



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

February 6, 2012

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

On behalf of the United States Securities and Exchange Commission (SEC), I am writing to report violations of the Antideficiency Act, as required by section 1351 of title 31, United States Code. Violations of section 1341(a) of title 31, United States Code, occurred in the *Salaries and Expenses, Securities and Exchange Commission* account (50X0100) related to obligations for the SEC's real property leases.

On October 3, 2011, the Government Accountability Office (GAO) issued a decision that the SEC's 20-year practice of recording lease obligations on an annual basis, as followed in the case of a lease for additional headquarters space in Washington, D.C., entered into on July 28, 2010, violated the recording statute, 31 U.S.C. §1501(a)(1). GAO's decision further indicated that the SEC should record the entire amount for the July 28, 2010 lease all in the first fiscal year, and, if such an adjustment were not possible, the SEC should report a violation of the Antideficiency Act, 31 U.S.C. §1351. The SEC recorded obligations for the July 28, 2010 lease consistent with how it has recorded all its other leasing obligations since Congress granted the SEC independent leasing authority in 1990. And because the agency does not now have sufficient remaining unobligated funds in the year in which each of those leases was entered to record the full amount of each lease upfront, the agency is reporting Antideficiency Act violations in FY 2010 and stretching back over two decades.

- Source of the Antideficiency Act Violations

All of the Antideficiency Act violations that the SEC is reporting are traceable to the SEC's 1991 interpretation of the independent leasing authority Congress granted to the SEC as part of the Securities Act Amendments of 1990 (1990 Amendments) and additional language addressing the SEC's leasing authority added to the SEC's FY 1992 appropriation in October 1991 (and repeated in each subsequent appropriation). Prior to 1991, the SEC occupied office space at its Washington, D.C. headquarters and seven regional offices under multiple-year leases administered by the General Services Administration (GSA). In the 1990 Amendments, Congress granted the SEC leasing authority independent of GSA, allowing the SEC to enter directly into its own leases for its office space needs. That authority provides as follows:

(2) LEASING AUTHORITY. – Notwithstanding any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

Section 103, Pub. L. No. 101-550, 104 Stat. 2713 (Nov. 15, 1990), codified at 15 U.S.C. § 78d(b)(3). Attachment 1.

Contemporaneous with that grant of authority, the SEC's Office of the General Counsel (OGC) analyzed whether the statutory language permitted the SEC to enter into multiple-year leases and to obligate the rent on such leases year-by-year without violating the Antideficiency Act. In an April 1991 memorandum opinion, OGC concluded that the 1990 Amendments provided the SEC with such authority based on the language of the amendments, case law interpreting similar grants of authority, and legislative history evidencing Congress's intent that the SEC utilize the authority being granted "to achieve actual cost savings and to increase the Commission's productivity and efficiency." See Attachment 2. Shortly after OGC prepared that memorandum, GSA and the SEC entered into a Memorandum of Understanding (1991 MOU) pursuant to which the existing multiple-year leases for the SEC's headquarters and regional offices were transferred from GSA to the SEC. Consistent with GSA's statutory authority to obligate multiple-year leases on a year-by-year basis (40 U.S.C. § 585(a)) -- an exception from the requirements of the recording statute -- funds for all of those GSA-administered leases had been obligated yearly in the amount necessary to pay the annual rent. The 1991 MOU transferring those leases to the SEC incorporated the OGC opinion, expressly stating that the SEC had "determined that it has full authority to enter into multiple year leases." See Attachment 3.

Commencing with the next appropriation cycle after the 1990 Amendments, Congress added language to the SEC's annual appropriation further addressing the SEC's leasing authority. That language authorized the SEC to use the funds provided in each appropriations act for, among other things, "necessary expenses, including . . . the rental of space (to include multiple year leases) in the District of Columbia and elsewhere . . ." See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, P.L. 102-140, 105 Stat. 782 (Oct. 28, 1991). Attachment 4. Each annual appropriation provided to the SEC since FY 1992 has included this language, which the SEC believed confirmed Congress's intent that the SEC was authorized to enter into multiple-year leases without obligating the entire amount due over the lifetime of each such lease in the first year the lease was entered into. Funds appropriated to the SEC each year have not been subject to annual limitation, but instead have remained available until expended.

Consistent with its belief that the leasing authority described above provided an exception to the requirements of the Antideficiency Act, the SEC recorded the liabilities under every headquarters and regional office lease it has entered since 1991 (including those transferred from

GSA under the 1991 MOU) in the same way -- by obligating each year the funds necessary to pay the annual rent for each lease.

- Determination and Scope of the Antideficiency Act Violations

As part of a May 16, 2011 report concerning the July 28, 2010 lease, the SEC's Office of Inspector General (OIG) recommended that the SEC seek an opinion from GAO concerning its leasing authority. The SEC requested GAO's opinion on June 15, 2011, and GAO issued its decision on October 3, 2011. GAO's decision agreed with the SEC's determination that the independent statutory leasing authority granted to the SEC by the 1990 Amendments, along with the fact that the SEC's appropriation stated that funds could be used for multiple-year leases, was sufficient to provide the SEC with authority to enter multiple-year leases. But GAO concluded that this authority was insufficiently explicit to provide an exception to the requirement that the full amount of the SEC's lease obligations be recorded against funds available at the time the lease was executed. Accordingly, GAO concluded that upon entering into a multiple-year lease, the SEC was required to obligate from available funds an amount sufficient to cover the SEC's total liability over the course of the lease, rather than obligating sufficient funds each year to cover the rent payments due for that year.

From our review of the available records, it appears that between 1990 and 2010, the SEC entered into twenty-nine leases, including those transferred from GSA, as well as numerous lease expansions and extensions. The SEC cannot determine at this time the precise value of all expired leasing actions going back to 1990. However, it is important to note that for these expired leases, all obligations were fully covered through annual appropriations. For the SEC's seventeen current leases for which Antideficiency Act violations occurred, the remaining rent payments for the full terms of the leases, including payments remaining on the July 28, 2010 lease, totaled \$810.2 million as of September 30, 2011, as more fully set forth below¹:

Lease	Effective Date (mo./yr.)	Payments through 9/30/2011 (\$ in millions)	Remaining Payments (\$ in millions)	Total Rent Liability (\$ in millions)
Atlanta	Jun-01	11.1	0.3	11.4
Boston	Mar-04	20.9	17.9	38.8
Chicago	Jun-01	34.3	1.4	35.7
DC Constitution Center	Jul-10	-	137.7	413.8 ²
DC Station Place 1	May-01	209.6	241.6	451.2

¹ This list excludes three leasing actions the SEC entered into in FY 2011, for which the SEC recorded from available funds the total liability required over the course of each lease: an extension of the lease for the Operations Center in Alexandria, VA; swing space for the San Francisco Regional Office; and a new lease for the Atlanta Regional Office.

² The SEC's original rent liability for the July 28, 2010 lease was \$413.8 million, but, as noted below, space released to other tenants has reduced the SEC's remaining rent liability to \$137.7 million. The SEC has made no payments and has no rent liability for the space released to other tenants, and is working with GSA to release the remaining space.

DC Station Place 2	Nov-02	96.6	138.6	235.2
DC Station Place 3	Mar-10	7.9	105.1	113.0
Denver	Dec-01	15.6	1.3	16.9
Fort Worth	Feb-01	10.7	1.6	12.3
Los Angeles	Sep-00	18.3	1.0	19.3
Miami	Oct-01	16.6	1.8	18.4
New York 3 World Financial	Mar-05	53.1	129.1	182.2
New York Woolworth	Sep-01	39.1	1.0	40.1
Philadelphia	Nov-02	11.9	2.1	14.0
COOP Location	Apr-04	1.0	0.2	1.2
Salt Lake	Oct-03	3.0	1.2	4.2
San Francisco	Apr-10	-	28.4	28.4
Total		549.7	810.2	1636.1

The \$810.2 million in remaining rent liabilities on these leases is equivalent to 68% of the SEC's FY 2011 budget of \$1.185 billion – an amount that roughly approximates the total budgets for the SEC's enforcement, examinations, trading and markets, and investment management programs combined. Thus, in consultation with GAO, the SEC has determined that the account adjustments required to obligate upfront sufficient funds to cover all the remaining amounts due on these open leases would not be practical because of the severe programmatic consequences that would result.

- Responsibility for Antideficiency Act Violations

The funding and program officials responsible for each of the leasing actions for which there was a violation of the Antideficiency Act did not willfully violate the Act. Prior to the recent GAO decision, the SEC's 20-year practice of recording lease obligations only on an annual basis was based on a consistent, good-faith interpretation of the authority granted to the SEC in the 1990 Amendments and the language in the SEC's annual appropriations since that time. That interpretation was developed by the OGC attorneys who prepared the April 1991 OGC memorandum opinion. See Attachment 2. Although subsequently determined to have been incorrect, that interpretation was based on a reading of the legislation addressing the SEC's leasing authority that was reasonable under all of the circumstances described above.

- Mitigation of Improper Recording of Existing Lease Obligations

The SEC has taken steps to reduce its continuing obligations under the July 28, 2010 lease. Following releases of SEC space for lease to other Federal tenants, the SEC currently retains the right to lease approximately 300,000 rentable square feet of space. The SEC's total remaining potential rent obligation for that space would be approximately \$137.7 million. The SEC has been working with the landlord and GSA to release, transfer, or otherwise resolve any remaining SEC space obligations in the building. The SEC has also worked to determine if it is economically feasible to amend its other existing leases to reduce the SEC's upfront obligations under those leases.

- Remedial Measures to Prevent Recurrence of the Violations

On August 1, 2011, the SEC and GSA entered into a Memorandum of Understanding (2011 MOU) pursuant to which all future new lease acquisitions for the SEC's office space needs will be performed by GSA under GSA's leasing authority. Attachment 5. Because all future SEC lease acquisitions under GSA authority will include the authority to obligate lease payments on an annual basis, the type of Antideficiency Act violation discussed above would not recur. The 2011 MOU also provides that GSA will advise and consult with the SEC regarding administration of existing leases and procurement and administration of any extensions to existing leases. In addition, in any future exercise of the SEC's leasing authority (such as for necessary extensions), the SEC will record the full amount of its lease obligations at the time the lease is entered, or otherwise will include a cancellation clause and record the amount to cover the first year's payments plus the costs of cancellation.

Following GAO's decision, the SEC's current funding and program officials have now been made aware of the proper scope of the SEC's authority with respect to recording obligations for leases and have been advised that all future lease acquisitions and administration will follow the process outlined above. In addition, the SEC is amending its Administrative Control of Funds Policy by adding a new provision, in this or similar form:

Leasing Obligations -- For any leasing action signed under the SEC's own leasing authority after October 3, 2011, the agency must record an obligation equal to the full cost of the leasing action over the life of the contract (excluding option years, and including any ancillary costs that are discussed within the contract), at the time the leasing action is signed. The timeframes by which such obligations are to be recorded are discussed elsewhere in this policy.

This requirement will be disseminated to all SEC leasing and budget officials. Further, the OGC attorneys who are principally responsible for interpreting appropriations law for agency staff have completed, or are scheduled to complete, continuing legal education courses in federal appropriations law addressing (among other issues) the proper recording of obligations under the recording statute.

Finally, OMB and the SEC will propose to include the following or similar language in its annual appropriation: "not less than \$[amount] of these funds shall be used to cover shortfalls in the Commission's funding of obligations incurred in past fiscal years for ongoing multi-year real property contracts".

This language would recognize the amount of the SEC's annual appropriation that will be used to make rent payments on the current leases for which Antideficiency Act violations occurred, until those leases are fully paid off.

An identical report has been submitted to the Speaker of the House of Representatives, the President of the Senate, and the Comptroller General of the United States.

Sincerely,



Mary L. Schapiro
Chairman

Attachments



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THE CHAIRMAN

February 6, 2012

The Honorable Joseph R. Biden, Jr.
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- Responsibility for Antideficiency Act Violations

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This requirement will be disseminated to all SEC leasing and budget officials. Further, the OGC attorneys who are principally responsible for interpreting appropriations law for agency staff have completed, or are scheduled to complete, continuing legal education courses in federal appropriations law addressing (among other issues) the proper recording of obligations under the recording statute.

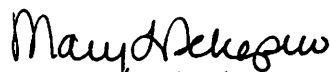
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Sincerely,


Mary L. Schapiro
Chairman

Attachments



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

February 6, 2012

The Honorable Jeffrey Zients
Acting Director
Office of Management and Budget
Washington, DC 20503

Dear Acting Director Zients,

Enclosed is a letter to the President transmitting violations of section 1341(a) of title 31, United States Code.

As described further in the attached letter, the Antideficiency Act violations occurred in leasing actions undertaken by the United States Securities and Exchange Commission (SEC) since obtaining independent leasing authority in 1990, when the SEC entered into leases without obligating from available funds an amount sufficient to cover the SEC's total liability over the course of each lease. The SEC's total remaining liability on existing leases is approximately \$810.2 million. This violation report is required by section 1351 of title 31, United States Code, to be submitted to the President; it is being submitted through your office. The agency's most recent audit opinion found that the SEC's financial statements were presented fairly, in all material respects, in conformity with the U.S. Generally Accepted Accounting Principles. The agency has determined that the violation contained no willful or knowing intent on the part of the responsible parties to violate the Antideficiency Act.

To comply with the aforementioned provisions, copies of the report are also being submitted to the President of the Senate and the Speaker of the House of Representatives as well as the Comptroller General.

Sincerely,

A handwritten signature in cursive script that reads "Mary L. Schapiro".

Mary L. Schapiro
Chairman

Enclosure



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

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The White House
Washington, DC 20500

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Section 103, Pub. L. No. 101-550, 104 Stat. 2713 (Nov. 15, 1990), codified at 15 U.S.C. § 78d(b)(3). Attachment 1.

Contemporaneous with that grant of authority, the SEC's Office of the General Counsel (OGC) analyzed whether the statutory language permitted the SEC to enter into multiple-year leases and to obligate the rent on such leases year-by-year without violating the Antideficiency Act. In an April 1991 memorandum opinion, OGC concluded that the 1990 Amendments provided the SEC with such authority based on the language of the amendments, case law interpreting similar grants of authority, and legislative history evidencing Congress's intent that the SEC utilize the authority being granted "to achieve actual cost savings and to increase the Commission's productivity and efficiency." See Attachment 2. Shortly after OGC prepared that memorandum, GSA and the SEC entered into a Memorandum of Understanding (1991 MOU) pursuant to which the existing multiple-year leases for the SEC's headquarters and regional offices were transferred from GSA to the SEC. Consistent with GSA's statutory authority to obligate multiple-year leases on a year-by-year basis (40 U.S.C. § 585(a)) -- an exception from the requirements of the recording statute -- funds for all of those GSA-administered leases had been obligated yearly in the amount necessary to pay the annual rent. The 1991 MOU transferring those leases to the SEC incorporated the OGC opinion, expressly stating that the SEC had "determined that it has full authority to enter into multiple year leases." See Attachment 3.

Commencing with the next appropriation cycle after the 1990 Amendments, Congress added language to the SEC's annual appropriation further addressing the SEC's leasing authority. That language authorized the SEC to use the funds provided in each appropriations act for, among other things, "necessary expenses, including . . . the rental of space (to include multiple year leases) in the District of Columbia and elsewhere . . ." See Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, P.L. 102-140, 105 Stat. 782 (Oct. 28, 1991). Attachment 4. Each annual appropriation provided to the SEC since FY 1992 has included this language, which the SEC believed confirmed Congress's intent that the SEC was authorized to enter into multiple-year leases without obligating the entire amount due over the lifetime of each such lease in the first year the lease was entered into. Funds appropriated to the SEC each year have not been subject to annual limitation, but instead have remained available until expended.

Consistent with its belief that the leasing authority described above provided an exception to the requirements of the Antideficiency Act, the SEC recorded the liabilities under every headquarters and regional office lease it has entered since 1991 (including those transferred from

GSA under the 1991 MOU) in the same way -- by obligating each year the funds necessary to pay the annual rent for each lease.

- Determination and Scope of the Antideficiency Act Violations

As part of a May 16, 2011 report concerning the July 28, 2010 lease, the SEC’s Office of Inspector General (OIG) recommended that the SEC seek an opinion from GAO concerning its leasing authority. The SEC requested GAO’s opinion on June 15, 2011, and GAO issued its decision on October 3, 2011. GAO’s decision agreed with the SEC’s determination that the independent statutory leasing authority granted to the SEC by the 1990 Amendments, along with the fact that the SEC’s appropriation stated that funds could be used for multiple-year leases, was sufficient to provide the SEC with authority to enter multiple-year leases. But GAO concluded that this authority was insufficiently explicit to provide an exception to the requirement that the full amount of the SEC’s lease obligations be recorded against funds available at the time the lease was executed. Accordingly, GAO concluded that upon entering into a multiple-year lease, the SEC was required to obligate from available funds an amount sufficient to cover the SEC’s total liability over the course of the lease, rather than obligating sufficient funds each year to cover the rent payments due for that year.

From our review of the available records, it appears that between 1990 and 2010, the SEC entered into twenty-nine leases, including those transferred from GSA, as well as numerous lease expansions and extensions. The SEC cannot determine at this time the precise value of all expired leasing actions going back to 1990. However, it is important to note that for these expired leases, all obligations were fully covered through annual appropriations. For the SEC’s seventeen current leases for which Antideficiency Act violations occurred, the remaining rent payments for the full terms of the leases, including payments remaining on the July 28, 2010 lease, totaled \$810.2 million as of September 30, 2011, as more fully set forth below¹:

Lease	Effective Date (mo./yr.)	Payments through 9/30/2011 (\$ in millions)	Remaining Payments (\$ in millions)	Total Rent Liability (\$ in millions)
Atlanta	Jun-01	11.1	0.3	11.4
Boston	Mar-04	20.9	17.9	38.8
Chicago	Jun-01	34.3	1.4	35.7
DC Constitution Center	Jul-10	-	137.7	413.8 ²
DC Station Place 1	May-01	209.6	241.6	451.2

¹ This list excludes three leasing actions the SEC entered into in FY 2011, for which the SEC recorded from available funds the total liability required over the course of each lease: an extension of the lease for the Operations Center in Alexandria, VA; swing space for the San Francisco Regional Office; and a new lease for the Atlanta Regional Office.

² The SEC’s original rent liability for the July 28, 2010 lease was \$413.8 million, but, as noted below, space released to other tenants has reduced the SEC’s remaining rent liability to \$137.7 million. The SEC has made no payments and has no rent liability for the space released to other tenants, and is working with GSA to release the remaining space.

DC Station Place 2	Nov-02	96.6	138.6	235.2
DC Station Place 3	Mar-10	7.9	105.1	113.0
Denver	Dec-01	15.6	1.3	16.9
Fort Worth	Feb-01	10.7	1.6	12.3
Los Angeles	Sep-00	18.3	1.0	19.3
Miami	Oct-01	16.6	1.8	18.4
New York 3 World Financial	Mar-05	53.1	129.1	182.2
New York Woolworth	Sep-01	39.1	1.0	40.1
Philadelphia	Nov-02	11.9	2.1	14.0
COOP Location	Apr-04	1.0	0.2	1.2
Salt Lake	Oct-03	3.0	1.2	4.2
San Francisco	Apr-10	-	28.4	28.4
Total		549.7	810.2	1636.1

The \$810.2 million in remaining rent liabilities on these leases is equivalent to 68% of the SEC’s FY 2011 budget of \$1.185 billion – an amount that roughly approximates the total budgets for the SEC’s enforcement, examinations, trading and markets, and investment management programs combined. Thus, in consultation with GAO, the SEC has determined that the account adjustments required to obligate upfront sufficient funds to cover all the remaining amounts due on these open leases would not be practical because of the severe programmatic consequences that would result.

- Responsibility for Antideficiency Act Violations

The funding and program officials responsible for each of the leasing actions for which there was a violation of the Antideficiency Act did not willfully violate the Act. Prior to the recent GAO decision, the SEC’s 20-year practice of recording lease obligations only on an annual basis was based on a consistent, good-faith interpretation of the authority granted to the SEC in the 1990 Amendments and the language in the SEC’s annual appropriations since that time. That interpretation was developed by the OGC attorneys who prepared the April 1991 OGC memorandum opinion. See Attachment 2. Although subsequently determined to have been incorrect, that interpretation was based on a reading of the legislation addressing the SEC’s leasing authority that was reasonable under all of the circumstances described above.

- Mitigation of Improper Recording of Existing Lease Obligations

The SEC has taken steps to reduce its continuing obligations under the July 28, 2010 lease. Following releases of SEC space for lease to other Federal tenants, the SEC currently retains the right to lease approximately 300,000 rentable square feet of space. The SEC’s total remaining potential rent obligation for that space would be approximately \$137.7 million. The SEC has been working with the landlord and GSA to release, transfer, or otherwise resolve any remaining SEC space obligations in the building. The SEC has also worked to determine if it is economically feasible to amend its other existing leases to reduce the SEC’s upfront obligations under those leases.

- Remedial Measures to Prevent Recurrence of the Violations

On August 1, 2011, the SEC and GSA entered into a Memorandum of Understanding (2011 MOU) pursuant to which all future new lease acquisitions for the SEC's office space needs will be performed by GSA under GSA's leasing authority. Attachment 5. Because all future SEC lease acquisitions under GSA authority will include the authority to obligate lease payments on an annual basis, the type of Antideficiency Act violation discussed above would not recur. The 2011 MOU also provides that GSA will advise and consult with the SEC regarding administration of existing leases and procurement and administration of any extensions to existing leases. In addition, in any future exercise of the SEC's leasing authority (such as for necessary extensions), the SEC will record the full amount of its lease obligations at the time the lease is entered, or otherwise will include a cancellation clause and record the amount to cover the first year's payments plus the costs of cancellation.

Following GAO's decision, the SEC's current funding and program officials have now been made aware of the proper scope of the SEC's authority with respect to recording obligations for leases and have been advised that all future lease acquisitions and administration will follow the process outlined above. In addition, the SEC is amending its Administrative Control of Funds Policy by adding a new provision, in this or similar form:

Leasing Obligations -- For any leasing action signed under the SEC's own leasing authority after October 3, 2011, the agency must record an obligation equal to the full cost of the leasing action over the life of the contract (excluding option years, and including any ancillary costs that are discussed within the contract), at the time the leasing action is signed. The timeframes by which such obligations are to be recorded are discussed elsewhere in this policy.

This requirement will be disseminated to all SEC leasing and budget officials. Further, the OGC attorneys who are principally responsible for interpreting appropriations law for agency staff have completed, or are scheduled to complete, continuing legal education courses in federal appropriations law addressing (among other issues) the proper recording of obligations under the recording statute.

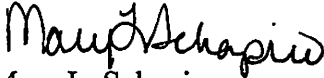
Finally, OMB and the SEC will propose to include the following or similar language in its annual appropriation: "not less than \$[amount] of these funds shall be used to cover shortfalls in the Commission's funding of obligations incurred in past fiscal years for ongoing multi-year real property contracts".

This language would recognize the amount of the SEC's annual appropriation that will be used to make rent payments on the current leases for which Antideficiency Act violations occurred, until those leases are fully paid off.

The President
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An identical report has been submitted to the Speaker of the House of Representatives, the President of the Senate, and the Comptroller General of the United States.

Sincerely,


Mary L. Schapiro
Chairman

Attachments