USAID
FROM THE AMERICAN PEOPLE

JUL 17 2008

The Administrator

The President
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the U.S. Agency for International Development (USAID), this letter is to report a violation of the Antideficiency Act, as required by Section 1351 of Title 31, United States Code.

USAID has determined that a violation of Section 1341(a) of the Antideficiency Act occurred with FY 2005 operating expenses (72 51000). The USAID Office of the Chief Financial Officer (CFO) conducted an initial inquiry into the violation. The report of that inquiry is attached. The USAID Office of the Inspector General (OIG) also conducted an investigation.

The violation occurred on September 30, 2005, when USAID entered into a five-year lease agreement for additional office space in Washington, D.C. USAID created an obligation of funds in advance of an appropriation because the lease did not condition future lease payments on the availability of funds and on affirmative action by the U.S. Government. The lease, therefore, obligated the Agency to pay the full cost of the five-year rental period with FY 2005 operating expense (OE) funds. The Agency had no statutory authority to extend the availability of OE funds for the entire term of the lease. The total estimated amount of the violation is $7,484,573, representing rent and projected future year costs of annual operating charges due under the terms of the lease.

USAID also created an obligation of funds in excess of an amount available in an appropriation because the lease agreement contained indemnification provisions subjecting the Agency to unlimited liability. Such provisions committed the Agency to an indefinite liability that could exceed available appropriations.

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The lease was signed by Roberto Miranda, Director of USAID's Office of Administrative Services. Prior to signing the lease, Mr. Miranda received legal guidance from Stephen Kaplitt, an attorney in USAID's Office of General Counsel (GC), and from expert outside counsel retained specifically to review the lease. As part of the initial inquiry, USAID found that there were no indications of a knowing or willful violation of the Antideficiency Act. However, the final USAID OIG report found that Mr. Miranda, Mr. Kaplitt, Lisa Fiely (then Chief Financial Officer), and Steven Wisecarver (then Acting Assistant Administrator for the Management Bureau), were all in positions to have prevented the violation. Consequently, USAID OIG determined that there was evidence of a knowing violation of the Antideficiency Act, and referred the matter to the Department of Justice (DOJ). The DOJ declined the case in lieu of administrative action by USAID. Ms. Fiely, Mr. Miranda, and Mr. Kaplitt were counseled on their official responsibilities and the legal requirements of administrative control of funds, and each received a letter of admonishment. Mr. Wisecarver had retired by the time the violation was discovered.

The adequacy of USAID's system of administrative control was approved by OMB. However, our inquiry reported several administrative funds control violations, in addition to the Antideficiency Act violation. Immediate corrective action was taken by removing financial responsibilities from the Office of Administrative Services pending completion of a review of its administrative control of funds. The delegation of authority for execution of leases has been revoked from the Director of the Office of Administrative Services.

In order to prevent recurrences of this type of violation, USAID conducted a thorough review of its procedures and implemented multiple additional safeguards. New internal operating instructions governing the acquisition of domestic real property are now in place. The operating instructions address the required steps and clearances to be undertaken before USAID procures domestic property, either through the General Services Administration (GSA) or through the Agency's independent lease authority (Section 636(a)(1) of the Foreign Assistance Act). The new procedures require consultation with GSA before the Agency procures space pursuant to its independent lease authority.

GC has emphasized legal training in commercial real estate and fiscal law matters, including attending courses available at the Government Accountability Office (GAO). It conducted a comprehensive review of domestic leased

properties, including directly-procured USAID leases and USAID occupancy agreements with GSA. Finally, GC reviewed foreign leasing procedures to ensure that proper safeguards are in place, and found that reference materials contain extensive background on funding, including specific warnings concerning indemnification provisions.

Since execution of the lease, USAID re-examined its space needs due to a reduction in OE budgets and to a workforce restructuring initiative. USAID terminated the lease, in lieu of seeking to amend it, in order to conform to the requirements of the Antideficiency Act.

Copies of the letters submitted to the President of the Senate, the Speaker of the House of Representatives, and the Comptroller General are enclosed.

Respectfully,

Henrietta H. Fore

Enclosures: As stated