

115TH CONGRESS
2D SESSION

H. R. 6891

To strengthen and enhance the authority to discipline officers and employees of the Federal Government for violating the Anti-Deficiency Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2018

Mr. MITCHELL introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To strengthen and enhance the authority to discipline officers and employees of the Federal Government for violating the Anti-Deficiency Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “The Anti-Deficiency
5 Reform and Enforcement Act of 2018”.

6 **SEC. 2. ADVERSE ACTIONS FOR VIOLATIONS OF THE ANTI-**
7 **DEFICIENCY ACT.**

8 (a) EXPENDING OR OBLIGATING AMOUNTS; VOL-
9 UNTARY SERVICES.—

1 (1) IN GENERAL.—Section 1349 of title 31,
2 United States Code, is amended—

3 (A) in subsection (a), by striking “An offi-
4 cer” and inserting “Consistent with the require-
5 ments of subsections (b) and (c), an officer”;
6 and

7 (B) by striking subsection (b) and insert-
8 ing the following:

9 “(b)(1) The head of an agency shall remove, or in
10 the case of a temporary or probationary employee, termi-
11 nate the employment of, an officer or employee of the
12 United States Government if the head determines that
13 such officer or employee knowingly violated section
14 1341(a) or 1342, as described under paragraph (2).

15 “(2) An officer or employee of the United States Gov-
16 ernment who committed an act in violation of section
17 1341(a) or 1342 did so knowingly if such officer or em-
18 ployee—

19 “(A) acted with actual knowledge that his or
20 her actions would violate section 1341(a) or 1342; or

21 “(B) acted in reckless disregard of whether his
22 or her actions would violate section 1341(a) or 1342.

23 “(c)(1) The head of an agency shall take an appro-
24 priate adverse action against an officer or employee of the
25 United States Government for a violation of section

1 1341(a) or 1342 if the head determines that the failure
2 of such officer or employee to exercise reasonable care in
3 carrying out his or her duties led to such violation.

4 “(2) An appropriate adverse action under this sub-
5 section shall be removal (or termination in the case of a
6 temporary or probationary employee), demotion, or sus-
7 pension.

8 “(d) An officer or employee who willfully uses or au-
9 thorizes the use of a passenger motor vehicle or aircraft
10 owned or leased by the United States Government (except
11 for an official purpose authorized by section 1344) or oth-
12 erwise violates section 1344 shall be suspended without
13 pay by the head of the agency. The officer or employee
14 shall be suspended for at least one month, and when cir-
15 cumstances warrant, for a longer period or removed from
16 office.”.

17 (2) REPORTS.—Section 1351 of title 31, United
18 States Code, is amended—

19 (A) by striking “If an officer” and insert-
20 ing “(a) If an officer”;

21 (B) by inserting after “actions taken” the
22 following: “, including, with respect to an offi-
23 cer or employee of the United States Govern-
24 ment, whether the violation was committed
25 knowingly (as described in section 1349(b)) or

1 whether a failure to exercise reasonable care in
2 carrying out duties led to the violation”;

3 (C) by striking “Congress” each place it
4 appears and inserting “the appropriate congress-
5 sional committees”; and

6 (D) by adding at the end the following:

7 “(b) In this section, the term ‘appropriate congress-
8 sional committees’ means the Committee on Oversight and
9 Government Reform of the House of Representatives and
10 the Committee on Homeland Security and Governmental
11 Affairs of the Senate.”.

12 (b) APPORTIONMENT.—

13 (1) IN GENERAL.—Section 1518 of title 31,
14 United States Code, is amended—

15 (A) by striking “An officer” and inserting
16 “(a) Consistent with the requirements of sub-
17 sections (b) and (c), an officer”; and

18 (B) by adding at the end the following:

19 “(b)(1) The head of an agency shall remove, or in
20 the case of a temporary or probationary employee, termi-
21 nate the employment of, an officer or employee of the
22 United States Government if the head determines that
23 such officer or employee knowingly made, authorized, or
24 involved the Government in a contract, obligation, or ex-

1 penditure in violation of section 1517(a), as described
2 under paragraph (2).

3 “(2) An officer or employee of the United States Gov-
4 ernment who committed an act in violation of section
5 1517(a) did so knowingly if such officer or employee—

6 “(A) acted with actual knowledge that his or
7 her actions would violate section 1517(a); or

8 “(B) acted in reckless disregard of whether his
9 or her actions would violate section 1517(a).

10 “(c)(1) The head of an agency shall take an appro-
11 priate adverse action against an officer or employee of the
12 United States Government for a violation of section
13 1517(a) if the head determines that the failure of such
14 officer or employee to exercise reasonable care in carrying
15 out his or her duties led to such violation.

16 “(2) An appropriate adverse action under this sub-
17 section shall be removal (or termination in the case of a
18 temporary or probationary employee), demotion, or sus-
19 pension.”.

20 (2) REPORTS.—Section 1517(b) of title 31,
21 United States Code, is amended—

22 (A) by striking “(b) If an officer” and in-
23 serting “(b)(1) If an officer”;

24 (B) by inserting after “actions taken” the
25 following: “, including, with respect to an offi-

1 cer or employee of the United States Govern-
2 ment, whether the violation was committed
3 knowingly (as described in section 1518(b)) or
4 whether a failure to exercise reasonable care in
5 carrying out duties led to the violation”;

6 (C) by striking “Congress” each place it
7 appears and inserting “the appropriate congress-
8 sional committees”; and

9 (D) by adding at the end the following:

10 “(2) In this subsection, the term ‘appropriate con-
11 gressional committees’ means the Committee on Oversight
12 and Government Reform of the House of Representatives
13 and the Committee on Homeland Security and Govern-
14 mental Affairs of the Senate.”.

15 (c) CLARIFICATION OF APPEAL RIGHTS.—Nothing in
16 this section or the amendments made by this section shall
17 be construed to—

18 (1) waive, modify, or otherwise affect the right
19 of an officer or employee of the United States Gov-
20 ernment to appeal an adverse action taken against
21 such an officer or employee for a violation of section
22 1349 or 1518 of title 31, United States Code, (as
23 amended by subsections (a)(1) and (b)(1), respec-
24 tively), including an appeal to the Merit Systems

1 Protection Board, if such a right is afforded by any
2 other provision of law, rule, or regulation; or

3 (2) extend or otherwise grant any appeal right
4 with respect to such an adverse action to an officer
5 or employee of the United States Government who
6 is not otherwise afforded such a right under any
7 other provision of law, rule, or regulation.

8 **SEC. 3. LEGAL OPINIONS RELATING TO POTENTIAL VIOLA-**
9 **TIONS OF THE ANTI-DEFICIENCY ACT.**

10 (a) IN GENERAL.—Subchapter II of chapter 7 of sub-
11 title I of title 31, United States Code, is amended by add-
12 ing at the end the following:

13 **“§ 722. Legal opinions relating to potential violations**
14 **of the Anti-Deficiency Act**

15 “(a)(1) Not later than 100 days after the date on
16 which the Committee on Oversight and Government Re-
17 form of the House of Representatives or the Committee
18 on Homeland Security and Governmental Affairs of the
19 Senate requests a legal opinion from the Comptroller Gen-
20 eral relating to a potential violation of section 1341, 1342,
21 or 1517 by an officer or employee of the United States
22 Government, the Comptroller General shall submit such
23 opinion to—

24 “(A) each Committee; and

1 “(B) the employing entity of such officer
2 or employee.

3 “(2) The legal opinion required under paragraph (1)
4 shall—

5 “(A) address whether the alleged violation of
6 section 1341, 1342, or 1517 occurred;

7 “(B) include recommendations to the employing
8 entity, including whether the entity should submit a
9 report under section 1351 or 1517(b); and

10 “(C) take into consideration any report sub-
11 mitted by the employing entity of such officer or em-
12 ployee under subsection (b).

13 “(b) Before submitting a legal opinion under sub-
14 section (a)(1), the Comptroller General shall notify the ap-
15 plicable employing entity of the request for a legal opinion,
16 and such entity shall submit to the Comptroller General
17 a report, including any relevant documents, on such re-
18 quest—

19 “(1) not later than 45 days after the date on
20 which the entity receives the notice; or

21 “(2) if the Comptroller General determines that
22 a shorter or longer period is appropriate based on
23 the specific circumstances of the request, within
24 such shorter or longer period.

1 “(c) With respect to any case in which the Comp-
2 troller General determines under subsection (b)(2) that a
3 longer period for the submission of a complete report is
4 appropriate, such period may not extend the deadline for
5 the submission of a legal opinion by the Comptroller Gen-
6 eral under subsection (a)(1).

7 “(d) Not later than 60 days after receiving a legal
8 opinion under subsection (a), the employing entity shall
9 submit a report on actions taken or planned to be taken
10 on any recommendation in the opinion, in accordance with
11 section 720(b).

12 “(e) With respect to the computation of any period
13 of time under this section, the following rules apply:

14 “(1) The period does not include the date on
15 which the request is submitted under subsection
16 (a)(1), notice is provided under subsection (b), or a
17 legal opinion is received under subsection (d), as the
18 case may be.

19 “(2) In the case of a period with respect to
20 which the last day is a Saturday, Sunday, legal holi-
21 day, or a day on which weather or other conditions
22 cause the closing of the Government Accountability
23 Office, the next day that is not any such day is the
24 last day of that period.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 of subchapter II of chapter 7 of title 31, United States
3 Code, is amended by inserting after the item relating to
4 section 721 the following:

“722. Legal opinions relating to potential violations of the Anti-Deficiency Act.”.

5 **SEC. 4. AWARDS FOR ANTI-DEFICIENCY ACT DISCLOSURES.**

6 (a) IN GENERAL.—Subchapter II of chapter 45 of
7 title 5, United States Code, is amended by adding after
8 section 4513 the following:

9 **“§ 4514. Agency awards for disclosures of Anti-Defi-**
10 **ciency Act violations**

11 “(a) The Inspector General of an agency, or any
12 other agency employee designated under subsection (b),
13 may award a cash payment to any employee of such agen-
14 cy whose disclosure of a potential Anti-Deficiency Act vio-
15 lation to the Inspector General, or to such other des-
16 ignated agency employee, resulted in a report of an Anti-
17 Deficiency Act violation under section 1351 or 1517(b) of
18 title 31. An award under this section shall be derived from
19 the appropriations account of the agency used for em-
20 ployee awards or bonuses, subject to the availability of ap-
21 propriations. The amount of an award under this section
22 may not exceed the lesser of—

23 “(1) \$1,000; or

24 “(2) an amount equal to 1 percent of the
25 amount of such violation.

1 “(b) In the case of an agency for which there is no
 2 Inspector General, the head of the agency shall designate
 3 an agency employee who shall have the authority to make
 4 the determinations and grant the awards permitted under
 5 this section.

6 “(c) In making cash awards under this chapter, the
 7 President or the head of an agency may take into account
 8 an employee’s—

9 “(1) disclosure of a potential Anti-Deficiency
 10 Act violation; or

11 “(2) recommendations to mitigate or prevent
 12 any Anti-Deficiency Act violation.

13 “(d) In this section, the term ‘Anti-Deficiency Act
 14 violation’ means a violation of section 1341(a), 1342, or
 15 1517(a) of title 31.”.

16 (b) CLERICAL AMENDMENTS.—

17 (1) TABLE OF SECTIONS.—The table of sections
 18 for subchapter II of chapter 45 of title 5, United
 19 States Code, is amended—

20 (A) by striking the item relating to sub-
 21 chapter II and inserting the following:

“SUBCHAPTER II—AWARDS FOR DISCLOSURES”; and

22 (B) by inserting after the item relating to
 23 section 4513 the following:

“4514. Agency awards for disclosures of Anti-Deficiency Act violations.”.

1 (2) SUBCHAPTER HEADING.—The heading for
2 such subchapter is amended by striking “COST
3 SAVINGS”.

4 **SEC. 5. INSPECTOR GENERAL REVIEWS.**

5 (a) IN GENERAL.—Not later than November 30,
6 2019, and every two years thereafter, the Inspector Gen-
7 eral of each agency shall, to the extent practicable, con-
8 duct an assessment of the applicable agency—

9 (1) assessing whether an Anti-Deficiency Act
10 violation occurred in the preceding two fiscal years
11 that was not reported under section 1351 or 1517(b)
12 of title 31, United States Code; and

13 (2) identifying internal controls, policies, proce-
14 dures, rules, regulations, or management practices
15 that may be contributing to any such violation, or
16 could contribute to such violations.

17 (b) REPORT.—The Inspector General shall include
18 the results of the assessment under subsection (a) as part
19 of the appropriate semiannual report submitted pursuant
20 to section 5 of the Inspector General Act of 1978 (5
21 U.S.C. App.) and shall include in such report rec-
22 ommendations to reduce Anti-Deficiency Act violations.

23 (c) COORDINATION.—The Inspectors General shall
24 coordinate with each other to share best practices and

1 methodologies for conducting the assessment required
2 under subsection (a).

3 (d) DEFINITION OF ANTI-DEFICIENCY ACT VIOLA-
4 TION.—In this section, the term “Anti-Deficiency Act vio-
5 lation” means a violation of section 1341(a), 1342, or
6 1517(a) of title 31, United States Code.

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