor to assess the implications of the allegations on the audit. In accordance with auditing standards, the external auditor was required to understand the scope, findings, conclusions, and planned remedial actions prior to completing the audit. It also resulted in additional work by Department resources to resolve the issue and focus attention on the inquiry into the allegations. We acknowledge that clerical errors can be very difficult to prevent. However, in light of the weaknesses identified during our review, we made recommendations that, if fully implemented, should help officials

improve the identification and resolution of potential *Anti-Deficiency Act* violations in the future. Our recommendations should also help to improve the internal control environment over the Department's financial management processes.

MANAGEMENT RESPONSE

Management indicated that it concurred in principle with our recommendations but did not always provide corrective actions or planned completion dates. In particular, management did not provide corrective actions related to modifying or updating existing directives and procedures to ensure that potential *Anti-Deficiency Act* violations are not committed and reviewed by the same organization. In addition, management indicated that our second recommendation implied that individuals did not have adequate knowledge and training related to procedures necessary to perform their job duties. While management concurred in principle, it did not provide a plan for implementing additional training requirements. In response to our third recommendation, management commented that the OCFO was drafting a report of its review of the clerical error and would support its conclusion with an accompanying review of *Anti-Deficiency Act* cases that will be provided to General Counsel. Although management indicated that it would continue to identify ways to improve communication, it did not provide any specific corrective actions. Officials commented that there are multiple examples in which OCFO staff proposed and drove process improvements.

Management also indicated that it was concerned with what it believed were erroneous OIG characterizations, assumptions, and conclusions throughout the report. Furthermore, management stated that none of the issues identified in our report contributed to the clerical error and that none of the recommendations would have prevented the error from occurring. Specific management comments have been incorporated throughout the report.

During the exit conference, management explained that a comprehensive assessment would encompass two parts – one to evaluate the circumstances of the error and another to evaluate whether an *Anti-Deficiency Act* violation occurred. OCFO officials noted that while they determined the cause of the error, the OCFO had not yet completed an evaluation of whether the issue was a potential *Anti-Deficiency Act* violation. Because the OCFO had not completed its assessment of the potential *Anti-Deficiency Act* violation, it stated that it had not yet coordinated all aspects of the potential violation with General Counsel.

INSPECTOR COMMENTS

We appreciate management's concurrence in principle with our recommendations. However, we note a lack of specificity related to management's planned corrective actions and timeframes for completion. We are also concerned with a number of assertions made in comments on our report. We have responded to a number of management's comments throughout the report.

We also continue to assert that communication weaknesses existed. For instance, our report highlighted communication weaknesses between the OCFO and General Counsel. These weaknesses appear to still exist as certain management comments continue to conflict with what we were told by General Counsel during our review, which would indicate an ongoing lack of

coordination between the offices. In addition, we stand by our statements in the report related to potential communication barriers within the OCFO. During our review, we identified numerous concerns related to perceived communication issues within the OCFO's environment. Due to the need for individuals to feel comfortable reporting concerns to our office when necessary, we did not disclose details to OCFO management. While our current review did not focus on these issues, we continue to believe it should be an area of consideration for a strengthened control environment. Lastly, we continue to be concerned about management's comments related to the lack of credibility of the sources and what is, in our opinion, a dismissive view of the allegations submitted to the OIG hotline.

Management's comments are included in Attachment 2.

Attachments

cc: Deputy Secretary
Chief of Staff
Chief Financial Officer

OBJECTIVE, SCOPE, AND METHODOLOGY

OBJECTIVE

To determine the facts and circumstances surrounding the alleged *Anti-Deficiency Act* violation and whether there was an attempt to hide potential violations from external auditors.

SCOPE

The inspection was performed from November 2017 to April 2018 at Department of Energy Headquarters in Germantown, Maryland and Washington, DC, and the National Energy Technology Laboratory in Pittsburgh, Pennsylvania. The review was conducted under Office of Inspector General project number A18TG007.

METHODOLOGY

To accomplish our objective, we:

- Reviewed applicable laws and regulations pertaining to the *Anti-Deficiency Act*, as well as applicable standards and guidance issued by the Office of Management and Budget;
- Reviewed the Government Accountability Office *Principles of Federal Appropriations Law* (Third Edition Volume II);
- Reviewed applicable guidance and standards issued by the Department, including Order 135.1A, *Budget Execution – Funds Distribution and Control*; Order 520.1A, *Chief Financial Officer Responsibilities*, Order 534.1B, *Accounting*; Manual 135.1-1a, *Department of Energy Budget Execution - Funds Distribution and Control Manual*; and the *Department of Energy Financial Management Handbook*;
- Held discussions with Office of the Chief Financial Officer, Office of the General Counsel, Office of Electricity Delivery and Energy Reliability, and National Energy Technology Laboratory personnel;
- Reviewed pertinent official correspondence between Federal personnel as it related to the inspection scope;
- Reviewed and analyzed transactional details from the Department’s Standard Accounting and Reporting System;
- Reviewed official budgetary documentation submitted to and approved by the Office of Management and Budget; and
- Coordinated with KPMG LLP, the Office of Inspector General’s contract auditor responsible for completing the audit of the Department’s Consolidated Financial Statements.

We conducted an allegation-based inquiry in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our objective. We believe the evidence obtained provided a reasonable basis for our conclusions and observations based on our objective. Accordingly, the inquiry included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the objective. Because our inquiry was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our work. Finally, we did not rely on computer-processed data to satisfy our objective.

An exit conference was held with Department officials on April 10, 2018. Subsequent to our exit conference, management withdrew its official comments on our report. Management provided updated comments on April 20, 2018 that were signed by the Chief Financial Officer.

MANAGEMENT COMMENTS



Department of Energy
Washington, DC 20585

April 20, 2018

MEMORANDUM FOR THE PRINCIPAL DEPUTY INSPECTOR GENERAL

FROM: John G. Vonglis *JGV*
Chief Financial Officer

SUBJECT: Special Report on "Inquiry into Alleged Anti-Deficiency Act Violation at the Department of Energy" – DRAFT REPORT

This is in response to the Office of Inspector General (IG) Draft Special Report on the "Inquiry into Alleged Anti-Deficiency Act Violation at the Department of Energy." The IG states in the report that it did "not substantiate" the allegation of wrongdoing by CFO management, and in fact, contradicts the allegation through documentation of the prompt CFO correction of a clerical error in accordance with OMB requirements and prompt CFO notification to OMB and the Office of General Counsel (GC) of the clerical error. Given the IG's documentation of these facts, we are both concerned and perplexed by the course of the investigation. Ironically, it was the IG's protracted investigation of more than four months into an alleged statutory violation (potential ADA violation) that resulted in an actual statutory violation, specifically, missing the 1 March Agency Financial Report (AFR) statutory issuance deadline.

Report Timing and Focus. During early to mid-November interviews with CFO management, the IG also resorted to use of a criminal investigator. The criminal investigator leading the interviews stated that the IG determined criminal investigator participation was required. However, during those interviews, the criminal investigator and other IG staff told several CFO officials that they recognized the issue was a clerical error and that they knew CFO had contacted both OMB and GC promptly after identification of the error. Considering this acknowledgment, and that by any objective definition, the event(s) under review do not rise to the level of "criminal" activity, use of a criminal investigator is particularly disturbing. Therefore, it is unclear why the IG combined its criminal investigation of alleged wrongdoing with that of a clerical error. We believe separating these pursuits would have allowed for the timely completion of the financial statement audit, while also enabling the more time consuming review of a possible ADA to occur independently. It also is troubling that the IG would not complete work on the financial statement audit based on an anonymous, and at best, inaccurate statement and sets a disturbing precedent that the IG could stop future financial statement audits because of equally baseless statements.

The failure to complete the financial statement audit negatively impacted government-wide financial reporting, was costly to the Department, and was extremely disruptive to critical CFO year-end and first quarter activities. In a November 6 conference call with IG, OMB informed

IG that potential ADAs can take years to resolve and should not interfere with the completion of the financial statement audit.

Report Narrative and Recommendations. We also are concerned with erroneous IG characterizations, assumptions, and conclusions throughout the report. The report falsely alleges a conflict in CFO responses regarding review of the clerical error and ADA analysis and conflates the two items. OCFO reviewed the clerical error and the required correction and does not believe the instance was an ADA. Now that the criminal investigation is completed, OCFO drafted its report on the incident in accordance with Chapter 2, paragraph 8, *Reporting of Violations within the Department*, of the Financial Management Handbook. The Assistant Director, Financial Policy and Internal Controls, is reviewing the report and will coordinate with GC to obtain the required formal GC opinion before making a final recommendation to me. The IG report focuses on, and exaggerates, the IG belief that OCFO should have expedited its normal operational processes after a possible ADA was identified. This is despite OCFO providing the IG with GAO's FY 2017 report of ADA violations that showed an average of 10 years between the violation and the report date. The IG makes much of differing memories of communications between CFO staff and GC staff but does not show this was of any consequence to the issues under review. For the record, with respect to OCFO meetings with GC, OCFO met with GC twice. In the first meeting, OCFO staff described the clerical error after which GC said it needed to review the matter further and followed up by e-mail after the meeting to request the apportionment documents which OCFO provided. In the second meeting, OCFO provided an update on the actions taken to correct the error, and GC said it would review the matter.

We remain concerned with IG statements in the report regarding "communication" and "impact" issues. The IG inaccurately states that CFO took "inadequate actions" to resolve the potential ADA violation. As OCFO has repeatedly explained to the IG, senior leadership did not take any action that could be perceived as hindering the IG criminal investigation. Based on the IG use of a criminal investigator taking statements under threat of potential criminal action, senior management recognized that requests to staff to document actions related to the clerical error could be perceived as interference with the IG investigation. In addition, the OMB-approved CFO policy requires coordination with GC, and OCFO in its 8 December 2017 memo to the IG stated "We will work with the Office of General Counsel (GC) to make a final determination on this matter in accordance with DOE Policy." Therefore, one wonders on what basis the IG concludes OCFO would not have coordinated with GC as necessary to resolve the issue.

Further, the IG claimed some individuals interviewed "indicated that senior management did not value or want feedback from employees on potential weaknesses or process changes." The IG admitted that it could not validate the claims and that the issue is not linked to the potential ADA violation. As noted in the attached response to the recommendations, OCFO has implemented many staff suggestions, and CFO staff has led multiple initiatives to automate and streamline DOE financial management.

Finally, none of the issues identified by the IG – which CFO considers mischaracterized – contributed to the clerical error; nor would any of the IG recommendations have prevented the clerical error; and the report falsely concludes that CFO actions led to the financial statement

audit being stopped. In fact, it was the IG decision to stop work on the audit based on a false statement provided to the IG that was not timely resolved by the IG.

Our comments on each finding and recommendation are attached and should be attached to the final report.

Attachment

Office of Chief Financial Officer

1. *In coordination with General Counsel, revise existing Department directives and procedures, including Department Order 534.1B, Accounting, and the Department's Financial Management Handbook, as appropriate, to ensure that potential Anti-Deficiency Act violations are reviewed by a party independent of the organization that may have been responsible for the violation;*

CFO Response – Concur in Principle: The CFO ensures appropriate independence when assigning a review of a potential ADA. As established in the CFO Act, the CFO is responsible for all DOE financial management activities, and appropriate independence is in the CFO's judgment. Further, CFO Financial Management Handbook (FMH) Chapter 2, *Administrative Control of Funds*, policy states "The CFO shall review, in coordination with the Office of General Counsel (GC), all reports of violations..." The GC is independent of the CFO.

2. *Ensure that individuals have adequate knowledge and training related to procedures necessary to perform their job duties, including those related to defining, identifying, and reporting potential Anti-Deficiency Act violations.*

CFO Response – Concur in Principle: CFO has an ongoing training program to ensure individuals have the knowledge required to perform their job duties. The recommendation implies that CFO employees do not have "adequate knowledge and training related to procedures necessary to perform their job duties". CFO employees have an excellent track record in performing their duties as evidenced by repeated clean financial statement audit opinions with no material weaknesses and repeated high scores on both OMB and Treasury financial performance metrics. Further, CFO employees receive training as applicable throughout their careers, and CFO regularly provides Appropriations Law training to ensure personnel can recognize a potential ADA. CFO is a strong advocate of training as demonstrated by the CFO DOE-wide accounting/financial management webinar program established in 2013 that grew to 76 webinars in FY17 provided to 3,340 participants. Courses are cost-free way for DOE staff to earn Continuing Professional Education (CPE) credit to support professional certifications, reduce training costs, and improve financial management. In fact, the IG has assisted with said training provided through the CFO-led program.

CFO provided and will continue to provide budget execution training to ensure that employees understand the related procedures to perform their jobs.

3. *Coordinate to ensure that the facts surrounding the potential Anti-Deficiency Act violation discussed in our report are resolved in a timely manner, including making a formal determination, ensuring corrective action plans are developed as necessary, disciplinary actions are taken as appropriate, and that any identified violations are reported to the appropriate oversight authorities.*

CFO Response – Concur in Principle: This recommendation appears to be a restatement of the existing CFO policy provided in the Financial Management Handbook (FMH) Chapter 2, *Administrative Control of Funds*. As noted in our cover memorandum, CFO drafted its report of the facts, including its already-completed review of the clerical

Management Responses to Draft IG Report:
Special Report on the
“Inquiry into Alleged Anti-Deficiency Act Violation at the Department of Energy”

error. This report is being reviewed by the Assistant Director of Financial Policy and Internal Controls. When the review is complete, the report with an accompanying review of ADA cases will then be provided to the Office of General Counsel in accordance with FMH Chapter 2.

4. *Conduct an assessment, with consideration given to utilizing an independent entity, which focuses on potential improvements within the OCFO, including but not limited to any potential improvements in communication processes and resource management.*

CFO Response – Concur in Principle: CFO agrees that communication is important and makes routine assessments to identify potential improvements in all aspects of CFO operations. The IG acknowledged “there was no way to prove the validity of these concerns” and also acknowledged the “concerns” are not related to this review. As documented in the IG report, the clerical error was promptly reported and the report provides no evidence that the individuals involved did not know how to identify ADAs or did not know how to report a potential ADA.

Further, CFO employees are encouraged to recommend improvements to operations and find efficiencies in processes. There are multiple recent examples in which CFO staff proposed and drove process improvements. CFO staff actively led efforts to streamline the Agency Financial Report development process and to institutionalize macros for reconciliations. In mid-2017, all CFO employees were asked to identify efficiency/streamlining improvements as part of the OMB government wide reform effort. Finance and Accounting staff identified 13 proposals, 11 of which were approved and are currently being implemented. In response to their suggestions, staff were reminded that they should not wait to be asked to identify and propose improvements. In addition, CFO staff suggestions to streamline OMB Circulars A-11 and A-136 were sent to OMB as part of the OMB reform effort. Throughout DATA Act implementation, staff identified and drove improvements in both the external processes with Treasury and GSA and internal processes with program and procurement offices. Throughout FDS 2.0 development, staff identified and drove improvements in budget execution business processes and system design to streamline the process and improve controls. After FDS 2.0 implementation, staff identified additional ways to streamline processes leading to implemented enhancements and to revised designs. Budget staff identified process improvements and developed the requirements for the budget formulation system under development to replace manual and old system processes.

Nonetheless, CFO will continue to identify ways to improve communication processes.

FEEDBACK

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