



June 9, 2006

Mr. David M. Walker  
Comptroller General of the United States  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Walker:

This letter reports seven identical violations of the Antideficiency Act (Act), as required by section 1351 of title 31, United States Code.

The violations occurred in the Economics and Statistics Administration (ESA) of the Department of Commerce (Revolving Fund account 13X4324). ESA provides broad and targeted economic data, analyses and forecasts for use by Government agencies, businesses and others, and develops domestic and international economic policy. STAT-USA is an office within ESA that develops and operates electronic information systems to deliver Government economic, business, statistical, and foreign trade information to the public, primarily through subscription on-line services.

The violations were discovered in June 2005 when the Office of the General Counsel of the Department reviewed a proposed agreement between STAT-USA and a Canadian government agency, Industry Canada. The draft agreement had an open-ended indemnification clause, which would violate the Antideficiency Act because it can never be determined that sufficient funds have been appropriated to cover the contingency. As a result of this discovery, ESA initiated a comprehensive review of all agreements involving STAT-USA.

The review by ESA revealed seven violations of the Antideficiency Act. In 1997, 1998, 2000, 2001, 2003, 2004, and 2005, STAT-USA entered into one-year agreements to provide subscription services to Industry Canada. Each of these agreements had very similar open-ended indemnification clauses. All of the agreements have now expired and no liability claims were ever filed under the indemnification clauses. Thus, no funds were expended in violation of the Antideficiency Act. No other agreements entered into by STAT-USA had such clauses or any other provisions that would violate the Act.

Because there is no evidence that the violations of the Act were willful or knowing, the Department has not notified the Department of Justice of the violations. Forrest Williams, the Director of STAT-USA who signed the agreements in 2003-2005, is the responsible official. He was issued a letter of reprimand for failure to follow established procedures requiring legal review of all agreements entered into by STAT-USA. ESA determined that this discipline was sufficient because there is no evidence that Mr. Williams willfully violated the Act and no claims were filed against the Federal government under the agreements. The employees who signed the earlier agreements (1997-2001), Ken Rogers and Robert Wendling, are former directors of STAT-USA. Mr. Rogers is deceased and Mr. Wendling is retired from the Department.

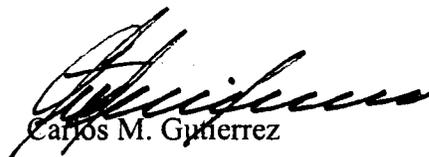
ESA took further remedial actions to ensure that no future violations of the Act occur:

- The most recent agreement between STAT-USA and Industry Canada, which expired in April 2006, was amended to remove the open-ended indemnification provisions [completed - December 2005].
- STAT-USA managers and employees were counseled by the Office of Chief Counsel for Economic Affairs on all the types of documents that require legal review and clearance [completed - July 2005].
- ESA established procedures and policies for STAT-USA's agreements to prohibit provisions that would violate the Antideficiency Act, which are documented in a checklist to ensure they are consistently followed [completed - December 2005].
- ESA trained STAT-USA managers and employees who work on agreements to ensure that they are aware of the internal controls set forth in the *Department of Commerce Interagency and Other Special Agreements Handbook* (April 2004) [completed - December 2005].
- All STAT-USA managers and employees involved with interagency agreements received training in appropriations law and in financial management best practices [completed - May 2006].

The Antideficiency Act violations by ESA are virtually identical to prior violations of the Act by the National Oceanographic and Atmospheric Administration of the Department (open-ended indemnification clauses in NOAA leases), which were previously reported on October 14, 2005. In response to all of these violations, the Department in November 2005 amended its fund control regulations to specify that agreements with indemnification clauses or open-ended liability violate the Antideficiency Act. The Department also directed its agencies and bureaus to create teams of knowledgeable staff to review all leases, memoranda of understanding, and contracts for these types of clauses. Any questionable clauses found in any of these documents were subject to further legal review. The Department completed this review in September 2005 and found no additional provisions that would violate the Antideficiency Act.

An identical report has been submitted to the President, the President of the Senate, and the Speaker of the House of Representatives.

Sincerely,



Carlos M. Gutierrez