B-331296

September 23, 2019

The Honorable Michael R. Pence
President of the Senate

The Honorable Nancy Pelosi
Speaker of the House of Representatives

Subject: Commodity Futures Trading Commission—Antideficiency Act Violation

This letter is to inform you that the Commodity Futures Trading Commission (CFTC) violated the Antideficiency Act, 31 U.S.C. § 1341(a), when it obligated funds in a manner prohibited by law. Notwithstanding the Act’s reporting requirement, 31 U.S.C. § 1351, CFTC failed to report this violation.

CFTC violated the Antideficiency Act when it agreed to certain lease provisions containing uncontrolled liabilities that had no fixed limit that the agency could ascertain upon execution of the agreement. B-328450, Mar. 6, 2018 (enclosed). CFTC entered into leases for real property in four cities. Id. Certain lease provisions required CFTC to pay its landlord additional amounts above the base rental payment, and the leases did not subject these payments to a fixed limit that CFTC could ascertain when it entered into the lease. Id.

The Antideficiency Act prohibits agencies from entering into uncontrolled liabilities that have no fixed, ascertainable limit, except as authorized by Congress. CFTC did not have statutory authorization to agree to lease provisions that would require the agency to pay for uncontrolled liabilities that were not fixed or ascertainable at the time of the agreement. B-328450. Therefore, CFTC violated the Antideficiency Act when it agreed to those lease provisions.

By law, agencies must immediately report Antideficiency Act violations to the President and to Congress, while transmitting a copy of the report to the Comptroller General. 31 U.S.C. § 1351. The report must state all relevant facts and actions taken. Id. This reporting requirement protects Congress’s power of the purse while promoting sound funds control throughout government. See 31 U.S.C. § 1514 (requiring a system of administrative funds control within each agency); Senate Committee on Government Operations, Financial Management in the Federal Government, S. Doc. No. 87-11, at 45–46 (1961) (stating that one of the principal
purposes of the Antideficiency Act is to provide effective control over the use of appropriations).

Our records show that CFTC has not transmitted a report as required by the Antideficiency Act. Our letter does not absolve the agency of its failure to report. We send you this information because the reporting of ADA violations is critical to congressional oversight of executive use of public money and central to Congress's constitutional power of the purse.

Sincerely,

Thomas H. Armstrong
General Counsel

Enclosure

cc: Daniel J. Davis
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    Mark Paoletta
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