Message

From: Holden, Allison [Holden.Allison@epa.gov]
Sent: 9/5/2018 3:03:04 PM
To: Packard, Elise [Packard.Elise@epa.gov]
CC: Sisson, Ann [Sisson.Ann@epa.gov]
Subject: Proposed Pending Anti-deficiency Act Language for Annual Financial Statement

Elise,

Bringing this to your attention because it involves the voluntary services and phonebooth Anti-deficiency Act violations we haven't reported yet. OMB policy more or less requires EPA to report (publicly) pending Anti-deficiency Act violations in our annual financial statements. Do you have any issues with the following language being included in EPA's FY 2018 Annual Financial Statement? (At the very bottom of this chain is language that went forward in FY 17, although I don't recall reviewing it because it is worded very oddly.) Carol Terris is reviewing this language concurrently. Thank you!

DRAFT FY 2018 ADA financial statement language

Ex. 5 Deliberative Process (DP)

Allison Holden
Attorney-Advisor
Civil Rights and Finance Law Office
Office of General Counsel
Environmental Protection Agency
(202) 564-3841

From: Humes, Hamilton
Sent: Tuesday, September 4, 2018 4:56 PM
To: O'Connor, John <OConnor.John@epa.gov>; Holden, Allison <Holden.Allison@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>
Cc: Washington, Lorna <Washington.Lorna@epa.gov>; Sheeran, Andrew <Sheeran.Andrew@epa.gov>
Subject: RE: AFS - Antideficiency Act Statement

Thanks Andrew for finding the link and pointing to the relevant portion.

https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2017/bulletin_17-03_audit_requirements_federal_financial_statements%20%28FINAL%29.pdf

Allison Holder (OGC) also found this:
https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A136/a136_revised_2017.pdf

Relevant section appears to be on pages 18-19:

Under OMB Circular A-123, management must ensure that the agency process for assessing internal control is integrated with the agency risk profile. In the FMFIA assurance statement management should:

- Provide (1) an assessment of the effectiveness of the organization's internal controls to support effective and efficient programmatic operations, reliable financial reporting, and compliance with applicable laws and regulations (FMFIA § 2) and (2) an assessment of whether financial management systems comply with Federal financial management systems requirements (FMFIA § 4). A particular finding should not be listed as both FMFIA § 2 and § 4 findings.
- Include a summary of material weaknesses (FMFIA § 2), instances of non-compliance (FMFIA § 4), a summary of the assurance (unmodified, modified, or no assurance), and a summary of corrective actions to resolve the material weaknesses and instances of noncompliance. Illustrative assurance statements and further guidance on corrective action plans can be found in OMB Circular A-123 and Appendix A of Circular A-123. Additional best practices can be found in the Chief Financial Officers Council Implementation Guide for Appendix A.

The Management Assurances section's analysis of legal compliance could include, as applicable, a brief discussion of efforts to maintain compliance with the following laws:

- Anti-Deficiency Act,31 U.S.C. §§ 1341, 1342, 1350, 1351, 1517;
- Federal Credit Reform Act of 1990, 2 U.S.C. §§ 661-661f;
- Pay and Allowance System for Civilian Employees as provided in 5 U.S.C. Chapters 51- 59;
- Prompt Payment Act, 31 U.S.C. §§ 3901-3907;

So – Are there any other major guidances that we need to follow?

Or does this cover what we have to say in the Financial Statement?

Thanks,

Hamilton Humes
202-564-2835

From: O'Connor, John
Sent: Tuesday, September 04, 2018 3:49 PM
To: Holden, Allison <Holden.Allison@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>
Cc: Humes, Hamilton <Humes.Hamilton@epa.gov>; Washington, Lorna <Washington.Lorna@epa.gov>; Sheeran, Andrew <Sheeran.Andrew@epa.gov>
Subject: FW: AFS - Antideficiency Act Statement

All:
Please find the below references.
Regards,
John

John T. O'Connor
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From: Sheeran, Andrew
Sent: Tuesday, September 04, 2018 3:32 PM
To: O'Connor, John <OConnor.John@epa.gov>; Washington, Lorna <Washington.Lorna@epa.gov>
Subject: FW: AFS - Antideficiency Act Statement

Hi John and Lorna,

The requirement for disclosure arises from the OMB audit requirements bulletin. In management's representation back to the auditor's for the general purpose financial statements the following statement is required:
https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/bulletins/2017/bulletin_17-03_audit_requirements_federal_financial_statements%20%28FINAL%29.pdf

44. We are not aware of any violations of the Antideficiency Act that we must report to the Congress and the President (and provide a copy of the report to the Comptroller General) for the year ended September 30, 20X2, and through the date of this letter. OR [We have reported all known violations of the Antideficiency Act to the Congress and the President (and provided a copy of the report to the Comptroller General) for the year ended September 30, 20X2, and through the date of this letter.]

Since EPA does is aware of potential ADA violations but has not yet communicated them as of the date of the financial statements disclosure is required in the financial statements.

This is reinforced by GAO Checklist 2020 under the following:

2020 – Checklist for Federal Reporting and Disclosures
Section II.5 – Other Information

II.5.7 Other Agency-specific Statutorily Required Reports	Yes, No, or N/A	Explanation & Reference
1) Does the entity disclose other agency-specific statutorily required reports pertaining to financial or performance management based on consultation with OMB and the Congress? (A-136, section II.5.7)	**NA**	

Thanks,

Andrew Sheeran
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General Ledger Accounting and Reporting Branch
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United States Environmental Protection Agency
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From: Humes, Hamilton
Sent: Tuesday, September 04, 2018 2:58 PM
To: Holden, Allison <Holden.Allison@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>
Cc: Trent, Bobbie <Trent.Bobbie@epa.gov>; Sheeran, Andrew <Sheeran.Andrew@epa.gov>; O'Connor, John <OConnor.John@epa.gov>; Washington, Lorna <Washington.Lorna@epa.gov>
Subject: AFS - Antideficiency Act Statement

Thanks Allison,

And per our conversation, looking for the AFS requirements.

OCFO OC – can you point us to what is required that we report? For example, is there something in A-11 or other guidance that specifies what must / should be included in the Annual Financial Statement?

Hamilton Humes
202-564-2835

From: Holden, Allison
Sent: Tuesday, September 04, 2018 2:46 PM
To: Humes, Hamilton <Humes.Hamilton@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>
Cc: Trent, Bobbie <Trent.Bobbie@epa.gov>; Sheeran, Andrew <Sheeran.Andrew@epa.gov>; O'Connor, John

<OConnor.John@epa.gov>
Subject: RE: Voluntary Services Letter -- Additional question on ADA related to Soundproof Booth

Let me chat with my management about it. Please hold will get back with you, thank you!

Allison Holden
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Civil Rights and Finance Law Office
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(202) 564-3841

From: Humes, Hamilton
Sent: Tuesday, September 4, 2018 2:37 PM
To: Holden, Allison <Holden.Allison@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>
Cc: Trent, Bobbie <Trent.Bobbie@epa.gov>; Sheeran, Andrew <Sheeran.Andrew@epa.gov>; O'Connor, John <OConnor.John@epa.gov>
Subject: RE: Voluntary Services Letter -- Additional question on ADA related to Soundproof Booth

We are working on the Annual Financial Statement and need to put a description into the Statement on where we are with Anti-deficiency related matters.

We had one question though – How much detail do we need to include?

In FY 2017 we included a much more detailed explanation of the voluntary services issues (highlighted in yellow below).

We in OCFO would prefer Ex. 5 Deliberative Process (DP)

Below are copies of some draft language for FY 2018 and below that the language included in FY 2017 (with the detail highl

Thanks,

Hamilton Humes
202-564-2835

DRAFT FY 2018 ADA financial statement language

C. Potential Anti-Deficiency Act Violations

Ex. 5 Deliberative Process (DP)

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.