

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

DEC 28 2006

The Honorable David M. Walker
Comptroller General of the United States
U.S. Government Accountability Office
Antideficiency Act Reports
Room 7165
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Walker:

This letter reports two violations of the Antideficiency Act, as required by sections 1351 and 1517 of Title 31, United States Code.

The first violation occurred in the Employment and Training Administration (ETA) Training and Employment Services (TES) account (160174) for Program Year 2005. The total amount of the violation was \$130,569,041. Of the total, \$126,629,000 is related to an inaccurate estimate of carry-over appropriations for allocation accounts, and the remainder is related to recoveries and refunds of prior-year obligations. This violation involved the obligation of budgetary resources in excess of a Fiscal Year 2006 apportionment, but did not involve obligations in excess of an appropriation. The Department received a clean audit opinion during the fiscal years in which the violations occurred.

Information about this possible violation first surfaced when the Department requested a reapportionment for the TES account for Program Year (PY) 2005 on June 30, 2006 (the last day of the program year). Funds in the TES account are available for obligation on a multi-year, program-year basis – in this case July 1, 2005 to June 30, 2006. Historically OMB has deviated from standard apportionment practices by apportioning across fiscal years for this account. In fact, the first apportionment for PY 2005, which was approved in March 2005, apportioned resources in this manner. In July 2005, however, OMB advised DOL that a separate apportionment would be required for the TES account for fiscal year 2006, consistent with Circular A-11 requirements.

As requested, DOL submitted an apportionment for this account for fiscal year 2006 in September 2005. OMB approved this FY 2006 apportionment, along with a requested reapportionment for FY 2005 to provide additional reimbursable resources, at the end of September. However, the FY 2006 apportionment contained a preliminary – and ultimately under-estimated – balance of funds brought forward for Job Corps' allocation accounts and certain TES programs in category B. While the carryover

balances were much higher than estimated in the apportionment, the Department did not seek a reapportionment for these additional funds until the afternoon of June 30th – after a portion of the funds had been obligated. Because this was a new approach for the TES account and there was confusion about apportionment procedures generally, there was a lack of understanding within ETA that the FY 2006 apportionment was the controlling apportionment. Further, fund controls were tied to the FY 2005 apportionment instead of the FY 2006 apportionment, so the accounting system did not prevent or identify obligations in excess of the amounts apportioned.

The second violation occurred in the Employment Standards Administration (ESA) Salaries and Expenses account (160150) for Fiscal Years 2005, 2006, and 2007. The total amount of the violation was \$29,102.63, which represents the compensation paid from March 20, 2005 through November 3, 2006 to an ESA employee who was a citizen of Mexico. Although inadvertent, this action violated a general provision in the FY 2005 and FY 2006 appropriation acts that prohibited the use of Federal appropriations “to pay the compensation of...any employee of the Government of the United States,” unless such person is a citizen of the United States; is a citizen of Ireland, Israel, or the Republic of the Philippines; or is a national of a country allied with the United States in a current defense effort. Mexico is not an excepted nation.

Information about this violation first came to our attention in October 2006, when the Employment Standards Administration (ESA) National Office sent an inquiry to the Office of the Assistant Secretary for Administration and Management (OASAM) Atlanta Regional Human Resources Office (HRO) about the employment status of non-citizens. In response to the inquiry, the OASAM Atlanta HRO reported that ESA had employed since March 2005 a citizen of Mexico in its Wage-Hour Division under a student temporary appointment in the excepted service. Prior to extending the offer of employment, OASAM’s Atlanta Regional HRO had taken the following actions: (1) secured a copy of the individual’s work permit; (2) reviewed previous guidance provided by OASAM National HRO about the procedures for hiring non-citizens, as described on the Office of Personnel Management’s (OPM) Web site, which erroneously listed Mexico as a country allied with the United States; (3) contacted the Department of State to verify the requisite documentation needed to employ a Mexican citizen; and (4) followed instructions by State Department staff to contact the U.S. Citizenship and Immigration Service, which in turn verified that the Mexican citizen possessed the necessary documents to permit her employment in the United States. The Department terminated the individual’s employment on November 3, 2006, following further research and legal analysis.

There is no evidence that either violation was willful or knowing. Therefore, it is not necessary for the Department to notify the Department of Justice of the violations.

In the first instance, Mr. Michael S. Jones, serving as the GS-15 Director, Division of Budget, Office of Financial and Administrative Management, ETA, was the official responsible for the violation. Following the violation, Mr. Jones accepted a reassignment to non-budgetary duties as a GS-14 program analyst position in another ETA office. In addition, confusion within ETA about the newly prescribed apportionment practice for this account, and the failure of Departmental budget officials to notify top level management in ETA of problems in the apportionment process, contributed to the violation. Therefore, the Department concluded that it would be prudent to undertake broader, systemic corrective action.

Accordingly, the Department convened an Apportionment Task Force chaired by the Assistant Secretary for Administration and Management to identify budget execution shortcomings. In response to the findings of the Task Force, the Department implemented a comprehensive Corrective Action Plan to strengthen its apportionment, budget execution, and fund controls. The plan has been provided to OMB, and includes, but is not limited to:

- **Revised Administrative Control of Funds.** DOL is revising its internal regulations for fund control to prevent recurrence of the TES apportionment problem and promote the full utilization of fund controls so that obligations do not exceed apportioned amounts. The Department will submit the revised fund control regulation to OMB for approval upon completion of its revisions.
- **Strengthened accountability.** The Department has amended its semi-annual internal Budget and Performance Integration (BPI) President's Management Agenda Scorecard to add a criterion that gauges the effectiveness of each agency's management of the budget execution process. Poor management of budget execution will trigger an automatic "red" BPI progress score for the previous six-month period and a request by the Deputy Secretary for immediate corrective action, including increased oversight, guidance, and training as necessary to improve budget execution procedures.
- **Rigorous budgetary accounting practices.** The Department is enhancing current policies and procedures to require timely, quarterly reconciliations of apportionments and Treasury obligations data reports that are reviewed and approved by management. The Department has also conducted training for its budget staff on budget execution and apportionment processes.

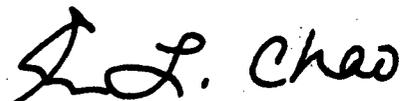
These aggressive corrective actions will deter any further such Antideficiency Act violations.

In the second instance, the officials responsible for the violation were Cindy L. Brown, Regional Administrator for Atlanta, OASAM and Betty McPherson, OASAM Human

Resources Office Director, Atlanta Region. Ms. Brown and Ms. McPherson have been counseled, and the Department is revising its procedures for the employment of non-citizens to prevent recurrence of this violation.

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

Sincerely,


Elaine L. Chao