



UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

DEC 2 2014

COMPTROLLER

The Honorable Gene Dodaro
Comptroller General of the United States
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to reply to alleged violations of the Antideficiency Act (ADA) as required by section 145.8 of the Office of Management and Budget (OMB) Circular A-11 (2014).

The violation of 10 U.S.C. § 1341 is alleged by the Government Accountability Office (GAO) to have occurred when Army officials signed three escrow agreements for three different military installations in 2006 that provided full indemnity to the escrow agent against all liabilities. The escrow agreements were part of leases for installation property that were or would be utilized by private entities. The GAO found that indemnity provisions were open-ended and thereby violated the ADA (B-321367, March 30, 2011). The indemnity provisions were never exercised and the parties amended the agreements to delete the provisions. The potential for misuse of funds with full indemnification against all liabilities was eliminated.

The Department of Defense Office of General Counsel (Fiscal) (OGC(F)) has thoroughly examined the matter and in the enclosure sets forth the Department's legal conclusions regarding the GAO's legal position. The OGC(F) opined that no violation of the ADA occurred here; therefore, no disciplinary action was taken, and no further steps are needed on this issue on the part of the Department.

To comply with OMB Circular A-11, identical letters are also being submitted to the President, the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget.

Sincerely,

Michael McCord

Enclosure:
As stated