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United States Government Accountability Office  
Washington, DC 20548

B-308715

November 13, 2007

The Honorable Richard B. Cheney  
President of the Senate

The Honorable Nancy Pelosi  
Speaker of the House of Representatives

Subject: *Department of Energy—Report of Antideficiency Act Violation*

The Antideficiency Act requires agencies to report violations of the Act to Congress and the President and transmit copies of those reports to the Comptroller General at the same time. 31 U.S.C. §§ 1351, 1517(b). The purpose of this letter is to advise you that the Department of Energy (DOE) violated the Antideficiency Act in fiscal years 2006 and 2007 but has not reported the violations as required by the Act and by Office of Management and Budget (OMB) Circular No. A-11.<sup>1</sup>

In an April 20, 2007, opinion to the Subcommittee on Energy and Water Development, House Committee on Appropriations, GAO concluded that DOE violated the Act when it incurred obligations to implement its title XVII loan guarantee program before Congress enacted appropriations for that program. [B-308715, Apr. 20, 2007 \(enclosed\)](#). By law, DOE may not use funds to implement or finance a loan guarantee program unless Congress specifically appropriates funds for the program. 42 U.S.C. § 7278. During fiscal years 2006 and 2007, DOE, without an appropriation for the program, incurred obligations of more than \$503,000 for developing and publishing policies and guidance, drafting regulations, issuing a solicitation announcement for pre-applications, staffing and operating a program office, preparing a notice of proposed rulemaking, drafting a charter for the program's Credit Review Board, reviewing pre-applications, and procuring support services.

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<sup>1</sup> OMB has advised executive agencies to report violations found by GAO and “[i]f the agency does not agree that a violation has occurred, the report to the President, Congress, and the Comptroller General will explain the agency’s position.” OMB Cir. No. A-11, *Preparation, Submission, and Execution of the Budget*, § 145.8 (July 2, 2007).

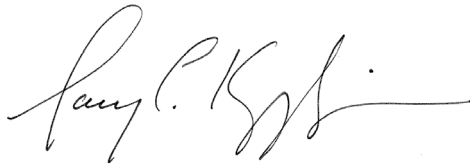
DOE charged those obligations to six different appropriations: its fiscal years 2006 and 2007 appropriations for “Departmental Administration,” “Science,” and “Energy Supply and Conservation.” These appropriations were not available for those purposes. The Antideficiency Act prohibits making or authorizing an expenditure or obligation that exceeds or is in advance of an appropriation. 31 U.S.C. § 1341(a). *See, e.g.*, B-303495, Jan. 4, 2005. In fiscal years 2006 and 2007, when DOE incurred obligations for its title XVII loan guarantee program, it had no appropriations available for this purpose,<sup>2</sup> and hence violated the Antideficiency Act.

On September 21, 2007, we wrote to DOE noting that we had not yet received a copy of the department’s Antideficiency Act report. Letter from Gary L. Kepplinger, General Counsel, GAO, to David R. Hill, General Counsel, DOE, *Department of Energy—Failure to Report Antideficiency Act Violation*, Sept. 21, 2007 (enclosed). We reminded the department of its reporting responsibility under the Act.

While DOE has indicated to us that it plans to report to Congress in accordance with the OMB Circular, more than 6 months have passed and it has not yet done so. For these reasons, we are writing to advise you of DOE’s violation of the Antideficiency Act and its failure to report its violation to Congress and transmit a copy of its report to this Office as required by the Act.

If you have any questions regarding this letter, please contact Managing Associate General Counsel Susan A. Poling, at 202-512-2667, or Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, at 202-512-8257.

Sincerely yours,



Gary L. Kepplinger  
General Counsel

Enclosures

cc: David R. Hill  
General Counsel  
Department of Energy

Gregory H. Friedman  
Inspector General  
Department of Energy

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<sup>2</sup> In February 2007, in the Revised Continuing Appropriations Resolution, 2007, Congress appropriated amounts to cover the costs of title XVII loan guarantees. Pub. L. No. 110-5, §§ 20315, 20320, 121 Stat. 8, 20, 21 (Feb. 15, 2007). This appropriation was not available at the time DOE incurred these obligations.



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United States Government Accountability Office  
Washington, DC 20548

B-308715

September 21, 2007

The Honorable David R. Hill  
General Counsel  
Department of Energy

Subject: *Department of Energy—Failure to Report Antideficiency Act Violation*

Dear Mr. Hill:

On April 20, 2007, we issued an opinion, [B-308715](#), concluding that the Department of Energy had incurred obligations in fiscal years 2006 and 2007 for its title XVII loan guarantee program in violation of the Antideficiency Act. The purpose of this letter is to advise you that GAO has not received a copy of your Antideficiency Act report of the violation as is required under the Act and Office of Management and Budget (OMB) guidance. If we do not receive a copy of your report by October 9, 2007, we will report the violation to Congress, identifying DOE's failure to report promptly under the Act.

Agencies in violation of the Antideficiency Act “shall report immediately to the President and Congress all relevant facts and a statement of actions taken.” 31 U.S.C. §§ 1351, 1517(b). *See also* OMB Cir. No. A-11, *Preparation, Submission, and Execution of the Budget*, § 145.1 (July 2, 2007). OMB has advised agencies that they should report violations found by GAO, and that “[i]f the agency does not agree that a violation has occurred, the report to the President, Congress, and the Comptroller General will explain the agency's position.” OMB Cir. No. A-11, § 145.8.

Your office may electronically send a PDF copy of the Antideficiency Act report to [AntideficiencyActReports@gao.gov](mailto:AntideficiencyActReports@gao.gov). Alternatively, you may send a paper copy to the following address:

Comptroller General of the United States  
U.S. Government Accountability Office  
Antideficiency Act Reports  
Room 7182  
441 G Street, NW  
Washington, D.C. 20548

If you or your staff have any questions regarding this letter, please contact Neill Martin-Rolsky, Senior Attorney, at 202-512-8580, or Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, at 202-512-8257.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gary L. Keplinger". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary L. Keplinger  
General Counsel

cc: Gregory H. Friedman  
Inspector General  
Department of Energy