

APPENDIX E--EXCERPTS FROM OMB CIRCULAR A-34

FROM PART III, OMB CIRCULAR A-34

REQUIREMENTS FOR REPORTING ANTIDEFICIENCY ACT VIOLATIONS

32.1 Adverse personnel actions and penalties

“In accordance with sections 1349 and 1518 of Title 31 of the U.S. Code, an officer or employee violating sections 1341(a), 1342, or 1517(a) of Title 31 shall be subject to appropriate administrative discipline, including--when circumstances warrant--a written reprimand, suspension from duty without pay, or removal from office.

“In addition, in accordance with sections 1350 and 1519 of Title 31 of the U.S. Code, an officer or employee convicted of willfully and knowingly violating sections 1341(a), 1342, or 1517(a) of Title 31 shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.

32.2 Requirements to report Antideficiency Act violations.

“The agency head will furnish to the President, through the Director of OMB, and to the Congress, information on Antideficiency Act violations of the following character:

“(1) Overobligation or overexpenditure of an appropriation or fund. This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund in excess of the amount available in the account. (31 U.S.C. 1341(a)).

“(2) Contract or obligation in advance of an appropriation. This is any case where an officer or employee of the United States has involved the Government in a contract or other obligation for the payment of money for any purpose in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law. (31 U.S.C. 1341(a))

“(3) Obligation and expenditure of funds required to be sequestered. This is any case where an officer or employee of the United States has made or authorized an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. (31 U.S.C. 1341(a))

“(4) Contract or obligation of funds required to be sequestered. This is any case where an officer or employee has involved the Government in a contract or other obligation for the payment of money required to be sequestered under section 2521 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. (31 U.S.C. 1341(a))

“(5) Acceptance of voluntary service. This is any case where an officer or employee of the United States has accepted voluntary service for the United States or employed personal services in excess of that authorized by law, except in cases of an emergency involving the safety of human life or the protection of property. As used above, the term “emergencies involving the safety of human life or the protection of property” does not include ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property. (31 U.S.C. 1342).

“(6) Overobligation or overexpenditure of an apportionment or reapportionment. This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of an apportionment or reapportionment. This includes adjustments that cause obligations in expired accounts that have not been merged to exceed the apportionment for the year in which such obligations were incurred. (31 U.S.C. 1517(a)).

“(7) Overobligation or overexpenditure of an allotment or suballotment. This is any case where an officer or employee of the United States has authorized or created an obligation or made an expenditure in excess of the amount permitted by the prescribed and approved agency fund control system. (31 U.S.C. 1517(a)).

“(8) Overobligation or overexpenditure of other administrative subdivisions of funds. Generally the overobligation of other administrative subdivisions of fund, e.g., operating budgets, allowances, financial plans, statutory limitations other than those found in the appropriation act, and other than those defined as a statutory limitation in this Circular, are violations of the Antideficiency Act only when it causes an overobligation or overexpenditure of an allotment, apportionment or appropriation unless the apportionment or agency's fund control regulations specify otherwise. (31 U.S.C. 1517(a)).

“Overobligation or overexpenditure of the following administrative divisions of funds are always violations of the Antideficiency Act: apportionments, allotments, and suballotments. Overobligation or overexpenditure of other administrative divisions of funds are violations of the Act only when so specified in the agency's fund control regulations or when the overobligation results in the overobligation of an apportionment allotment, or suballotment.

“The overobligation of an allocation does not necessarily result in a violation of the Antideficiency Act unless either the allocation is separately apportioned, e.g., as a category B or in an attachment to the SF 132 (unless otherwise specified on the SF 132), or the agency fund control regulations specifies that an overobligation of the allocation automatically results in a violation of the Antideficiency Act.

“Violations involving subapportionments relating to allocation accounts will be reported through OMB to the President by the agency that administers the allocation account through the agency administering the parent account.

32.3 Contents of report to the President.

“The agency report to the President on an Antideficiency Act violation will be in the form of a letter (original and three copies), forwarded through the Director of OMB

“The letter will set forth the following data, in the sequence outlined:

“(1) The title and Treasury symbol (including the fiscal year) of the appropriation or fund account, the amount involved for each violation, and the date on which the violation occurred.

“(2) The name and position of the officer(s) or employee(s) responsible for the violation.

“(3) All facts pertaining to the violation, including the type of violation (e.g., overobligation of an appropriation, overobligation of an apportionment, overobligation of an allotment or suballotment), the primary reason or cause, any statement from the responsible officer(s) or employee(s) with respect to any circumstances believed to be extenuating, and any germane report by the agency's Inspector General and/or the agency's counsel.

“(4) A statement of the administrative discipline imposed and any further action(s) taken with respect to the officer(s) or employee(s) involved in the violation.

“(5) In the case where an office[r] or employee is suspected of willfully and knowingly violating the Antideficiency Act, confirm that all information has been submitted to the Department of Justice for determination of whether further action is needed.

“(6) A statement regarding the adequacy of the system of administrative control prescribed by the head of the agency and approved by OMB, if such approval has been given. If the head of the agency determines a need for changes in the regulations, such proposals will be submitted as provided in section 31.5.

“(7) A statement of any additional action taken by, or at the direction of the head of the agency, including any new safeguards provided to prevent recurrence of the same type of violation.

“(8) If another agency is involved, a statement concerning the steps taken to coordinate the report with the other agency.

32.4 Report to the Congress.

“The report to the Congress will be in the form of identical reports to the Speaker of the House of Representatives and the President of the Senate.”

“If it is identical to the report to the President, a statement to this effect will be included in the report to the President. If it is not identical, one copy of the report to the Congress will be submitted to OMB with the report to the President.

32.5 Report on GAO Findings

“Reports to the President and the Congress should also be made on violations not previously reported by the agency that are included in findings of the General Accounting Office in connection with audits and investigations.

“In these cases, the report to the President will indicate whether the agency agrees that a violation occurred, and if so, it will contain an explanation as to why the violation was not discovered and previously reported by the agency. If the agency does not agree that a violation has occurred, the report to the President and to the Congress will explain the agency's position.

32.6 OMB-requested investigations and audits

“Whenever OMB determines that a violation of the Antideficiency Act may have occurred, OMB may request that an investigation or audit be undertaken or conducted by the agency. In such cases, a report describing the results of the investigation or audit should be submitted to OMB through the head of the agency. If the report indicates that no violation of the Antideficiency Act has occurred, the agency head will so inform OMB and forward to OMB a copy of the report. If the report indicates that a violation of the Antideficiency Act has occurred, the agency head will report to the President and the Congress in accordance with sections 32.3 and 32.4 respectively, as soon as possible. If the agency head does not agree that a violation has occurred, the report to the President and to the Congress will explain the agency's position.

32.7 Timing of Reports by Agency Heads

“The required reports to the President and to the Congress, signed by the head of the agency, will be made immediately after a violation becomes known.

EXCERPTS FROM PART III, OMB CIRCULAR A-34

111.12 Antideficiency Act violations

“Agencies are required to report violations of the Antideficiency Act when the following conditions occur. (Note: See section 32 of this Circular for instructions on reporting Antideficiency Act violations.)

“(a) New obligations and expenditures or adjustments to obligations and expenditures exceed the original appropriations. This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount available in the original appropriation or fund account.

“(b) New obligations or any expenditures in canceled accounts. This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against an account that was closed pursuant to 31 U.S.C. 1551-1557.

“(c) New obligations and expenditures or adjustments to obligations and expenditures that exceed the amount apportioned or allotted. This is any case where an officer or employee of the United States has made or authorized an expenditure from or created or authorized an obligation against any appropriation or fund account in excess of the amount apportioned or allotted to the original appropriation or fund account.”