



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

March 09, 2009

The President
The White House
Washington, DC 20500

Dear Mr. President:

This letter is to report several violations of the Antideficiency Act (ADA), as required by sections 1517(b) and 1351 of Title 31, United States Code. The violations of section 1517(a)(2), 1341 and 1342 of the Act occurred in the U.S. Department of Transportation's (DOT) Maritime Administration's (MARAD) Operation and Training Account (69 1750). The violations occurred over a period of several years and involve a series of transactions by the U.S. Merchant Marine Academy (USMMA or Academy), which is part of MARAD. We estimate that the multiple violations cited here totaled as much as \$20 million.

During Fiscal Year (FY) 2006, the Academy incurred obligations of \$524,546 in excess of what had been appropriated and allotted for the pay and benefit program of the Academy. This violated 31 U.S.C. § 1341(a), which prohibits authorizing and making an obligation and expenditure in excess of an appropriation, as well as 31 U.S.C. § 1517(a)(2), which prohibits exceeding an allotment.

The Academy also engaged in a series of end-of-year transactions in FYs 2005, 2006 and 2007 totaling \$397,740 with one of its Non-Appropriated Fund Instrumentalities (NAFIs) the Fiscal Control Office, for the purpose of unlawfully extending the availability of funds beyond the fiscal year for future needs. These year-end transactions for unspecified goods and services violated section 1341(a)(1)(B) of the ADA, which also violated the related concept of "bona fide needs." Although the transactions were structured differently across the years, none of the funds was available for the purposes for which they were obligated.

Further, the Academy used unauthorized personal services contracts to carry out the Federal Government's business through the use of one of its NAFIs. For FY 2007, these transactions totaled approximately \$4.1 million. These contracts constituted personal services contracts between the Academy and the NAFI for the use of the NAFI staff and violated section 1342 of the ADA, which prohibits such transactions, absent express authority.¹ Although this provision

¹ For both ADA violations under section 1342 based on unauthorized personal services contracts, the analysis includes the application of case law and Federal Acquisition Regulation 37.104 to the facts regarding whether a personal services relationship existed between the Academy and the NAFI staff, and the Academy and the adjunct professors, as well as an assessment of the Department's authority to award personal services contracts under 5 U.S.C. § 3109 (incorporated by 49 U.S.C. § 323) as it applies to these situations.

of the Act is most often cited as prohibiting the acceptance of voluntary services, it also prohibits agencies from entering into personal services contracts without express statutory authority.

Similar to the unauthorized personal services contracts with the NAFI, the Academy also violated section 1342 of the ADA by employing part-time teaching staff through adjunct professor contracts, which constituted personal services contracts in excess of those authorized by law. Adjunct professors are contractors serving in a part-time capacity, who supplement the capabilities of the Academy's full-time teaching staff. In total, these agreements were for approximately \$500,000 to \$700,000 per year, involving close to 100 individual contracts. In total, these contracts were actually associated with about 50 staff, since some of the 96 contracts were with the same individuals across the academic terms. In 2007, these contracts totaled almost \$668,000. Over the past 4 years, these contracts were valued at about \$2.4 million. For most of this period, none of the obligations or expenditures for adjunct professor contracts was authorized. Beginning with July 2007, the terms and the administration of the contracts for adjunct professors were modified substantially to establish the adjunct professors as independent contractors, not as operating under personal services contracts.

Administrative Discipline and Corrective Actions

The DOT, in coordination with MARAD and the USMMA, has taken corrective and disciplinary action with respect to the officials responsible for the ADA violations discussed above. There was no evidence that any of these actions involved willful violation of any law or regulation by the employees involved. Moreover, the violation did not result in the loss of any funds or the over obligation of the total budget authority provided to the Academy. Accordingly, we have not made any referrals to the Department of Justice for additional action at this time.

During the last 4-year period of these violations, VADM Joseph D. Stewart, former Superintendent of the Academy, and James D. Amoroso, Director of the Department of Resource Management, were the officials directly responsible for these violations. After being informed that he was being relieved of his command at the Academy, VADM Stewart elected to retire from Federal service and is no longer subject to administrative action. Mr. Amoroso, as the senior financial official at the Academy, has been officially reprimanded and is being removed from his position at the Academy. Mr. John Long, Head of Budget and Accounts at the Academy, during the period of the violations, retired from Federal service and is no longer subject to administrative action. Mr. Osvaldo Jorge, Acting Financial Manager for the Academy, who acted under the direction of Mr. Amoroso, has been counseled regarding his conduct and will receive additional training.

Regarding the personal services contract violations based on the use of the NAFI personnel, the USMMA is in the process of converting the majority of subject NAFI employees to Federal employment. Regarding the personal service contract violations based on the adjunct professor contracts, the USMMA now has temporary, specific legal authority under 46 U.S.C. to hire adjunct professors under personal services contracts without regard to Title 5.

Finally, with regard to corrective actions for the government accounts, of the \$318,800 unlawfully conveyed to bank accounts in 2006 and 2007, \$214,258 has been recovered to the Treasury. The remaining funds were expended for authorized purposes.

System of Administrative Control

Since the violations occurred, MARAD and the USMMA have revised their internal control procedures to prevent a reoccurrence of this type of violation and have taken additional actions to improve internal controls at the Academy. With respect to the problems reported here, the principal failings were staff actions that deviated from established procedures and regulations. However, we will revisit all internal guidance regarding the administrative control of funds to determine whether any existing procedures need to be updated or improved, with coordination with the Office of Management and Budget, as necessary.

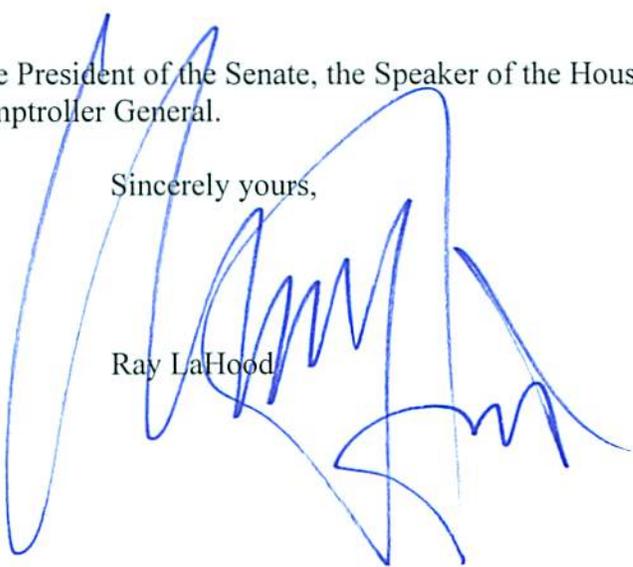
To avoid similar serious issues in the future, MARAD engaged a new Chief Financial Officer (CFO), an Acting Assistant CFO at the Academy, and a new Budget Officer, and is in the process of retraining staff to have the financial skills needed to ensure that a deficiency will not occur again. The MARAD gave its CFO direct overall responsibility for the Academy's finances, and assigned the Acting Assistant CFO to provide day-to-day supervision of the school's budget and financial activities. Also, the Maritime Administrator created an oversight board for the Academy, consisting of key senior executives within MARAD. This board is assisting the Academy in making needed improvements to its financial and administrative practices. In addition, the Department revitalized the Academy's Congressional Board of Visitors, which is expected to meet more regularly and provide another important element of oversight to ensure continuing sound practices.

With these improvements, we will strengthen significantly the Academy's operations and to preserve its place as a valuable asset of the Nation. We appreciate the seriousness of any ADA violation. We have worked hard to identify all of the factors associated with these problems and have taken the steps needed to correct weaknesses in our systems and procedures. As required by statute, we are also informing Congress and the Government Accountability Office of these violations.

Identical letters have been sent to the President of the Senate, the Speaker of the House of Representatives, and the Acting Comptroller General.

Sincerely yours,

Ray LaHood





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WASHINGTON, D.C. 20590

March 09, 2009

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

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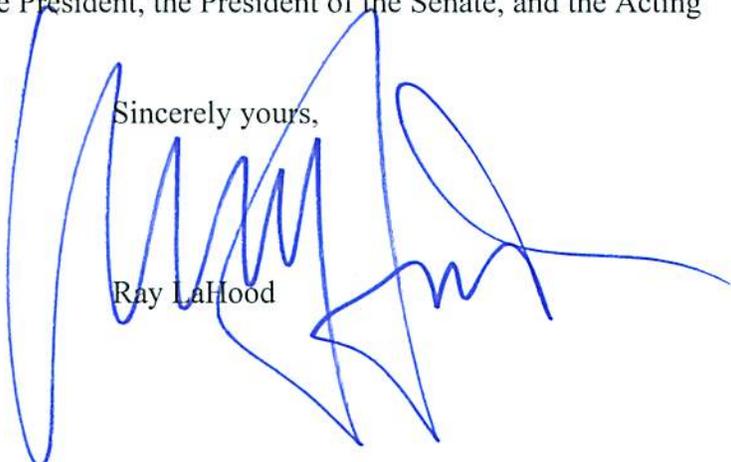
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