

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**THE CENTERS FOR MEDICARE &
MEDICAID SERVICES DID NOT
IDENTIFY AND REPORT POTENTIAL
ANTIDEFICIENCY ACT VIOLATIONS
FOR 12 CONTRACTS USED TO
ESTABLISH THE FEDERAL
MARKETPLACE UNDER THE
AFFORDABLE CARE ACT**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



**Christi A. Grimm
Principal Deputy Inspector
General**

**February 2020
A-03-16-03001**

Office of Inspector General

<https://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at <https://oig.hhs.gov>

Section 8M of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief

Date: February 2020

Report No. A-03-16-03001

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

A 2008 HHS review of its acquisition process concluded that HHS components, including the Centers for Medicare & Medicaid Services (CMS), did not always obligate and expend funds in compliance with Federal requirements. As a result, in July 2011, HHS reported a department-wide Antideficiency Act violation totaling more than \$1.4 billion. These previously identified deficiencies, combined with issues with the October 2013 launch of the Federal marketplace, raised concerns about CMS's management and oversight of contracts awarded in whole or in part for the support of the Federal marketplace. CMS relies extensively on contractors to operate many of its healthcare programs, including the Federal marketplace.

Our objective was to determine whether CMS obligated and expended funds for its Federal marketplace contracts in compliance with appropriations law and Federal requirements.

How OIG Did This Review

We reviewed 74 contracts that CMS identified as having been awarded for the development, implementation, and operation of the Federal marketplace. We reviewed these contracts to identify their funding sources and determine whether their obligations and expenditures from March 23, 2010, through October 31, 2015, were made in accordance with funding source and other legal requirements.

The Centers for Medicare & Medicaid Services Did Not Identify and Report Potential Antideficiency Act Violations for 12 Contracts Used To Establish the Federal Marketplace Under the Affordable Care Act

What OIG Found

CMS correctly obligated and expended funds for 62 of the 74 contracts we reviewed. For the remaining 12 contracts, CMS did not obligate and expend funds in compliance with applicable laws and requirements. For instance, CMS did not always obligate funds in accordance with the bona fide needs rule. Under this rule, a fiscal year appropriation may be obligated only to meet a bona fide, or legitimate, need arising in, or in some cases arising before but continuing to exist in, the appropriation's period of availability. CMS did not meet this rule because it obligated the wrong fiscal year's funds to contract modifications. In addition, CMS did not meet rules governing expenditures because it paid some contract invoices with fiscal year funds that were not available at the time the billed work was performed. CMS's accounting system, the Healthcare Integrated General Ledger Accounting System (HIGLAS), did not ensure that expenditures were matched to obligations with an appropriate period of availability.

These errors resulted in potential, unreported Antideficiency Act obligation violations totaling \$164.6 million (\$155.9 million related to the Federal marketplace) and expenditure violations totaling \$22.4 million (\$18.3 million related to the Federal marketplace). In addition, for three contracts, CMS failed to record obligations totaling \$2.9 million in a timely manner. Failure to record obligations in a timely manner can result in Antideficiency Act violations.

What OIG Recommends and CMS Comments

We recommend that CMS (1) correct the bona fide needs obligation violations totaling \$164.6 million (\$155.9 million related to the Federal marketplace) and, if CMS is unable to correct those violations, report the Antideficiency Act violations; (2) correct the bona fide needs expenditure violations totaling \$22.4 million (\$18.3 million related to the Federal marketplace) and, if CMS is unable to correct those violations, report the Antideficiency Act violations; (3) coordinate with HHS, in consultation with the Office of the General Counsel, to develop guidance and train Office of Financial Management personnel on the correct process to record obligations and expenditures to avoid potential Antideficiency Act violations; and (4) develop automated controls in HIGLAS to ensure that contract expenditures for each program year are paid using appropriate program-year obligations.

Report in Brief Continued

Report No. A-03-16-03001

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



In written comments on our draft report, CMS did not specifically concur with our recommendations but described the actions it planned to take in response to those recommendations. CMS officials stated that in coordination with appropriate offices within HHS, they would examine the identified obligation and expenditure violations, make appropriate account adjustments, and report any remaining reportable Antideficiency Act violations as necessary. Further, CMS officials stated that in coordination with appropriate offices within HHS, they would develop additional guidance and provide training to personnel as appropriate once they examined the contract obligation and expenditure violations we identified. In response to our final recommendation, CMS stated that automated controls would be developed in HIGLAS as appropriate.

After receiving CMS's comments on our draft report, we made two revisions to the total value of the bona fide needs obligation violations. Our findings and recommendations, however, remain essentially unchanged.

TABLE OF CONTENTS

INTRODUCTION.....	1
Why We Did This Review	1
Objective	1
Background	1
The Federal Marketplace	1
Accounting for the Federal Marketplace.....	2
Federal Marketplace Funding Sources	3
Federal Requirements	4
How We Conducted This Review	6
FINDINGS.....	7
Federal Requirements.....	7
Fiscal Year Appropriations and the Antideficiency Act.....	7
The Bona Fide Needs Rule	8
Twelve Contracts Did Not Comply With Appropriations Requirements	11
Funding Obligations for Six Contracts Did Not Comply With the Bona Fide Needs Rule.....	12
Eight Contracts Did Not Comply With Time and Amount Requirements for Appropriations.....	15
CMS Did Not Record Contract Obligations in a Timely Manner and Inappropriately Backdated Funds	17
Causes of Potential Antideficiency Act Violations and Untimely Recording of Contract Obligations	18
RECOMMENDATIONS	19
CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE	20
APPENDICES	
A: Audit Scope and Methodology	21
B: Contracts Awarded To Develop, Implement, and Operate the Federal Marketplace	23
C: 2013–2015 Agency Funds Transferred To and Received From the Nonrecurring Expense Fund	27

D: Federal Requirements	28
E: CMS Comments.....	32

INTRODUCTION

WHY WE DID THIS REVIEW

In 2008, the U.S. Department of Health and Human Services (HHS) conducted a review¹ of its acquisition process to determine whether HHS was in compliance with appropriations law and Federal acquisition policies and procedures. The review concluded that HHS components, including the Centers for Medicare & Medicaid Services (CMS), did not always obligate and expend² funds in compliance with Federal requirements. As a result of the review, in July 2011, HHS reported a department-wide Antideficiency Act³ violation totaling more than \$1.4 billion. These previously identified deficiencies, combined with issues with the October 1, 2013, launch of the Federal marketplace, raised serious concerns about CMS's management and oversight of contracts that were awarded either in whole or in part for the support of the Federal marketplace.

This audit is part of a broader portfolio of Office of Inspector General (OIG) reviews that has examined various aspects of marketplace operations, including payment accuracy, eligibility verification, management and administration, and data security. As CMS relies extensively on contractors to operate many of its healthcare programs, including the Federal marketplace, this report addresses the sources and uses of funds that CMS obligated and expended for contracts awarded to establish and operate the Federal marketplace.

OBJECTIVE

Our objective was to determine whether CMS obligated and expended funds for its Federal marketplace contracts in compliance with appropriations law and Federal requirements.

BACKGROUND

The Federal Marketplace

The Affordable Care Act (ACA)⁴ requires HHS to operate a Federal marketplace for each State that elects not to establish and operate its own State marketplace. CMS is responsible for the operation of the Federal marketplace, which it operates through its Center for Consumer

¹ The HHS review, *Tiger Team on Multiple Year Funding*, was initiated on October 21, 2008. The resulting HHS report, *Funding Multiple Year Contracts, Tiger Team Summary Report*, was issued on July 29, 2009.

² Obligations represent Federal funds set aside to cover a legal commitment to pay, either immediately or in the future, for contractor goods and services. Expenditures represent the actual payment of funds to a contractor.

³ Codified at 31 U.S.C. § 1341(a), with additional provisions also found in § 1342 and § 1517(a). The Antideficiency Act prohibits, among other things, Federal agencies from obligating or expending Federal funds in advance or in excess of an available appropriation.

⁴ P.L. No. 111-148 (March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (March 30, 2010), is known as the Affordable Care Act.

Information and Insurance Oversight (CCIIO). A marketplace is designed to serve as a one-stop shop where individuals receive information about health insurance options, determine their eligibility for a qualified health plan, and enroll in the plan of their choice. Individuals can also determine whether they are eligible for financial assistance through insurance affordability programs. During the 2015 open enrollment period, 37 States used the Federal marketplace.

CMS identified 74 contracts⁵ that it awarded to 40 different contractors to develop, implement, and operate the Federal marketplace. Because some of the 74 contracts included services unrelated to the Federal marketplace, this report also addresses some services that CMS awarded for purposes other than the Federal marketplace. As of October 31, 2015, these 74 contracts had \$3.7 billion total obligations and \$3.3 billion total expenditures. Of those amounts, \$2.2 billion in obligations and \$1.8 billion in expenditures were related to the Federal marketplace. See Appendix B for contract obligations and expenditures by individual contract.

Accounting for the Federal Marketplace

The Office of the Assistant Secretary for Financial Resources (ASFR) provides advice and guidance to the Secretary of HHS on all aspects of budget, financial management, and grants and acquisition management. ASFR directs and implements these activities across HHS. For Federal marketplace activities that were originally initiated by or transferred to HHS, HHS processed obligations and expenditures related to awards and modifications and recorded those obligations and expenditures in HHS's Unified Financial Management System (UFMS). UFMS is a core accounting system that supports all HHS operating and staff divisions except CMS and the National Institutes of Health (NIH).

After HHS transferred operation of the Federal marketplace to CMS, CMS processed and recorded obligations and expenditures related to contract modifications. CMS's Office of Acquisition and Grants Management is responsible for developing and overseeing CMS acquisition efforts and awarding and administering Federal marketplace contracts.

Within CMS, the Office of Financial Management (OFM) performs accounting functions including formulating, presenting, and executing all CMS budget accounts; developing outlay plans and tracking contract and grant award amounts; performing cash management activities; and establishing and maintaining systems to control the obligation of funds and ensure that the Antideficiency Act is not violated.

The Healthcare Integrated General Ledger Accounting System (HIGLAS) is CMS's core accounting system that records transactions for the financial management of CMS's health programs. OFM records all obligations in HIGLAS and authorizes expenditures against those obligations for each contract awarded by CMS. OFM records in HIGLAS funding sources and amounts, as well as expenditures and other financial information. OFM also records in HIGLAS contract and contract modification common accounting numbers, which identify the funding

⁵ The 74 contracts include contracts initiated by other HHS offices and transferred to CCIIO. When we refer to CMS contracts in this report, we include contracts awarded by other HHS offices and transferred to CMS.

source, as well as various codes that identify each transaction by contract number, requisition number, project code, and other items. In addition, OFM records in HIGLAS the relevant codes and the amounts to be paid for each contractor invoice to ensure that funds are charged to the specific contract funding source for the work invoiced.

Federal Marketplace Funding Sources

CMS and HHS used the following funding sources to develop, implement, and operate the Federal marketplace:

- **Congressional appropriations:** Appropriations provide the budget authority that permits the Government to incur obligations that result in the immediate or future expenditure of Government funds. Fiscal year (annual) appropriations are available for obligation only in the fiscal year in which appropriated. Multiyear appropriations remain available beyond the fiscal year in which appropriated but expire at the end of a stated period. No-year funds remain available until expended and never expire or cancel.
- **The Nonrecurring Expense Fund (NEF):** The NEF was established in the Treasury to make funds available for capital acquisitions necessary for HHS operations. NEF funds are limited use funds and may only be used for capital acquisitions that include facilities infrastructure and information technology infrastructure; NEF funds are subject to approval by the Office of Management and Budget (OMB). The NEF includes funds transferred from unobligated balances left over from expired discretionary funds⁶ appropriated to HHS from the General Fund of the Treasury.⁷ Funds in the NEF are no-year and are available until expended. Funds from the NEF can be obligated only after the Committees on Appropriations of the House of Representatives and the Senate are notified, which must occur at least 15 days in advance of HHS's planned use of the funds.
- **The Health Insurance Reform Implementation Fund (Health Reform Fund):** The Health Reform Fund provided funding for Federal administrative expenses necessary to carry out the requirements of the ACA. This funding was derived from congressional appropriations. HHS and CMS used a portion of these funds to support the establishment of the Federal marketplace.
- **The HHS Secretary's limited authority to transfer funds between appropriations (the Secretary's transfer authority):** The Secretary's transfer authority allows the HHS

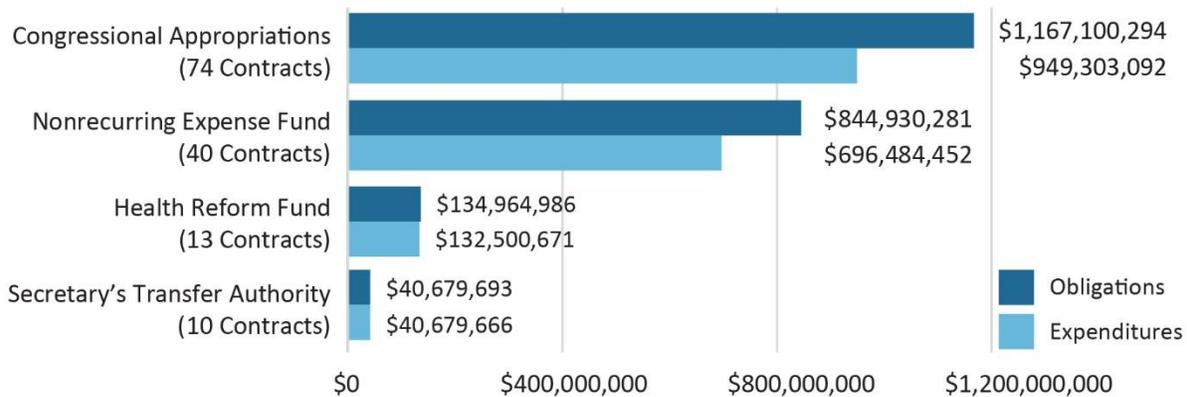
⁶ Discretionary funds are provided through annual appropriations. Examples include funds for salaries, other personnel expenses, and other agency operating expenses.

⁷ From fiscal year 2013 through fiscal year 2015, 17 HHS agencies transferred a total of \$2.4 billion into the NEF. The largest transfers were from NIH, which transferred \$1.1 billion (including Recovery Act funds). CMS did not transfer any funds into the NEF during this period but received \$1.2 billion of the \$1.4 billion transferred out of the NEF. See Appendix C for agency funds transferred to and received from the NEF.

Secretary to set aside an amount not to exceed one percent of discretionary funds appropriated in a fiscal year and transfer it between appropriations as long as the transfer does not increase any appropriation by more than three percent. This authority cannot create a new program or fund a project or activity that was not funded by an appropriation in the current fiscal year. The Committees on Appropriations of the House of Representatives and the Senate must be notified at least 15 days in advance of the transfer.⁸

Figure 1 provides details on the funding sources for the \$2.2 billion in obligations and \$1.8 billion in expenditures for the 74 contracts used to develop, implement, and operate the Federal marketplace.⁹

Figure 1: Federal Marketplace Funding by Source as of October 31, 2015



Federal Requirements

The Federal Acquisition Regulation (FAR) is the primary regulation that all Federal Executive agencies must follow when acquiring goods and services with appropriated funds (FAR, 48 CFR chapter 1). The HHS Acquisition Regulation (HHSAR) supplements the FAR and provides the regulatory framework for conducting acquisitions across HHS (HHSAR, 48 CFR chapter 3). Both provide a framework for awarding contracts, paying contractor invoices, and conducting management and oversight of contractor performance.

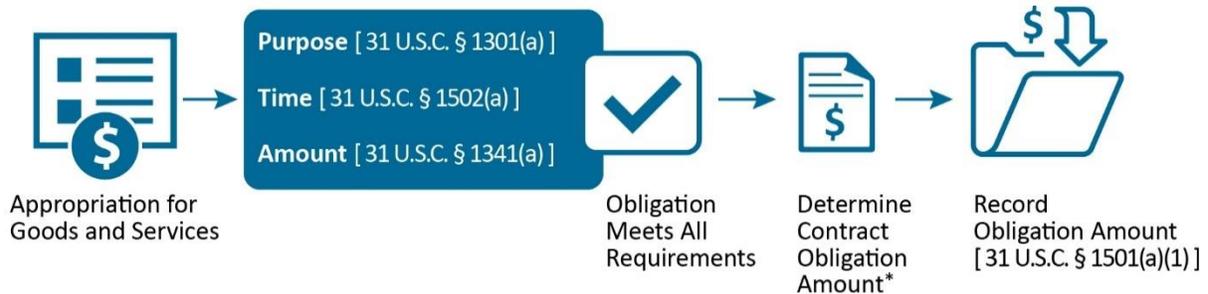
An agency may obligate or expend appropriations for goods and services when (1) the purpose of the obligation or expenditure is authorized (31 U.S.C. § 1301(a)), (2) the obligation occurs within the time for which the appropriation is available (31 U.S.C. § 1502(a)), and (3) the obligation or expenditure is within the amounts that Congress has established (31 U.S.C. § 1341(a)). These are referred to as the main tenets of appropriations law requirements:

⁸ An agency may transfer funds between appropriations only if Congress has provided the agency with the statutory authority to do so. Transfer authority may be provided in authorizing statutes but most often occurs in appropriations acts. See Appendix D.

⁹ Some contracts had more than one funding source.

purpose, time, and amount. According to the Recording Statute, an agency is required to record an obligation at the time it incurs a liability (31 U.S.C. § 1501(a)(1)). Figure 2 on the following page shows the necessary steps before an obligation can be recorded.

Figure 2: Recording Statute Requirements for Recording an Obligation



*Amounts known at the time of obligation.

The Antideficiency Act (31 U.S.C. § 1341(a)(1)) prohibits an agency from obligating or expending funds in advance of or in excess of an appropriation unless specifically authorized by law. A fiscal year appropriation may be obligated only to meet a bona fide, or legitimate, need arising in, or in some cases arising before but continuing to exist in, the appropriation’s period of availability (31 U.S.C. § 1502(a)). This is known as the “bona fide needs rule.”¹⁰ Bona fide needs may involve transactions that cover more than 1 fiscal year, and obligations for those services depend on the nature of the services involved. The services may be either nonseverable, representing a benefit received upon completion (single outcome), or severable, representing services that are continuing and recurring, in which case the benefit is received upon completion of that portion of the service.¹¹ An exception to the bona fide needs rule allows agencies to enter into contracts for severable services for periods beginning in 1 fiscal year and ending in the next fiscal year, using currently available funds, as long as the contracts do not exceed 1 year in duration (41 U.S.C. § 3902). Without this exception, contracts that cross fiscal years would violate the bona fide needs rule.

OMB Circular No. A-11, section 145: Requirements for Reporting Antideficiency Act Violations, defines an Antideficiency Act violation and provides the appropriate requirements for reporting an Antideficiency Act violation to the President (through the Director of OMB), Congress, and the Comptroller General of the Government Accountability Office (GAO).¹²

See Appendix D for a summary of Federal requirements referenced in this report.

¹⁰ 31 U.S.C. § 1502(a).

¹¹ For further information regarding the circumstances that make a service severable or nonseverable, see *Principles of Federal Appropriations Law: Third Edition* (GAO-04-261SP), chapter 5.

¹² OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, July 1, 2016.

HOW WE CONDUCTED THIS REVIEW

We reviewed the 74 contracts that CMS identified as having been awarded for the development, implementation, and operation of the Federal marketplace.¹³ The 74 contracts represented 40 different contractors and resulted in obligations totaling \$3.7 billion and expenditures totaling \$3.3 billion from March 23, 2010,¹⁴ through October 31, 2015 (the audit period). These totals include \$2.2 billion obligated and \$1.8 billion expended in support of Federal marketplace projects.¹⁵ Figure 3 shows the number of severable services contracts, nonseverable services contracts, and combination severable and nonseverable services contracts reviewed.

Figure 3: Reviewed Contracts by Service Type



We reviewed the 74 contracts to identify their funding sources and determine whether obligations and expenditures were made in accordance with funding source and other legal requirements. We limited our review of internal controls to those in place to ensure compliance with requirements for accounting for contract obligations and expenditures. We established reasonable assurance of the authenticity, accuracy, and completeness of HIGLAS data obtained from CMS and UFMS data obtained from HHS. However, we did not independently verify that the 74 contracts that CMS identified represent all of the contracts that were awarded for the development, implementation, and operation of the Federal marketplace during our audit period.

We conducted this performance audit in accordance with 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹³ The 74 contracts included 31 contracts with obligations and expenditures that were entirely related to the Federal marketplace. The other 43 contracts had obligations and expenditures related to both the Federal marketplace and other CMS projects.

¹⁴ The Patient Protection and Affordable Care Act (P.L. No. 111-148) was signed on March 23, 2010, and we reviewed all contract actions after that date related to the Federal marketplace.

¹⁵ CMS provided us with specific project number and common accounting number combinations that identify obligations and expenditures related to the Federal marketplace.

See Appendix A for the details of our audit scope and methodology.

FINDINGS

CMS correctly obligated and expended funds for 62 of the 74 contracts we reviewed; however, for the remaining 12 contracts, CMS did not obligate and expend all funds for its contracts in compliance with applicable laws and requirements. For six contracts, CMS did not correctly fund contract modifications, resulting in unreported potential Antideficiency Act obligation violations totaling \$164.6 million (\$155.9 million related to the Federal marketplace).¹⁶ For eight contracts,¹⁷ CMS did not comply with the time and amount requirements for appropriations, resulting in unreported potential Antideficiency Act expenditure violations totaling \$22.4 million (\$18.3 million related to the Federal marketplace).¹⁸ None of these potential violations were identified, investigated, or reported in accordance with OMB Circular A-11. These errors occurred because CMS's procedures did not ensure that all contract modifications complied with the bona fide needs rule or one of its statutory exceptions at the time of modification, and HIGLAS did not ensure that expenditures were matched to obligations with an appropriate period of availability. In addition, for 3 of the 74 contracts we reviewed, CMS failed to record in a timely manner HIGLAS obligations totaling \$2.9 million. Failure to record obligations in a timely manner can result in Antideficiency Act violations.

FEDERAL REQUIREMENTS

Fiscal Year Appropriations and the Antideficiency Act

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for which the funds are made available. An agency is required to record an obligation in the agency's accounting system against an appropriation currently available for the authorized purpose in an amount that reflects the Government's liability as a result of a contract or contract modification (31 U.S.C. § 1501(a)). The Antideficiency Act prohibits the agency from entering into contracts that exceed the amount of enacted appropriations for the year and from purchasing services and merchandise before appropriations are enacted (31 U.S.C. § 1341(a)(1)).¹⁹ Agencies must report Antideficiency Act violations to the President (through

¹⁶ Specifically, the unreported potential Antideficiency Act obligation violations totaled \$164,606,982 (\$155,866,794 related to the Federal marketplace).

¹⁷ Two contracts had both an obligation violation and an expenditure violation.

¹⁸ Specifically, the unreported potential Antideficiency Act expenditure violations totaled \$22,386,227 (\$18,269,216 related to the Federal marketplace).

¹⁹ Antideficiency Act violations can occur during the apportionment as well as allocation level of the budget process. (31 U.S.C § 1517).

OMB), Congress, and the Comptroller General of GAO (31 U.S.C. § 1351). OMB Circular A-11 prescribes the methodology for this reporting.

After fiscal year appropriations expire, they remain available to record, adjust, and liquidate obligations properly chargeable to the appropriation account for up to 5 years. After 5 years, the appropriation account is closed and any remaining balance (whether obligated or not) is canceled (31 U.S.C. § 1552(a)). If fiscal year funds are no longer available because an account has been closed, an agency may charge the obligation to the current fiscal year appropriation account available for the same purpose (31 U.S.C. § 1553(b)(1)). The amount to be charged to the current fiscal year appropriation account may not exceed 1 percent of the appropriation (31 U.S.C. § 1553(b)(2)). After the close of each fiscal year, the head of each agency must report to the President and the Secretary of the Treasury any adjustments that the agency made to appropriation accounts during the year, including any obligation adjustments made in accordance with 31 U.S.C. section 1553 (31 U.S.C. § 1554(b)).

When OIG identifies possible violations of the Antideficiency Act, it is the responsibility of the agency to investigate or audit the possible violations and attempt to correct them by making adjustments, and it is the responsibility of the agency head to report any Antideficiency Act violations that cannot be corrected (OMB Circular A-11 § 145).

The Bona Fide Needs Rule

Federal statutes limit the time for which an appropriation may be used. The bona fide needs rule requires that a fiscal year appropriation be obligated only to meet a bona fide, or legitimate, need arising in, or in some cases arising before but continuing to exist in, the appropriation's period of availability (31 U.S.C. § 1502(a)). Bona fide needs may involve transactions that cover more than 1 fiscal year, depending on the nature of the services involved. When an agency does not follow the bona fide needs rule, an Antideficiency Act violation can occur. In 2013, GAO issued a decision that addressed, among other things, the proper application of the bona fide needs rule.²⁰ See Appendix D for information about the decision.

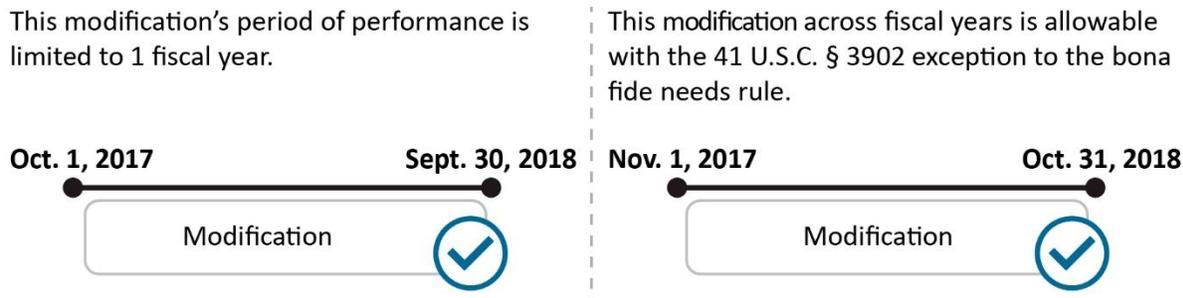
Severable services are continuing and recurring, but a contract for severable services must reflect a bona fide need identified for each program year, which may not exceed 12 months. For cost-reimbursement contracts, because the agency at the time of contract award cannot necessarily anticipate the need for and amount of increases to the contract ceiling, a modification that increases the ceiling (a new or additional need) is considered a bona fide need at the time the modification is executed. Contract modifications that reflect a new need must be charged to appropriations that are current at the time the modification is executed.

An exception to the bona fide needs rule allows agencies to enter into contracts for severable services for periods beginning in 1 fiscal year and ending in the next fiscal year, using currently

²⁰ GAO, *Department of Health and Human Services—Multiyear Contracting and the Bona Fide Needs Rule* (B-322455), published August 16, 2013.

available funds, as long as the contracts do not exceed 1 year in duration (41 U.S.C. § 3902). Without this exception, such action would violate the bona fide needs rule. (See Figure 4.)

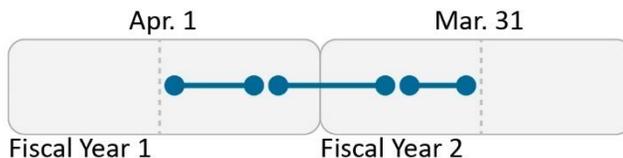
Figure 4: 41 U.S.C. Section 3902 Exception to the Bona Fide Needs Rule



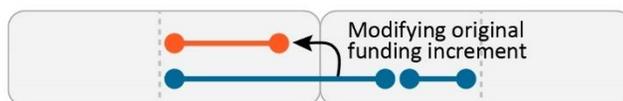
Although 41 U.S.C. section 3902 allows contract modifications to cross fiscal years, it does not allow contract modifications to overlap and cross fiscal years in a way that results in funding in advance of a need. The bona fide need for a contract modification lasts for the period of performance prescribed by the modification. The HHSAR dated June 28, 2010, stated that funding increments must be allocated to cover specific periods of performance (HHSAR 332.702-70(d)). The current HHSAR, effective December 18, 2015, expanded on the June 28, 2010, HHSAR to add that the contract or contract modification must include a funding table for obligations (HHSAR 332.703-72). The table must specify the start and end dates for each increment of performance funded and contain a contract line item, task number, or description of the services funded.

An agency may not add funds to increase the amount of funding for the same goods or services purchased by the previous modification during the same period of performance. Doing so would violate the bona fide needs rule by funding in advance of the need, which by law cannot arise until after the previous period of performance has ended. (See Figure 5 on the following page.)

Figure 6: Incremental Funding



Funding increments cover a 12-month period. Funding for each increment is made from the appropriation current at the time funds are obligated.



The agency modifies the original funding increment to add funds and adjust the end of the period of performance for the increment.

TWELVE CONTRACTS DID NOT COMPLY WITH APPROPRIATIONS REQUIREMENTS

For 12 of the 74 contracts reviewed, CMS did not obligate and expend all funds for its contracts in compliance with applicable laws and requirements, resulting in bona fide needs violations. These will result in Antideficiency Act violations totaling \$164.6 million (\$155.9 million related to the Federal marketplace) and expenditure violations totaling \$22.4 million (\$18.3 million related to the Federal marketplace) if CMS is unable to correct the bona fide needs violations.²¹ None of these violations were identified, investigated, or reported in accordance with OMB Circular A-11. Table 1 on the following page shows the unreported potential Antideficiency Act violations.

²¹ To correct a deficiency resulting from the obligation or expenditure of fiscal year funds that are no longer available because an account has been closed and the balance has been canceled, an agency may charge the obligation to the current appropriation accounts, including no-year funds accounts, available for the same purpose (U.S.C. § 1553(b)).

**Table 1: Unreported Potential Antideficiency Act Violations for
12 Federal Marketplace Contracts**

Contract No.	Contractor	Obligation Violation	Expenditure Violations	
			Prior-Year Funds	Subsequent-Year Funds
3	Blast Design Studio, Inc.	\$0	\$2,401	\$0
9	CGI Federal, Inc.	0	0	159,383
10	CGI Federal, Inc.	5,139,999	0	0
33	HP Enterprise Services, LLC	137,334,464	0	18,902,245
39	Northrop Grumman IT, Inc.	231,442	0	
45	Quality Software Services, Inc.	0	136,997	5,978
46	Quality Software Services, Inc.	18,489,608	84,495	409,867
48	Science Applications Int'l. Corp.	0	103,338	372,062
55	The Mitre Corporation	1,740,212	0	0
56	The Mitre Corporation	0	1,758,689	378,693
63	Spherecom Enterprises, Inc.	0	72,079	0
68	Accenture Federal Services, LLC	1,671,257	0	0
Subtotal			\$2,157,999	\$20,228,228
Total		\$164,606,982		\$22,386,227

In addition, for 3 of the 74 contracts we reviewed, CMS failed to record in a timely manner HIGLAS obligations totaling \$2.9 million.²²

Funding Obligations for Six Contracts Did Not Comply With the Bona Fide Needs Rule

For six contracts, CMS did not correctly fund contract modifications, resulting in bona fide needs rule violations. Specifically, CMS incrementally funded overlapping contract periods of performance for four severable services contracts and one combination severable services and nonseverable services contract and incrementally funded one contract without assigning a specific period of performance. This incorrect funding resulted in potential Antideficiency Act violations in funding obligations totaling \$164.6 million (\$155.9 million related to the Federal marketplace).

When periods of performance overlap, the overlapping portions are funded simultaneously; the portion funded before the prior need ends creates a bona fide needs violation. This type of violation occurred in two different circumstances. This type of violation was especially problematic in the first circumstance, in which the original and overlapping modifications were executed in the same fiscal year, with the periods of performance crossing fiscal years. Because the original period of performance crossed a fiscal year, CMS violated the bona fide needs rule

²² An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence (31 U.S.C. § 1501).

by executing a modification before that original period of performance ended. The bona fide need for the second obligation could not arise until the period of performance for the first obligation ended.²³ Therefore, when CMS entered overlapping modifications in which the original obligation crossed fiscal years, it funded the second obligation in advance of the bona fide need.

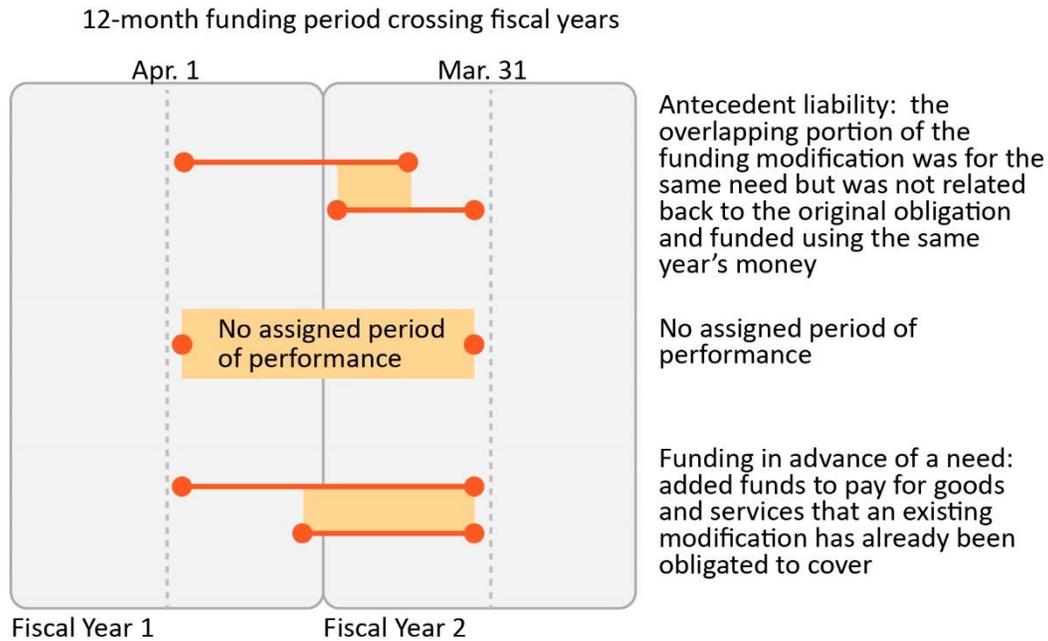
In the second circumstance, CMS executed overlapping modifications in different fiscal years for the same need. The overlapping portion of the second obligation is a bona fide needs violation because it is not funded in accordance with the antecedent liability rule.²⁴ Contract modifications that only increase the contract price, without ordering additional goods or services, relate back to the original obligation and should therefore be funded from the same fiscal year funds as the original obligation. However, CMS funded these overlapping obligations from the subsequent year's funds, thereby violating the bona fide needs rule.

Lastly, some contract obligations did not state specific periods of performance. Those contracts were funded incrementally with funds added to the contract as previously allocated funds were depleted. If there is no stated period of performance, the contract obligation does not have an established bona fide need, and the obligation violates the bona fide needs rule. If a contract is funded this way, appropriated funds may be used for services rendered during a period for which the funds are not available or may be used to fund services for which the funds were not appropriated. (See Figure 7.)

²³ GAO, *Department of Health and Human Services—Multiyear Contracting and the Bona Fide Needs Rule* (B-322455), issued August 16, 2013.

²⁴ 23 Comp. Gen. 943, 945 (1944).

Figure 7: Incremental Funding Errors



Example 1: Bona Fide Needs Rule Obligation Violations²⁵

Sample 1: Antecedent Liability

On June 21, 2013, CMS awarded a 5-year contract²⁶ to provide all support necessary for the production hosting and disaster-recovery requirements of CMS's Health Insurance Marketplace Infrastructure. The contract was estimated to total \$208.1 million.

During the third year of the contract, CMS obligated a total of \$116 million using fiscal year 2014 and no-year funds to exercise and incrementally fund Option Year 1 of the contract. Later modifications increased the contract ceiling and provided funding for an additional need; these modifications were correctly funded using current fiscal year and no-year funds. However, a modification dated January 27, 2015, obligated \$38.8 million using fiscal year 2015 funds for the same need that had initially been funded using fiscal year 2014 funds. Because this obligation was related to the original \$116 million obligation funded using fiscal year 2014 funds and no-year funds, it also should have been funded using fiscal year 2014 funds. As a result, CMS violated the bona fide needs rule in the amount of the portion of the \$38.8 million modification that overlapped.

²⁵ Samples may not reflect all obligation violations exhibited within each contract.

²⁶ See Appendix B, contract number 33. This was a fixed-price and cost reimbursable contract which included both severable and non-severable services.

We questioned the entire \$38.8 million modification as we were unable to determine the amount of the overlapping obligation.

Sample 2: No Period of Performance Assigned

On January 17, 2012, CMS awarded a 5-year contract²⁷ to provide technical expertise and support to test components and services delivered by multiple-component contracts. The 5-year contract was estimated to total \$70.4 million.

During the third year of the contract, CMS incrementally funded an obligation totaling \$8.5 million using fiscal year 2014 funds. However, when CMS incrementally funded this portion of the contract, it did not assign a specific period of performance for the obligation. Therefore, the contract obligation did not have an established bona fide need. As a result, CMS violated the bona fide needs rule in the amount of \$8.5 million.

Sample 3: Funding in Advance of a Need

On April 30, 2010, CMS awarded a 5-year contract²⁸ to obtain website development and support services for CMS's external and internal websites and applications. The contract was estimated to total \$73.2 million.

During the second year of the contract, on April 29, 2011, CMS funded obligations totaling \$11.3 million to exercise and incrementally fund Option Period 1 through February 29, 2012. Another modification dated September 22, 2011, also obligated an additional \$2.3 million using fiscal year 2011 funds to incrementally fund Option Period 1. This funding increment overlapped with the previous funding increment, whose bona fide need did not end until February 29, 2012. As a result, CMS violated the bona fide needs rule in the amount of \$2.3 million by funding the increment in advance of the need.

Eight Contracts Did Not Comply With Time and Amount Requirements for Appropriations

For eight contracts, CMS did not comply with the time and amount requirements for appropriations, which resulted in unreported potential Antideficiency Act expenditure violations totaling \$22.4 million (\$18.3 million related to the Federal marketplace). CMS used subsequent-year funds to pay for current-year costs for two contracts, used prior-year funds to pay for current-year costs for two contracts, and used both subsequent-year and prior-year funds to pay for current-year costs for the remaining four contracts.

²⁷ See Appendix B, contract number 46. This was a cost-plus-award-fee severable services contract.

²⁸ See Appendix B, contract number 10. This was a cost-plus-fixed-fee severable services contract.

Contracts Used Subsequent-Year Funds To Pay for Current-Year Costs

For six contracts,²⁹ CMS used \$20.2 million (\$17.7 million related to the Federal marketplace) in funds obligated for subsequent program years to pay for costs incurred in a current program year, resulting in bona fide needs violation and a potential Antideficiency Act expenditure violation.

Example 2: Expenditure Violation—Subsequent-Year Funds

On January 27, 2012, CMS awarded a 5-year contract¹ to provide enterprise identity-proofing and multi-factor authentication services. The contract was estimated to total \$78.6 million.

CMS correctly funded obligations totaling \$42.3 million for this contract using the following sources:

- \$2.8 million in contract year 1 using fiscal year 2012 funds;
- \$5.7 million in contract year 2 using fiscal year 2013 funds;
- \$18.1 million in contract year 3 using fiscal year 2014 and 2015 funds; and
- \$15.7 million in contract year 4 using 2015 and 2016 funds.

However, CMS made payments totaling \$372,063 using fiscal year 2014 funds for periods of performance before the date that funding was available. These payments were for three invoices:

- one invoice covering all of February 2014 was paid using funding that only became available on February 25, 2014;
- one invoice covering all of March 2014 was paid using funding that only became available on March 28, 2014; and
- one invoice covering all of August 2014 was paid using funding that only became available on August 28, 2014.

As a result, CMS used a total of \$372,063 from subsequent program years to pay for services in prior program years, resulting in a potential Antideficiency Act violation. CMS should have used funds that were available during the period covered by the invoice to pay for the cost of the services provided.

²⁹ Four of the six contracts used both subsequent- and prior-year funds to pay for current-year costs.

CMS Used Prior-Year Funds To Pay for Current-Year Costs

For six contracts,³⁰ CMS used \$2.2 million (\$566,569 related to the Federal marketplace) in funds remaining from 1 or more prior program years to pay for costs incurred in a current program year, resulting in a bona fide needs violation and a potential Antideficiency Act expenditure violation.

Example 3: Expenditure Violation—Prior-Year Funds

On July 11, 2014, CMS awarded a 3-year contract³¹ to provide information technology services. The contract was estimated to total \$3.9 million.

During the first year of the contract, CMS correctly funded obligations totaling \$1.5 million using fiscal year 2014 funds. CMS also correctly funded the second year of the contract with obligations totaling \$1.5 million using fiscal year 2015 funds. The total funded obligations were \$3 million.

However, CMS made payments totaling \$72,079 using fiscal year 2014 funds for two invoices related to the Federal marketplace whose period of performance included dates that extended beyond the availability of the funds from which the invoice was paid. Both invoices covered the period July 15 through July 31, 2015 and were paid from funds only available through July 14, 2015. As a result, CMS used a total of \$72,079 from a prior program year to pay for services provided in a subsequent program year, resulting in a potential Antideficiency Act violation. CMS should have used fiscal year 2015 funds that were available during the period covered by the invoice to pay for the cost of the services provided.

CMS DID NOT RECORD CONTRACT OBLIGATIONS IN A TIMELY MANNER AND INAPPROPRIATELY BACKDATED FUNDS

For three contracts, CMS failed to record in a timely manner HIGLAS obligations totaling \$2.9 million. An agency should record an obligation at the time it incurs a liability. Although these errors are not Antideficiency Act violations, the failure to record obligations in a timely manner would cause an inaccurate accounting of available funds, which can result in an Antideficiency Act violation.

Example 4: Contract Obligations Not Recorded in a Timely Manner

On September 30, 2011, CMS awarded a contract³² with a 2-year base period, three 1-year option periods, and a 6-month transition period to develop

³⁰ Four of the six contracts used both subsequent and prior-year funds to pay for current-year costs.

³¹ See Appendix B, contract number 63. This was a time and materials severable services contract.

³² See Appendix B, contract number 12. This contract's base period was a cost-plus-fixed-fee nonseverable

information technology systems for the Federal marketplace. The contract was estimated to total \$93.7 million.

During the course of the contract, contract modifications extended the base period and the scope of work. The base period was correctly funded with obligations totaling \$204.5 million using funds from fiscal years 2011, 2012, 2013, and 2014. On January 10, 2014, CMS issued a modification for the contractor to transition services to a new contractor. The transition period was correctly funded with obligations totaling \$4.9 million using fiscal year 2014 funds. The total funded obligations during the base and transition periods was \$209.4 million.

During the transition period, CMS correctly used fiscal year 2014 funds to make payments totaling \$1.9 million for one invoice related to the Federal marketplace covering the period October 1, 2013, through February 28, 2014. However, the obligation of those fiscal year 2014 funds was not recorded until February 18, 2014, nearly 4 months after the October 1, 2013, start of the period of performance. CMS should have recorded the obligation when it was made. Although this is not an Antideficiency Act violation, CMS's failure to record the obligation in a timely manner could have resulted in an Antideficiency Act violation.

Further, in one contract when funds were not available to cover an entire contract option, CMS chose to fund the contract option incrementally and inappropriately backdated the start date of the funding increments to the original option start date. CMS should have specified the period of performance for each increment of funding and should have designated the funding start date for each funding increment on the date which funding was added or the date on which work covered by that funding began. Although not a bona fide needs violation, this practice could lead to fiscal and contracting problems as the subsequent funding increments all began with the same start date.³³

In both cases, failure to record obligations and adjustments in a timely manner and the failure to accurately identify the period of performance for a funding increment increases the risk of

services period, and the three option periods were cost-plus-award-fee severable services periods.

³³ Incorrectly identifying a period of performance creates a potential for noncompliance with the Antideficiency Act, which states that Federal employees must not authorize an obligation, under any appropriation, in excess of the amount available or for any purpose in advance of authorization by law. A failure to record a valid obligation or expenditure as of the date incurred does not prevent an agency from incurring, and being required to report, a potential Antideficiency Act violation if, when the obligation or expenditure is recorded, it exceeds available funds or other limitations. Thus, all obligations must be recorded in a timely manner. See also 31 U.S.C. § 1501. Although 31 U.S.C. § 1501 does not explicitly state that obligations must be recorded as they arise or are incurred, GAO found this follows logically from an agency's responsibility to comply with the Antideficiency Act. See, e.g., B 302358, December 27, 2004.

obligating more funds than required during a contract period. These failures also increase the risk that program officials will not have accurate information to use in decision making.

CAUSES OF POTENTIAL ANTIDEFICIENCY ACT VIOLATIONS AND UNTIMELY RECORDING OF CONTRACT OBLIGATIONS

Potential Antideficiency Act violations and contract obligation recording errors occurred because CMS's procedures did not ensure that the modifications complied with the bona fide needs rule or one of its statutory exceptions at the time of modification and HIGLAS did not validate that expenditures were matched to obligations with an appropriate period of availability.

During the contract modification process, CMS did not always identify the specific period of performance for each funding increment. CMS officials stated that they believed that when they exercised an option, the entire option period was the period of performance and funds could be added at any time during that period. Following this reasoning, CMS incorrectly funded portions of some contracts with money from incorrect fiscal years.

In addition, OFM personnel stated that OFM uses a "standard process of using funding first in first out" when paying for services. However, OFM should have paid for services from the funds obligated for each specific increment of performance. As each contract period progressed, the contractor submitted invoices that specified the time period for which the services were charged. OFM should have matched the invoice and the amounts to funds obligated for the periods for which the services were charged. Instead, OFM incorrectly expended the funds using the oldest obligation first, regardless of the time period covered by the invoice.

The HIGLAS accounting system has no automated controls to ensure that expenditures are paid using funds available for the period in which the goods or services are provided. OFM personnel who process payments for contractor invoices must use a manual process outside of HIGLAS to independently determine which funds to expend for each payment. As a result, payments may be erroneously charged to funds that are not available for the period for which services were charged, resulting in bona fide needs violations and potential Antideficiency Act violations.

RECOMMENDATIONS

We recommend that the Centers for Medicare & Medicaid Services:

- correct the bona fide needs obligation violations totaling \$164,606,982 (\$155,866,794 related to the Federal marketplace) and, if CMS is unable to correct those violations, report the Antideficiency Act violations;
- correct the bona fide needs expenditure violations totaling \$22,386,227 (\$18,269,216 related to the Federal marketplace) and, if CMS is unable to correct those violations, report the Antideficiency Act violations;

- coordinate with HHS, in consultation with the Office of the General Counsel, to develop guidance and train OFM personnel on the correct process to record obligations and expenditures to avoid potential Antideficiency Act violations; and
- develop automated controls in HIGLAS to ensure that contract expenditures for each program year are paid using appropriate program-year obligations.

CMS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, CMS did not specifically concur with our recommendations but described the actions it planned to take in response to those recommendations. CMS officials stated that, in coordination with appropriate offices within HHS, they would examine the identified obligation and expenditure violations, make appropriate account adjustments, and report any remaining reportable Antideficiency Act violations as necessary. Further, CMS officials stated that, in coordination with appropriate offices within HHS, they would develop additional guidance and provide training to personnel as appropriate once they examined the contract obligation and expenditure violations we identified. In response to our final recommendation, CMS stated that automated controls would be developed in HIGLAS as appropriate.

After receiving CMS's comments on our draft report, we made two revisions to the total value of the bona fide needs obligation violations. Our findings and recommendations, however, remain essentially unchanged.

CMS comments are included in their entirety in Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed the 74 contracts that CMS identified as awarded for the development, implementation, and operation of the Federal marketplace. The 74 contracts represented 40 different contractors and resulted in obligations totaling \$3,743,813,994 and expenditures totaling \$3,294,251,070 from March 23, 2010, through October 31, 2015 (the audit period). Those obligations and expenditures included approximately \$2,187,675,254 obligated and \$1,818,967,881 expended in support of Federal marketplace projects. The 74 contracts consisted of 62 severable services contracts, 7 nonseverable services contracts, and 5 contracts that combined severable and nonseverable services.

We reviewed the 74 contracts to identify their funding sources and determine whether obligations and expenditures were made in accordance with funding source and other legal requirements. We limited our review of internal controls to those in place to ensure compliance with requirements for accounting for contract obligations and expenditures. We established reasonable assurance of the authenticity, accuracy, and completeness of HIGLAS data obtained from CMS and UFMS data obtained from ASFR. However, we did not independently verify that the 74 contracts that CMS identified represent all of the contracts that were awarded for the development, implementation, and operation of the Federal marketplace during our audit period.

We conducted our audit from January 2016 to September 2019.

METHODOLOGY

To accomplish our objectives, we:

- reviewed Federal appropriations laws, Federal requirements, and contract requirements;
- identified and reviewed CMS controls for accounting for contractor services in accordance with fiscal year appropriation requirements for obligations and expenditures;
- reviewed obligation and expenditure data recorded in HIGLAS and UFMS³⁴ for the 74 contracts CMS identified as awarded for the development, implementation, and operation of the Federal marketplace;

³⁴ Obligations and expenditures for four contracts were recorded in UFMS before HHS transferred operation of the Federal marketplace to CMS.

- reviewed contract file documentation, including statements of work, to determine the nature of the products or services provided;
- reviewed contract funding documents and payment invoices to determine what appropriations were obligated, recorded, and expended; and
- discussed the results of our review and provided the detailed potential Antideficiency Act violations to ASFR and CMS officials.

We conducted this performance audit in accordance with 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 on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**APPENDIX B: CONTRACTS AWARDED TO DEVELOP, IMPLEMENT, AND OPERATE
THE FEDERAL MARKETPLACE**

No.	Type*	Contractor	Total Obligations	Total Expenditures
1	S	Aquilent, Inc.	\$64,183,022	\$47,593,485
2	S	Blast Design Studio, Inc.	197,625	197,625
3	S	Blast Design Studio, Inc.	2,236,860	1,391,620
4	S	Blue Canopy Group, LLC	24,958,500	16,201,402
5	S	Booz Allen & Hamilton, Inc.	15,033,182	14,607,287
6	S	Carahsoft Technology Corp.	330,182	330,182
7	S	Carahsoft Technology Corp.	238,349	238,349
8	S	CGI Federal, Inc.	23,547,210	23,533,529
9	S	CGI Federal, Inc.	32,106,303	31,700,651
10	S	CGI Federal, Inc.	149,889,011	147,995,102
11	S	CGI Federal, Inc.	15,786,140	14,581,688
12	C	CGI Federal, Inc.	209,364,213	206,225,730
13	S	Corporate Executive Board	746,949	560,212
14	S	Creative Computing Solutions, Inc.	28,658,678	22,700,744
15	N	Dede, Inc. DBA Genova Technologies	3,266,077	3,156,044
16	N	Dede, Inc. DBA Genova Technologies	1,110,327	1,110,327
17	S	Dede, Inc. DBA Genova Technologies	5,879,433	4,255,918
18	S	Dede, Inc. DBA Genova Technologies	7,148,053	7,148,053

No.	Type*	Contractor	Total Obligations	Total Expenditures
19	S	Dede, Inc. DBA Genova Technologies	1,749,608	1,749,608
20	N	Dede, Inc. DBA Genova Technologies	3,175,424	3,175,424
21	S	Dede, Inc. DBA Genova Technologies	7,579,078	7,579,078
22	S	Dede, Inc. DBA Genova Technologies	15,084,400	14,484,809
23	S	Deloitte Consulting LLP	2,129,716	2,129,716
24	S	FedResults, Inc.	16,338,409	16,175,209
25	S	eGlobalTech	3,986,800	3,591,396
26	S	eGlobalTech	3,603,027	3,379,730
27	S	eGlobalTech	1,975,916	1,975,916
28	S	eGlobalTech	1,984,012	1,794,413
29	S	Government Acquisitions, Inc.	12,534,396	12,534,396
30	S	Heitech Services, Inc.	2,998,342	2,862,143
31	S	Heitech Services, Inc.	3,966,308	3,082,666
32	S	Heitech Services, Inc.	8,947,829	5,355,409
33	C	HP Enterprise Services, LLC	431,039,319	348,452,903
34	S	IDL Solutions, Inc.	101,060,180	76,840,934
35	S	Innosoft Corporation	2,804,742	2,804,742
36	N	L&M Policy Research, LLC	4,441,906	4,209,033
37	C	Lockheed Martin Services, Inc.	999,596,497	990,779,494
38	S	Maricom Systems, Inc.	73,549,175	61,208,294

No.	Type*	Contractor	Total Obligations	Total Expenditures
39	S	Northrop Grumman Information Technology, Inc.	64,718,082	58,720,672
40	S	Onix Networking Corporation	113,625	113,625
41	N	ProTelecom, LLC	69,195	69,195
42	N	ProTelecom, LLC	685,260	685,260
43	S	Quality Software Services, Inc.	3,072,883	2,631,594
44	C	Quality Software Services, Inc.	178,321,941	136,008,578
45	S	Quality Software Services, Inc.	127,180,341	100,851,952
46	S	Quality Software Services, Inc.	94,631,489	86,663,048
47	S	Quality Technology, Incorporated	57,951,940	45,985,418
48	S	Science Applications Int'l Corp.	42,271,428	26,261,302
49	S	Scope Infotech, Inc.	2,993,846	2,544,053
50	S	Spann & Associates, Inc.	22,745,532	14,111,477
51	S	Spherecom Enterprises, Inc.	16,695,267	16,695,267
52	S	Spherecom Enterprises, Inc.	3,587,590	3,587,590
53	S	Terremark Federal Group, Inc.	60,802,140	60,799,653
54	S	The Mitre Corporation	14,149,792	9,569,884
55	S	The Mitre Corporation	7,343,197	7,096,371
56	S	The Mitre Corporation	22,167,084	19,501,067
57	S	The Mitre Corporation	28,567,878	27,064,797
58	S	The Mitre Corporation	5,124,546	4,955,262
59	S	TurningPoint Global Solutions	6,559,250	6,031,983

No.	Type*	Contractor	Total Obligations	Total Expenditures
60	S	Accenture Federal Services, LLC	189,935,351	177,846,891
61	S	Four, LLC	86,347,943	86,347,943
62	S	Affigent, LLC	13,536,586	13,536,586
63	S	Spherecom Enterprises, Inc.	2,989,747	1,589,989
64	S	Terremark Federal Group, Inc.	138,340,541	138,340,541
65	S	Innosoft Corporation	3,131,035	1,744,216
66	S	Customer Value Partners, Inc.	3,400,822	566,802
67	S	Buccaneer Computer System and Services	12,685,341	571,005
68	S	Accenture Federal Services, LLC	155,242,416	96,070,956
69	S	Solutions By Design IT, LLC	14,413,629	5,044,942
70	S	eGlobal Tech	1,266,948	52,790
71	S	eDaptive Systems, LLC	14,465,918	0 ³⁵
72	C	Quality Software Services, Inc.	39,148,376	30,667,091
73	S	Booz Allen & Hamilton, Inc.	25,070,994	3,997,766
74	N	TurningPoint Global Solutions	860,843	232,243
Total			\$3,743,813,994	\$3,294,251,070

*S = severable services contract, N = nonseverable services contract, C = combined severable and nonseverable services contract

³⁵ The contract that CMS awarded to eDaptive Systems, LLC, was protested in May 2015. Work began on this contract in November 2015. As a result, no payments were made to eDaptive Systems, LLC, during our audit period, which ended October 31, 2015.

**APPENDIX C: 2013–2015 AGENCY FUNDS TRANSFERRED TO AND RECEIVED FROM
THE NONRECURRING EXPENSE FUND**

Agency	Transferred to NEF	Received From NEF
Office of the Secretary	\$98,033,878	\$0
Administration for Children and Families	242,306,157	0
RA*—Administration for Children and Families	90,549,517	0
Administration for Community Living	18,000,000	0
Agency for Toxic Substances and Disease Registry	1,829,959	0
Centers for Disease Control and Prevention	314,059,522	45,000,000
RA—Centers for Disease Control and Prevention	16,245,388	0
Food and Drug Administration	137,000,000	90,000,000
Health Resources and Services Administration	192,312,283	0
RA—Health Resources and Services Administration	19,058,835	0
NIH	912,524,580	10,000,000
RA—NIH	181,674,643	0
Office for Civil Rights	1,420,449	0
Office of Inspector General	2,688,500	0
Office of the National Coordinator for Health Information Technology	3,853,423	0
Substance Abuse and Mental Health Services Administration	136,150,385	0
RA—Agency for Healthcare Research and Quality	17,600,000	0
RA—Administration on Aging	296,619	0
Indian Health Service	0	50,000,000
Centers for Medicare & Medicaid Services	0	1,235,100,000
Total	\$2,385,604,138	\$1,430,100,000

* RA = Recovery Act funds

APPENDIX D: FEDERAL REQUIREMENTS

PUBLIC LAWS

Consolidated Appropriations Act, 2008, P.L. No. 110-161, Division G, Section 223

This section established in the Treasury a NEF to make funds available for capital acquisitions necessary for HHS operations. These capital acquisitions include facilities infrastructure and information technology infrastructure and are subject to approval by OMB.

Consolidated Appropriations Act, 2012, P.L. No. 112-74; Continuing Appropriations Resolution, 2013, P.L. No. 112-175; Consolidated and Further Continuing Appropriations Act, 2013, P.L. No. 113-6; and Consolidated Appropriations Act, 2014, P.L. No. 113-76

The 2012 and 2014 appropriations acts established that discretionary funds appropriated for the relevant current fiscal year for HHS may be transferred between appropriations. The 2013 continuing resolutions continued the 2012 authority through fiscal year 2013. The amount to be transferred cannot exceed 1 percent of the discretionary funds, and no such transfer may increase an appropriation by more than 3 percent. The transfer authority cannot be used to create any new program or to fund any project or activity for which no funds were provided in the 2012 and 2014 appropriations acts. Both Acts also required that the Committees on Appropriations of the House of Representatives and the Senate be notified at least 15 days in advance of any transfer.

UNITED STATES CODE

31 U.S.C. § 1301(a), Appropriations application

This section states that appropriations are limited to the purpose for which the appropriations were made, except as otherwise provided by law.

31 U.S.C. § 1341(a)(1), Limitations on expending and obligating amounts

This section identifies the limitations that prohibit an agency from obligating or expending funds in advance of or in excess of an appropriation unless specifically authorized by law. This section is commonly referred to as the Antideficiency Act.

31 U.S.C. § 1351, Reports on violations

This section requires the head of an agency to report violations of the Antideficiency Act (31 U.S.C. § 1341(a)) to the President, Congress, and the Comptroller General in accordance with the reporting requirements prescribed in OMB Circular A-11, part 4, section 145.

31 U.S.C. § 1501(a)(1), Documentary evidence requirement for government obligations

This section states that agencies should record an obligation against a currently available appropriation for the authorized purpose in an amount reflecting the liability incurred as a result of a binding written agreement.

31 U.S.C. § 1502(a), Balances available

This section states that the balance of an appropriation is limited for obligation to a definite period and is available only for payment of expenses properly incurred during the period of availability. Further, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.

31 U.S.C. § 1552(a), Procedure for appropriation accounts available for definite periods

This section states that a fixed appropriation account is closed 5 years after the period of availability during which the funds were available for obligation. At that time, the appropriation account is closed, and the balance is canceled and is no longer available for further obligation or expenditure.

31 U.S.C. § 1553(b), Availability of appropriation accounts to pay obligations

This section states that after a fixed appropriation account is closed and canceled, an agency may charge an obligation or an adjustment to an obligation chargeable to the canceled account to a current-year appropriation account available for the same purpose. However, the amount charged may not exceed 1 percent of the current appropriation.

31 U.S.C. § 1554, Audit, control, and reporting

This section requires the head of each agency to report to the President and the Secretary of the Treasury any obligation adjustments that the agency made during the year pursuant to section 1553.

41 U.S.C. § 3902, Severable services contracts for periods crossing fiscal years

This section states that an agency is allowed to enter into a contract for severable services for periods beginning in one fiscal year and ending in the next fiscal year using currently available funds as long as the contracts do not exceed 1 year in duration.

DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION

HHSAR, 48 CFR § 332.702-70(d), Contract Financing (removed from HHSAR as of December 18, 2015)

This section stated that contracting officers were authorized to use incremental funding when full funding was not possible. It also stated that an incrementally funded contract was a

multiple-year contract in which funds were allocated to cover a specific period or increment of performance.

HHSAR, 48 CFR § 332.703-72, Incremental Funding Table

The section provides specifics about the incremental funding table that a contracting officer must insert into a contract when incremental funding will be used. It further states the contracting officer must identify the increment of performance covered by the funding and specify the start and end dates for each increment of performance.

OFFICE OF MANAGEMENT AND BUDGET CIRCULAR

OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget

This circular provides guidance on preparing the Federal budget and includes instruction on budget execution. Section 145, *Requirements for Reporting Antideficiency Act Violations*, defines what an Antideficiency Act violation is and provides the appropriate reporting requirements, including sample transmittal letters for reporting an Antideficiency Act violation to the President (through the Director of OMB), Congress, and the Comptroller General of GAO.

GOVERNMENT ACCOUNTABILITY OFFICE GUIDANCE

Department of Health and Human Services—Multiyear Contracting and the Bona Fide Needs Rule, B-322455 (Aug. 16, 2013)

This GAO opinion examined a severable services contract awarded by NIH. The contract was funded by multiple, overlapping funding modifications that were executed in the same fiscal year and continued into the following fiscal year. The opinion stated that an agency must ensure that contract modifications comply with the bona fide needs rule or one of its statutory exceptions. GAO stated that an agency may not obligate current appropriations for the bona fide needs of future fiscal years without statutory authority. The opinion further clarified that in the circumstance of overlapping funding modifications that cross fiscal years, the bona fide need for the second and subsequent modifications cannot arise until the period of performance for the original funding modification has ended.

Bureau of Customs and Border Protection—Automated Commercial Environment Contract—Multiyear Contracting, B-302358 (Dec. 27, 2004)

This GAO opinion examined the recording of an obligation for a contract awarded by the Bureau of Customs and Border Protection. The opinion stated that Customs should have recorded the obligation in its obligational accounting records at the time of contract award. The opinion stated that consistent with 31 U.S.C. § 1501(a)(1), commonly referred to as the recording statute, Customs should have recorded an obligation against a currently available appropriation for the authorized purpose in an amount reflecting the liability incurred as a result of a binding written agreement at the time the contract was awarded. The opinion

further stated to ensure the integrity of Customs' obligational accounting records needed for a variety of reasons not least of which is compliance with the Antideficiency Act.

***“Antecedent Liability,” Principles of Federal Appropriations Law: Third Edition,
GAO-04-261SP, Page 5-35***

Government contracts frequently contemplate that performance will extend into later fiscal years. As with an original contract award, any later modifications must comply with the bona fide needs rule. When an upward price adjustment is necessary in a later year, the general approach is to ask whether the adjustment is attributable to an “antecedent liability.” If the government’s liability arises and is enforceable under a provision in the original contract, then it is a bona fide need of the year in which the contract was executed. A within-scope price adjustment requested and approved in a subsequent fiscal year will be charged against the appropriation current at the time the contract was originally executed. 59 Comp. Gen. 518 (1980); 23 Comp. Gen. 943 (1944); 21 Comp. Gen. 574 (1941); 18 Comp. Gen. 363 (1938); A-15225, Sept. 24, 1926; B-146285-O.M., Sept. 28, 1976.

APPENDIX E: CMS COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

DATE: November 21, 2019

TO: Joanne Chiedi
Acting Inspector General

FROM: Seema Verma
Administrator
Centers for Medicare & Medicaid Services

SUBJECT: Office of Inspector General (OIG) Draft Report: The Centers for Medicare & Medicaid Services Did Not Identify and Report Potential Antideficiency Act Violations for 12 Contracts Used To Establish the Federal Marketplace Under the Affordable Care Act (A-03-16-03001)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the Office of Inspector General's (OIG) draft report. CMS is committed to ensuring that funds are obligated and expended in accordance with appropriations law and federal contracting requirements.

CMS understands that incremental funding is a vital but complex tool for funding agency obligations, and that guidance around incremental funding can lead to differing interpretations of agency responsibilities. In order to assist the agency as well as financial and contracting staff working in good faith, CMS requests that the Federal Acquisition Regulations Council review and provide additional regulatory clarity around this issue.

OIG's recommendations and CMS' responses are below.

OIG Recommendation

Correct the bona fide needs obligation violations totaling \$246,778,158 (\$238,037,970 related to the Federal marketplace) and, if CMS is unable to correct those violations, report the Antideficiency Act violations.

CMS Response

CMS, in coordination with appropriate offices within the Department of Health and Human Services, will examine the identified contract obligations, and if necessary, make any appropriate account adjustments and report any resulting reportable Antideficiency Act violations.

OIG Recommendation

Correct the bona fide needs expenditure violations totaling \$22,386,227 (\$18,269,216 related to the Federal marketplace) and, if CMS is unable to correct those violations, report the Antideficiency Act violations.

CMS Response

CMS, in coordination with appropriate offices within the Department of Health and Human Services, will examine the identified expenditure obligations, and if necessary, make any appropriate account adjustments and report any resulting reportable Antideficiency Act violations.

OIG Recommendation

Coordinate with HHS, in consultation with the Office of the General Counsel, to develop guidance and train OFM personnel on the correct process to record obligations and expenditures to avoid potential Antideficiency Act violations

CMS Response

CMS, in coordination with appropriate offices within the Department of Health and Human Services, will examine the identified contract obligations and expenditures. Depending on the outcome of its examination, CMS will develop additional guidance and provide training to personnel as appropriate.

OIG Recommendation

Develop automated controls in HIGLAS to ensure that contract expenditures for each program year are paid using appropriate program-year obligations.

CMS Response

CMS, in coordination with appropriate offices within the Department of Health and Human Services, will examine the identified contract obligations and expenditures. Depending on the outcome of its examination, CMS will develop automated controls in HIGLAS as appropriate.