



Decision

Matter of: U.S. Department of Health and Human Services—Obligations for Communication Services

File: B-332531

Date: November 16, 2023

DIGEST

The Centers for Medicare & Medicaid Services (CMS), within the U.S. Department of Health and Human Services, awarded task orders for communication services regarding new agency goals and initiatives. Under the purpose statute, 31 U.S.C. § 1301(a), an agency may not use appropriations for impermissible personal expenses. Further, under government-wide appropriations prohibitions, an agency may not use appropriations for publicity or propaganda, or for publicity experts. Under the Antideficiency Act, 31 U.S.C. § 1341, an agency may not incur obligations in excess of available appropriations.

We conclude that CMS did not violate the purpose statute, publicity or propaganda prohibition, or publicity experts prohibition when it obligated appropriations for task orders for communication services. The task orders did not call for services that were impermissible personal expenses, require production of prohibited publicity or propaganda, or require contractors to serve as prohibited publicity experts. Further, CMS obligated the proper appropriation account for the communication services task orders. We also conclude that CMS did not violate the Antideficiency Act because CMS's obligations for the task orders did not exceed amounts available.

DECISION

This responds to a request for our decision on whether the Centers for Medicare & Medicaid Services (CMS), within the U.S. Department of Health and Human Services

(HHS), contracted for communication services that violated the purpose statute, 31 U.S.C. § 1301(a), and the Antideficiency Act, 31 U.S.C. § 1341.¹

In accordance with our regular practice,² we contacted HHS to seek factual information and its legal views on this matter.³ HHS provided a response but did not provide its legal views on all of CMS's actions.⁴ Following an additional request from our office, HHS provided a supplementary response with further information and its legal views.⁵ We conducted a teleconference with HHS to confirm our understanding of certain information provided in its supplementary response.⁶

The Request Letter references an investigative report issued by congressional staff regarding CMS's use of contractors for communication services (Staff Report).⁷ The Staff Report asserts, among other things, that CMS may have violated appropriations laws by having communications services contractors perform activities to benefit the then-CMS Administrator in their personal capacity, produce prohibited publicity or propaganda, and serve as prohibited publicity experts.⁸ For example, the Staff Report refers to a particular document produced by a contractor entitled *Executive Visibility*

¹ Letter from Senators Murray and Wyden, Representative Pallone, and former Representative Maloney, to Comptroller General (Sept. 10, 2020) (Request Letter); Letter from Representative Raskin to Comptroller General (Feb. 16, 2023).

² GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP.

³ Letter from Assistant General Counsel, GAO, to General Counsel, HHS (Dec. 21, 2020).

⁴ Letter from General Counsel, HHS, to Assistant General Counsel, GAO (Jan. 19, 2021) (Agency Response).

⁵ Letter from Assistant General Counsel, GAO, to Acting General Counsel, HHS (Jan. 25, 2021); Letter from Acting General Counsel, HHS, to Assistant General Counsel, GAO (Mar. 28, 2022) (Supplementary Agency Response).

⁶ Telephone Conversation with Deputy General Counsel, HHS (Sept. 9, 2022).

⁷ Request Letter, at 1; *Investigation of CMS Administrator Seema Verma's Use of Private Communications Consultants* (Sept. 2020), available at <https://drive.google.com/file/d/1nezMXLk6auFtFn4bzLy26k0P5CVI1Zow/view> (last visited Aug. 7, 2023). The Staff Report refers to an HHS Office of Inspector General (OIG) report focused on the administration and management of the communication services contracts from a federal contracting perspective. Staff Report, at 3; HHS OIG, *CMS Did Not Administer and Manage Strategic Communications Services Contracts in Accordance with Federal Requirements*, A-12-19-20003 (July 15, 2020), available at https://oig.hhs.gov/oas/reports/region12/121920003.asp?utm_source=website&utm_medium=web&utm_campaign=cms-contracting-report-07-16-2020 (last visited Aug. 7, 2023) (OIG Report).

⁸ Staff Report, at 49–51.

Proposal, noting that it described a plan to highlight the leadership and accomplishments of the then-CMS Administrator through targeted media opportunities.⁹ Further, the Staff Report asserts that activities performed by CMS contractors emphasized the importance of the then-CMS Administrator in a manner unrelated to official CMS functions.¹⁰ Lastly, the Staff Report suggests that CMS contractors promoted the then-CMS Administrator's public profile and personal brand.¹¹

With respect to the *Executive Visibility Proposal*, HHS told us that it did not procure this document, it was not provided to HHS as a deliverable under any of its contracts or task orders, and HHS was never invoiced for this document.¹² Therefore, because HHS did not obligate appropriations for the *Executive Visibility Proposal*, we do not address it in this decision. Further, HHS did not have records of the communications described in the Staff Report for us to evaluate. As confirmed with congressional staff, this decision addresses whether the communication services that CMS contracted for, as evidenced in particular task orders' statements of work (SOW), violated appropriations laws.

This decision addresses whether CMS violated the purpose statute by (1) contracting for services that were impermissible personal expenses; (2) requiring contractors to produce prohibited publicity or propaganda; or (3) requiring contractors to serve as prohibited publicity experts.¹³ We also address whether CMS violated the Antideficiency Act. We conclude that CMS did not violate the purpose statute because (1) the communication services were logically related to the purpose of CMS's appropriation and were not for personal expenses; (2) the communication services did not constitute prohibited publicity or propaganda; and (3) the contractors did not serve as prohibited publicity experts. Further, CMS obligated the proper appropriation account for the contracted services. We conclude that CMS did not violate the Antideficiency Act because it did not incur obligations in excess of amounts available.

BACKGROUND

In 2017, CMS established new goals and initiatives for the agency.¹⁴ In connection with these efforts, CMS worked to develop a new communications strategy to "proactively communicate and gain feedback from a broad range of stakeholders."¹⁵ In addition to

⁹ *Id.* at 29, 49.

¹⁰ *Id.* at 52.

¹¹ *Id.* at 52–53.

¹² Supplementary Agency Response, at 6–8.

¹³ These issues were raised in the Request Letter. Request Letter, at 2.

¹⁴ OIG Report, Appendix G, at 4.

¹⁵ *Id.*

the in-house capacity within CMS's Office of Communications, CMS contracted for assistance with the development and execution of the new communications strategy.¹⁶

CMS used contracted services under four task orders: a September 2015 task order and December 2017 modification to the task order (TO 1); a July 2016 task order (TO 2); a June 2017 task order (TO 3)¹⁷; and an August 2018 task order (TO 4) (collectively, the task orders).¹⁸

Each task order had its own SOW setting forth CMS's requirements. For example, the 2015 SOW for TO 1 required the contractor to develop a multimedia campaign targeting Medicare beneficiaries to raise awareness through avenues such as social media. The 2017 modifications to the SOW required a strategic communications plan to support new initiatives. The contractor was required to reconcile feedback from a listening session tour and form a plan to communicate key findings with beneficiaries and other stakeholders, and support the CMS Administrator in implementing the communications plan.

The SOW for TO 2 required the contractor to conduct public outreach about the *HealthCare.gov* website, with the target audience being the healthy and young population. The contractor was required to emphasize paid media and digital strategies.

The SOW for TO 3 required strategic communication plans in support of HHS's major announcements, in light of new administration initiatives. The requirement included development of plans for HHS to coordinate with key stakeholders, such as patients and insurers, media groups, and other government entities.

The SOW for TO 4 required the contractor to develop and implement a strategic communications plan to support CMS's overall goals, in light of new initiatives from HHS and CMS. The requirement included a plan to ensure accurate and reliable information about CMS and its programs and services, with the target audience being Medicare beneficiaries 65 years of age or older. Additionally, the SOW required the contractor to translate complex healthcare policy into messages that resonated with key audiences.

The contracted work was performed on a time and materials (T&M) basis. This means that services were provided based on direct labor hours at specified fixed hourly rates

¹⁶ *Id.*

¹⁷ The June 2017 award was a modification to an existing task order. Only the June 2017 award is relevant to this decision.

¹⁸ See Agency Response, at 2, attachments (TO 1 and TO 4); Supplemental Agency Response, at 3–4, attachments (TO 2 and TO 3).

and the actual cost for materials.¹⁹ CMS obligated its 2015, 2016, 2017, and 2018 Program Management appropriations for the task orders.²⁰

DISCUSSION

At issue in this decision is whether CMS violated the purpose statute, 31 U.S.C. § 1301(a), and the Antideficiency Act, 31 U.S.C. § 1341, when it obligated appropriations for the task orders for communication services. For the reasons explained below, we conclude that CMS did not violate the purpose statute or the Antideficiency Act.

Purpose Statute

The purpose statute provides that appropriations are available only for the purposes for which they were made. When an appropriation does not plainly authorize an expense, we apply a three-step analysis to determine whether the expense is an authorized use of the appropriation. First, the expense must bear a logical relationship to the appropriation and not be an impermissible personal expense. Second, the expense must not be prohibited by law. Third, the expense must not be otherwise provided for.²¹

(1) Reasonable and Logical Relationship Between Communication Services and Program Management Appropriation

CMS's Program Management appropriation does not explicitly mention communications. The Program Management appropriation is available for, among other things, carrying out parts of the Social Security Act and CMS's other responsibilities.²² For example, the appropriation is available to carry out titles XVIII, XIX, and XXI of the

¹⁹ Federal Acquisition Regulation (FAR), 48 C.F.R. § 16.601(b).

²⁰ Supplementary Agency Response, at 8; Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, div. G, title II, 128 Stat. 2130, 2477–2478 (Dec. 16, 2014); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. H, title II, 129 Stat. 2242, 2611 (Dec. 18, 2015); Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, div. H, title II, 131 Stat. 135, 530 (May 5, 2017); Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, div. H, title II, 132 Stat. 348, 726–727 (Mar. 23, 2018).

²¹ B-333691, Feb. 8, 2022; B-331419, July 1, 2021.

²² Pub. L. No. 113-235, 128 Stat. at 2477–2478; Pub. L. No. 114-113, 129 Stat. at 2611; Pub. L. No. 115-31, 131 Stat. at 530; Pub. L. No. 115-141, 132 Stat. at 726–727. We previously reported that CMS's Program Management account "supports the agency's administration of programs under its management." GAO, *Patient Protection and Affordable Care Act: Status of CMS Efforts to Establish Federally Facilitated Health Insurance Exchanges*, GAO-13-601 (Washington, D.C., June 2013), at 12, n. 23. The Program Management account was used to fund contracts and task orders to support establishment of the federally facilitated exchanges. *Id.*

Social Security Act—which establish the Medicare and Medicaid Programs, and the Children’s Health Insurance Program (CHIP)²³—and to carry out “other responsibilities,” such as the *HealthCare.gov* website.²⁴

Here, the task orders require the contractors to facilitate communication regarding CMS programs, activities, and initiatives, including Medicare, Medicaid, and the *HealthCare.gov* website.²⁵ Communicating about these programs and activities is part of how CMS carries out the programs and activities, because agencies are responsible for informing the public about their programs and activities.²⁶ Therefore, the costs of communicating about CMS programs and activities is logically related to the purpose of the appropriation—to carry out CMS programs and responsibilities.

Next, we must consider whether the communication services called for under the task orders constituted an official expense of CMS as opposed to a personal expense. A personal expense is something that generally satisfies a personal need of an agency employee, such as food, clothing, or commuting. While appropriations are available to cover the costs of official agency expenses, appropriations are not available for personal expenses unless there is specific statutory authority or where the expense

²³ 42 U.S.C. Ch. 7, subch. XVIII, subch. XIX, subch. XXI; see also *Brief Summaries of Medicare & Medicaid Title XVII and Title XIX of The Social Security Act*, Office of the Actuary, CMS, HHS (Sept. 30, 2022), at 3, 25, available at <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/medicareprogramratesstats/summarymedicaremedicaid> (last visited Aug. 9, 2023).

²⁴ See, e.g., Pub. L. No. 115-141, 132 Stat. at 726. CMS is responsible for the *HealthCare.gov* website, <https://www.healthcare.gov> (last visited Aug. 9, 2023). B-329199, Sept. 25, 2018, n.13.

²⁵ TO 1, 2015 SOW, at 1; TO 1, 2017 Modified SOW, at 1; TO 2, SOW, at 1; TO 3, SOW, at 2; TO 4, SOW, at 1, 4.

²⁶ B-319834, Sept. 9, 2010. Indeed, CMS has an Office of Communications and consistently requests Program Management appropriations to cover costs such as communications. CMS, *About CMS, CMS Leadership, Office of Communications*, available at https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OC (last visited Aug. 9, 2023); HHS, CMS, *Justification of Estimates for Appropriations Committees, Fiscal Year 2017*, at 6, available at https://www.cms.gov/about-cms/agency-information/performancebudget/prior_years_performance_and_budget_submissions (last visited Aug. 29, 2023); HHS, CMS, *Justification of Estimates for Appropriations Committees, Fiscal Year 2018*, at 26, available at https://www.cms.gov/about-cms/agency-information/performancebudget/prior_years_performance_and_budget_submissions (last visited Aug. 29, 2023).

primarily benefits the agency.²⁷ For example, we concluded that the Privacy and Civil Liberties Oversight Board (PCLOB) could not reimburse an employee for the costs of their commute because commuting is a personal expense.²⁸ Congress has authorized agencies to pay for an employee's commute only when they use public transportation, not when they use a taxi or rideshare service as was the case with the PCLOB employee.²⁹

Here, CMS contracted for communication services to help it communicate with the public about programs that the agency is statutorily required to administer. The contractors were tasked with helping CMS reach target audiences and using various mediums, such as traditional media and social media, to explain its programs.³⁰ These services do not satisfy any personal need of CMS employees, but rather satisfy the agency's responsibility to inform the public about its programs. The fact that a contractor was tasked with helping the then-CMS Administrator communicate with beneficiaries and stakeholders on new initiatives³¹ does not make the expense personal to the Administrator because the Administrator's official work duties include these types of communication activities. Furthermore, policy-making officials traditionally use government resources to explain and defend their policies.³² Therefore, the contracted communication services were not personal expenses. We conclude step one of the purpose statute analysis is satisfied.

(2) Not Prohibited By Law: Section 718 and Section 3107

Even when an expense is logically related to the appropriation, the expense is not permissible if it is prohibited by law. Section 718 of the annual Financial Services and General Government Appropriations Act prohibits agencies from using appropriations "directly or indirectly, including by private contractor, for publicity or propaganda purposes" not authorized by Congress (Section 718).³³ Section 718 applied to CMS's Program Management appropriations obligated on the task orders.³⁴ In addition, section 3107 of title 5 of the United States Code, a permanent restriction, prohibits the

²⁷ B-329479, Dec. 22, 2020; B-302993, June 25, 2004.

²⁸ B-332633, June 3, 2021.

²⁹ *Id.*

³⁰ *See, for example*, TO 2, SOW, at 2–3; TO 4, SOW, at 3.

³¹ TO 1, 2017 Modified SOW, at 13.

³² B-284226.2, Aug. 17, 2000; B-319834, Sept. 9, 2010.

³³ *See, e.g.*, Pub. L. No. 113-235, § 718, div. E, title VII, 128 Stat. at 2382; Supplementary Agency Response, at 6.

³⁴ Pub. L. No. 113-235, § 718, div. E, title VII, 128 Stat. at 2382; Pub. L. No. 114-113, § 718, div. E, title VII, 129 Stat. at 2477; Pub. L. No. 115-31, § 718, div. E, title VII, 131 Stat. at 381; Pub. L. No. 115-141, § 718, div. E, title VII, 132 Stat. at 591.

use of appropriations for “publicity experts” unless specifically appropriated for that purpose (Section 3107). We address each prohibition in turn.

(a) Section 718

Section 718 prohibits three forms of communications: those that are purely partisan, self-aggrandizing, or covert.³⁵ When we consider agency communications under Section 718, we are also mindful that it is important for agencies to be transparent with the public and that “legitimate objectives [are] served by a robust exchange of information between the government and the public.”³⁶

(i) Purely Partisan

Purely partisan communications are those that have no connection to an agency’s official duties and are completely political in nature.³⁷ Communications are not purely partisan simply because they have some political content.³⁸ Agencies have a responsibility to explain their policies to the public and may defend those policies, even when the communications have some political content or express a certain viewpoint.³⁹ For example, we previously concluded that HHS’s websites, social media posts, and videos on the then-administration’s viewpoint on health care policy were not purely partisan because the communications concerned health care—one of HHS’s official duties—and were not designed to aid a particular party or candidate and were not completely political in nature.⁴⁰ Here, the SOW for each task order is focused on informing the public about CMS’s official duties, such as the Medicare Program and *HealthCare.gov* website.⁴¹ Providing information to the public concerning official responsibilities, even when it expresses a certain viewpoint, is not purely partisan. Therefore, we conclude that the communication services called for under the task orders were not purely partisan communications.

(ii) Self-Aggrandizing

Self-aggrandizing communications are those that emphasize the importance of the agency or an activity.⁴² In two prior decisions, the respective agencies engaged in

³⁵ B-329199, Sept. 25, 2018.

³⁶ B-319834, Sept. 9, 2010, at 4–5; see *also* B-319075, Apr. 23, 2010, at 4, B-284226.2, Aug. 17, 2000, at 5.

³⁷ B-329199, Sept. 25, 2018.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*; B-319075; Apr. 23, 2010.

⁴¹ See, *for example*, TO 1, 2015 SOW, at 1; TO 2, SOW, at 1.

⁴² B-329199, Sept. 25, 2018.

communications with the public in order to inform the public about recent changes to the Medicaid Program, in one case involving an HHS flyer and advertisements,⁴³ and in another involving an Environmental Protection Agency (EPA) social media post, to promote the significance and benefits of a new clean water rule.⁴⁴ In both decisions, we concluded that the communications were not self-aggrandizing because they were not praising the agency or attributing the benefits to the agency or any agency official.⁴⁵ Here, the communications called for under the task orders are similar to the communications at issue in our prior decisions on HHS and EPA. The contractors here were tasked with informing the public about CMS programs and new CMS initiatives.⁴⁶ There is no indication in the task orders that the contractors were to praise CMS or HHS, or attribute program benefits to the agency or agency officials. Therefore, we conclude that the communication services called for under the task orders were not self-aggrandizing communications.

(iii) Covert

We turn next to covert communications, which are those that conceal the agency's role in creating the material from the target audience.⁴⁷ For example, in our prior decision regarding an EPA social media post, the post did not identify EPA as the author of the message.⁴⁸ We concluded that the target audience would not be able to ascertain that EPA was the author and, therefore, the post was a prohibited covert communication.⁴⁹ In another decision, we concluded that the Department of Education (Education) engaged in covert communications when it required a contractor to regularly comment on the No Child Left Behind Act (NCLBA) without ensuring that the contractor disclosed it was acting on behalf of Education.⁵⁰ There, the contractor did not regularly, if at all, disclose to the audience that it was acting on behalf of Education when it communicated about NCLBA. By contrast, where HHS made changes to the *HHS.gov* website and *HealthCare.gov* website, and posted on its official social media accounts, we concluded the communications were clearly identifiable as agency communications and made through official agency communication channels and, therefore, were not covert.⁵¹

Here, the SOW for TO 1 and TO 4 included provisions to identify HHS as the source of communications. Specifically, the contractor could not publicly disseminate any

⁴³ B-302504, Mar. 10, 2004.

⁴⁴ B-326944, Dec. 14, 2015.

⁴⁵ B-302504, Mar. 10, 2004; B-326944, Dec. 14, 2015.

⁴⁶ *See, for example*, TO 4, SOW, at 1.

⁴⁷ B-329199, Sept. 25, 2018.

⁴⁸ B-326944, Dec. 14, 2015.

⁴⁹ *Id.*

⁵⁰ B-305368, Sept. 30, 2005.

⁵¹ B-329199, Sept. 25, 2018.

communications until HHS cleared the material and the contractor was required to identify HHS as the source of the material and place the HHS logo prominently on the material.⁵² Therefore, CMS took steps in TO 1 and TO 4 to ensure the target audience would know that HHS or CMS was the source of communications. The SOW provisions in TO 1 and TO 4 are in contrast to our prior decision on EPA, where the social media post was drafted to sound like it was the statement of a supporter, and our prior decision on Education, where the department made no effort to ensure the contractor disclosed Education as the source of the communications.⁵³

Under TO 3, the contractor's requirement was to deliver planning documents that HHS would use to communicate about new initiatives, and there is no evidence that the contractor was required to disseminate any communications or material to the public.⁵⁴ Therefore, the services called for under TO 3 do not implicate the prohibition on covert communications.

Finally, for TO 2, the contractor was required to coordinate with CMS throughout performance, and obtain CMS input and approval during development and implementation of all public communications.⁵⁵ While TO 2 did not specifically require placement of the HHS logo on materials, we believe the requirement for CMS approval of contractor-produced material provided opportunity for CMS to ensure it was identified as the source of communications. Our prior decision on Education is distinguishable because in that case, the contractor carried out its work with little to no coordination with Education and the contractor acknowledged that it, in fact, communicated with the public to promote NCLBA on behalf of Education without disclosing that Education sponsored the commentary. Here, TO 2 required continuous input and approval of CMS on public communications, and we do not have evidence that a covert communication was actually produced by the contractor or CMS. We conclude that CMS did not contract for covert communications.

In sum, the task orders did not require contractors to produce communications that were purely partisan, self-aggrandizing, or covert. Therefore, we conclude that the communication services were not prohibited by Section 718.

(b) Section 3107

Section 3107 of title 5 of the U.S. Code prohibits the use of appropriations "to pay a publicity expert unless specifically appropriated for that purpose." CMS does not have an appropriation specifically available for publicity experts and, therefore, CMS's funds

⁵² TO 1, 2015 SOW, at 5; TO 1, 2017 Modified SOW, at 5; TO 4, SOW, at 3.

⁵³ B-326944, Dec. 14, 2015; B-305368, Sept. 30, 2005.

⁵⁴ See TO 3, SOW, at 2–3.

⁵⁵ TO 2, SOW, at 3, 6, 14.

are not available for this purpose.⁵⁶ CMS asserts that the task orders did not require contractors to serve as publicity experts within the meaning of Section 3107.⁵⁷ We agree with CMS.

Section 3107 prohibits an agency from paying an individual to “extol or to advertise” the agency or individuals within the agency.⁵⁸ For example, when the Forest Service used a contractor to help produce a brochure on forest fires, we concluded that the contractor was not acting as a publicity expert under Section 3107 because the contractor’s role was to help the agency more clearly communicate its policies to the public.⁵⁹ Here, CMS used contractors to help its Office of Communications communicate about new goals and initiatives related to health care.⁶⁰ The task orders did not require the contractors to extol or advertise HHS, CMS, or any individual. Helping the then-CMS Administrator or other CMS spokespeople be prepared to engage with the public about agency programs and initiatives does not extol or advertise the agency or the spokespeople, but rather is part of legitimate CMS activity. We conclude that the communication services contractors were not tasked with serving as prohibited publicity experts under Section 3107.

(3) Not Otherwise Provided For

Having concluded that the communication services here were logically related to CMS’s Program Management appropriation, and that the services were not prohibited by law, we now turn to the final step in the purpose analysis: determining whether an appropriation other than CMS’s Program Management account was the proper account to charge for CMS’s communication services task orders. The general rule is that “a more specific appropriation prevails over a general appropriation, including where another agency has the more specific appropriation.”⁶¹ CMS has four appropriation accounts: Grants to States for Medicaid, Payments to Health Care Trust Funds, Health Care Fraud and Abuse Control Account, and Program Management.⁶² None of the other accounts are more specific than the Program Management account with respect to communication services. We are not aware of any other agency having a more specific appropriation that would cover costs of communicating about CMS programs and activities. Therefore, as no other account provides for this activity, CMS’s Program

⁵⁶ Supplementary Response, at 4–5.

⁵⁷ *Id.* at 5.

⁵⁸ B-302992, Sept. 10, 2004, at 12; B-305349, Dec. 20, 2005, at 6.

⁵⁹ B-302992, Sept. 10, 2004.

⁶⁰ OIG Report, Appendix G, at 4.

⁶¹ B-330862, Sept. 5, 2019, at 13.

⁶² Pub. L. No. 113-235, 128 Stat. at 2477–2478; Pub. L. No. 114-113, 129 Stat. at 2610–2611; Pub. L. No. 115-31, 131 Stat. at 529–530; Pub. L. No. 115-141, 132 Stat. at 726–727.

Management appropriation was the appropriate account to use for the communication services task orders. We conclude that step three is satisfied. In sum, CMS did not violate the purpose statute through the communication services called for under the task orders.

Antideficiency Act

The Antideficiency Act, 31 U.S.C. § 1341, prohibits obligations in excess of amounts available. Using appropriations for a purpose prohibited by law also violates the Antideficiency Act. For example, we concluded that EPA's use of social media constituted covert propaganda in violation of Section 718.⁶³ Because appropriations are not available for covert propaganda, EPA did not have any funding available for this purpose, and EPA's obligations therefore exceeded amounts available. By exceeding its available appropriations, EPA violated the Antideficiency Act.⁶⁴

Here, as explained above, we concluded that CMS used its appropriations for permissible communication services. There is no evidence that CMS obligated appropriations in excess of its available funding. Therefore, we conclude that CMS did not violate the Antideficiency Act.

CONCLUSION

CMS did not violate the purpose statute through the task orders for communication services. The task orders did not call for services that were impermissible personal expenses; the task orders did not require production of publicity or propaganda prohibited by Section 718; and the task orders did not require contractors to serve as publicity experts prohibited by Section 3107. Further, CMS's Program Management appropriation was the appropriate account to charge for the communication services. CMS's obligations under the task orders did not violate the Antideficiency Act because obligations were not in excess of amounts available.



Edda Emmanuelli Perez
General Counsel

⁶³ B-326944, Dec. 14, 2015.

⁶⁴ *Id.*