



**THE SECRETARY OF COMMERCE**  
Washington, D.C. 20230

October 14, 2005

The Honorable David M. Walker  
Comptroller General of the United States  
Government Accountability Office  
Washington, D.C. 20548

Dear Mr. Walker:

This letter reports violations of the Antideficiency Act (ADA), as required by United States Code, Title 31, Section 1351.

The violations occurred in the National Oceanic and Atmospheric Administration's (NOAA) Operations, Research and Facilities fiscal account number 13X1450. The first violation, discovered by the Department's Office of the General Counsel, occurred in August 2002, when the NOAA Real Property Office at the Eastern Administrative Support Center in Norfolk, Virginia, entered into a real property license agreement that included open-ended indemnification clauses. Such clauses are *prima facie* violations of the ADA because they constitute open-ended obligations of the Government, even though, as is the case here, no liability claims are filed under the agreement.

As a consequence of the issues identified in the August 2002 agreement, NOAA initiated a comprehensive review of all license and lease agreements within its real property offices for similar problems. This review encompassed 2,130 agreements and resulted in the identification of 80 agreements that included indemnification clauses or provisions involving an indeterminate liability, or both. These agreements, which are licenses or leases of real property from the private sector for NOAA operations, span a period covering 82 years, with the earliest signed in 1923. Like the first license discovered, they concern activities currently funded in NOAA Operations, Research and Facilities fiscal account number 13X1450. Because no claims are pending, and, so far as is known, none has been filed under any of these agreements, NOAA is not further investigating these agreements. Each individual who signed such an agreement and who is still a NOAA employee has been given administrative discipline under the Department of Commerce Table of Offenses and Penalties: Richard Szymanski, GS-12 (14 agreements); Rosa Asberry, GS-13, (2 agreements); James Barrows, GS-13, (2 agreements); Debbie Putney, GS-13, (1 agreement); and Yvonne Chesson, GS-12 (17 agreements).

The reported violations reflect systemic problems in NOAA's evaluation and negotiation of real property licenses and leases with the private sector. The primary reasons for the violations are: (1) lack of clear understanding of the lease contracting process, (2) pressure from

reviews to ensure compliance with all legal and regulatory requirements, (3) a long-standing low priority given to training of real property specialists on the ADA, (4) the impact of retirement and attrition on the general level of realty specialist expertise in ADA issues, negotiating skills, and related competencies, (5) an increased number of transactions to be processed annually, coupled with a declining workforce, over the last several years, and (6) NOAA's prior organizational systems and structure, which included five fragmented real estate organizations, no lease templates, few process controls, and weak supervisory oversight.

NOAA is taking remedial action with respect to its real property contracting operations to ensure that future agreements comply with the ADA by:

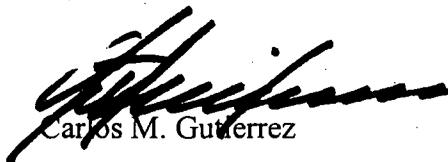
- Renegotiating any of the agreements still in force that contain open-ended indemnification clauses;
- Developing and issuing guidance to NOAA management and appropriate staff on standard leasing practices and management controls and establishing templates for standard real property transactions;
- Implementing appropriate headquarters and Office of General Counsel reviews for non-standard lease clauses;
- Conducting appropriate training for real property acquisition staff;
- Realigning real property acquisition staff under a functional management model to ensure clear accountability for program and resources; and
- Providing monthly status reports to the Chief Administrative Officer and the Chief Financial Officer on the progress made in implementing corrective action plans.

In addition, the Department of Commerce will amend its funds control regulations to provide that agreements with indemnification clauses or open-ended liabilities violate the ADA.

There is no evidence that these violations were willful or knowing. Thus, the Department has not notified the Department of Justice of the violations. No other agencies have been involved.

Identical reports have been submitted to the President, the Speaker of the House of Representatives, and the President of the Senate.

Respectfully,



Carlos M. Gutierrez