

**PALMS Funding and Payments
Did Not Comply with
Federal Appropriations Law**





DHS OIG HIGHLIGHTS

PALMS Funding and Payments Did Not Comply with Federal Appropriations Law

March 24, 2020

Why We Did This Audit

This is the second of two audits looking at DHS' Performance and Learning Management System (PALMS). Our objective was to determine whether DHS' funding and payments for PALMS complied with appropriations law and related policies and procedures.

What We Recommend

We made nine recommendations to address violations of Federal appropriations law and to improve controls to prevent potential violations in the future.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Found

The Department of Homeland Security's funding and payments for PALMS violated Federal appropriations law. Specifically, DHS violated the bona fide needs rule in using fiscal year 2011 component funds in FYs 2012 and 2013 for e-Training services and PALMS implementation, respectively, when the funds were not legally available for those needs. This occurred because the Department misinterpreted a provision in DHS appropriations acts dating back to FY 2009, regarding the availability of funds provided to DHS' Working Capital Fund.

Additionally, the Department used component funds for PALMS implementation in FYs 2013 – 2015, which amounted to use of appropriations for other than their authorized purpose, thereby violating the purpose statute. PALMS implementation was not an authorized purpose of the component appropriations. Violation of the purpose statute occurred because DHS officials approved a PALMS acquisition funding strategy that included using component funds obligated for a Working Capital Fund activity.

Due to the bona fide needs rule and purpose statute violations, DHS may also have violated the *Antideficiency Act* in FYs 2013 through 2015 when the Department augmented the Human Resources Information Technology program appropriations with component funds.

Finally, DHS made upfront payments for annual PALMS subscriptions that exceeded the value of the subscription services received, which violated the statutory prohibition on advance payments. Headquarters and component contracting officers did not purchase and pay for PALMS subscriptions according to the terms in the PALMS blanket purchase agreement. The Department misspent more than \$4.6 million in fees for more than 200,000 paid subscriptions that expired before the contractor provided any subscription services.

DHS Response

DHS did not concur with our recommendations. A copy of DHS' response to our draft report is included at appendix B.



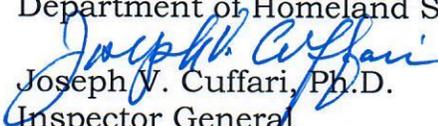
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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

March 24, 2020

MEMORANDUM FOR: The Honorable Randolph D. Alles
Deputy Under Secretary for Management
Department of Homeland Security

FROM: 
Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *PALMS Funding and Payments Did Not Comply with
Federal Appropriations Law*

Attached for your action is our final report, *PALMS Funding and Payments Did Not Comply with Federal Appropriations Law*. We incorporated the formal comments provided by your office.

The report contains nine recommendations aimed at addressing violations of Federal appropriations law. Your office did not concur with the recommendations. Based on information provided in your response to the draft report, we consider recommendations 1 through 9 open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Until your response is received and evaluated, the recommendations will be considered open and unresolved. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov. Because the issues identified in the report concern possible violations of the Antideficiency Act and appropriations law we are providing a copy to Comptroller General for information.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Sondra McCauley, Assistant Inspector General for Audits, at (202) 981-6000.

Attachment



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Abbreviations

BPA	Blanket Purchase Agreement
GAO	Government Accountability Office
HRIT	Human Resources Information Technology
OIG	Office of Inspector General
OPO	Office of Procurement Operations
PALMS	Performance and Learning Management System
U.S.C.	United States Code
WCF	Working Capital Fund



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Background

This is the second of two audit reports concerning the acquisition of the Department of Homeland Security’s Performance and Learning Management System (PALMS). The first audit report, *PALMS Does Not Address Department Needs*, OIG-17-91, dated June 30, 2017, showed PALMS does not address the Department’s critical need for an integrated, department-wide learning and performance management system. We initiated a second audit to review the funding and payments for PALMS because we noted potential violations of appropriations law while conducting the first audit.

In May 2013, DHS entered into a 5-year Blanket Purchase Agreement (BPA) with Visionary Integration Professionals — with an estimated \$95 million ceiling — to provide the Department with an employee performance and learning management system known as PALMS. Starting in August 2013, headquarters and components issued task orders against the BPA for implementation and migration activities, including user subscriptions.

The PALMS acquisition was part of the Human Resources Information Technology (HRIT) program that supports the mission of integrating and modernizing human resources systems across the Department. HRIT funds are used to plan for, acquire, configure, and implement human resources information technology systems across the enterprise. Congress provided more than \$23 million in line-item appropriations for the HRIT program between fiscal years 2013 and 2015, as shown in table 1.

Table 1: HRIT Appropriations for FYs 2013 – 2015

FY	HRIT Appropriation (\$)
2013	9,680,000
2014	7,815,000
2015	6,000,000
Total	\$23,495,000

Source: Office of Inspector General (OIG) analysis of DHS appropriations acts

The Department funds the operations and maintenance of HRIT systems with component contributions to the Working Capital Fund (WCF) for the e-Training activity. The WCF is a DHS intragovernmental revolving fund providing a number of centralized activities, including e-Training, for its headquarters and



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component customer agencies.¹ The fund has a governance board responsible for establishing WCF policies and procedures, and reviewing and endorsing annual budgets and reprogramming requests. The Deputy Chief Financial Officer and other senior management officials from DHS headquarters offices and components comprise the governance board.

E-Training is a WCF activity supporting the use of technology for department-wide learning and development programs. DHS components obligate funds for e-Training services based on annual cost estimates and reimburse the WCF for actual costs incurred during a fiscal year. (Appendix C diagrams the obligation and reimbursement process for DHS WCF activities.)

Results of Audit

DHS' funding and payments for PALMS violated Federal appropriations law. Specifically, the Department violated the bona fide needs rule when it used FY 2011 component funds in FYs 2012 and 2013 for e-Training services and PALMS implementation respectively.² A fiscal year appropriation is available only for the needs arising in the current fiscal year and is not available for the needs of a future fiscal year. The FY 2011 component funds the Department used were not legally available for e-Training services in FY 2012 or PALMS implementation in FY 2013. The Department improperly carried over FY 2011 component funds based on its misinterpretation of a provision in the *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009*, and subsequent DHS appropriations acts, regarding the availability of funds provided to the WCF. As a result, DHS augmented the HRIT appropriation in FY 2013 and may have violated the *Antideficiency Act*.

The Department used additional component funds for PALMS implementation in FYs 2013 – 2015, violating the purpose statute codified at 31 United States Code (U.S.C.) § 1301(a), which prohibits the use of appropriations for other than their authorized purpose. PALMS implementation was not an authorized purpose of the component appropriations because Congress provided a specific appropriation for the HRIT program. PALMS implementation was part of the HRIT program. This violation occurred because DHS officials approved a PALMS acquisition funding strategy that included using component funds

¹ An intragovernmental revolving fund is a revolving fund whose receipts come primarily from other Government agencies, programs, or activities. It is designed to carry out a cycle of business-type operations with other Federal agencies or separately funded components of the same agency.

² Throughout this report, the term "component funds" refers to DHS components' obligations to the WCF, which the WCF had not yet earned through its operations.



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obligated for the e-Training WCF activity. As a result, DHS improperly augmented HRIT appropriations in FYs 2013 – 2015 and may have violated the *Antideficiency Act*.

Finally, DHS made advance, upfront payments for annual PALMS subscriptions before the contractor had fully rendered subscription services, which violated the statutory prohibition on advance payments. Headquarters and the component contracting officers did not purchase and pay for PALMS subscriptions according to the terms in the PALMS BPA. The Department misspent more than \$4.6 million in fees for more than 200,000 paid subscriptions that expired before the contractor provided any subscription services.

In its 30-page response to our draft report, DHS did not concur with any of our nine recommendations. We consider all nine recommendations open and unresolved. Our analysis focuses on those salient aspects of the Department's comments associated with OIG recommendations. We also included a copy of management's comments in their entirety at appendix B. DHS provided technical comments to our draft report, which we considered, and we revised the report as appropriate.

DHS Violated the Bona Fide Needs Rule in FYs 2012 and 2013

DHS violated the bona fide needs rule when the WCF used more than \$5 million of FY 2011 component funds in FYs 2012 and 2013 for e-Training services and PALMS implementation, respectively. The funds used were components' unliquidated obligations to the WCF for FY 2011 e-Training needs. Neither the FY 2012 e-Training services nor the PALMS implementation were FY 2011 bona fide needs, and the FY 2011 funds were not legally available for these needs. The use of the FY 2011 funds for these needs in FY 2012 and 2013 violated the bona fide needs rule in each FY. This occurred because the WCF improperly carried over and used components' FY 2011 unliquidated obligations in the subsequent FYs based on its misinterpretation of DHS appropriations act language.

Bona Fide Needs Rule Violations

According to the bona fide needs rule, a fiscal year appropriation is available only for the needs arising in the current year and is not available for the needs of a future fiscal year. The bona fide needs rule is rooted in 31 U.S.C. § 1502 (a), which provides that an appropriation is available only for expenses properly incurred during its period of availability and not beyond this period.



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The bona fide needs rule also applies to transactions between a working capital fund and a customer agency.

The WCF used more than \$5 million of FY 2011 component funds in FY 2012 for e-Training services and in FY 2013 for PALMS implementation, violating the bona fide needs rule in each FY. The component funds the Department used in FYs 2012 and 2013 were components' unliquidated obligations for FY 2011 e-Training services, and were available only for FY 2011 e-Training needs. In FY 2011, the components obligated a combined total of \$11 million to the WCF from their fiscal year appropriations for FY 2011 e-Training services.³ The components obligated these funds based on the WCF's annual estimate for the cost of FY 2011 e-Training services. The actual cost of the e-Training services the WCF provided in FY 2011 was approximately \$6 million, leaving approximately \$5 million in unliquidated component obligations. The components' appropriations expired at the end of FY 2011, and the unliquidated obligations were only available for the subsequent 5 years to record, adjust, or liquidate obligations properly chargeable to FY 2011 e-Training needs. However, the Department carried over these funds to FY 2012 and obligated more than \$5 million for three e-Training contracts in FY 2012 and more than \$14,000 for PALMS implementation in FY 2013.

The FY 2012 e-Training contracts and PALMS implementation were not FY 2011 bona fide needs, and the components' FY 2011 unliquidated obligations were, therefore, not legally available for PALMS implementation in FY 2013. Specifically, the e-Training contracts the Department purchased with the FY 2011 funds were for FY 2012 e-Training services. Additionally, PALMS implementation was not an FY 2011 bona fide need. For example, the Department did not issue a request for quotation for PALMS until November 2012. Furthermore, the Department did not formally approve the PALMS acquisition until January 2013, and did not award the contract for PALMS until May 2013. Therefore, the Department violated the bona fide needs rule when it used more than \$5 million of components' FY 2011 unliquidated obligations in FYs 2012 and 2013 for e-Training services and PALMS implementation, respectively.

Improper Carryover and Reprogramming of Component Funds

The WCF carried over more than \$5 million FY 2011 component funds to FY 2012 and more than \$14,000 to FY 2013. The carryover and use of FY 2011 funds in FYs 2012 and 2013 were improper and invalid because the

³ The Department could not provide evidence of component contributions to the WCF for PALMS implementation in FY 2011.



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components' unliquidated obligations were not legally available for carryover to another fiscal year. Additionally, the WCF's use of the carryover funds for its reprogramming of the FY 2012 WCF was also improper.

According to the Government Accountability Office (GAO), carryover is the dollar value of work that has been ordered and obligated by customers but not completed at the end of the fiscal year.⁴ It consists of an unfinished portion of work started but not completed, as well as requested work not yet commenced. The e-Training activity had no unfilled or incomplete FY 2011 orders at the end of FY 2011. Therefore, the components' FY 2011 obligations were not carryover funds and were only available for the subsequent 5 years to record, adjust, or liquidate obligations properly chargeable to FY 2011.

DHS' FY 2012 reprogramming of WCF e-Training activity was also improper. In May 2012, DHS notified Congress that it was reprogramming WCF funds to increase the overall assessment for FY 2012 e-Training activity. The Department carried over the \$5 million in components' FY 2011 unliquidated obligations to increase the FY 2012 assessment. The governance board subsequently approved the use of the same funds for PALMS implementation in FY 2013.

This reprogramming and carryover of components' unliquidated obligations was improper and invalid for multiple reasons. First, the component funds were only available for FY 2011 e-Training needs and were not legally available for carryover and reprogramming in the following fiscal year. Second, by definition, the Department cannot reprogram funds between different appropriations.

Misinterpretation of DHS Appropriations Act Language

The Department improperly carried over and expended components' FY 2011 funds in FYs 2012 and 2013 because WCF officials misinterpreted Section 504 of the FY 2009 DHS appropriations act. Pursuant to the Department's request, Congress revised section 504 of *Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009*, to include the following language: "...funds provided to the Working Capital Fund shall be available for obligation until expended to carry out the purposes of the Working Capital Fund." DHS appropriations following this act also included the same language. The Department incorrectly understood this language as giving the WCF the

⁴ GAO, *Defense Working Capital Fund, Military Services Did not Calculate and Report Carryover Amounts Correctly*, GAO-06-530, June 2006.



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authority to carry over components' unliquidated obligations from a previous fiscal year for services in subsequent fiscal years.

According to Federal appropriations law, only the receipts and collections a WCF has earned through its operations and are credited to the WCF are available without fiscal year limitation.⁵ When a customer agency makes funds available to a WCF, the funds are not available without fiscal year limitation until the WCF earns those funds. A WCF only earns its customer agencies' funds after it performs the agreed-upon services and has been reimbursed for the services provided. DHS WCF did not earn the component funds remaining unliquidated at the end of FY 2011 because it did not provide services for those funds. Therefore, the components' unliquidated balances from that fiscal year were not available to provide e-Training services in a future fiscal year.⁶ The Department, however, issued several policy documents with incorrect guidance authorizing use of prior-year component funds for subsequent fiscal year needs.

For example, a 2010 WCF procedure document explains Section 504 of the FY 2009 DHS appropriations act as the carryover authority for the WCF to use component funds it has not obligated at the end of a fiscal year toward the same activity and purpose in the following fiscal year. The DHS *Financial Management Policy Manual* interpreted this provision as the carryover authority for the WCF "to retain customer contributions in one fiscal year to provide services in the following fiscal year." A 2015 WCF governance board memorandum further discussed the Department's interpretation of Section 504 as the authority for the WCF to use the component funds the WCF did not obligate in the previous fiscal year for the service needs in the following fiscal year.

⁵ Earned receipts and collections are the portion of the fee reimbursing the revolving fund for the actual cost of its operations. Advances made by a customer agency to a revolving fund have not yet been earned.

⁶ Although the Comptroller General has opined a revolving fund has a reasonable amount of time to use (or earn) its customers' funds beyond the period of availability, the use of the funds should only be for legitimate, actual needs within the fund's period of availability. See, e.g., *Whether the General Services Administration May Proceed With An Assisted Acquisition For the Department of Veterans Affairs in Fiscal Year 2012 Using the Department's Fiscal Year 2009/2010 Funds*, 2012 WL 3059227, *10 (O.L.C. March 2, 2012); *Expired Funds and Interagency Agreements Between GovWorks and the Department of Defense*, B-308944 (Comp. Gen. July 17, 2007). PALMS implementation was not a legitimate, actual need in FY 2011.



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Additional Carryover Amounts

The WCF's routine practice of carrying over components' unliquidated obligations may have resulted in more bona fide need rule violations in FY 2012 and following fiscal years. In addition to the \$5 million improperly carried over from FY 2011, the WCF carried over more than \$23 million in components' unliquidated obligations for 21 other WCF activities from FY 2011 to FY 2012. Additionally, the WCF carried over more than \$28 million of FY 2012 funds, \$18 million of FY 2013 funds, and \$23 million of FY 2014 funds into subsequent fiscal years for a number of WCF activities. The use of these funds in the subsequent fiscal years may have resulted in additional violations of the bona fide needs rule.

DHS Violated the Purpose Statute in FYs 2013 – 2015

DHS violated the purpose statute when it used component funds to fund PALMS implementation in FYs 2013 – 2015. The purpose statute prohibits the use of appropriations for other than their authorized purpose. PALMS implementation was not an authorized purpose of the component appropriations because Congress provided a specific appropriation for the HRIT program that was available for PALMS implementation. Under Federal appropriations law, if a specific appropriation exists for a particular item, it is improper to use any other appropriation for that item absent specific statutory authority.

The HRIT appropriation was the specific appropriation Congress provided for PALMS implementation across the Department. The Department spent more than \$7 million of HRIT funds for PALMS implementation in FYs 2013 – 2015. However, the Department obligated another \$7.3 million in component funds to implement PALMS in FYs 2013 through 2015. The use of component funds violated the purpose statute in each fiscal year because PALMS implementation was not an authorized purpose of the component funds.

DHS officials approved a funding strategy for PALMS acquisition that included the use of component funds obligated for e-Training. In fact, PALMS' acquisition plan included multiple funding sources comprising component funds for e-Training and HRIT appropriations. The Head of Contracting Activity within Office of Procurement Operations (OPO) approved the acquisition plan in August 2012 after multiple DHS officials, including officials from Office of General Counsel and OPO, reviewed and signed the plan. OPO also prepared an independent cost estimate including the use of component funds for e-Training and HRIT appropriation for PALMS implementation. Additionally, HRIT Executive Steering Committee briefings, dated as early as



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January and September 2012, discussed the use of WCF and HRIT funds to implement PALMS. The HRIT Executive Steering Committee consisted of senior DHS officials including the Undersecretary for Management, the Chief Information Officer, and the Chief Human Capital Officer.

Although the Department’s FY 2015 Congressional Justification discussed the use of the HRIT appropriation and WCF for PALMS program, it did not constitute statutory authority for the Department to use WCF in addition to HRIT funds for PALMS implementation. According to the HRIT program description in the FY 2015 Congressional Justification, operations and maintenance of HRIT systems are funded by WCF. It did not specifically request the use of WCF for PALMS implementation. Furthermore, the Department used WCF for PALMS implementation in FYs 2013 and 2014 without explicitly notifying Congress in its FY 2013 and 2014 Congressional Justifications.

DHS May Have Violated the Antideficiency Act in FYs 2013 – 2015

The Department’s use of the component funds in FYs 2013 through 2015 for PALMS implementation may have resulted in *Antideficiency Act* violations in each fiscal year. The *Antideficiency Act*⁷ prohibits the Department from using funds in excess of the amount available in an appropriation unless authorized by law. The component funds used for PALMS implementation augmented HRIT appropriations in FYs 2013 through 2015. As a result, the Department may have used funds in excess of the amounts available in the HRIT appropriations in each fiscal year. (See table 2 for a summary of the HRIT and component funds used for PALMS implementation from FYs 2013 through 2015.)

Table 2: HRIT and Component Funds Used in FYs 2013 – 2015

Fiscal Year	HRIT Funds (\$)	Component Funds (\$)
2013	3,617,513.15	4,542,100.53
2014	1,034,752.58	32,317.00
2015	2,430,701.92	2,823,464.95
Total	\$7,082,967.65	\$7,397,882.48

Source: OIG analysis of PALMS payment documentation

DHS may avoid *Antideficiency Act* violations if the proper HRIT appropriation accounts have sufficient funds available to correct the improper use of

⁷ 31 U.S.C. § 1341(a)(1)(A)



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component funds. If the HRIT appropriation accounts do not have sufficient funds available to correct the violations, DHS must report its violations of the *Antideficiency Act* for the applicable fiscal years consistent with 31 U.S.C. § 1351 and Section 145 of the Office of Management and Budget Circular No. A-11.⁸ We attempted to determine the balances in HRIT appropriation accounts, but the Department could not provide the necessary HRIT spending data to support our effort.

The *Antideficiency Act* also requires an agency head prescribe, by regulation, a system of administrative control of funds. Administrative control of funds ensures that obligations are recorded under proper appropriation, do not exceed funding limits, meet the purpose identified in the appropriation law, and are incurred during the time the appropriation is made available. The Department's fund control system was ineffective to ensure proper use of component funds, as it used component funds not legally available, for an unauthorized purpose, and possibly in excess of funding limits.

Recommendations

Recommendation 1: We recommend the Under Secretary for Management identify and correct all violations of the bona fide needs rule and purpose statute related to the funding of PALMS, and report the violations to Congress and other stakeholders as necessary.

Recommendation 2: We recommend the Under Secretary for Management identify any violations of the *Antideficiency Act* related to the funding of PALMS and report all violations in accordance with 31 U.S.C. § 1351 and Section 145 of the Office of Management and Budget Circular No. A-11.

Recommendation 3: We recommend the Under Secretary for Management conduct a review of all Working Capital Fund carryover activities from FYs 2010 through 2017, and determine whether the Department violated the bona fide needs rule and the *Antideficiency Act* regarding the use of carryover funds for WCF activities.

Recommendation 4: We recommend the Under Secretary for Management provide a report of the findings of the reviews of PALMS funding and Working Capital Fund activities, and corrective actions if applicable, to the Office of Inspector General.

⁸ OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget, § 145 (June 21, 2005).



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Recommendation 5: We recommend the Under Secretary for Management implement or improve DHS administrative fund control systems to prevent improper use of funds.

Recommendation 6: We recommend the Under Secretary for Management implement corrective actions to improve the acquisition review process for proper funding and compliance with Federal appropriations law.

Recommendation 7: We recommend the Under Secretary for Management review WCF guidance and practices, and ensure all WCF obligations within a fiscal year are properly correlated with that fiscal year in order to prevent improper future carryover of unobligated funds.

DHS Comments and OIG Analysis

DHS Comments to Recommendations 1–4: DHS did not concur with our recommendations 1 – 4, stating it did not violate the bona fide needs rule or the purpose statute related to PALMS funding. DHS claimed the annual funds obligated to the WCF in FY 2011 for e-Training services were available to fund such services in FYs 2012 and 2013. The Department explained it was authorized to use FY 2011 component funds to carry out PALMS implementation in FY 2013 because the description of e-Training services in the Department’s FY 2011 budget justification included a DHS Learning Management System. Additionally, DHS stated, “in consideration of the recurring ‘direct usage’ proviso, the DHS WCF does not ‘earn’ working capital through fees to finance its operations. Instead, the DHS WCF is authorized only to charge for the exact expenses borne by the fund.” DHS also stated Congress first statutorily precluded the DHS WCF in FY 2005 from earning working capital in the manner of a true revolving fund.

OIG Analysis: We responded to each of the distinct issues the Department raised in its comments.

Bona Fide Need

Including a Learning Management System in the description of e-Training services in the FY 2011 budget justification does not establish PALMS as an FY 2011 bona fide need. When entering into a transaction with the WCF, the components must satisfy the time rules related to their own appropriation. Specifically, the components must obligate their appropriation for a bona fide need within the specified period of availability (*i.e.*, FY 2011). For the components to incur a valid obligation upon entering into an agreement with the WCF, the components must have had documentary evidence of a binding



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agreement for specific goods or services. The specificity requirement is a long-standing principle of appropriations law, supported by decisions of the Comptroller General and by the recording statute, 31 U.S.C. § 1501(a). As discussed in the report, PALMS was not an FY 2011 bona fide need. PALMS was not a specific good or service in FY 2011. The Department did not issue a request for quotation for PALMS until November 2012, formally approve the PALMS acquisition until January 2013, and award the PALMS BPA until May 2013. Furthermore, the Department could not provide evidence that the FY 2011 assessment and obligation for e-Training activity included funds for PALMS implementation.

DHS Working Capital Fund

In its response to our report, DHS argued that Congress statutorily precluded the WCF in FY 2005 from earning working capital in the manner of a true revolving fund. However, the Department's argument that the direct usage proviso in the FY 2005 appropriations act does not allow it to earn customer funds as a true revolving fund is incorrect. An intragovernmental revolving fund is one whose receipts come primarily from other government agencies, programs, or activities. The WCF is an intragovernmental revolving fund financing centralized activities, including e-Training, for DHS components. As with all revolving funds, DHS WCF earns receipts when the components reimburse it for the actual expenses incurred after providing the services, such as e-Training. As GAO has pointed out, "a working capital fund is intended to (1) generate sufficient resources to cover the full costs of its operations and (2) operate on a break-even basis over time—that is, neither make a gain nor incur a loss."⁹

The Department argued that DHS WCF's governing provisions authorized carrying over prior-year funds. DHS interpreted the legislative provisions of the DHS WCF to provide carryover authority. However, based on our review, the FY 2011 component funds the WCF carried over to FYs 2012 and 2013 were not true carryover funds. According to GAO, carryover is the dollar value of work ordered and obligated by customers but not completed by the WCF activity. The e-Training activity had no unfilled or incomplete FY 2011 orders at the end of FY 2011. As explained in our report, the components' appropriations expired at the end of FY 2011, and the unliquidated obligations were only available for the subsequent 5 years to record, adjust, or liquidate obligations properly chargeable to FY 2011 e-Training needs. The FY 2011

⁹ GAO, *Defense Working Capital Fund, Military Services Did not Calculate and Report Carryover Amounts Correctly*, GAO-06-530, June 2006.



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unliquidated obligations were not available for carryover for bona fide needs arising in subsequent fiscal years.

Additionally, DHS cited the language in the General Provision governing the DHS WCF that “funds provided to the Working Capital Fund shall be available for obligation until expended to carry out the purposes of the Working Capital Fund.” DHS stated this language allows the Department to retain and cross FYs with direct usage costs. DHS also explained our draft report’s interpretation of the DHS WCF statutory language is unreasonable because it would render the “available until expended” proviso mere surplusage¹⁰ and superfluous.

Our interpretation of the DHS WCF statutory language does not render the “available until expended” proviso surplusage and superfluous. According to the provision authorizing and governing the DHS WCF in FY 2011, funds provided to the WCF shall be available for obligation until expended. As with all revolving funds, only receipts the WCF has earned through its operations are available without fiscal year limitation. Advances a customer agency makes to a revolving fund have not yet been earned and retain the one-year period of availability of the component’s appropriation. Therefore, the statutory language incorporating “available until expended” identifies an essential characteristic of an intragovernmental revolving fund.

Comptroller General decision B-288142 makes clear that only the earned funds are available without fiscal year limitation despite similar proviso. When an agency withdraws funds from its appropriation and makes them available for credit to another appropriation, like a revolving fund, the withdrawn amounts retain their time character and do not assume the time character of the appropriation to which they are credited until they are earned. Consequently, unless otherwise specified by law, unexpended expired balances must be returned to the customer agency. Similarly, advances made by a customer agency to a revolving fund to cover the costs of the order have not been earned by the fund and retain the fiscal year limitations of the customer agency.

¹⁰ There is an established body of principles, known as “canons” of construction, which are designed to aid in arriving at the best interpretation of statutory language. One such canon is that all words of a statute should be given effect, if possible. The theory is that all of the words have meaning because Congress does not include unnecessary language, or “surplusage.” (GAO, Principles of Federal Appropriations Law, 3rd ed., 2004 rev., ch 2, § D.1, GAO-04-261SP (Washington, D.C.: Jan. 2004)).



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GAO's Reasonableness Standard

DHS also pointed out the Department of Justice Office of Legal Counsel and GAO opinions regarding the “reasonable” amount of time a revolving fund has to use (or earn) the funds obligated by its customers. As noted in the report, although the Comptroller General has opined that a revolving fund has a reasonable amount of time to use (or earn) its customers’ funds beyond the period of availability, the use of the funds should only be for legitimate, actual needs within the fund’s period of availability.

The Comptroller General’s discussion of the “reasonableness” standard applies to a requesting agency’s order with a working capital fund for a bona fide need existing at the time of the order. As discussed in our report, the PALMS implementation was not a bona fide need in FY 2011 for which the components obligated FY 2011 funds. Additionally, there were no unfilled or incomplete FY 2011 e-Training orders for which the WCF had a reasonable time to obligate the FY 2011 funds. The WCF did not use the FY 2011 component funds for a legitimate, actual need within the period of availability of FY 2011. Therefore, the Comptroller General’s ‘reasonableness’ standard does not apply to the Department’s use of FY 2011 component funds for PALMS implementation in FY 2013.

Obligation of FY 2011 Funds in FY 2012 for e-Training

The Department also pointed out the WCF obligated the carryover funds in FYs 2012 and 2013 against four contracts, with most of the funds obligated in FY 2012 for three contracts supporting FY 2012 e-Training services. The Department provided additional documentation supporting its obligation of most of the FY 2011 funds in FY 2012 for the three contracts and the rest of the funds in FY 2013 for a contract for PALMS. We revised our report to reflect the correct amounts of FY 2011 component funds the Department used in FYs 2012 and 2013 for e-Training services and PALMS implementation, respectively.

We also revised our report to note additional violations of the bona fide needs rule in FY 2012 with the use of FY 2011 component funds in FY 2012. The WCF obligated components’ FY 2011 funds for the three contracts awarded in FY 2012 to obtain FY 2012 e-Training services. As discussed in our draft report, a fiscal year appropriation is available only for the needs arising in the current fiscal year and is not available for the needs of a future fiscal year. Additionally, the components obligated their FY 2011 funds only for FY 2011 e-Training services. Therefore, the use of FY 2011 funds for the three contracts



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for FY 2012 e-Training services also violated the bona fide needs rule in FY 2012.

Purpose Statute Violation

Regarding the purpose statute violation, the Department explained the component funds used for PALMS implementation did not violate this statute because our conclusion appears to be premised, at least in part, upon the determination that the HRIT line items represented an amount that could not be exceeded. DHS pointed out the legislative history accompanying the appropriation for the HRIT program does not include an express statement that Congress intended DHS to use HRIT funds as the exclusive source of funding for all PALMS implementation costs. The Department also argued the congressional budget justifications for the Departmental Operations – Office of Under Secretary for Management do not indicate DHS intended all costs associated with PALMS to be borne by the HRIT earmark. The Department also pointed out its FYs 2015 and 2016 budget justifications included DHS’ intent to fund PALMS with HRIT and WCF funding.

Our conclusion regarding the purpose statute violation is not premised upon the conclusion that the HRIT line items represented an amount that could not be exceeded. As discussed in our report, our conclusion is based upon the determination that PALMS implementation was not an authorized purpose of the component appropriations because Congress provided a specific appropriation for the HRIT program that was available for PALMS implementation. Under Federal appropriations law, if a specific appropriation exists for a particular item, it is improper to use any other appropriation for that item absent specific statutory authority. According to Federal appropriations law, two appropriations are available for the same purpose only when the statutory language clearly demonstrates congressional intent to make one appropriation available to supplement or increase a different appropriation. The legislative history accompanying the appropriation for the HRIT program or the language in the budget justifications for the Departmental Operations – Office of Under Secretary for Management did not constitute statutory language clearly demonstrating congressional intent to make component funds available for PALMS implementation to supplement or increase the HRIT funds.

In its response, DHS also presumed our conclusion regarding the purpose statute violation is “premiered upon a determination that the Department may have changed the source of funding for PALMS implementation.” We did not include such a determination in our report. Regardless, the Department cited a Department of Justice opinion concluding that an activity otherwise funded from a lump sum account, such as a HRIT activity, may be shifted to the WCF



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at the discretion of the Department and carried out with customer funding. However, DHS did not shift funding from HRIT to WCF. It used both HRIT funds and component funds for PALMS implementation.

The Department also argued that, at a minimum, additional lump sum amounts from the “Departmental Operations – Office of Under Secretary for Management” account could have been used for HRIT related activities. HRIT is an earmark in the Departmental Operations – Office of Under Secretary for Management appropriation. The HRIT earmark does not create a limitation on the maximum amount of funds for the HRIT program if additional funds come from within the “Departmental Operations – Office of Under Secretary for Management” appropriation. However, the additional funds used for PALMS implementation came from the components’ obligations to the WCF for e-Training services.

Reprogramming of e-Training Funds

Finally, the Department argued the WCF’s reprogramming of e-Training funds was not improper because Section 503(e) of DHS’ appropriations act, including *Consolidated Appropriations Act, 2012*, authorized reprogramming of the prior year balance. According to Section 503(e), “[t]he notification thresholds and procedures set forth in this section shall apply to any use of deobligated balances of funds provided in previous Department of Homeland Security Appropriations Acts.” Section 503(e) explicitly discusses the “use of deobligated balances.” The funds the WCF carried over from FY 2011 and reprogrammed in FY 2012 were components’ unliquidated obligations for FY 2011 e-Training services. The components did not deobligate any portion of their FY 2011 obligations to the WCF.

Recommendations 1 – 4 will remain open and unresolved until the Department provides evidence of its corrective actions responsive to each recommendation.

DHS Comments to Recommendation 5: DHS did not concur with our recommendation and stated there is no basis to conclude DHS administrative controls failed. DHS referred to its response to recommendation 1 for additional information.

OIG Analysis: Our report explained the purpose of administrative control of funds and identified violations of the bona fide needs rule, the purpose statute, and potential violations of the *Antideficiency Act*. These violations of Federal appropriations law occurred because the Department’s administrative control of funds was not effective.



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This recommendation will remain open and unresolved until the Department implements or improves DHS administrative fund control systems to prevent improper use of funds.

DHS Comments to Recommendation 6: DHS did not concur with our recommendation and stated there is no basis to conclude DHS administrative controls failed. DHS referred to its response to recommendation 1 for additional information.

OIG Analysis: DHS' response addressed administrative control of funds rather than the acquisition review process. However, an effective system of administrative control of funds would ensure appropriated funds are legally available for a given obligation or expenditure.

This recommendation will remain open and unresolved until the Department implements corrective actions to improve the acquisition review process for proper funding of acquisitions.

DHS Comments to Recommendation 7: DHS did not concur with our recommendation and stated there is no basis to conclude the Department's WCF guidance and practices are deficient. DHS referred to its response to recommendation 1 for additional information.

OIG Analysis: As explained in our report, the Department misinterpreted Section 504 of the general provisions of the DHS appropriations acts from 2009 forward as giving the WCF authority to carry over components' unliquidated obligations from a previous fiscal year for service needs in subsequent fiscal years. The Department issued several policy documents with incorrect guidance authorizing the use of prior year funds for subsequent fiscal year needs. For example, the DHS *Financial Management Policy Manual* interpreted this provision as the carryover authority for the WCF "to retain customer contributions in one fiscal year to provide services in the following fiscal year." Additionally, a 2015 WCF governance board memorandum further discussed the Department's interpretation of Section 504 as the authority for the WCF to use component funds the WCF did not obligate in the previous fiscal year for the service needs in the following fiscal year.

This recommendation will remain open and unresolved until the Department reviews WCF guidance and practices and ensures all WCF obligations within a fiscal year are properly correlated with that fiscal year in order to prevent improper future carryover of unobligated funds.



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DHS Violated the Statutory Prohibition on Advance Payments

DHS' payments for PALMS subscriptions violated the statutory prohibition on advance payments. The Department purchased PALMS as a 'software as a service' cloud computing system. It pays annual subscription fees for its users to access the contractor's software applications for performance and learning management activities. DHS headquarters and components made upfront payments for 12 months of subscription services before and during the initial months of the subscription period. These payments exceeded the value of the services received at the time of the payments.

According to the statute prohibiting advance payments, 31 U.S.C § 3324(a), a payment under a contract may not be more than the value of the service already provided or the article already delivered unless authorized by an appropriation, law, or the President. The statute prohibits the Government from paying for goods before they have been received or for services before they have been rendered. The primary purpose of the statute is to protect the Government against the risk of nonperformance in the event a contractor fails to perform or refunds the moneys advanced. Advance payments are allowed under certain exceptions, but PALMS subscriptions for 'software as a service' do not fall within those exceptions.

The PALMS subscription price consisted of the following services for a 1-year period — user access to PALMS, help desk support, hosting and storage, and annual maintenance. Between August 2013 and September 2016, DHS headquarters and components issued approximately 13 task orders, and related modifications, to purchase 454,288 PALMS annual subscriptions, costing \$10.7 million. The headquarters and components paid about \$9.7 million of these costs before or during the 12-month subscription period, which was \$8.5 million more than the value of the services provided at the time of the payments. (Appendix D summarizes the payments for subscriptions.)

The BPA included a pricing clause requiring the contractor to provide a consumption-based pricing methodology allowing the Government to pay actual user prices for active system users on an annual basis, rather than a specified number of users upfront for a specified period. However, headquarters and components did not purchase and pay for PALMS subscriptions in accordance with this BPA pricing term. Rather, they paid for a specific number of subscriptions upfront for a 1-year period. The Department misspent more than \$4.6 million in subscription fees for more than 200,000 paid subscriptions that expired before the contractor delivered any of the services included in the subscriptions.



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Recommendations

Recommendation 8: We recommend the Chief Procurement Officer issue a memorandum to DHS headquarters and components instructing its procurement offices to pay for PALMS subscriptions only after satisfactory delivery of all associated services.

Recommendation 9: We recommend the Chief Procurement Officer develop policies and procedures to ensure future Cloud Services contracts do not violate the statutory prohibition on advance payments.

DHS Comments and OIG Analysis

DHS Comments to Recommendation 8: DHS did not concur with our recommendation and stated the facts in the report do not constitute a violation of the advance payment prohibition because the PALMS subscriptions at issue are licenses. The Department explained the immediate contractual right conferred by a license constitutes performance such that payment for that license upon delivery is not a prohibited advance payment.

OIG Analysis: The Department's argument that PALMS subscriptions are licenses is not accurate. As discussed in the report, the PALMS subscriptions consisted of various services for a 1-year period including user access to PALMS, helpdesk support, hosting and storage, and annual maintenance.

When procuring PALMS as 'software as a service,' the Department purchased no software, but the right to use the software the contractor runs on an underlying platform and cloud infrastructure. The Department accesses PALMS through a Web Browser and does not manage or control the software or the underlying infrastructure.

According to the accounting guidance issued by the Financial Accounting Standards Board,¹¹ an internal-use software a customer obtains access to in a hosting arrangement does not constitute a purchase of, or convey a license to, the software if both of the following criteria are not met:

1. The customer has the contractual right to take possession of the software at any time during the hosting period without significant penalty.
2. It is feasible for the customer to either run the software on its own hardware

¹¹ Financial Accounting Standards Board, *Customer's Accounting for Fees Paid in a Cloud Computing Arrangement*, ASU2015-05, April 2015.



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or contract with another party unrelated to the vendor to host the software.

Nothing in the BPA or the task orders indicate the Department had a contractual right to the possession of the underlying applications within PALMS, or that it was feasible for the Department to run the software on its own hardware or contract with another party to host it.

Additionally, according to the DHS' guide to Enterprise IT Infrastructure and Cloud Services,¹² payment for service-based IT infrastructure is made per-usage instead of upfront. Cloud computing is a pay-as-you-go approach to acquiring IT services, with low initial investment.

This recommendation will remain open and unresolved until the Department provides evidence of its communication with the headquarters and component officials regarding payment for PALMS subscriptions only after satisfactory delivery of all associated services.

DHS Comments to Recommendation 9: DHS did not concur with our recommendation and stated the Department did not violate the statutory prohibition on advance payments because the licenses, or subscriptions, for PALMS are separately priced line items and the orders created a contractual right to access PALMS and accompanying support at the time of purchase. DHS referred to its response to recommendation 8 for additional information.

OIG Analysis: The Department claimed DHS did not violate the statutory prohibition on advance payments. However, the Department's argument that PALMS subscriptions are licenses and orders for them created a contractual right to access PALMS at the time of purchase is not accurate. The PALMS subscriptions consisted of various services for a 1-year period, including user access to PALMS, helpdesk support, hosting and storage, and annual maintenance.

This recommendation will remain open and unresolved until the Department develops policies and procedures to prevent advance payments for future cloud services contracts.

¹² DHS Office of the Chief Information Officer, *Commodity IT Strategy and Services 2.0, A Guide to Enterprise IT Infrastructure and Cloud Services*.



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Appendix A

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We conducted this audit to determine whether DHS' funding and payments for PALMS complied with appropriations law and related policies and procedures. To achieve our audit objective, we interviewed officials in the Office of the Chief Financial Officer, Office of the Chief Human Capital Officer, Office of the Chief Procurement Officer, DHS Office of General Counsel, United States Coast Guard (Coast Guard), U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and the Federal Law Enforcement Training Center (FLETC). We reviewed public laws, congressional budget justifications, contract documents, WCF documents, interagency agreements, and financial documents. We also received assistance from OIG's Office of Counsel regarding the application and interpretation of Federal appropriations law and applicable Comptroller General Decisions.

To determine whether the Department complied with the bona fide needs rule and the purpose statute, we reviewed PALMS implementation task orders, invoice and payment documents, WCF billing notifications, and DHS appropriations acts. We reviewed WCF decision memos, DHS *Financial Management Policy Manual*, *Principles of Federal Appropriations Law*, Comptroller General Decisions, and DHS Office of General Counsel responses to OIG questions. We also obtained, compiled, and analyzed payment documents for all the PALMS task orders issued by headquarters and components between FYs 2013 and 2015.

To determine whether the Department complied with the statutory prohibition on advance payments, we reviewed the PALMS blanket purchase agreement, subscription pricing terms, headquarters and component task orders, contractor invoices, and headquarters and component payment documentation. We compared the dates of payments for the subscriptions to the period of performance for the subscriptions to determine the amount of payments in excess of the value of the subscription services.

We assessed controls related to funding and payments for PALMS. We assessed controls over the use of component obligations to WCF for e-Training, funding of PALMS implementation, and payments made to the PALMS contractor for subscriptions. Our limited assessment would not necessarily disclose all material weaknesses within these areas. However, the audit



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evidence we obtained indicates control weaknesses leading to using funds not legally available, for unauthorized purposes, and in excess of funding limits. We did not rely on computer-processed data to materially support our findings, conclusions, or recommendations in this report.

We conducted this performance audit between February 2017 and December 2017 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 the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
DHS Comments to the Draft Report

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



**Homeland
Security**

August 8, 2019

MEMORANDUM FOR: Joseph V. Cuffari
Inspector General

FROM: Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office 

SUBJECT: Management Response to Draft Report: "PALMS Funding and
Payments Did Not Comply with Federal Appropriations Law"
(Project Number OIG-17-050-AUD-DHS)

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG) announced this audit on February 10, 2017, subsequently held an exit conference on December 21, 2017 to discuss preliminary findings and recommendations, and a year and a half later on May 9, 2019 provided DHS the subject Draft Report for a formal management response.

The Department is *extremely* concerned that despite the numerous meetings program officials, subject matter experts, and others held with and the thousands of pages of technical comments and supporting documentation provided to the audit team during the past two and a half years, the Draft Report contains as many significantly flawed and inaccurate factual representations (i.e., findings) as it does.

The Draft Report does not provide references in support of a number of its factual findings, thus the Department has attempted to identify relevant documents to verify, if possible, the source and validity of those findings. The Draft Report, for example:

- Does not identify through which contracts or agreements the Department obligated the fiscal year (FY) 2011 carryover at issue. DHS believes that almost all of the Department's carryover was obligated by the end of FY 2012.
- Reaches conclusions regarding whether funds obligated in FY 2013 was a *bona fide* need of funds appropriated in FY 2011 in violation of 31 U.S.C. § 1502(a), but does not address the time character of the funds at issue. It is likely that the funds at issue were annual year funds and that it is now impossible to verify the



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time character of the funds provided to the DHS Working Capital Fund (WCF) in FY 2011, but this should at least be acknowledged in the report discussion.

- Provides that the Department approved a reprogramming and carryover of funds from FY 2011 to FY 2013, but does not identify any documents that evidences DHS actually executed such an action.
- States that the Department cannot reprogram funds between appropriations, which is true, but does not state between which appropriations DHS transferred funds.

Had the OIG identified the basis for its factual findings in the Draft Report the Department might have been able to more readily address the concerns raised in the report or, perhaps, even concurred with some of its recommendations. It is unreasonable, however, to expect DHS to concur with or fully respond to findings of multiple violations of law in the absence of a complete and comprehensive analysis of the issues raised. The Department did not:

- Misinterpret the DHS appropriations act and violate Federal appropriations law, specifically the bona fide needs rule, when using FY 2011 component funds in FY 2013 for implementation of the Performance and Learning Management System (PALMS);
- Violate the purpose statute when it used component funds for PALMS implementation;
- Violate the *Antideficiency Act* by augmenting the Human Resources Information Technology (HRIT) program appropriations with component funds; or
- Violate the prohibition on advance payments when it made upfront payments of annual PALMS subscriptions as required under the Blanket Purchase Agreement (BPA).

The OIG's findings and recommendations are inconsistent with the legislative framework governing the DHS WCF and contravene longstanding interpretations of those governing provisions and administrative practices and policies effectuating those interpretations. Overall, DHS believes OIG's report does an injustice to end users (i.e., Congress and the public) of the report given the report's significantly flawed and factual misrepresentations.

The Draft Report contained nine recommendations with which the Department non-concurs. Attached find our detailed response to each of these recommendations.

Again, thank you for the opportunity to review and comment on the Draft Report. Please feel free to contact me if you have any questions.

Attachment



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Attachment: Management Response to Recommendations Contained in OIG-17-050-AUD-DHS

The DHS Office of Inspector General (OIG) recommended that the Under Secretary for Management:

Recommendation 1: Identify and correct all violations of the bona fide needs rule and purpose statute related to funding of the Performance and Learning Management System (PALMS), and report the violations to Congress and other stakeholders as necessary.

Response: Non-concur. DHS did not violate the bona fide needs rule or purpose statute related to funding of PALMS. Specifically:

- I. Annual funds obligated to the DHS Working Capital Fund (DHS WCF) in FY 2011 for e-Training services were available to fund the supplies and services acquired in FYs 2012 and 2013.

The Draft Report concludes that the Department violated the bona fide needs rule by expending more than \$4.5 million in FY 2011 component funds in FY 2013 for PALMS implementation.¹ The Draft Report further asserts that the funding used for PALMS implementation were components' unliquidated obligations to the WCF for FY 2011 e-Training needs, and PALMS implementation was not an FY 2011 bona fide need.² The OIG asserts that these funds were improperly expended in subsequent FYs because the DHS WCF did not obligate the funds for a *bona fide* need of FY 2011.³

These conclusions are not correct. As an initial matter, records of the DHS Office of the Chief Financial Officer (OCFO) evidence that the unobligated balance of funds provided to the DHS WCF for the e-Training service in FY 2011 were fully obligated by the end of FY 2013. Those funds were obligated primarily for e-Training acquisitions in FY 2012. Further, the analysis below establishes that, within the legislative framework established by Congress for the DHS WCF, funds paid by the participating Components in FY 2011 for the e-Training service were properly obligated from the DHS WCF in FY 2012 and FY 2013.

Annual funds obligated to the DHS WCF in FY 2011 for e-Training services were available to fund e-Training services in FY 2012 and FY 2013 for the following reasons:

¹ OIG, *PALMS Funding and Payments Did Not Comply with Federal Appropriations Law*, OIG-19-XX (May 9, 2019) [DRAFT] ("Draft Report"), at 4.

² *Id.*

³ *Id.*



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- The operations of the DHS WCF are governed by recurring general provisions in the Department's annual appropriations acts.
- As required by the DHS WCF's governing provisions, the Department included the e-Training service activity in its FY 2011 DHS WCF budget justification materials. Consequently, the Department was authorized to use funds provided to the DHS WCF in FY 2011 to carry out the e-Training services described in the Department's FY 2011 budget justification materials.
- As required by the DHS WCF's governing provisions, the Department assesses each departmental Component the cost of their direct usage for each service. In FY 2011 the departmental Components were assessed funds for the cost of carrying out the e-Training services that were described in the Department's FY 2011 budget justification materials.
- The Department is authorized to obligate funds assessed in FY 2011 for e-Training in subsequent FYs for activities within the scope of that service activity because (1) the carrying over of funds is authorized by the DHS WCF's governing provisions; and (2) the Department has a reasonable amount of time to use the funds provided to the DHS WCF.
- Funds assessed in FY 2011 for e-Training services that carried over into FYs 2012 and 2013 were obligated for activities within the scope of the e-Training service activity.

A. The operations of the DHS WCF are governed by recurring general provisions in the Department's annual appropriations acts.

The DHS WCF was established pursuant to the Department of Homeland Security Appropriations Act, 2004.⁴ The DHS WCF is available "for expenses and equipment necessary for maintenance and operations of such administrative services as the Secretary of Homeland Security determines may be performed more advantageously as central services."⁵ The DHS WCF has been authorized to continue operations through provisions in the Department's annual appropriations acts since FY 2007.⁶ In addition to authorizing continued operations, the Department's annual appropriations acts also

⁴ Pub. L. No. 108-90, tit. V § 506.

⁵ *Id.*

⁶ See Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, tit. V § 526 (Oct. 4, 2006). The historical legislative framework of the DHS WCF is complicated and not germane to this discussion and thus this Management Response does not discuss the statutory mechanisms through which the DHS WCF was annually authorized to continue operations prior to FY 2007.



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impose conditions on the operations of the DHS WCF.⁷ The Draft Report primarily discusses funds provided to the DHS WCF in FY 2011. The provision authorizing and governing the DHS WCF in FY 2011 provided the following:

The Department of Homeland Security Working Capital Fund, established pursuant to section 403 of Public Law 103–356 (31 U.S.C. 501 note), shall continue operations as a permanent working capital fund for fiscal year [2011]: *Provided*, That none of the funds appropriated or otherwise made available to the Department of Homeland Security may be used to make payments to the Working Capital Fund, except for the activities and amounts allowed in the President’s fiscal year [2011] budget: *Provided further*, That funds provided to the Working Capital Fund shall be available for obligation until expended to carry out the purposes of the Working Capital Fund: *Provided further*, That all departmental components shall be charged only for direct usage of each Working Capital Fund service: *Provided further*, That funds provided to the Working Capital Fund shall be used only for purposes consistent with the contributing component: *Provided further*, That such fund shall be paid in advance or reimbursed at rates which will return the full cost of each service: *Provided further*, That the Working Capital Fund shall be subject to the requirements of section 503 of this Act.⁸

The recurring general provisions, such as the 2011 General Provision, authorize the continued operations, and govern the operations of the DHS WCF. The Department must comply with these governing provisions and has longstanding administrative practices and policies that implement its interpretation of these governing provisions that are intended to give effect to all such provisions.

B. As required by the DHS WCF’s governing provisions, the Department included the e-Training service activity in its FY 2011 budget justification materials. Consequently, the Department was authorized to use the DHS WCF in FY 2011 to carry out the e-Training services described in those budget justification materials.

The Department is required to provide an appropriations justification for the DHS WCF every FY as part of the President’s budget submitted under 31 U.S.C. § 1105(a).⁹ The

⁷ See, e.g. Department of Homeland Security Appropriations Act, 2008, Pub. L. No. 110-161, Div. E, Title V, § 504 (Dec. 26, 2007); Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, tit. V § 504 (Oct. 4, 2006).

⁸ Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, div. B, § 1101(a)(3) (Apr. 15, 2011) continued Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, tit. V § 504 (Oct. 28, 2009).

⁹ Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, div. A, tit. VI § 6025 (May 11, 2005).



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condition in the first proviso of the 2011 General Provision is “[t]hat none of the funds...made available to the Department of Homeland Security may be used to make payments to the Working Capital Fund, except for the activities and amounts allowed in the President’s fiscal year [2011] budget.”¹⁰ In accordance with these statutory requirements, the Department must determine what activities are to be carried out through the DHS WCF, and how much is to be expended upon those activities, and describe those activities and amounts in its budget justification materials. The Department must satisfy these requirements for each activity for which the DHS WCF will charge Components and then expend funds provided to the DHS WCF accordingly. The Department included the e-Training service activity in its FY 2011 budget justification materials. The scope of the e-Training service activity is described in the Department’s budget justification materials for FY 2011, in part, as follows:

Provides enterprise approach to leveraging technology to support learning and development programs, initiatives, and capabilities. This includes an enterprise architecture approach to the modernization and reduction in complexity of DHS Learning Management Systems (LMS’), building enhanced capability through tools such as web conferencing, and closing existing and future gaps in structured learning opportunities by providing every DHS employee access to over 3,000 online courses and 12,000 online books.¹¹

Consequently, the Department was authorized to use the DHS WCF in FY 2011 to carry out the e-Training services described in its 2011 budget justification materials.

C. As required by the DHS WCF’s governing provisions, the Department assesses each departmental Component the cost their direct usage of each service. In FY 2011 the departmental Components were assessed funds for the cost of carrying out the e-Training services that were described in the Department FY 2011 budget justification materials.

As described in the current DHS WCF Charter, the Department obtains funding for the DHS WCF to manage and execute centralized, administrative services from departmental Components through “assessments.”¹² It is through these assessments that funds are

¹⁰ See note 8 and associated text.

¹¹ DHS, Working Capital Fund, Fiscal Year 2011 Congressional Justification, at 24.

¹² The establishment of the amount to be assessed is the responsibility of the Director of the DHS WCF Governance Board. DHS, Working Capital Fund Charter § 6.d (2015). See also DHS, Working Capital Fund Charter § 6.f. (Customer Components are to “[p]rovide a signed Annual Customer Assessment Forms (CAF) with a valid and appropriate funding string within 30 days of receipt of the CAF”). While the current Charter has been in effect since FY 2015, a similar assessment process is described in a prior versions of the Department’s Working Capital Fund charter. See DHS, Working Capital Fund Charter, Version VI § 6 (2010); DHS, Working Capital Fund Charter, Version 1.0 § 5 (2008).



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obligated from the departmental Components' appropriations to the DHS WCF to fund the centralized service activities described in the Department's budget justification materials.¹³ The Department conducts a reassessment of the amount for each service activity when necessary.¹⁴ That is, the Department reassesses the amount for each service initially represented in the Department's budget justification materials for that FY as necessary to ensure that each departmental Component is providing the funds necessary to fund the actual, direct expenses of the services provided through the DHS WCF. The assessment and reassessment process ensure compliance with the requirement of the third proviso of the 2011 General Provision "[t]hat all departmental components shall be charged only for direct usage of each Working Capital Fund service."¹⁵

The previous sections establish that the DHS WCF is available to carry out centralized administrative services specified in the Department's budget justification materials. And through the assessment process, the departmental Components' obligate appropriated funds to the DHS WCF to carry out those services. It is at the point of obligation that compliance with various fiscal laws such as the *bona fide* needs rule is determined.¹⁶

¹³ Decisions of the GAO uniformly provide that satisfying the requirement to record an obligation through a written binding agreement as provided in the Recording Statute at 31 U.S.C. § 1501(a)(1) requires that the requesting agency place a firm, complete order for specific goods or services. *See, e.g., Matter of Expired Funds & Interagency Agreements Between Govworks & the Dep't of Def.*, B-308944 (Comp. Gen. July 17, 2007), at *6-7. As previously described, the Departmental components obligate funds to the DHS WCF through the assessment process. This process complies with the specific legislative provisions of the DHS WCF which, in part, require the Department to describe the services to be provided through the DHS WCF in its congressional budget justification materials. *See* note 10 and associated text. The Department may not add or remove activities from the DHS WCF, or increase or decrease amounts to be provided for such activities, from that which is described in the Department's budget justification materials without notifying Congress. *See* notes 61 through 65 and associated text. . The cost allocation methodology for the e-Training service activity in FY 2011 was "a pro-rata share based on the percent of each component's Full Time Equivalent (FTE) divided by DHS's total FTE (excluding military) multiplied by total estimated cost of the activity." DHS, Working Capital Fund, Fiscal Year 2011 Congressional Justification, at 24.

¹⁴ DHS, Working Capital Fund Charter § 6.e (2015). Service providers should seek a reassessment only under extraordinary circumstances beyond the control of the service provider. *Id.* § 6.d. The Department notifies the participating Components of that reassessed amount and provides them with an obligation schedule detailing when the Components must obligate funding to the DHS WCF for the activities to which they are contributing. *Id.* Prior versions of the DHS WCF Charter also anticipated possible rate increases. DHS, Working Capital Fund Charter, Version VI § 6.c (2010); DHS, Working Capital Fund Charter, Version 1.0 § 5.c (2008)

¹⁵ *Id.* note 9.

¹⁶ *See Department of Defense – Obligation of Bonuses Under Military Service Agreements*, B-325526 (Comp. Gen. July 16, 2014), at *2. The *bona fide* needs rule is derived from 31 U.S.C. § 1502(a), which provides that "an appropriation ... limited ... to a definite period is available only for payment of expenses properly incurred during the period of availability." *Commodity Futures Trading Commission-Recording of Obligations for Multiple-Year Leases*, B-327242 (Comp. Gen. Feb. 4, 2016), at *6. In accordance with the *bona fide* needs rule, an appropriation limited to a definite period of availability may be obligated only to meet a legitimate or *bona fide* need arising during the period of availability of the appropriation. *Id.* The Department assumes for the purpose of this Management Response that the funds provided by the departmental Components to the DHS WCF in FY 2011 for e-Training were annual funds (i.e. funds that expired at the end of the FY 2011).



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Information provided by OCFO indicates that departmental Components were assessed for e-Training for FY 2011 on May 20, 2011 for a total amount of \$11,000,000.¹⁷ Through the assessment process in FY 2011 the departmental Components obligated funds to the DHS WCF in order for the DHS WCF to manage and execute their *bona fide* e-Training service needs as described in the Department's FY 2011 budget justification materials.¹⁸

- D. The Department's obligation of the funds provided to the DHS WCF in FY 2011 in subsequent FYs satisfied the bona fide needs rule because (1) the Department's carrying over of funds is authorized by the DHS WCF's governing provisions; and (2) the Department has a reasonable amount of time to use the funds provided to the DHS WCF.

(1) *The Department's carrying over of funds is authorized by the DHS WCF's authorizing language.*

The U.S. Government Accountability Office (GAO) has stated in numerous reports that, as a general matter, some carryover in a working capital fund is appropriate.¹⁹ The GAO opines that such carryover ensures the continuity of operations from one FY to the next.²⁰ The Department has consistently interpreted the legislative provisions of the DHS WCF to provide carryover authority.²¹ Consistent with the rationale asserted by GAO for why some carryover is needed, DHS policy states that “[t]he carryover authority provides the WCF with flexibility to retain customer contributions in one fiscal year to provide services in the following fiscal year, therefore ensuring continuity of services.”²²

¹⁷ WCF Reimbursable Agreement No. WCF110036 (May 20, 2011).

¹⁸ *Id.* See also notes 12 and 13 and associated text.

¹⁹ See, e.g. GAO, ARMY WORKING CAPITAL FUND: ARMY INDUSTRIAL OPERATIONS COULD IMPROVE BUDGETING AND MANAGEMENT OF CARRYOVER, GAO-16-477 (May 2016) at 5-6 (“Some carryover is appropriate in order for working capital fund activities...to ensure the continuity of operations from one fiscal year to the next.”); GAO, NAVY WORKING CAPITAL FUND: BUDGETING FOR CARRYOVER AT FLEET READINESS CENTERS COULD BE IMPROVED, GAO-15-462 (June 2015), at 4 (“Some carryover is appropriate in order for working capital fund activities...to ensure the continuity of operations from one fiscal year to the next.”)

²⁰ *Id.*

²¹ See DHS Financial Management Policy Manual, ch. 2 § 2.8 – Working Capital Fund (Feb. 8, 2019), at 2 (“Pursuant to Section 505, Public Law 108-90, the carryover authority provides the WCF authority to use unobligated balances at the end of the fiscal year towards the same activity and purpose in the next fiscal year”) The Department has had a similar policy since at least 2011. See DHS Financial Management Policy Manual, ch. 2 § 2.8 – Working Capital Fund (Aug. 18, 2011), at 4.

²² *Id.* Notably, GAO reports discussing Department of Defense (DoD) revolving funds describe as having a policy similar to DHS’ regarding the time allowed to execute carryover funds. See GAO, ARMY WORKING CAPITAL FUND: ARMY INDUSTRIAL OPERATIONS COULD IMPROVE BUDGETING AND MANAGEMENT OF CARRYOVER, GAO-16-543 (June 2016), at 7. (“The DOD carryover policy further provides that for orders funded with non-procurement



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In addition to ensuring continuity of services, interpreting the legislative provisions of the DHS WCF as providing carryover authority is necessary to give full effect to all of the legislative provisions of the DHS WCF. Congress first statutorily precluded the DHS WCF from earning working capital in the manner of a true revolving fund in FY 2005.²³ For FY 2009 the Department specifically requested language making the DHS WCF a permanent working capital fund that would function as a true revolving fund.²⁴ The Department explained at that time that “[t]he Department’s Working Capital Fund used to be a true revolving fund with retained earnings collected from working capital. In 2005, the Department lost many of its authorities for the working capital fund (i.e. the ability to carry funds across years and collect more than the direct usage costs)...”²⁵ The Department’s FY 2009 congressional budget justification requested language that would have provided the Department the “[a]bility to retain a modest level of earnings to develop operating reserves for each service offered through the working capital fund.”²⁶ Congress, however, elected not to include this language in the annual general provisions governing the DHS WCF.²⁷ Absent the requested language, and in consideration of the recurring “direct usage” proviso, the DHS WCF does not “earn” working capital through fees to finance its operations. Instead, the DHS WCF is authorized only to charge for the exact expenses borne by the fund.

While Congress did not authorize the DHS WCF to earn working capital through fees, Congress did, as the Draft Report notes, include the proviso that “funds provided to the Working Capital Fund shall be available for obligation until expended to carry out the purposes of the Working Capital Fund.”²⁸ In requesting this language, the Department

appropriations, work on the current fiscal year’s orders is expected to be completed by the end of the following fiscal year.”) GAO, NAVY WORKING CAPITAL FUND: BUDGETING FOR CARRYOVER AT FLEET READINESS CENTERS COULD BE IMPROVED, GAO-15-462 (June 2015), at 5 (“The DOD carryover policy further provides that the work on the current fiscal year’s orders is expected to be completed by the end of the following FY. For example, for an order accepted in fiscal year 2014, the work is expected to be completed at the end of fiscal year 2015.”)

²³ Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109–13, div. A, tit. VI § 6024 (May 11, 2005). The relevant proviso in this section stated “That all organizations shall be charged only for direct usage of each service.”

²⁴ See Department of Homeland Security, Working Capital Fund, Fiscal Year 2009 Strategic Context Congressional Justification, at 78 (“Provided further, That such fund shall be paid in advance or reimbursed at rates which will return the full cost of each service, and an amount necessary to maintain a reasonable operating reserve”).

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Department of Homeland Security Appropriations Act, 2009, Pub. L. No. 110-329, div. D, tit. V § 504 (Sep. 30, 2008).

²⁸ *Id.* This language has continued to be included the DHS WCF authorizing proviso in subsequent fiscal years. See note 40.



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stated that it was requesting the “ability to carry over funds in a no-year revolving fund account.”²⁹ In the joint explanatory statement accompanying the FY 2009 DHS Appropriations, Congress stated, in most relevant part, that “[f]unds provided to the WCF are available until expended.”³⁰ Similar language has appeared in subsequent explanatory statements accompanying the Department’s appropriations.³¹ Thus, the current WCF authorizing language does not allow DHS to earn working capital through fees, but does allow DHS to retain and cross FYs with direct usage costs.³² Further, as it pertains to the FY 2011 e-Training funds, DHS’ use of those funds was consistent with the GAO and U.S. Department of Justice (DOJ) opinions on this subject (i.e., allowing a reasonable amount of time to incur obligations).³³

The Draft Report, however, does not provide an analysis of the specific legislative language governing the DHS WCF and its legislative history.³⁴ Consequently, the Draft

²⁹ See Department of Homeland Security, Working Capital Fund, Fiscal Year 2009 Strategic Context Congressional Justification, at 78.

³⁰ 154 Cong. Rec. H9434, H9808 (daily ed. Sep. 24, 2008).

³¹ See e.g., 165 Cong. Rec. H1589, H1724 (daily ed. Feb. 13, 2019); 164 Cong. Rec. H2045-01, H2564 (daily ed. Mar. 22, 2018); 163 Cong. Rec. H3327, H3822 (daily ed. May 3, 2017); 161 Cong. Rec. H10161, H10175 (daily ed. Dec. 17, 2015); 161 Cong. Rec. H272, H288 (daily ed. Jan. 13, 2015); 160 Cong. Rec. H475, H938 (daily ed. Jan. 15, 2014); 159 Cong. Rec. S1287, S1561 (daily ed. Mar. 11, 2013); 157 Cong. Rec. H9433, H9550 (daily ed. Dec. 15, 2011); 155 Cong. Rec. H11195, H11229 (daily ed. Oct. 13, 2009).

³² Cf. GAO, BUDGET ISSUES: BETTER FEE DESIGN WOULD IMPROVE FEDERAL PROTECTIVE SERVICE’S AND FEDERAL AGENCIES’ PLANNING AND BUDGETING FOR SECURITY, GAO-11-492 (May 2011), at 5. In this report, GAO discusses fees collected by the Federal Protective Service (FPS) from other Federal agencies that are available “without fiscal year limitation, for necessary expenses related to the protection of federally owned and leased buildings for FPS operations.” FPS’ expenditure account is governed by the following recurring, annual appropriations text:

The revenues and collections of security fees credited to this account shall be available until expended for necessary expenses related to the protection of federally owned and leased buildings and for the operations of the Federal Protective Service.

See, e.g., Department of Homeland Security Appropriations, 2019, Pub. L. No. 116-6, div. A. tit. II (Feb. 15, 2019). Similar to the assessment of funds from departmental Components by the DHS WCF, “FPS security fees are transferred from customer agencies to FPS’s expenditure account per interagency agreements.” GAO-11-492 (May 2011), at 5. In discussing FPS carryover balances, GAO notes that “[b]ecause FPS’s fees are available to it without fiscal year limitation, unobligated balances are carried forward to future fiscal years.” *Id.* at note 36. Though the FPS expenditure account is not a revolving fund, its appropriations text includes language similar to the “available until expended” proviso.

³³ See notes 43 through 45 and associated text.

³⁴ The Draft Report does mention the “. . . funds provided to the Working Capital Fund shall be available for obligation until expended to carry out the purposes of the Working Capital Fund” proviso, but then concludes that the Department has misinterpreted this language by reference to advisory opinions of the GAO that discuss how working capital funds generally function without additional discussion of the specific legislative framework of the DHS WCF. Draft Report at 5-6.



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Report does not interpret the DHS WCF governing language in a manner that gives full effect to all of its terms. Rather, the interpretation proffered would render the “available until expended” proviso mere surplusage and ignore the legislative history concerning that language. In interpreting statutes, the rule against surplusage requires that each word and clause of a statute be given operative effect, if possible.³⁵ Instead of giving all of the language of the DHS WCF governing legislation operative effect, the Draft Report’s interpretation is unreasonable because it would render language Congress has enacted superfluous.

Finally, the Draft Report’s analysis also fails to meaningfully factor into its analysis the longstanding administrative practice of the Department interpreting the DHS WCF authorizing language to allow for unobligated balances to be carried forward for a reasonable amount of time in the subsequent FY. “[W]henver an act of Congress has, by actual decision or by continued usage and practice, received a construction at the proper Department, and that construction has been acted on for a succession of years, it must be a strong and palpable case of error and injustice that would justify a change in the interpretation to be given to it (citations omitted).”³⁶ The Department has a longstanding policy stating that DHS WCF has carryover authority—the authority to retain customer contributions in one FY to provide services in the following FY to ensure continuity of services.³⁷ Moreover, in the annual President’s budget request, the Department identifies estimated amounts carried forward in the DHS WCF.³⁸ In addition, since FY 2014 the Department has been required to submit quarterly execution reports with activity level detail to Congress.³⁹ Thus, Congress is aware that the Department has carryover in the DHS WCF every FY and continues to authorize the DHS WCF in the same manner each FY.⁴⁰ That Congress has continued to enact this

³⁵ See *Duncan v. Walker*, 533 U.S. 167, 174 (2001). See also *Clark v. Arizona*, 548 U.S. 735, 755 n.24 (2006) (recognizing “usual rule of statutory construction” to “giv[e] effect, if possible, to every clause and word of a statute.”) (internal quotations and citations omitted).

³⁶ *Peck’s Case*, 10 U.S. Op. Atty. Gen. 52, 55–56 (1861). See also *FCC v. Am. Broad. Co.*, 347 U.S. 284, 294-95 (1954); *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 116, 67 S. Ct. 1129, 1132, 91 L. Ed. 1375 (1947). Cf. *S.D. Warren Co. v. Me. Bd. of Env’t Prot.*, 547 U.S. 370, 377 (2006) (citing the EPA’s Water Quality Standards Handbook).

³⁷ See note 21 and associated text.

³⁸ See e.g., Office of Management and Budget (OMB), Budget of the U.S. Government, Fiscal Year 2012, Appendix, at 500-501 (Feb. 14, 2011); OMB, Budget of the U.S. Government, Fiscal Year 2013, Appendix, at 539-540 (Feb. 13, 2012).

³⁹ See Department of Homeland Security Appropriations Act 2014, Pub. L. No. 113-76, div. F, tit. V § 504 (Jan. 17, 2014). These monthly execution reports clearly display that the DHS WCF has unobligated carryover that is included in the total obligational authority of the DHS WCF. See e.g., Monthly Budget Execution and Staffing Report, Fiscal Year 2019 – Through May 31, 2019 (June 28, 2019), at 5.

⁴⁰ See, e.g., Department of Homeland Security Appropriations, 2019, Pub. L. No. 116-6, div. A, tit. V § 504 (Feb. 15, 2019); Department of Homeland Security Appropriations, 2018, Pub. L. No. 115-141, div. F, tit. V § 504 (Mar.



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legislation in the same manner in light of the Department's longstanding interpretation gives additional weight to the Department's interpretation of the provisions at issue.⁴¹

(2) *The Department has a reasonable amount of time to use the funds provided to the DHS WCF.*

While the DHS WCF has distinct characteristics, it is nonetheless an intragovernmental revolving fund.⁴² The DOJ Office of Legal Counsel (OLC) and GAO have opined that agencies performing under interagency agreements (IAA), to include those financing their operations through revolving funds, have a "reasonable" amount of time to use (or earn) funds provided.⁴³ The OLC posited that the "reasonableness" standard "is contextual and imposes no rigid standard regarding the time in which a servicing agency

23, 2018); Department of Homeland Security Appropriations, 2017, Pub. L. No. 115-31, div. F, tit. V § 504 (May 5, 2017).

⁴¹ "The reenactment of the statute by Congress, as well as the failure to amend it in the face of the consistent administrative construction, is at least persuasive of a legislative recognition and approval of the statute as construed." *McCaughn v. Hershey Chocolate Co.*, 283 U.S. 488, 492-93, 51 S. Ct. 510, 512, 75 L. Ed. 1183 (1931). See also *Costanzo v. Tillinghast*, 287 U.S. 341, 345, 53 S. Ct. 152, 154, 77 L. Ed. 350 (1932).

⁴² A working capital fund is "[a] type of intragovernmental revolving fund that operates as a self-supporting entity that conducts a regular cycle of businesslike activities." GAO, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS, GAO-06-734SP (Washington, D.C.: Sep. 2005), at 101. As has been discussed, the legislative framework of the DHS WCF does not allow it to earn working capital through fees as a true working capital fund. Notwithstanding, the DHS WCF is designated as a revolving fund by the Department of Treasury (Treasury). See Treasury, Federal Account Symbols and Titles (FAST) Book, Bulletin No. 2019007 (Mar. 2019), at *108. The Treasury account fund symbol for the DHS WCF is 070X4640, which is within the fund group for intra-governmental revolving funds. *Id.* at *58. The account symbol ("X") also identifies the DHS WCF as a no-year account.

⁴³ Memorandum Opinion for the General Counsel, Department of Veterans Affairs, and the General Counsel, General Services Administration from Virginia A. Seitz, Assistant Attorney General, *Re: Whether The General Services Administration May Proceed With An Assisted Acquisition For The Department Of Veterans Affairs In Fiscal Year 2012 Using The Department's Fiscal Year 2009/2010 Funds*, 2012 WL 3059227, at *10 (O.L.C. March 2, 2012); *Expired Funds and Interagency Agreements Between GovWorks and the Department of Defense*, B-308944 (Comp. Gen. July 17, 2007), at *8. Some Federal agencies have used 90 days as a reasonable amount of time to start work with funds provided to their working capital funds. See GAO, DEFENSE WORKING CAPITAL FUND: MILITARY SERVICES DID NOT CALCULATE AND REPORT CARRYOVER AMOUNTS CORRECTLY, GAO-06-530 (June 27, 2006), at 4; GAO, IMPROPER USE OF INDUSTRIAL FUNDS BY DEFENSE EXTENDED THE LIFE OF APPROPRIATIONS WHICH OTHERWISE WOULD HAVE EXPIRED, AFMD-84-34 (June 5, 1984), App. I, at 5; and GSA, General Services Administration, Interagency Agreements—Acceptance and Obligation of Funds—General Services Administration Acquisition Letter V-09-06 (June 16, 2009). Although DHS policy does not prescribe a time period in which work on programs should start after assessment, DHS policy does provide that DHS WCF carryover should be executed in the subsequent FY. DHS Financial Management Policy Manual, ch. 2 § 2.8 – Working Capital Fund (Feb. 8, 2019), at 2. The Draft Report does not consider the reasonableness of this policy. Such consideration would, presumably, consider the effect of the legislation governing the DHS WCF on the ability to execute those funds in the year in which they are provided by the Components. For example, given that the Department must execute the DHS WCF in accordance with its annual budget justification, the ability to execute those funds in the same fiscal year in which funds are assessed is impacted by delay and uncertainty caused by extended continuing resolutions.



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must perform under an IAA.”⁴⁴ For example, in the OLC opinion cited here, the requesting agency obligated FY 2009/2010 funds through an IAA and the servicing agency’s revolving fund did not start carrying out the activity, to include contracting for the services with third-party contractors, until FY 2012.⁴⁵ More recently, the GAO described the obligational consequences of orders placed with a working capital fund, describing them as functioning like a contractor.⁴⁶ The GAO has explained that when a requesting agency places an order with a working capital fund for a *bona fide* need existing at the time of the order, the appropriations of the ordering agency is obligated at that time for the cost of the work to be performed.⁴⁷ The ordering agency’s obligations to the working capital fund remain available to reimburse services performed by the working capital fund until those funds are canceled by operation of law.⁴⁸ The DHS WCF thus has a reasonable amount of time to incur and liquidate obligations in performance of the services for which it is provided funds to carry out. There is no government-wide standard for a reasonable time period for performing work under an IAA as it relates to a customer agency’s *bona fide* need.⁴⁹ A reasonable time frame depends on the nature of the work to be performed and any associated requirements.⁵⁰ Thus, unless there is a basis for establishing the time frame to be unreasonable, the FY 2011 funds provided to carry out e-Training services were available in FYs 2012 and 2013 to fund activities within the scope of that service activity.

E. Funds assessed in FY 2011 for e-Training services that carried over into FYs 2012 and 2013 were obligated for activities within the scope of the e-Training service activity.

The funds at issue were unobligated balances in the DHS WCF that were assessed in FY 2011 for the e-Training service activity. The scope of the e-Training service activity is described in the Department’s budget justification materials for FY 2011 and includes

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Architect of the Capitol-Proposal for Establishment of a Working Capital Fund*, B-328065 (Comp. Gen. Oct. 27, 2016), at *9.

⁴⁷ *Id.*

⁴⁸ *Id.* See also GAO, INTRAGOVERNMENTAL REVOLVING FUNDS: NIST’S INTERAGENCY AGREEMENTS AND WORKLOAD REQUIRE MANAGEMENT ATTENTION, GAO 11-41 (Oct. 2010), at 10 (“Those advances are available...for covering costs of performance under - the agreement during the appropriation’s period of availability plus 5 FYs, regardless of the specified period of performance for an agreement.”)

⁴⁹ *Id.*, at 14.

⁵⁰ *Id.* For example, this might include the time necessary to comply with reprogramming requirements.



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providing, maintaining, and operating an online learning environment for the Department.⁵¹

The Department obligated carryover funds from unobligated balances assessed in FY 2011 for the e-Training service in FYs 2012 and 2013 against four contracts, with the vast majority of the funds being obligated in FY 2012.⁵² The contracts awarded in FY 2012 using a total of \$5,023,165 in FY 2011 DHS WCF carryover were as follows:

- HSHQDC12X00042 (\$2,468,431 of FY 2011 DHS WCF carryover out of a total contract value of \$2,468,431) – An IAA between the Department and the Office of Personnel Management (OPM) for e-Training Skillssoft product licenses and support services.
- HSHQDC12X00069 (\$2,353,162 in FY 2011 DHS WCF carryover out of a total contract value of \$2,817,840) – This was an IAA between the Department and OPM for professional services support requirements for Enterprise Learning and Development and Human Capital Business Systems.
- HSHQDC12X00075 (\$201,572 in FY 2011 DHS WCF carryover (added in modifications #1 and #2) out of a total contract value of \$1,532,725) – This was an IAA between the Department and OPM to provide Plateau/Success Factors Learning Management System (LMS) SaaS, migration and hosting and professional support.

The contract awarded in FY 2013 using a total of \$14,308 in FY 2011 DHS WCF carryover was as follows:

- HSHQDC13X00206 (\$14,308 in FY 2011 DHS WCF carryover out of a total contract value of \$2,412,528) – This was an IAA between the Department and the U.S. Customs and Border Protection for the procurement of Enterprise Talent Management System (ETMS) licenses.

All of the IAAs and contracts were for the acquisition of services in support of the Department's e-Training programs (licenses for online learning tools and related

⁵¹ See note 11 and associated text

⁵² Each of these contracts include funding data that includes "RW11036." RW11036 was the project code for the FY 2011 e-Training service activity. See WCF Reimbursable Agreement No. WCF110036 (May 20, 2011). Notably, the \$5,023,165 in FY 2011 carryover obligated against the FY 2012 contracts roughly approximates the \$5,522,000 in carryover that was described in the FY 2012 DHS WCF reprogramming and the description of the services to be purchased with that carryover. See Department of Homeland Security, Working Capital Fund, FY 2012 Reprogramming Summary, at 5 ("The increased assessment is needed to fund licensing support costs and an increase in dependency on centralized custom courseware development.")



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support). The LMS is specifically described as an activity within the e-Training service in the Department's FY 2011 budget justification materials.⁵³ The activities for which the FY 2011 carryover funds were expended in FYs 2012 and 2013 were thus within the scope of the e-Training service activity as that service is described in the Department's FY 2011 budget justification materials.⁵⁴

II. The reprogramming of \$5 million in e-Training funds assessed in FY 2011 in FY 2012 was executed in accordance with the DHS WCF's governing provisions.

The Draft Report concludes that the Department approved an improper reprogramming in FY 2012 of funds for e-Training that included the use of \$5 million in components' FY 2011 unliquidated obligations.⁵⁵ The OIG asserts that this reprogramming and carryover of components' unliquidated obligations was improper for several reasons.⁵⁶ First, the OIG states that the component funds were only available for FY 2011 e-Training needs and were not legally available for carryover and reprogramming in the following FY.⁵⁷ Second, the OIG states that by definition the Department cannot reprogram funds between different appropriations.⁵⁸ Finally, the OIG states that the FY 2011 DHS appropriations act prohibited the reprogramming of FY 2011 funds after June 30, 2011, except in extraordinary circumstances.⁵⁹ These three bases upon which the OIG has concluded that the Department carried out an improper reprogramming are incorrect. The OIG also asserts that the Department subsequently approved carryover and use of the same funds in FY 2013 for PALMS implementation, but it is not clear how this conclusion is reached.⁶⁰

⁵³ See note 11 and associated text.

⁵⁴ *Id.*

⁵⁵ Draft Report at 5.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ There are DHS WCF meeting notes from May 22, 2013 that refer to using \$6.936M in e-Training carryover in FY 2013, but there is no indication that the funds discussed were specifically derived from FY 2011 DHS WCF carryover. See WCF Governance Board Meeting Minutes (May 22, 2013), at *4. The Department budgeted \$10.501M for e-Training in FY 2012. See DHS, Working Capital Fund, Fiscal Year 2012 Congressional Justification, at 93. As described in previous sections of this Management Response, the Department reprogrammed \$5.522M of FY 2011 carryover for the e-Training service activity in FY 2012, increasing the funding for that activity in FY 2012 to \$16.023M. Information provided to the Department by OCFO indicates that \$5.023M of FY 2011 DHS WCF carryover in the e-Training service activity was obligated in FY 2012 on e-Training activities. Using carryover in this manner is consistent with the Department's policy on carryover in the DHS WCF. See note



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The sixth proviso of the 2011 General Provision states “[t]hat the Working Capital Fund shall be subject to the requirements of section 503 of this Act.”⁶¹ This reprogramming proviso was included in the provisions authorizing the continued operation of the DHS WCF through FY 2013.⁶² Section 503 is a recurring general provision the Department’s annual appropriations act that, relevant to this discussion, limits the inherent authority of Federal agencies to reprogram funds.⁶³ The GAO defines a reprogramming as “[s]hifting funds within an appropriation or fund account to use them for purposes other than those contemplated at the time of appropriation; it is the shifting of funds from one object class to another within an appropriation or from one program activity to another.”⁶⁴ The reprogramming proviso, in short, requires the Department to provide Congressional notice prior to expending funds in a manner that is inconsistent with the amounts and activities of the DHS WCF specified in its budget justification materials.⁶⁵ In compliance

21 and associated text. As a practical matter, the Department would have derived no financial benefit from designating the funds carried over in FY 2011 from the e-Training activity an additional FY (to FY 2013) in lieu of carrying over the funds provided in FY 2012 to FY 2013.

⁶¹ See note 8 and associated text.

⁶² See Department of Homeland Security Appropriations Act, 2013, Pub. L. No. 113-6, Div. D, Title V, § 504 (Mar. 26, 2013); Department of Homeland Security Appropriations Act, 2012, Pub. L. No. 112-74, Div. D, Title V § 504 (Ja. 04, 2011).

⁶³ See, e.g. Department of Homeland Security Appropriations Act 2019, Pub. L. No. 116-6, div. A, tit. V § 503 (Feb. 15, 2019). This recurring general provision also includes transfer authority to the Department, but that is not relevant to this discussion.

⁶⁴ GAO, A GLOSSARY OF TERMS USED IN FEDERAL BUDGET PROCESS, GAO-05—734SP (Sep. 2005), at 85. As a general matter, “the rule [is] that . . . reprogramming authority extends to the expenditure of funds under lump sum appropriations. The Comptroller General has taken the position that a lump sum appropriation may be used for any authorized purpose, even if the legislative history of the appropriation statute prescribes specific priorities with regard to allocating funds among authorized purposes.” *Attorney Gen.’s Auth. to Reprogram Funds for the United States Marshals Serv. to Avoid Deficiencies*, 4B U.S. Op. Off. Legal Counsel 701, 702 (1980). Section 503 serves to limit the inherent authority by establishing notice requirements as condition precedents to funds being available pursuant to a reprogramming. See *U.S. Secret Service — Statutory Restriction on Availability of Funds Involving Presidential Candidate Nominee Protection*, B-319009 (Comp. Gen. Apr. 27, 2010), at *3.

⁶⁵ The limitation of the DHS WCF to the activities and amounts specified in the Department’s annual budget justification materials and the imposition of section 503 reprogramming notice requirements are, in many respects, inconsistent with the normal operations of a true working capital fund and require the DHS WCF to be executed in a manner that can satisfy those requirements. “Intragovernmental revolving funds are designed to collect funds from other agencies and accounts to finance a continuing cycle of business-type operations.” See *Assignment of Losses Incurred by the Library of Cong. Fedlink Revolving Fund*, B-301714 (Comp. Gen. Jan. 30, 2004), at note 4. A working capital fund thus normally charges and expends funds in exclusive consideration of the cost of carrying out its activities and ongoing ability to deliver authorized services. *Id.* For a true working capital fund, if the cost of providing services increases the fund would charge more for the services without need for a reprogramming. Also, most working capital funds do not need to comply with Congressional notice requirements to add or remove services from the fund. In contrast, the DHS WCF must satisfy requirements to provide Congress with a reprogramming notice to add or remove services from the Fund.



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with section 503, the Department notified Congress prior to making reprogrammed funds available for obligation in FY 2012.⁶⁶

In the Draft Report, the OIG appears to find fault with the Department for reprogramming funds within the DHS WCF to increase the amount of funding for the e-Training activity in FY 2012 by \$5 million.⁶⁷ However, the reprogramming of funds in the DHS WCF (i.e. shifting of funds within an account for different authorized purposes) is what the reprogramming proviso anticipates and requires.⁶⁸ Put another way, the 2011 General Provision limited the funding provided to the DHS WCF to being used for activities and amounts provided in the Department's budget justification materials *unless* those funds, subject to the limitations of section 503, were administered pursuant to a reprogramming action with the requisite notice(s) made to Congress prior to making reprogrammed funds available for obligation. Thus, the Department was authorized to reprogram funds within the DHS WCF, and notified Congress prior to making reprogrammed funds available for obligation.⁶⁹

The funds that were reprogrammed in FY 2012 for the e-Training service were derived from carryover from the FY 2011 e-Training service activity. The reprogramming gave notice to Congress of the amount of funds that the Department intended to execute from funds provided to DHS WCF by the Components (i.e. funds assessed) for the e-Training activity in FY 2012.⁷⁰ The reprogramming notice also described the purposes for which

⁶⁶ The reprogramming notice, in relevant part, communicated to Congress that the FY 2011 e-Training carryover was being executed in FY 2012 for that same purpose. See Department of Homeland Security, Working Capital Fund, FY 2012 Reprogramming Summary. Given that the carryover was to be used for the same purpose in FY 2012 and within the same program, project and activity (PPA) it is not clear that this reprogramming was required in accordance with section 503. It may be that the e-Training information was included for purposes of transparency or as a discretionary notice to Congress. Regardless, the FY 2011 e-Training carryover was included in the reprogramming notice.

⁶⁷ See Draft Report at 5. The limited discussion in the Draft Report makes it difficult to ascertain the precise nature of the OIG's objections regarding the reprogramming of funds at issue. This discussion is included in this Management Response because, as a starting point, it is necessary to establish that Congress enacted a framework for reprogramming of funds provided to the DHS WCF and that, as it pertains to the reprogramming issue, the Department complied with the applicable statutory notice requirements for a reprogramming.

⁶⁸ See note 8 and associated text.

⁶⁹ Adhering to the budget justification and reprogramming requirements of the 2011 General Provision required that the DHS WCF be structured more like a directly appropriated account than a working capital fund. Specifically, the activities of the DHS WCF are budgeted and managed by the Department at the activity level within a formal PPA structure. For example, in FYs 2011 and 2012 the DHS WCF had five PPAs (1) Fee for Service Activity; (2) Tri-Bureau Service Activity; (3) Government-Wide Mandated Service Activity; (4) DHS Crosscutting Activity; and (5) WCF Management Activity. See DHS, Working Capital Fund, Fiscal Year 2011 Congressional Justification; DHS, Working Capital Fund, Fiscal Year 2012 Congressional Justification. The "e-Training Activity," from which PALMS/ETMS was funded, was an activity within the Government-Wide Service Activity PPA. *Id.* The Components are assessed independently for each activity, such as e-Training. *Id.*

⁷⁰ Department of Homeland Security, Working Capital Fund, FY 2012 Reprogramming Summary.



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the additional funds were to be used within the e-Training activity (“licensing support costs and an increase in dependency on centralized custom courseware development”).⁷¹ The reprogramming notice thus met the requirements of the reprogramming proviso.

The Draft Report appears to conclude that prior year balances cannot be reprogrammed. As a general matter, the executive branch has the inherent authority to reprogram lump sum appropriations.⁷² It is not clear why the inherent authority to reprogram would not extend to prior year balances. Moreover, DHS annual appropriations acts includes recurring language imposing notice and threshold requirements on the reprogramming of prior year balances.⁷³ Thus, section 503 of DHS’s appropriations act contemplates reprogramming of prior year balances.

As to OIG’s conclusion that by definition the Department cannot reprogram funds between different appropriations the Draft Report does not state what funds, if any, were reprogrammed between different appropriations. As such, it is not possible to validate the factual assertion made. Additionally, the DHS WCF requires a reprogramming to use funds in the DHS WCF for activities that are different from the activities included in the Department’s congressional budget justifications. Thus, the Department’s authority to reprogram has been extended by statute to the funding provided by the departmental Components to the WCF.

Finally, OIG states that the FY 2011 DHS appropriations act prohibited the reprogramming of FY 2011 funds after June 30, 2011, except in extraordinary circumstances. The statement is premised on a misunderstanding of the application of section 503 notice requirements to carryover balances. In FY 2012, the reprogramming notice requirements for prior year balances was governed by section 503(e) of the Department of Homeland Security Appropriations Act, 2012.⁷⁴ This provision applies the notification thresholds and procedures to prior year funds, and thus, the June 30 deadline applies to each year for all funds proposed for reprogramming in that year, to include prior year funds.

⁷¹ *Id.*, at 5.

⁷² See *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993); *Land Acquisition by the Yurok Indian Tribe*, B-279338 (Comp. Gen. Jan. 4, 1999), at *4; *The Honorable Silvio O. Conte Ranking Minority Member Comm. on Appropriations House of Representatives*, B-196854 (Comp. Gen. Mar. 19, 1984), at *2; *In the LTV Aerospace Corp.*, 55 Comp. Gen. 307, 318 (Oct. 1, 1975).

⁷³ See e.g. Department of Homeland Security Appropriations Act, 2012, Pub. L. No. 112-74, div. D, tit. V § 503(e) (Dec. 23, 2011).

⁷⁴ *Id.*



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III. The use of departmental Component funds provided to the DHS WCF for PALMS implementation did not violate 31 U.S.C. § 1301(a).

The Draft Report concludes that DHS violated the purpose statute when it used Component funds for PALMS implementation in FYs 2014 and 2015.⁷⁵ The Draft Report states that in FYs 2013 through 2015, nearly \$7.1 million in HRIT funds were expended on contracts that were also funded by the DHS WCF.⁷⁶ The OIG asserts that the Department augmented HRIT funds by expending approximately \$7.4 million in departmental Component appropriations through the DHS WCF for enterprise-wide implementation of PALMS, which was an HRIT program.

Agencies may not augment their appropriations improperly.⁷⁷ An improper augmentation results when an agency obtains and retains money from outside sources without statutory authority.⁷⁸ The “miscellaneous receipts statute” (31 U.S.C. § 3302(b)) and the “Purpose Statute” (31 U.S.C. § 1301(a)) generally prevent an agency from spending more money than Congress appropriates, thus maintaining Congress's control over agency activity.⁷⁹ The anti-augmentation principle thus prohibits unauthorized augmentation from both government and non-government sources.⁸⁰

The OIG concludes that the Department violated the Purpose Statute because “Congress provided a specific appropriation for the HRIT program that was available for PALMS implementation.”⁸¹ The DHS OIG’s conclusion appears to be premised, at least in part, upon the conclusion that the HRIT line items represented an amount that could not be exceeded. In FYs 2013 through 2015, the Department’s “Departmental Management and Operations – Office of Under Secretary for Management” appropriation included an amount for HRIT.⁸² Each HRIT line item provided that a specified amount from the

⁷⁵ Draft Report at 7.

⁷⁶ *Id.* at 8.

⁷⁷ *United States Postal Serv. Office of Inspector Gen.-Implementation of Postal Accountability & Enhancement Act Section 603, Part 1, B-317022* (Comp. Gen. Sep. 25, 2008), at *5.

⁷⁸ *Id.* See *Reimbursement of the Internal Revenue Serv. for Investigative Servs. Provided to the Indep. Counsel*, 12 U.S. Op. Off. Legal Counsel 233-234 (O.L.C. 1988).

⁷⁹ *Id.*

⁸⁰ *Id.* *NRC Auth. to Collect Annual Charges from Fed. Agencies*, 15 U.S. Op. Off. Legal Counsel 74, 78 (O.L.C. 1991).

⁸¹ Draft Report at 7.

⁸² Department of Homeland Security Appropriations Act, 2013, Pub. L. No. 113-6, div. D, tit. I (Mar. 26, 2013); Department of Homeland Security Appropriations Act 2014, Pub. L. No. 113-76, div. F, tit. I (Jan. 17, 2014); Department of Homeland Security Appropriations Act 2015, Pub. L. No. 114-4, Div. F, tit I (Mar. 4, 2015).



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lump sum appropriation “shall be available for Human Resources Information Technology program” and extended the period of availability for those funds, making them available for multiple years.⁸³ The GAO has opined that clauses such as these (1) designate a specific amount that cannot be diverted to other purposes; and (2) extend the time period those earmarked funds are available for obligation, but do not constitute limitations or caps on the amount of money available for that purpose.⁸⁴ In accordance with the two most recent GAO opinions interpreting similar appropriations text, these HRIT line items established a limit only on the amount of funds to be available for an extended period of time for obligation for HRIT, and provided that no less than that amount could be expended upon HRIT activities, but did not create a limitation on the maximum amount of funds available for HRIT activities.⁸⁵ Thus, at minimum, additional lump sum amounts from the “Departmental Operations – Office of Under Secretary for Management” account could have been used for HRIT related activities.

The legislative history accompanying the appropriation for “Departmental Operations – Office of Under Secretary for Management” does not include an express statement that Congress intended DHS to use this account as the exclusive source of funding for all PALMS implementation costs. To be certain, it would not be unusual for a departmental Component to fund the proportional cost of an activity that benefitted that departmental Component (in proportion to the benefit conferred).⁸⁶ As the HRIT line item did not establish a statutory maximum on the amount of funds that were legally available for HRIT activities, the mere fact that funds were expended upon HRIT activities in addition to those made available in the HRIT line items, without more, does not in of itself establish a purpose violation.

Moreover, the budget justification materials do not indicate that DHS intended for all costs associated with PALMS to be borne by the “Departmental Operations – Office of Under Secretary for Management” account (i.e. that benefiting components would not be proportionally contributing to this effort). Notably, the Department’s FY 2015 and FY 2016 congressional budget justifications stated that DHS would fund ETMS/PALMS

⁸³ *Id.*

⁸⁴ *Small Bus. Admin.-Availability of Appropriations for Loan Modernization & Accounting Sys.*, B-326941 (Comp. Gen. Dec. 10, 2015), at *5-6; *Forest Serv.-Appropriations for Fighting Forest Fires*, B-231711 (Comp. Gen. Mar. 28, 1989), at *2-3.

⁸⁵ *Id.*

⁸⁶ *Cf. Use of Agencies' Appropriations to Purchase Computer Hardware for Dep't of Labor's Exec. Computer Network*, 70 Comp. Gen. 592, 596 (June 28, 1991) (The GAO advising, in most relevant part, that appropriated funds provided by various agencies for a procurement of supplies and services in excess of the proportional benefit received by those agencies was a violation of 31 U.S.C. §§ 1301(a) and 1532.



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through HRIT and DHS WCF funding.⁸⁷ The OIG however, argues that the FY 2015 Congressional Justification limits the WCF funding for ETMS/PALMs to operations and maintenance.⁸⁸ This argument appears to be premised on the statements in the budget justification that “[u]pon successful acquisition and deployment to DHS components, the Operations and Maintenance (O&M) resource requirement are funded by Working Capital Fund (WCF) component contributions” and that “[o]nce IT solutions have been acquired and deployed to DHS components, their Operations and Maintenance (O&M) is funded via Component contributions to Working Capital Funds (WCF).”⁸⁹ This statement supports the conclusion that O&M expenses of pertinent IT solutions are to be borne entirely by departmental Component contributions to the DHS WCF, but does not imply that the acquisition of IT solutions for the Department are to be borne entirely by funds made available for HRIT activities. Those statements also should be read in the context of the DHS WCF e-Training activity—which included as a specific service in FYs 2014 and 2015 the “[c]entralized procurement of primary DHS LMS in use, providing greater visibility to CFO’s, CIO’s, and all DHS management regarding costs.”⁹⁰ Those statements rather, clearly indicate that funds provided to the DHS WCF would be funding at least some portion of the procurement of the Department’s LMS. So long as the Department had a reasonable methodology for allocating the cost between the “Departmental Operations – Office of Under Secretary for Management” account for enterprise level investments and the appropriations of the departmental Components contributing through the DHS WCF (i.e. the amount charged reflected the proportional benefit, and purpose of, the appropriations charged), there is no basis for finding, upon the facts presented in the Draft Report, a violation of Purpose Statute.

To the extent that the OIG’s conclusion is premised upon a determination that the Department may have changed the source of funding for PALMS implementation, the Draft Report does not address the matter in the specific context of the Department’s working capital fund authority under which the agency may shift covered services to such a fund.⁹¹ Specifically, pursuant to the Department of Homeland Security Appropriations

⁸⁷ DHS, Under Secretary for Management, Fiscal Year 2015 Congressional Justification, at 14; DHS, Under Secretary for Management, Fiscal Year 2016 Congressional Justification, at 13.

⁸⁸ Draft Report at *8 (“Although the Department’s FY 2015 Congressional Justification discussed the use of the HRIT appropriation and WCF for PALMS program, it did not constitute statutory authority for the Department to use WCF in addition to HRIT funds for PALMS implementation. The HRIT program description in the FY 2015 Congressional Justification states that the operations and maintenance of HRIT systems are funded by WCF. It did not specifically request the use of WCF for PALMS implementation.”)

⁸⁹ Department of Homeland Security, Under Secretary for Management, Fiscal Year 2015 Congressional Justification, at 13 and 44.

⁹⁰ DHS, Working Capital Fund, Fiscal Year 2014 Congressional Justification, at 33; DHS, Working Capital Fund, Fiscal Year 2015 Congressional Justification, at 29.

⁹¹ See Draft Report at 8 (“Furthermore, the Department used WCF for PALMS implementation in FYs 2013 and 2014 without explicitly notifying Congress in its FY 2013 and 2014 Congressional Justifications.”) Included in this



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Act, 2004, Pub. L. No. 108–90, tit. V § 506, the DHS WCF shall be available “for expenses and equipment necessary for maintenance and operations of such administrative services as the Secretary of Homeland Security determines may be performed more advantageously as central services.” In reviewing a similar authority granted to the Department of Commerce, the OLC determined that such authority constitutes an exception to the Comptroller General’s rule prohibiting an agency from switching responsibility for funding a particular service from one appropriation account to another.⁹² This opinion supports the conclusion that an activity otherwise funded from a lump sum account, such as a HRIT activity that was funded from the “Departmental Operations – Office of Under Secretary for Management,” may be shifted to the DHS WCF at the discretion of the Department and carried out with customer funding.

We request that the OIG consider this recommendation resolved and closed.

Recommendation 2: Identify any violations of the *Antideficiency Act* related to the funding of PALMS and report all violations in accordance with 31 U.S.C. § 1351 and Section 145 of the Office of Management and Budget Circular No. A-11.

Response: Non-concur. DHS did not violate the purpose statute, bona fide needs rule, or *Antideficiency Act* related to the funding of PALMS. See response to Recommendation 1 for additional information.

We request that the OIG consider this recommendation resolved and closed.

Recommendation 3: Conduct a review of all Working Capital Fund carryover activities from FYs 2010 through 2017, and determine whether the Department violated the bona fide needs rule and the *Antideficiency Act* regarding the use of carryover funds for WCF activities.

issue are a subset of concerns expressed by the OIG related to the fiscal year 2012 reprogramming. Given that there is no indication that the HRIT line items were intended to be the exclusive source of funding for PALMS/ETMS, any concern regarding the sufficiency of a reprogramming action to authorize the augmentation of such an appropriations cap is moot. Further, to the extent that the Department’s budget justification materials may have been unclear regarding the Department’s intent to fund PALMS from other lump sum appropriations, such materials are not legally binding on the Department. See *Hein v. Freedom From Religion Foundation, Inc.*, 551 U.S. 587, 608 (2007); *Lincoln v. Vigil*, 508 U.S. 182, 192, 113 S. Ct. 2024, 2031, 124 L. Ed. 2d 101 (1993) (“The allocation of funds from a lump-sum appropriation is another administrative decision traditionally regarded as committed to agency discretion. After all, the very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective or desirable way.”)

⁹² *Funding an Agency’s Functions from Its Working Capital Fund*, 6 U.S. Op. Off. Legal Counsel 384 (O.L.C. 1982), at note 9.



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Response: Non-concur. DHS did not violate the purpose statute, bona fide needs rule, or the *Antideficiency Act* regarding the use of carryover funds for WCF activities. As the draft report states in footnote 6 on page 6, the Comptroller General and the Office of Legal Counsel have opined that a revolving fund has a reasonable amount of time to obligate funds provided to it by the customer agency, even if that period extends beyond the period of availability for fund obligated to the revolving fund. See response to Recommendation 1 for additional information.

We request that the OIG consider this recommendation resolved and closed.

Recommendation 4: Provide a report of the findings and the reviews of PALMS funding and Working Capital Fund activities, and corrective actions if applicable, to the Office of the Inspector General before June 28, 2019.

Response: Non-concur. DHS did not violate the purpose statute, bona fide needs rule, or the *Antideficiency Act* regarding the use of carryover funds for WCF activities. See response to Recommendation 1 for additional information.

We request that the OIG consider this recommendation resolved and closed.

Recommendation 5: Implement or improve DHS administrative fund control systems to prevent improper use of funds.

Response: Non-concur. The report provides no basis for concluding that the Department's administrative controls failed, nor does it identify any relevant, specific gaps in the Department's current controls. See response to Recommendation 1 for additional information.

We request that the OIG consider this recommendation resolved and closed.

Recommendation 6: Implement corrective actions to improve the acquisition review process for proper funding and compliance with Federal appropriations law.

Response: Non-concur. The report provides no basis for concluding that the Department's administrative controls failed, nor does it identify any relevant, specific gaps in the Department's current controls. See response to Recommendation 1 for additional information.

We request that the OIG consider this recommendation resolved and closed.

Recommendation 7: Review WCF guidance and practices, and ensure that all WCF obligations within a FY are properly correlated with that FY in order to prevent improper future carryover of unobligated funds.



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Response: Non-concur. The report provides no basis for concluding that the Department's WCF guidance and practices are deficient. See response to Recommendation 1 additional information.

We request that the OIG consider this recommendation resolved and closed.

OIG recommended that the DHS Chief Procurement Officer:

Recommendation 8: Issue a memorandum to DHS headquarters and components instructing its procurement offices to pay for PALMS subscriptions only after satisfactory delivery of all associated services.

Response: Non-concur. This recommendation is premised on the conclusion that the Department violated the advanced payment prohibition at 31 U.S.C. § 3324(a). The Department does not concur with this conclusion. The licenses, or subscriptions (the orders under the BPA appear to use the terms appear interchangeably in the pertinent contracts), for the PALMS/ETMS SaaS are separately priced line items on the orders made for those services. Those orders created a contractual right at the time of purchase for the ordering entity to grant the users, commensurate with the number of licenses procured, access to the PALMS/ETMS SaaS and accompanying support for the use of those licenses (hosting, updates, and Tier 3 support).

- I. The payment for the PALMS/ETMS licenses upon delivery was not an advance payment.

On May 28, 2013 the Department awarded a BPA to Visionary Integration Professionals (BPA No. HSHQDC-13-A-00030, hereafter BPA-00030) to provide the Department and the departmental Components Software as a Service (SaaS) PALMS/ETMS using federally approved cloud services. BPA-00030 was established against a General Services Administration federal supply contract, GS-35F-0050L. BPA-00030's term was for a base period of May 28, 2013 through May 27, 2014 with four subsequent option years. BPA-00030 provides PALMS/ETMS as SaaS, a vendor hosted solution including user access, configuration, data migration, training, change management, program management, and IT professional services to support the capabilities. In procuring the PALMS/ETMS as SaaS, the Department did not purchase software, but the legal right to use software hosted by the provider with associated training and support services. In general, SaaS runs on an underlying platform and infrastructure managed by the vendor and provides a self-contained operating environment used to deliver a complete application such as Web-based email and related management capabilities.⁹³ The service

⁹³ GOVERNMENT ACCOUNTABILITY OFFICE ("GAO"), FEDERAL GUIDANCE NEEDED TO ADDRESS CONTROL ISSUES WITH IMPLEMENTING CLOUD COMPUTING, GAO-10-513 (May 27, 2010), at 11.



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provider delivers one or more applications and all the resources (operating system and programming tools) and underlying infrastructure to run them for use on demand.⁹⁴ The procuring agency uses the service provider's applications, which are accessible from various client devices through an interface such as a Web browser (e.g., Web-based e-mail system).⁹⁵ The procuring agency does not manage or control the underlying infrastructure or the individual application capabilities.⁹⁶

In procuring PALMS/ETMS as SaaS the Department and departmental Components were buying a Commercial-Off-the-Shelf service scaled to their needs. The contractor, pursuant to orders under the BPA, provides development, test, production, and training environments. The contractor further provides annual hosting, maintenance, support, and user access via the PALMS/ETMS software subscription.⁹⁷ The number of users of this service defined the scalability of the requirement because the platform, infrastructure and support that comprise the service are defined by the number of people to be given access to the system. The responsible contracting officer explained that when purchasing commercial SaaS, it is standard for there to be an implementation period after the purchase of the service during which the system is not fully operational.

Pursuant to 31 U.S.C. § 3324, agencies may not make advance payments on contracts unless the payments are authorized by law. Specifically, “a payment under a contract to provide a service ... for the United States Government may not be more than the value of the service already provided.”⁹⁸ Section 3324(a) thus generally prohibits the government from paying for goods before they have been received or for services before they have been rendered.⁹⁹ The primary purpose of § 3324 is to protect the government against the risk of nonperformance—“to preclude the possibility of loss to the Government in the event a contractor—after receipt of payment—should fail to perform his contract or refuse or fail to refund moneys advanced.”¹⁰⁰ In determining whether a payment has been made in advance, opinions of the GAO have advised that it is necessary to

⁹⁴ GAO, CLOUD COMPUTING: AGENCIES HAVE INCREASED USAGE AND REALIZED BENEFITS, BUT COST AND SAVINGS DATA NEED TO BE BETTER TRACKED, GAO-19-58 (Apr. 2019), at 8.

⁹⁵ GAO, CLOUD COMPUTING: AGENCIES NEED TO INCORPORATE KEY PRACTICES TO ENSURE EFFECTIVE PERFORMANCE, GAO-16-325 (Apr. 07, 2016), at 5.

⁹⁶ *Id.*

⁹⁷ See Vision Integration Professional, RFQ #HSHQDC-12-Q-00286, Volume I, Technical Proposal § 2.1.1 (Jan. 10, 2013) (“[T]he environments, hosting infrastructure, maintenance support, and Tier 3 help desk support will be included in the core SaaS offering covered by the per user fee thereby reducing risk to DHS.”)

⁹⁸ 31 U.S.C. § 3324(a).

⁹⁹ 1 GAO, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, GAO-04-261SP (3rd Ed. 2004), at 5-50.

¹⁰⁰ *Id.* citing *Comptroller Gen. Warren to the Dir., Bureau of the Budget*, 25 Comp. Gen. 834, 835 (June 5, 1946).



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determine whether (1) the service was performed prior to payment,¹⁰¹ and (2) whether the government received the benefit of the service at the time of payment.¹⁰²

The facts presented do not constitute a violation of the advance payment prohibition of 31 U.S.C. § 3324 because:

- The PALMS/ETMS subscriptions at issue are licenses.
- The delivery of the licenses created a present contractual right commensurate with the number of users of PALMS/ETMS.
- The failure of PALMS/ETMS to function properly did not convert payment for licenses granting the right to use that system to an advance payment.

The payment for the PALMS/ETMS licenses upon delivery was thus not an advance payment notwithstanding the failure of the PALMS/ETMS system to function in accordance with the terms of the subscription order.

A. The PALMS/ETMS subscriptions at issue are licenses.

The PALMS/ETMS subscriptions were procured using Federal Acquisition Regulation (FAR) Part 12 commercial procedures. The contracting officer was required to follow the policies in FAR Part 12, which includes the following:

- Contracts for the acquisition of commercial items are subject to the policies in other parts of the FAR. Part 12 takes precedent when a policy in another part of the FAR is inconsistent with a policy in part 12.¹⁰³
- The FAR requires agencies to acquire commercial computer software or commercial computer software documentation under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs.¹⁰⁴

¹⁰¹ See *In the Reimbursements of Total Performance or Payment Bond Premiums to Contractor in First Progress Payment*, 57 Comp. Gen. 25, 28 (Comp. Gen. Oct. 12, 1977) (once contractor obtains performance full performance has been completed).

¹⁰² *Coast Guard Membership Fees*, B-221569 (Comp. Gen. June 2, 1986) (benefit of memberships in private organizations is received upon enrollment and payment); *Acting Comptroller Gen. Elliott to the Sec'y of State*, 22 Comp. Gen. 904, 905 (Mar. 16, 1943) (benefit of license to use a patent accrued at time of payment thus precluding a finding of an advance payment). Cf. *McClure v. United States*, 19 Ct. Cl. 173, 181 (1884) finding that the prohibition against advance payment does not apply when there is a complete performance, although the government may not have received any benefit in consequence of the destruction of the subject-matter of the agreement.

¹⁰³ 48 C.F.R. § 12.102(c).

¹⁰⁴ *Id.* § 12.212(a).



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The Department has identified other examples of licenses which government agencies are paid for upon delivery. For example, the National Aeronautics and Space Administration's (NASA's) Solutions for Enterprise-Wide Procurement (SEWP) Government-Wide Acquisition Contract (GWAC) anticipates that software subscriptions will be purchased on a yearly basis upfront.¹⁰⁵ Accordingly, DHS's payment for software subscriptions or licenses when the subscriptions or licenses are acquired is consistent with commercial practice.

At the Exit Conference for this audit, the DHS OIG questioned whether a contract for SaaS should be treated as the acquisition of a "license" or a "service." The acquisition of SaaS at issue was structured, in relevant part, as an acquisition of licenses. The General Services Administration (GSA) federal supply schedule contract, GS-35F-0050L offers various commercial licenses, subscriptions and professional services. BPA-00030 established SaaS user volume-based pricing table for subscriptions and labor rates for services that the Department could procure through individual task orders. The volume-based (identified in the BPA as "consumption-based") pricing provided 7 tier levels.¹⁰⁶ As shown in the Product SKU Number column of the BPA pricing sheet for each tier, the SaaS subscription includes the Meridian SaaS license¹⁰⁷ (MKSL-GLMS-001P, Q, S, T and U), products associated with the license (MKSL-GLMS-003A, B, and C; MKSL-GLMS-004E, F, H, I and J; MKSK-GLMS-005I and D), and an annual subscription to NEOGOV Performance Management (NGV-PE-FED-D and, E, G, H and I).¹⁰⁸ The Product SKU Number also lists associated professional services and access to the cloud

¹⁰⁵ See NASA, Solutions for Enterprise-Wide Procurement (SEWP) Terms and Conditions § A.1.14, § A.1.15 ("[S]oftware subscriptions can be thought of like magazine subscriptions - you can pay monthly, but it costs much more; typically you buy a one, two or three year subscription upfront.") (last visited July 29, 2019: https://sewpprod.service-now.com/support?id=kb_article&sys_id=82514883db749b00525bf3421f9619d7); see also U.S. Department of Transportation, Federal Transit Administration, Third Party Contracting Guidance, FTA C 4220.1F, Chapter IV.2.b.(5)(b) ("FTA recognizes that advance payments are typically required for . . . software licenses.") (last visited July 29, 2019: <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf>.)

¹⁰⁶ Section 2.5.2 of the BPA explains that the consumption-based pricing methodology allows the government to pay actual user prices for active system users, rather than specifying a number of users up front. Before an order is issued, the contractor provides the Agency with the cumulative amount of uses to establish the tier rate for that particular order. See also Vision Integration Professional, RFQ #HSHQDC-12-Q-00286, Volume I, Technical Proposal § 2.1.7 (Jan. 10, 2013) ("Team VIP will offer a consumption-based pricing model to DHS and its component agencies predicated on task order issuance that estimates the number of active users in the annual period.")

¹⁰⁷ The item is identified in Visionary's GSA Schedule contract as the SaaS License Model. This "[p]rovides cloud based subscription model as an annual reoccurring fee that includes maintenance, upgrades, patches, and hosting." See Contract Number GS-35F-0050L, SIN 132-32.

¹⁰⁸ See BPA-00030, Attachment 1, BPA Pricing Sheet.



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infrastructure for web hosting (GSA IaaS BPA Web Hosting CLINs) that may be ordered separately.¹⁰⁹ The BPA pricing chart states that Annual Maintenance¹¹⁰ and Tier 3 Help Desk Support are included in the description.¹¹¹ The product was thus structured as a license notwithstanding its incorporation of certain services into those licenses.

- B. The delivery of the licenses created a present contractual right to a commensurate number of users to the PALMS/ETMS constituted performance under the contract.

The licenses, or subscriptions (the Orders under the BPA appear to use the terms interchangeably), for the PALMS/ETMS SaaS are separately priced line items on the orders made under the BPA. Those orders created a contractual right at the time of purchase for the ordering entity to grant the users, commensurate with the number of licenses procured, access to the PALMS/ETMS SaaS and accompanying support for the use of those licenses (hosting, updates, and Tier 3 support). This determination is consistent with the structure of GS-35F-0050L. Similar to warranties and memberships in organizations, the immediate contractual right conferred by a license constitutes performance such that payment for that license upon delivery is not a prohibited advance payment.¹¹²

- C. The failure of the PALMS/ETMS to function properly does not convert payment for licenses granting the right to use that system to an advance payment.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* Visionary's GSA Schedule contract identifies two types of software maintenance, software maintenance as a product and software maintenance as a service. See Contract Number GS-35F-0050L, at 9. Services were procured under SIN 132-32 as shown in the associated SKUs provided in the BPA pricing sheet for the SaaS license. Maintenance associated with that SIN is identified as Software Maintenance as a Product. See Contract Number GS-35F-0050L, SIN 132-32. This product is billed at the time of purchase. *Id.* at 9.

¹¹¹ *Id.* Tier 3 Helpdesk Support is "support and maintenance for the platform and cloud inclusive of infrastructure upkeep, system patches, and upgrades." Vision Integration Professional, RFQ #HSHQDC-12-Q-00286, Volume I, Technical Proposal § 2.1.1 (Jan. 10, 2013).

¹¹² *Cf. Matter of: United States Dep't of Interior--Purchase of Warranties in Advance*, B-249006 (Comp. Gen. Apr. 6, 1993) (contractual right to the correction of defects accruing at the time of payment precluded a finding of an advance payment); *Coast Guard Membership Fees*, B-221569 (Comp. Gen. June 2, 1986) (benefit of memberships in private organizations is received upon enrollment and payment); *In the Reimbursements of Total Performance or Payment Bond Premiums to Contractor in First Progress Payment*, Oct. 12, 1977, 57 Comp. Gen. 25, 28 (Oct. 12, 1977) (once contractor obtains bonds, full performance has been completed); *Acting Comptroller Gen. Elliott to the Sec'y of State*, 22 Comp. Gen. 904, 905 (Mar. 16, 1943) (benefit of license to use a patent accrued at time of payment thus precluding a finding of an advance payment).



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The Performance Work Statement for BPA-00030, DHS HQ's Order No. HSHQDC-13-J-00401, provided that system launch would occur on December 19, 2013, approximately three months after award of the order.¹¹³ The order immediately provided the legal right for the number of users, as authorized by the number of licenses procured, to access the PALMS/ETMS platform. At the time of the award, the migration of content, system configuration, testing, and acceptance, however, was expected to be completed by this launch date. Problems with implementing the PALMS/ETMS SaaS, to include issues stemming from system configuration, data migration, and obtaining the authority to operate, delayed initial system launch until January 2015, with full implementation occurring in July 2016.

The OIG has expressed concern that the payment upon delivery for the PALMS/ETMS licenses constituted an advance payment because the system to which the licenses granted access did not function properly for approximately 18 months after award, such that the government did not derive the full benefit of the licenses at the time they were procured.¹¹⁴ There is no precedent for finding the failure of a service to function properly is tantamount to an advance payment.¹¹⁵ For purposes of applying 31 U.S.C. § 3324, procuring a service for which the full benefit is delayed because of unanticipated defects and access problems is distinguishable from purchasing an item for a future benefit. The law governing federal procurements allows for the government to remedy inadequate

¹¹³ BPA-00030, DHS HQ's Order No. HSHQDC-13-J-00401, Performance Work Statement (Aug. 28, 2013) at 13. The order was awarded on Aug. 30, 2013.

¹¹⁴ The concern expressed was similar to that discussed in *Def. Television-Audio Support Activity--Advance Payments*, B-288013 (Comp. Gen. Dec. 11, 2001), wherein the GAO reviewed the Department of Defense's (DoD) payment of membership fees to a private fitness center at the beginning of each option year under a contract for providing fitness facilities and services for government employees before the agency employees use the contractor's facilities. The GAO advised that DoD could not procure full-year memberships in health clubs because no benefit was conferred until employees accessed the fitness facilities and availed themselves of the health services. However, the facts related to PALMS/ETMS are distinguishable from those presented in *Def. Television*. Once a license is delivered, like an organizational membership, patent, warranty, or bid bond, the benefit accrues to the purchaser because the legal right provided through the license has conveyed. See note 112 and associated text. This is distinguishable from a membership in a health club for which no benefit accrues until the member avails itself of its services. While the GAO does not discuss such a distinction in *Def. Television*, the dissimilarity between a license and gym membership is inherent in the nature of the item procured and can be implied by GAO's advice that paying for an item such as a patent, warranty, or bid bond at the time of purchase is not an advance payment.¹¹⁴ A license, like a patent, is a legal right that conveys in total upon purchase as distinguished from a health club membership which, like a lease or payment for cable television service, is procuring access to a facility or service that by its nature cannot convey at the time of purchase.

¹¹⁵ When the GAO has identified circumstances that it determines are the equivalent of an advance payment it explicitly stated that the facts presented constituted an advance payment. See, e.g. *Ms. Margaret A. Willis Far Secretariat Gen. Servs. Admin.*, B-234591 (Comp. Gen. June 20, 1989), at *1 and *Riverport Indus., Inc.-Request for Reconsideration*, B-218656 (Comp. Gen. July 31, 1985), at *2 advising that the acceptance of an imbalanced price proposal, for example, would be tantamount to making an advance payment; or the determination in the non-decision letter, *To Roy J. Heinbuch*, B-237127 (Comp. Gen. Dec. 12, 1989) that paying utilities on a "balanced" payment schedule effectively resulted in the government paying in advance for utilities during future high use periods, see also *To the Sec'y of the Army*, 46 Comp. Gen. 202, 205 (Sep. 9, 1966) reaching a similar conclusion regarding the payment tuition for a five-year program over a four-year period.



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performance through various means, to include termination for default. The advance payment prohibition does not address inadequate performance.

We request that the OIG consider this recommendation resolved and closed.

Recommendation 9: Develop policies and procedures to ensure future Cloud Services contracts do not violate the statutory prohibition on advance payments.

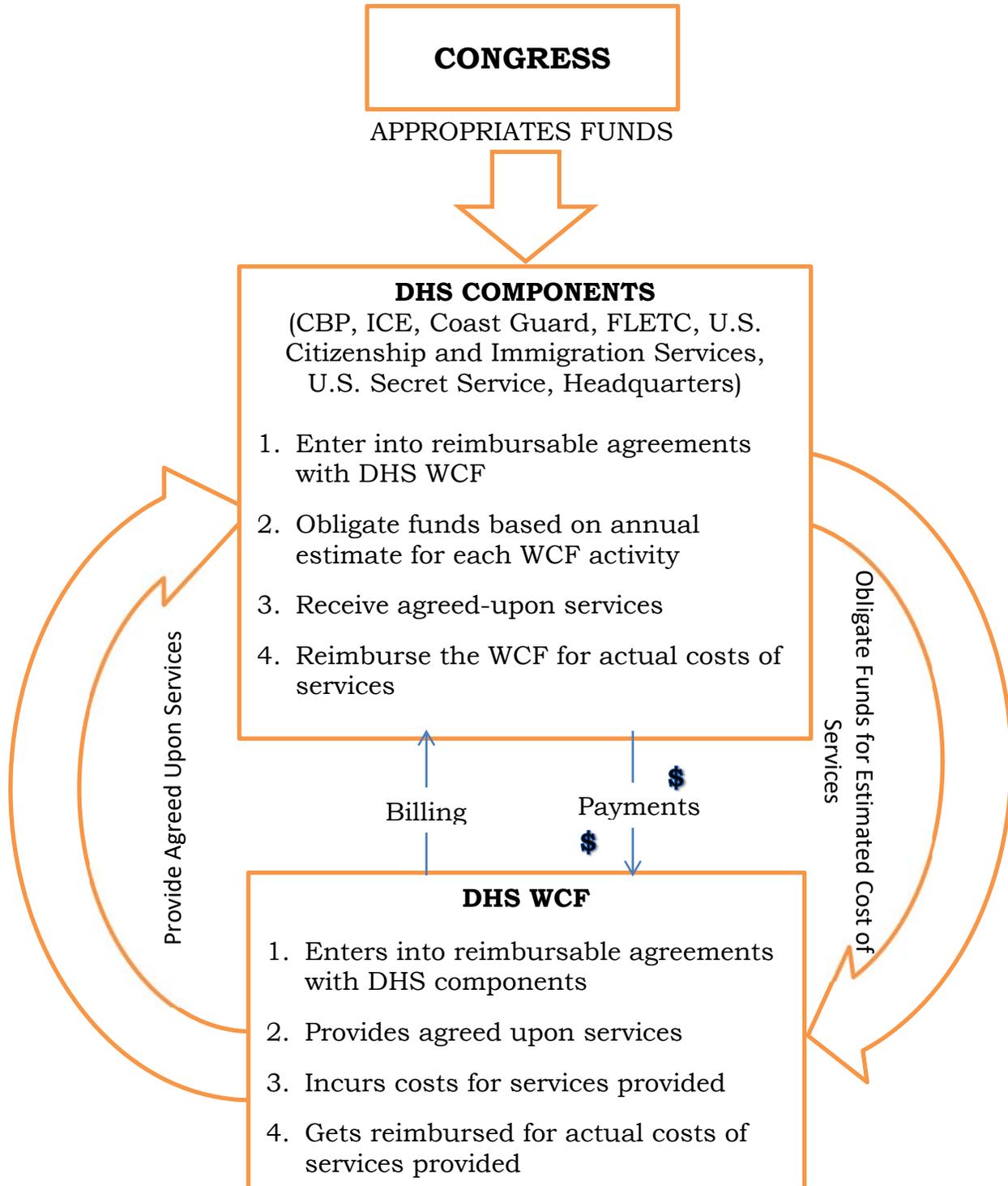
Response: Non-concur. DHS did not violate the statutory prohibition on advance payments. The licenses, or subscriptions (the Orders under the BPA appear to use the terms interchangeably), for the PALMS/ETMS SaaS are separately priced line items on the orders made under the BPA. Those orders created a contractual right at the time of purchase for the ordering entity to grant the users, commensurate with the number of licenses procured, access to the PALMS/ETMS SaaS and accompanying support for the use of those licenses (hosting, updates, and Tier 3 support). This determination is consistent with the structure of GS-35F-0050L. See response to Recommendation 8 for additional information.

We request that the OIG consider this recommendation resolved and closed.



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Appendix C
Obligation and Reimbursement Process for DHS WCF Activities



Source: OIG analysis of WCF operations documentation



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Appendix D
Upfront Payments for PALMS Subscriptions

Component	Date of Order	Task Order/MOD	Subscriptions	Period of Performance	Payment Date	Payment Amount
CBP	9/26/2013	HSBP10-13-J-00680	67360	09/30/2013 - 09/29/2014	10/29/2013	\$1,570,835.20
	5/28/2015	HSBP10-15-J-00274	67630	06/01/2015 - 05/31/2016	7/13/2015	\$1,425,640.40
	6/6/2016	HSBP10-15-J-00274-1	67630	06/01/2016 - 05/31/2017	6/13/2016	\$1,813,160.30
FLETC	1/2/2014	HSFLGL-13-J-00444	2000	01/15/2014 - 01/14/2015	3/5/2014	\$46,640.00
	6/1/2015	HSFLGL-13-J-00444-1	2000	06/01/2015 - 05/31/2016	6/18/2015	\$42,160.00
	6/1/2016	HSFLGL-16-J-00334	2000	06/01/2016 - 05/31/2017	6/13/2016	\$53,620.00
Headquarters	8/30/2013	HSHQDC-13-J-00401	7500	08/30/2013 - 08/29/2014	3/12/2014	\$967,780.00
	6/30/2016	HSHQDC-16-J-00245-1	16000	07/01/2016 - 05/31/2017	8/18/2016	\$393,213.33
ICE	6/1/2015	HSCETC-15-J-00019-1	23000	06/01/2015 - 05/31/2016	6/11/2015	\$484,840.00
	6/21/2016	HSCETC-15-J-00019-3	23000	07/01/2016 - 05/31/2017	6/29/2016	\$565,244.17
Coast Guard	9/5/2013	HSCG23-13-J-PEF001	19905	09/28/2013 - 09/27/2014	11/26/2013	\$464,184.60
	9/30/2013	HSCG23-13-J-PEF001	24573	09/28/2013 - 09/27/2014	11/26/2013	\$573,042.36
USCIS	5/29/2015	HSSCCG-15-F-00238	21245	06/01/2015 - 05/31/2016	6/11/2015	\$447,844.60
	6/2/2016	HSSCCG-16-F-00198	21245	06/01/2016 - 05/31/2017	6/20/2016	\$569,578.45
Secret Service	9/9/2015	HSSS01-15-F-0134	6500	09/09/2015 - 09/08/2016	11/17/2015	\$137,020.00
	9/6/2016	HSSS01-16-J-0109	7200	09/09/2016 - 09/08/2017	10/28/2016	\$193,032.00
Grand Total						\$9,747,835.41

Source: OIG analysis of PALMS task orders and payment information



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Appendix E
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