



Department of Homeland Security Office of Inspector General

**DHS/U.S. Secret Service FY 2009
Antideficiency Act Violation**

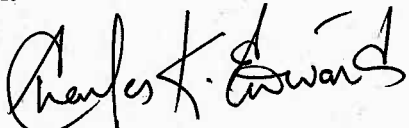




Homeland Security

JUL 13 2011

MEMORANDUM FOR: The Honorable Rafael Borrás
Under Secretary for Management
Directorate for Management

FROM: Charles K. Edwards
Acting Inspector General 

SUBJECT: *DHS/U.S. Secret Service FY 2009 Anti-Deficiency Act Violation*
OIG Report No. OIG-11-94

Attached for your information is our final letter report, *DHS/U.S. Secret Service FY 2009 Anti-Deficiency Act Violation*. We incorporated the formal comments from the Directorate for Management in the report.

The report contains three recommendations. Your office concurred with all three recommendations. Based on information provided in your response to the draft report, we consider the recommendations resolved but open until we can verify that the recommended actions have been implemented.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination. To promote transparency, your response to our final letter report, including your corrective actions planned, will be posted to our website.

Should you have any questions, please call me, or your staff may contact Anne L. Richards, Assistant Inspector General for Audits, at (202) 254-4100.

Attachment

Background

The Government Accountability Office (GAO) reported¹ that the Department of Homeland Security (DHS) and the U.S. Secret Service (USSS) violated Section 503(b) of the 2009 *DHS Appropriations Act*² in fiscal year (FY) 2009. Although USSS' budget obligations in connection with presidential candidate nominee protection ended with the inauguration on January 20, 2009, DHS did not notify Congress until June 30, 2009, that USSS obligated \$5.1 million in excess of the \$41 million appropriated for this purpose. Because DHS failed to notify Congress 15 days in advance of the USSS reprogramming³ action, the \$5.1 million obligated by USSS was not legally available for reprogramming. Therefore, GAO determined that DHS violated the *Anti-Deficiency Act* (ADA), which prohibits the obligation of funds in excess of or in advance of available appropriations.

In July 2010, DHS requested that the OIG determine (1) the name and position of the officer(s) or employee(s) responsible for the ADA violation, and (2) whether the employee(s) is (are) suspected of willfully and knowingly violating the ADA.

Results in Brief

In FY 2009, USSS obligated funds more than 10% in excess of available appropriations to cover a presidential candidate protection budget shortfall before submitting a reprogramming request to the department for congressional approval. Component agencies are required to submit such requests to DHS before any reprogramming decisions are made, as DHS must notify Congress 15 days prior to their implementation. Because the request was not submitted before the funds were obligated, the funds USSS obligated to cover its presidential candidate protection costs in excess of appropriations were not legally available for this purpose, thereby violating the ADA. We determined that USSS' former Chief Financial Officer (CFO) was responsible for the ADA violation reported by the GAO. However, we found no evidence that the former CFO acted with any knowledge or willful intent to violate the law.

Results of Review

In FY 2009, the USSS CFO was responsible for oversight of all financial management activities relating to the agency's programs and operations, including complying with applicable regulatory and procedural guides. However, the CFO did not ensure that sufficient funds were available to cover the agency's FY 2009 presidential candidate

¹ *U.S. Secret Service: Statutory Restriction on Availability of Funds Involving Presidential Candidate Nominee Protection*, B-319009 (April 27, 2010).

² Section 503(b) states, "None of the funds provided by this Act...shall be available for obligation or expenditure for programs, projects, or activities through a reprogramming of funds in excess of \$5,000,000 or 10 percent, whichever is less, that...augments existing programs, projects, or activities,...or...that would result in a change in existing programs, projects, or activities as approved by the Congress, unless the Committees on Appropriations of the Senate and the House of Representatives are notified 15 days in advance of such reprogramming of funds."

³ Reprogramming is the shifting of funds within an appropriation to use them for purposes other than those contemplated at the time of the appropriation.

nominee protection costs prior to incurring a budget shortfall. As early as October 2008, USSS budget staff recognized that presidential candidate protection costs might exceed its \$41 million appropriation. In December 2008, the CFO chose not to pursue the option of reprogramming funds to avoid a potential budget shortfall because he believed that sufficient supplemental funds were available internally to cover presidential candidate protection costs through the inauguration. However, by January 2009, USSS budget data supported that the agency's presidential candidate protection costs would exceed its available appropriation.

Even after a budget shortfall was imminent, the CFO did not follow official guidance to ensure that funds were legally available to cover USSS' presidential candidate protection costs through the inauguration. DHS' FY 2009 Budget Execution Guidance states that a reprogramming request arises from an unforeseen need to respond to operational requirements, and advises that components should examine the need for a reprogramming notification as soon as practicable. The guidance further states that components are responsible for promptly notifying the department when reprogramming needs arise, and that such notifications are required no less than 45 days before the reprogramming action needs to occur. The guidance emphasizes that requests must be submitted before reprogramming decisions are made since, by law, DHS must notify Congress of any reprogrammings 15 days prior to implementation.

Through Inauguration Day 2009, USSS obligated \$5.1 million in excess of its \$41 million appropriation to cover presidential candidate protection costs as they were incurred. Because this amount exceeded the section 503(b) monetary threshold, DHS was required to notify Congress 15 days prior to USSS' reprogramming action to ensure that the funds were legally available for obligation. However, USSS had already obligated these funds without first submitting a reprogramming request to the department for congressional approval. USSS did not submit an official request to the department to reprogram \$5.1 million for presidential candidate protection until June 1, 2009—more than 4 months after it incurred obligations in excess of the statutory threshold.

Because USSS' former CFO failed to ensure the timely submission of a reprogramming request to the department prior to obligating funds more than 10% in excess of available appropriations, we determined that he was responsible for the FY 2009 ADA violation reported by the GAO. However, we have no evidence to support that the former CFO acted willfully or knowingly to violate the law.

Recommendations

We recommend that the DHS Under Secretary for Management report to the DHS Secretary in compliance with ADA reporting requirements the individual(s) responsible for the FY 2009 ADA violation reported by the GAO.

We recommend that the DHS Under Secretary for Management ensure that the DHS Chief Financial Officer and the USSS Chief Financial Officer—

1. Complete implementation of the November 30, 2009, corrective action plan developed in response to the Conference Report accompanying the FY 2010 *DHS Appropriations Act*.
2. Complete implementation of the recommendations previously issued in GAO-10-762⁴ to improve financial management controls and communication related to presidential candidate protection budget execution.

Management Comments and OIG Analysis

We obtained written comments on a draft of this report from the DHS Under Secretary for Management, and have included a copy of the comments in Appendix B. The Under Secretary for Management concurred with each of our recommendations and provided the status of the department's efforts to comply with ADA reporting requirements and actions taken by DHS and USSS to improve controls over financial management and communications.

We consider our recommendations to be resolved; they will remain open until we can verify that the recommended actions have been implemented. Respectively, each recommendation will be closed after the department has provided us with the following:

1. A letter formally notifying the President, Congress, and the Comptroller General of the individual responsible for the reported FY 2009 ADA violation.
2. The final funds control policy and procedures issued by the USSS CFO related to the timing of internal and external reprogramming requests.
3. Written notice from the GAO verifying that all recommendations issued to the Secretary of Homeland Security in GAO-10-762 have been implemented and closed.

⁴ *Secret Service: Additional Guidance Would Enhance Financial Management and Communication of Candidate Protection Spending to Congress* (GAO-10-762), June 30, 2010.

Appendix A

Purpose, Scope, and Methodology

The objectives of this audit were to determine (1) the name(s) and position(s) of the employee(s) responsible for an FY 2009 ADA violation reported in GAO-10-762, and (2) whether the employee(s) is (are) suspected of willfully and knowingly violating the ADA.

The scope of our audit was FY 2009 budget execution activities by USSS and DHS related to presidential candidate nominee protection during the 2008 presidential campaign. To conduct this audit, we obtained and reviewed workpapers from GAO's archives developed in support of GAO-10-762. We performed procedures in accordance with government auditing standards to verify that GAO's prior audit work was adequate and established a sufficiently reliable basis for its use within the context of our own audit objectives. We also independently obtained and analyzed relevant documentation provided by USSS and DHS, and interviewed personnel from both agencies.

We conducted this performance audit between July and November 2010 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

We appreciate the efforts by DHS management and staff to provide the information and access necessary to accomplish this review.

Appendix B Management Comments to the Draft Letter Report

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 6, 2011

Mr. Charles K. Edwards
Acting Inspector General
Office of Inspector General
U.S. Department of Homeland Security
245 Murray Lane, SW, Building 410
Washington, DC 20528-0305

Re: Draft Report OIG Project No. 10-143-AUD-CFO, USSS, "DHS/U.S. Secret Service
FY 2009 Anti-Deficiency Act Violation" — For Official Use Only

Dear Mr. Edwards:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the Office of Inspector General's (OIG's) work in planning and conducting its review and issuing this report, requested by the Department's Chief Financial Officer (CFO).

We are pleased to note the OIG found no evidence that anyone acted with any knowledge or willful intent to violate the law. Your report contained two recommendations. As discussed below, DHS concurs with both recommendations. Specifically, OIG recommended that the DHS Under Secretary for Management take the following actions:

Recommendation 1: Report to the DHS Secretary, in compliance with ADA reporting requirements, the individual(s) responsible for the FY 2009 ADA violation reported by the GAO.

Response: Concur. DHS will report the Anti-Deficiency Act (ADA) violation, including the name of the individual whom the OIG determined was responsible, in accordance with OMB Circular A-11 and the Department's Administrative Control of Funds policy and procedures for reporting violations, as documented in Section 2.5 of the DHS Financial Management Policy Manual. DHS will also ensure the transmittal of notification letters to the President, Congress, and Comptroller General. (Estimated Completion Date: June 30, 2011)

Recommendation 2: Ensure that the DHS Chief Financial Officer and the USSS Chief Financial Officer:

1. **Complete implementation of the November 30, 2009, corrective action plan developed in response to the Conference Report accompanying the *FY 2010 DHS Appropriations Act*.**

Appendix B

Management Comments to the Draft Letter Report

Response: Concur. The DHS Office of the Chief Financial Officer (OCFO) and the U.S. Secret Service (USSS) CFO have already substantially implemented the actions identified in the corrective action plan (CAP). The CAP identifies specific actions that DHS and USSS should take in three areas to ensure that an ADA violation does not occur in the future: *increase visibility*, *improve funds controls*, and *increase the rigor of internal and external reprogrammings*. Unless otherwise noted, initiatives discussed below were implemented in FY 2010 and early FY 2011:

Increase Visibility

- DHS OCFO has updated its budget execution guidance, which is available to leadership and financial management staff Department-wide, to provide clear direction on how to better analyze and review execution reports and identify potential problems earlier in the process. The updated guidance also addresses congressional limitations on obligations and reprogramming and transfers. DHS OCFO will continue to monitor Department-wide implementation of this guidance and provide additional updates, as appropriate.
- Instead of quarterly obligation plans, DHS OCFO now requires the USSS CFO to provide monthly obligation plans, with anticipated monthly obligations by Programs, Projects, and Activities (PPA). Updates to the plans are provided to DHS OCFO with the submission of monthly execution reports. DHS OCFO budget desk officers and other budget office personnel review and analyze the updates for early warning signs of variances from the plan.
- DHS OCFO has developed and delivered to all DHS Component financial management staff mandatory monthly execution report training as well as oversight training on congressional limitations and appropriations law. The training targeted analysis of the monthly execution report and SF 133 for discrepancies.
- DHS OCFO budget office personnel provide technical assistance to the USSS CFO and other Component CFOs, as necessary. The DHS OCFO budget desk officer now routinely schedules working sessions with USSS CFO to evaluate the current financial management controls that are in place for developing presidential campaign budget estimates.

Improve Funds Controls

- Early Warning System: USSS CFO personnel track actual obligations against planned and anticipated obligations in conjunction with benchmarks that act as red flags alerting USSS CFO of potential funding shortfalls.
- The USSS CFO has drafted policy to provide documentation of funds control procedures to ensure that internal and external reprogramming requests are submitted significantly before anticipated over-obligations are expected to occur. This draft policy is currently being routed through the USSS formal coordination process. The procedures for implementing the policy are currently in the testing process to confirm effectiveness.

Appendix B Management Comments to the Draft Letter Report

Testing is scheduled to be completed by the end of June 2011. The results of the coordination and testing processes will be incorporated into final policy and procedures, to be completed by the end of June 2011.

- DHS OCFO has put in place specific procedures should the monthly Budget Execution Report show overspending at the PPA level. Specific training has been implemented to ensure these procedures are followed.

Increase the Rigor of Internal and External Reprogramming

- All internal transfers and realignments now require the notification and written approval of DHS OCFO within 24 hours of the request.
 - DHS OCFO has implemented procedures to increase the rigor and responsiveness of reprogramming requests.
 - All external (above threshold) reprogramming proposals will be submitted to DHS OCFO by May 30, 2011, to meet the Appropriations Committee's June 30, 2011, deadline.
 - DHS Components are now required to first initiate an internal funding review to identify lower priority spending within their budgets before reaching out to the Department to identify sources from other Components.
 - Reprogramming using funds from other Components can only be requested if the Component can clearly articulate the adverse impact of using internal resources to cover the shortfall.
 - All reprogramming proposals must be submitted in writing and in the appropriate format. A reprogramming will only be considered by the Department after the impact of reducing funding for lower priority efforts is clearly articulated and communicated to DHS OCFO in writing.
2. **Complete implementation of the recommendations previously issued in GAO-10-762¹ to improve financial management controls and communication related to presidential candidate protection budget execution.**

Response: Concur. DHS OCFO has begun implementation of all five recommendations included in the aforementioned report. In addition, the USSS CFO has drafted the documentation and policies addressed in GAO's recommendations. Specifically, GAO recommended that the Secretary of DHS:

- *Direct the Director of USSS to develop documented procedures for preparing and reviewing its Monthly Execution and Staffing Reports and Presidential Campaign Cost*

¹ Government Accountability Office. SECRET SERVICE: *Additional Guidance Would Enhance Financial Management and Communication of Candidate Protection Spending to Congress (June 30, 2010).*

Appendix B Management Comments to the Draft Letter Report

Reports. USSS has completed a draft of the documented procedures for preparing and reviewing its Monthly Execution and Staffing Reports and Presidential Campaign Cost Reports.

The procedures are currently in the test phase of the process to ensure accuracy and reliability. Testing is scheduled to be completed by the end of June 2011. The results testing process will be incorporated into final policy and procedures, to be completed by the end of June 2011.

- *Direct the Director of USSS to develop written policies and procedures for charging costs when protection activities may be funded from multiple PPAs.*
This draft policy is currently being routed through the USSS formal coordination process. The procedures for implementing the policy are currently in the testing process to confirm effectiveness. Testing is scheduled to be completed by the end of June 2011. The results of the coordination and testing processes will be incorporated into final policy and procedures, to be completed by the end of June 2011.
- *Direct the DHS CFO to ensure that DHS's Components, including USSS, have guidance and training on how to develop and document appropriate benchmarks for monitoring obligations and expenditures.*
DHS has implemented new guidance and new training on how to develop and document appropriate benchmarks for monitoring obligations and expenditures.
- *Direct the DHS CFO to develop and provide written guidance clarifying the elements necessary in a reprogramming request from a Component to document internal funding reviews and the negative impact of using internal sources.*
The DHS CFO has developed updated budget guidance clarifying the specific elements necessary in a reprogramming request from a Component to document internal funding reviews and the negative impact of using internal sources.
- *Direct the DHS CFO to define timeframes by which DHS could assess timeliness of submissions of reprogramming notifications to the Appropriations Committees.*
Within the updated budget guidance, DHS has specifically defined timeframes by which DHS could assess timeliness of submissions of reprogramming notifications to the Appropriations Committees.

Again, thank you for the opportunity to review and comment on this draft report. We look forward to working with you on future Homeland Security issues.

Sincerely,



Rafael Borrás
Under Secretary for Management

Appendix C
Major Contributors to this Report

Sandra John, Director
Gary Alvino, Analyst-in-Charge
Michael Staver, Independent Referencer

Appendix D
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