



B-331295

DATE: SEPTEMBER 23, 2019

TO: AGENCY GENERAL COUNSELS

SUBJECT: AGENCY REPORTING OF GAO DETERMINATIONS OF
ANTIDEFICIENCY ACT VIOLATIONS

The Office of Management and Budget (OMB) recently amended Circular No. A-11 addressing agency reports of Antideficiency Act violations found by the U.S. Government Accountability Office (GAO). OMB instructs agencies to report such violations only if “the agency, in consultation with OMB, agrees that a violation has occurred.” OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, pt. 4, at § 145.8 (June 28, 2019). The purpose of this notice is to inform agencies that if an agency fails to report a violation that GAO finds, GAO will report the violation, noting the agency’s failure to report.¹

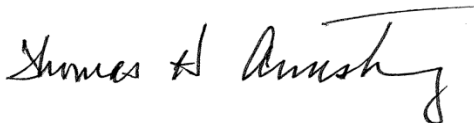
OMB’s June 2019 revision of Circular No. A-11 is a departure from longstanding guidance to agencies. OMB had long instructed each executive branch agency to submit such a report whenever GAO found an Antideficiency Act violation. See, e.g., GAO, *Agriculture’s Food and Nutrition Service Violates the Antideficiency Act*, GAO/AFMD-87-20 (Washington, D.C.: Mar. 1987) (citing to OMB Cir. No. A-34, *Instructions on Budget Execution* (1987)); OMB Cir. No. A-34, *Instructions on Budget Execution*, pt. 2, § 22.8 (Nov. 7, 1997); OMB Cir. No. A-11, pt. 4, § 145.8 (July 2007) (revised Nov. 20, 2007); OMB Cir. No. A-11, pt. 4, § 145.8 (June 2018). OMB directed agencies to report violations even if they disagreed with GAO’s determination. See, e.g., OMB Cir. No. A-11, pt. 4, § 145.8 (June 2018). OMB instructed agencies that, in such cases, they should explain their position in the report. *Id.*

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, 1517(b). The Antideficiency Act serves to protect and underscore Congress’s constitutional prerogatives of the purse. See U.S. Const., art. I, § 9, cl. 7 (power of the purse, statement and account of public money); B-328450, Mar. 6, 2018; B-317450, Mar. 23, 2009.

¹ GAO’s notification to Congress will not supplant the report that the agency is required by law to make under 31 U.S.C. § 1351 or under 31 U.S.C. § 1517(b).

In 2004, Congress amended the Antideficiency Act to require agencies to send to the Comptroller General a copy of each violation report on the same date the agency sends the report to the President and Congress. Pub. L. No. 108-447, div. G, title I, § 1401, 118 Stat. 2809, 3192 (Dec. 8, 2004). The Senate Appropriations Committee directed the Comptroller General to establish a central repository of reports, and to track all reports, including responses to GAO legal decisions and opinions and findings in audit reports and financial statement reviews. S. Rep. No. 108-307, at 43 (2004). Since then, if GAO finds an Antideficiency Act violation in a decision and if the agency does not make its required report, we notify Congress of the violation. See, e.g., B-308715, Nov. 13, 2007.

Consistent with this longstanding practice, GAO will continue to notify Congress of agencies' Antideficiency Act violations if the agency does not do so, noting the agency's failure to report. After GAO publishes a decision concluding that an Antideficiency Act violation occurred, we will contact the relevant agency to ensure a report of the violation. If the agency does not report the violation within a reasonable period, GAO will notify Congress of the violation.

A handwritten signature in black ink, reading "Thomas H. Armstrong". The signature is fluid and cursive, with a long horizontal line extending from the top of the "A".

Thomas H. Armstrong
General Counsel