



B-331093

June 30, 2020

The Honorable Michael R. Pence  
President of the Senate

The Honorable Nancy Pelosi  
Speaker of the House of Representatives

Subject: *U.S. Department of the Treasury—Tax Return Activities during the Fiscal Year 2019 Lapse in Appropriations*

This letter is to inform you that the Internal Revenue Service (IRS) in the U.S. Department of the Treasury (Treasury) 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, Treasury failed to report this violation.

In an October 22, 2019 decision, GAO concluded that Treasury violated the Antideficiency Act when, during a lapse in appropriations, it incurred obligations to process tax remittances (payments submitted by individuals) and issue tax refunds. B-331093, Oct. 22, 2019. In that decision, GAO found that Treasury lacked available budget authority to support these activities, that no exception to the Antideficiency Act permitted IRS to incur these obligations, and that it must report the violation as required by 31 U.S.C. § 1351. *Id.*

By law, agencies must immediately report Antideficiency Act violations to the President and to Congress, and must transmit 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. Senate Committee on Government Operations, *Financial Management in the Federal Government*, S. Doc. No. 87-11, at 45 (1961) (stating that one of the principal purposes of the Antideficiency Act is to provide effective control over the use of appropriations).

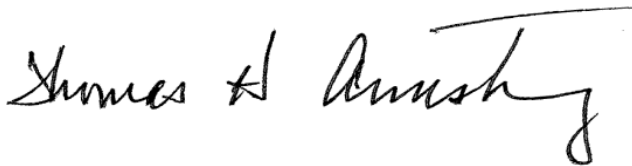
GAO has notified agencies that if an agency fails to report a violation that GAO finds, GAO will report the violation, noting the agency's failure to report. B-331295, Sept. 23, 2019. The Antideficiency Act serves to protect and underscore Congress's constitutional power of the purse. See U.S. Const., 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.

Treasury has informed GAO that it does not plan to report the Antideficiency Act violation identified in the October 22, 2019 decision. E-mail from Deputy Assistant General Counsel, Treasury, to Assistant General Counsel, GAO, *Subject: RE: GAO letter—Antideficiency Act violation* (June 9, 2020). Treasury’s e-mail response asserts that “IRS’s actions did not violate the [Antideficiency Act].” *Id.*

Treasury’s e-mail notwithstanding, this does not absolve the agency of its failure to report, even though it disagrees with the GAO decision. Rather we recommend that agencies continue to submit reports explaining the agency’s position on GAO’s findings, including when the agency disagrees, in an effort to enhance government transparency and accountability to the President, Congress, and the American people. We send you this information because the reporting of Antideficiency Act violations is critical to congressional oversight of executive use of public money and central to Congress’s constitutional power of the purse.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is fluid and cursive, with a horizontal line above the name.

Thomas H. Armstrong  
General Counsel

Enclosure

cc: Michael Desmond  
Chief Counsel, Internal Revenue Service

Brian Callanan  
General Counsel, U.S. Department of the Treasury

Richard K. Delmar  
Acting Inspector General, U.S. Department of the Treasury

Mark R. Paoletta  
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