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## GAO Appropriations Law Decisions

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B-331092, June 29, 2020

**Matter of:** Office of Management and Budget—Withholding of Ukraine Security Assistance

**File:** B-331564

**Date:** Jan. 16, 2020

In the summer of 2019, the Office of Management and Budget (OMB) withheld from obligation funds appropriated to the Department of Defense (DOD) for security assistance to Ukraine. In order to withhold the funds, OMB issued a series of nine apportionment schedules with footnotes that made all unobligated balances unavailable for obligation.

Faithful execution of the law does not permit the President to substitute his own policy priorities for those that Congress has enacted into law. OMB withheld funds for a policy reason, which is not permitted under the Impoundment Control Act (ICA). The withholding was not a programmatic delay. Therefore, we conclude that OMB violated the ICA.

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**Matter of:** Department of Defense—Availability of Appropriations for Border Fence Construction

**File:** B-330862

**Date:** Sept. 5, 2019

The Department of Defense (DOD) transferred and obligated its fiscal year 2019 appropriations in order to construct fences at the southern border of the United States in response to a request from the Department of Homeland Security (DHS) that DOD provide support for DHS's counter-drug activities pursuant to DOD's authority under 10 U.S.C. § 284.

DOD's transfer of amounts into its Drug Interdiction and Counter-Drug Activities, Defense, account for border fence construction was consistent with DOD's statutorily enacted transfer authority, and use of these amounts for the purpose of border fence construction was permissible under various statutory provisions. We also conclude that DHS waivers of legal requirements did not violate a prohibition on use of DOD's appropriations. Our opinion applies the legal provisions to the facts before us and does not address or draw conclusions regarding border fencing as a policy matter.

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**Matter of:** Agency Reporting of GAO Determinations of Antideficiency Act Violations

**File:** B-331295

**Date:** Sept. 23, 2019

In response to the Office of Management and Budget's (OMB) June 28, 2019 revision of Circular No. A-11, GAO notified agency general counsels that if an agency fails to report an Antideficiency Act violation that GAO finds, GAO will report the violation, noting the agency's failure to report.

OMB had long instructed each executive branch agency to submit a report to the President, Congress, and Comptroller General whenever GAO found an Antideficiency Act violation. OMB directed agencies to report violations even if they disagreed with GAO's determination, and, in such cases, to explain their position in the report. OMB now instructs agencies to report such violations only if the agency, in consultation with OMB, agrees that a violation has occurred.

Under 31 U.S.C. §§ 1351 and 1517(b), agencies must immediately report Antideficiency Act violations to the President and to Congress, while transmitting a copy of the report to the Comptroller General. In order to support Congress's constitutional oversight of federal spending, where GAO finds an Antideficiency Act violation, GAO will continue its practice of notifying Congress of the violation and, if the agency does not make its required report, of the agency's failure to report.

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**Matter of:** U.S. Department of Agriculture—Anti-Lobbying Provisions

**File:** B-330095

**Date:** July 22, 2020

In September 2017, the U.S. Secretary of Agriculture made statements urging state foresters to contact Congress to support a "permanent fire funding fix," and the U.S. Department of Agriculture (USDA) subsequently published a press release that included those statements. These communications constituted grassroots lobbying prohibited by two provisions in the Consolidated Appropriations Act, 2017. USDA violated these provisions when it obligated and expended funds appropriated by the act to prepare and deliver the Secretary's statements and to develop and publish the associated press release. USDA's obligation and expenditure of appropriated amounts for this prohibited purpose also violated the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A).

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**Matter of:** U.S. Environmental Protection Agency—Application of a Publicity or Propaganda Provision to an EPA Tweet

**File:** B-330107

**Date:** Oct. 3, 2019

In April 2018, the U.S. Environmental Protection Agency (EPA) tweeted about the Senate confirmation of an official to the position of Deputy Administrator. The tweet identified a particular political party by name and stated that Senators of that party were unable to block the confirmation. We conclude that EPA did not violate the government-wide publicity or propaganda prohibition because, despite its inclusion of some political content, the tweet maintained a connection to EPA's official business. Our opinion applies the law to the facts at issue and draws no conclusions concerning whether it was necessary or prudent for EPA to name a particular political party in the tweet.

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**Matter of:** U.S. General Services Administration and U.S. Department of the Interior—  
Operation of the Old Post Office Observation Tower during the Fiscal Year 2019 Lapse in  
Appropriations

**File:** B-330775

**Date:** Sept. 5, 2019

During the fiscal year 2019 lapse in appropriations, the General Services Administration and the National Park Service, Department of the Interior, entered into interagency agreements regarding the operation of the Old Post Office Building observation tower. GSA provided us with information regarding which appropriations it obligated for the interagency agreements with the National Park Service and for related activities. Because GSA obligated available budget authority for these activities, such obligations did not violate the Antideficiency Act.

The Department of the Interior has not responded to our request for information regarding which appropriations it obligated for the activities at issue. Consequently, at this time we are unable to assess Interior's compliance with the Antideficiency Act. We will issue a separate opinion concerning Interior's obligations for the observation tower during the fiscal year 2019 lapse in appropriations.

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**Matter of:** Department of the Interior—Activities at National Parks during the Fiscal Year 2019 Lapse in Appropriations

**File:** B-330776

**Date:** Sept. 5, 2019

The Department of the Interior violated the purpose statute when, during a partial government shutdown, it obligated Federal Lands Recreation Enhancement Act fees for expenses that it would normally charge to Operation of the National Park System (ONPS) appropriations. Because National Park Service did not have an ONPS appropriation at the time that it incurred the obligations at issue, the Department of the Interior also violated the Antideficiency Act and should report its violation as required by 31 U.S.C. § 1351. While the Department of the Interior should correct its Antideficiency Act violation, it must report the violation to Congress and enumerate actions it has taken to prevent recurring violations in the event of future funding lapses. With this decision, we will consider such violations in the future to be knowing and willful violations of the Act.

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

**File:** B-331093

**Date:** Oct. 22, 2019

During the fiscal year 2019 lapse in appropriations, the Internal Revenue Service (IRS) in the Department of the Treasury (Treasury) incurred obligations to process payments submitted by taxpayers and to issue tax refunds. IRS lacked available budget authority to support these activities and no exception to the Antideficiency Act permitted IRS to incur these obligations. Therefore, Treasury violated the Antideficiency Act. Treasury must report the violation as required by 31 U.S.C. § 1351, and should describe actions taken to prevent recurring violations in the event of future funding lapses. With this decision, we will consider such violations in the future to be knowing and willful violations of the Act.

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**Matter of:** U.S. Department of Agriculture—Operations of the Farm Service Agency during the Fiscal Year 2019 Lapse in Appropriations

**File:** B-331092

**Date:** June 29, 2020

During the fiscal year 2019 lapse in appropriations, the Farm Service Agency (FSA) in the U.S. Department of Agriculture (USDA) incurred obligations to perform various activities and ultimately recalled employees in all county offices back to work. FSA lacked available budget authority for these activities. USDA permissibly relied on the exception to the Antideficiency Act for emergencies to protect property when it incurred obligations to prevent imminent threat to the federal government's security interests. USDA violated the Antideficiency Act when it incurred obligations to operate FSA county offices through December 28, 2018, and, subsequently, to provide warehouse receipts, process payments, sign checks, and implement farm programs. USDA must report the violation as required by 31 U.S.C. § 1351, and describe actions taken to prevent recurring violations in the event of future funding lapses. With this decision, we will consider such violations in the future to be knowing and willful violations of the Act.

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