DRAFT 5/4/2018

[Administrator's Office Letterhead]

The Honorable John Michael Mulvaney
Director
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Mr. Mulvaney:

On April 16, 2018, the Government Accountability Office (GAO) issued an opinion concluding that the Environmental Protection Agency (EPA) violated section 710 of the Financial Services and General Government Appropriations Act, 2017 when it obligated more than $5,000 to install a soundproof privacy booth in the Administrator's office. Under section 710, an agency must provide advance notice to the Senate and House Appropriations Committees before obligating funds in excess of $5,000 to furnish, redecorate, purchase furniture, or make improvements to such space. Pub. L. No. 115-31, div. E, title VII, § 710, 131 Stat. 135, 379 (May 5, 2017). GAO further concluded that EPA's obligation of appropriated funds without first providing the required notice also violated the Antideficiency Act.

Enclosed is a letter transmitting to the President a report of the alleged ADA violation as required by section 145.8 of the Office of Management and Budget (OMB) Circular A-11 (2016). EPA did not come to the same conclusion as GAO and disagrees that an ADA violation occurred. The report explains the agency's position.

EPA is also submitting identical reports to the President of the Senate, the Speaker of the House of Representatives, and the Comptroller General.

Sincerely,

E. Scott Pruitt

Enclosure

DRAFT 5/4/2018

[Administrator's Office Letterhead]

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On April 16, 2018, the Government Accountability Office (GAO) issued an opinion concluding that the Environmental Protection Agency (EPA) violated section 710 of the Financial Services and General Government Appropriations Act, 2017 when it obligated in excess of $5,000 to install a soundproof privacy booth in the Administrator's office. Under section 710, an agency must provide advance notice to the Senate and House Appropriations Committees before obligating funds in excess of $5,000 to furnish, redecorate, purchase furniture, or make improvements to such space. Pub. L. No. 115-31, div. E, title VII, § 710, 131 Stat. 135, 379 (May 5, 2017). GAO further concluded that EPA's obligation of appropriated funds without first providing the required notice also violated the Antideficiency Act.

As required by section 145.8 of the Office of Management and Budget (OMB) Circular A-11 (2016), I am reporting the alleged violation. As explained below, EPA disagrees with GAO's conclusion that an ADA violation occurred.

The EPA's Office of General Counsel has examined the matter and determined that the agency's expenditure of appropriated funds to provide a secure privacy booth in the Administrator's Office did not violate section 710 or the Antideficiency Act. In a letter to GAO dated March 23, 2018, the Office of General Counsel articulated the basis for EPA's determination.

The violation of 31 U.S.C. § 3141 is alleged to have occurred at varying points between July 2017 and December 2017 in the Environmental Programs and Management account, Treasury Account Symbol XXXXXXXX.

GAO asserts that section 710 requires advance notification before an agency obligates funds to furnish, to redecorate, to purchase furniture for, or to make improvements for the office of a Federal employee appointed by the President and that each of these limitations have operative effect. GAO further asserts that section 710 applied to EPA's obligation of funds and EPA was required to notify the appropriations committees in advance of its obligation.

Section 710 provides:

> "During the period in which the head of any department or agency, or any other officer or civilian employee of the Federal Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of $5,000 to furnish

> or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is transmitted to the Committees on Appropriations of the House of Representatives and the Senate. For the purposes of this section, the term 'office' shall include the entire suite of offices assigned to the individual, as well as any other space used primarily by the individual or the use of which is directly controlled by the individual."

In the absence of case law interpreting this provision or legislative history to inform Congressional intent, it is difficult to conclude with any degree of certainty that this provision was intended to reach agency expenditures deemed necessary to effectively conduct the work of the agency.

EPA's 2017 Environmental Program Management appropriation provides in relevant part:

> For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs . . . $2,619,799,000, to remain available until September 30, 2018. . . .

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2017, Pub. L. No. 115-3 div G, title II (May 5, 2017). This appropriation includes funds for salaries, travel, contracts, grants, and cooperative agreements for pollution abatement, control, and compliance activities and administrative activities of the operating programs, including activities under the Working Capital Fund. This appropriation supports core agency programs. The secure privacy booth was installed to provide a soundproof area to facilitate agency business, without concern that classified, deliberative, privileged, or sensitive information might inadvertently be disclosed to those who are not intended to receive such information. Accordingly, the expenditure of appropriated funds to pay for the privacy booth was undertaken solely to further the mission of the agency and not to furnish, to redecorate, to purchase furniture for or to make improvements for the office in the way it appeared Congress intended to apply the restriction. That is, the privacy booth did not enhance the aesthetic appeal of the office.

The privacy booth was found to be analogous to other functional items an employee might require to perform his job duties such as a high-speed computer, high speed copier/scanner, or television. Given this and in the absence of applicable case law or legislative history, the Office of General Counsel found no basis for concluding that this type of expenditure was subject to the $5,000 appropriations rider.

Identical reports are being submitted to the President of the Senate, the Speaker of the House of Representatives, and the Comptroller General in accordance with the process set forth in OMB Circular A-11.

Sincerely,

E. Scott Pruitt

Enclosures