DRAFT FY 2018 ADA financial statement language

Ex. 5 Deliberative Process (DP)

FY 2017 financial statements language

C. Potential Anti-Deficiency Act Violations

In FY 2016 the EPA determined that the Agency had experienced two separate Anti-Deficiency Act Voluntary Services Prohibition violations. 31 U.S.C. § 1342 prohibits the EPA from accepting voluntary services for the United States, or employing personal services not authorized by law, except in the cases of emergency involving the safety of human life or the protection of property.

The first violation occurred from January through April 2014 when the EPA accepted unpaid peer reviews for environmental education grants. At least one of the peer reviewers did not sign a written agreement in advance that states that the services are offered without the expectation of payment, and expressly waives any future pay claims against the government which constitutes a violation of the Voluntary Services Prohibition. The Agency was also unable to determine if there were any more peer reviewers who only had oral agreements.

The second violations occurred in the Honors Law Clerk Program where at least seven post-graduates provided services to the Agency at varying points between 2011 and 2015. Written and signed waivers were unable to be located but are ineffective under 5 U.S.C. §§ 5331-5338 which the principle of equal pay for substantially equal work applies.

In FY 2017, the Agency reviewed whether other voluntary and intern programs might also have had similar issues and included language in its budgetary and supervisory guidance reminding Agency managers to pay close attention to all Federal requirements when accepting voluntary services on behalf of the Agency.

As of the date of the audit report, the EPA is reviewing the proposed transmission of, as required by OMB circular A-11, Section 145, written notifications to the (1) President, (2) President of the Senate, (3) Speaker of the House of Representatives, (4) Comptroller General, and (5) the Director of OMB for Anti-Deficiency Act violation related to the Voluntary Services Provision.