



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

July 20, 2015

Honorable Gene Dodaro  
Comptroller General  
Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report violations of the Antideficiency Act (ADA), as required by 31 U.S.C. 1351.

Violations of 31 U.S.C. 1341 occurred in account 91 0800 Program Administration, Departmental Management, Education, when the U.S. Department of Education used its appropriated funds in violation of an appropriations provision, Pub. L. 111-8, div. D, title VII, §749, Mar. 11, 2009, 123 Stat. 693, which provides that:

[e]ffective January 20, 2009, and for each fiscal year thereafter, no part of any appropriation contained in this or any other Act may be used for the payment of services to any individual carrying out the responsibilities of any position requiring Senate advice and consent in an acting or temporary capacity after the second submission of a nomination for that individual to that position has been withdrawn or returned to the President.

The ADA violation occurred in connection with the services of two of the Department's employees, Michael Yudin (from December 16, 2014, through February 12, 2015) and Ericka Miller (from January 13, 2015, through February 19, 2015), who were carrying out responsibilities and duties in an acting capacity for positions requiring Senate advice and consent following the return to the President of such employees' second nominations. The total amount of funds expended by the Department was \$59,801.57, covering payment for salaries and benefits for Mr. Yudin and Ms. Miller.


The Department was unaware of the above-stated provision of law, which is referenced in a note to 5 U.S.C. 5501. Instead, the Department based its advice and actions with regard to service in an "acting" capacity on applicable provisions of the Federal Vacancies Reform Act. The Department, therefore, has determined that this action contained no willful and knowing intent on the part of the responsible party/parties to violate the Antideficiency Act.

Upon learning of the violation, the Department took immediate steps to ensure that Mr. Yudin and Ms. Miller discontinued the performance of any responsibilities or duties in an acting capacity for positions requiring Senate advice and consent. In addition, both

Mr. Yudin and Ms. Miller were reassigned to Senior Advisor positions within the Office of the Secretary.

Notwithstanding the lack of willful and knowing intent on the part of employees of the Department to violate the Antideficiency Act, the Department recognizes that it is imperative that all of its offices involved in processes related to positions requiring Senate advice and consent are made aware of, and understand, the above-stated provision of law and the implications to the Department of any failure to comply with its mandate. Therefore, the Department intends to provide each affected office with written information concerning Pub. L. 111-8, div. D, title VII, §749, Mar. 11, 2009, 123 Stat. 693 and the Antideficiency Act.

Sincerely,



Arne Duncan