UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

March 20, 2007

The Honorable David M. Walker
Comptroller General of the United States
Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Comptroller General:

On behalf of the U.S. Commission on Civil Rights (the "Commission"), this letter is being sent to report probable violations of the Antideficiency Act, as required by section 1351 of Title 31 of the United States Code.

The agency's investigation indicates that violations of section 1341(a)(I)(B) of the Antideficiency Act occurred in the amount of $140,000 in FY 2003 and in the amount of $75,000 in FY 2004. As described below, these advanced obligations caused a probable violation of section 1341(a)(I)(A) of the Antideficiency Act in account TFM ALC 951900 – 95031900, in an estimated total amount of $114,296.58.

Through an internal investigation, the Commission learned that in FY 2003, the Commission and its landlord, General Services Administration's National Capital Region Office for the Public Buildings Service ("PBS"), agreed to shift $140,000 in rent obligations from FY 2003 to FY 2004. The Commission and PBS agreed that the aforesaid amount would be paid in FY 2004 in addition to the regular rent that was due. The terms of the transaction were negotiated by representatives of PBS and Commission employee Alexander Sun, a former Special Assistant (Schedule C, GS-14). Although no formal lease amendment or modification was executed by the parties, a March 15, 2004 email from Mr. Sun to PBS reflects the terms of the proposal.

In FY 2004, the Commission and PBS entered into a similar arrangement and shifted $75,000 in rent obligations from FY 2004 to FY 2005. Again, representatives of PBS and Mr. Sun negotiated the terms of this agreement.

Previously, on May 18, 2005, the Commission provided notice pursuant to the Antideficiency Act concerning the shifting of funds from FY 2004 to FY 2005. A copy of said letter is attached hereto as Exhibit A. The Commission subsequently learned of the earlier shifting of rent obligations in FY 2003 to FY 2004 and conducted a further investigation involving interviews of many of the participants.

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This investigation indicates that the rental deferral agreement appears to have violated multiple provisions of the Antideficiency Act. First, by entering into the rent deferral agreement with the General Services Administration ("GSA") on behalf of the Commission, Mr. Sun obligated $140,000 of FY 2004 funds in advance of FY 2004 appropriations in violation of section 1341(a)(I)(B).

Second, once funds have been credited to the correct year, the rental deferment agreement caused probable deficiency in the Commission's FY 2003 account of approximately $114,296.58 in violation of section 1341(a)(I)(A). Pursuant to the bona fide needs rule, the Commission's $140,000 rent obligation incurred in FY 2003, should not have been discharged with FY 2004 funds. The Commission is required to remedy this bona fide needs rule violation by discharging the FY 2003 rent obligation with funds from FY 2003. Currently, the Commission has approximately $25,703.42 of unobligated funds left in its FY 2003 account and, therefore, has insufficient funds available in this account to properly discharge the $140,000 of FY 2003 rent obligation.

Third, by entering into an additional deferral agreement in FY 2004, Mr. Sun obligated $75,000 of FY 2005 funds in advance of FY 2005 appropriations in violation of section 1341(a)(I)(B). Once funds are credited to the correct year, however, the Commission did not incur obligations that could not be fully discharged with the appropriations in FY 2004, as prohibited under section 1341(a)(I)(A).

Since the May of 2005 notice, the Commission completed the process of reviewing and revising its system of administrative funds control as stated in the Commission's Administrative Instructions ("AIs"). This process resulted in a complete revision of the AI on Budget Execution, which was approved by the Office of Management and Budget. In order to prevent any similar recurrence by staff, the Commission also issued a memorandum to all employees regarding the administrative funds control guidelines relating to the Antideficiency Act.

In addition, the Commission implemented account reconciliation procedures that require the Commission's accounting services provider and the Commission's budget and finance officers to reconcile accounts and records monthly, quarterly, and annually. The agency has also implemented new payroll and expenditure policies and account reconciliation procedures so that expenses are accounted for in the proper time period and with the proper documentation.

The Commission has also requested that the GSA rescind the rent deferral agreement for FY2003 and FY 2004 and is continuing to consult with the GSA in this regard.

Please be aware that identical reports of the Antideficiency Act violations are also being submitted to the President through the Director of the Office of Management and Budget, the Vice President, as the President of the Senate, and the Speaker of the House of Representatives.

Respectfully yours,

Kenneth L. Marcus
Staff Director

Enclosure