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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: United States Postal Service Office of Inspector General—
Implementation of Postal Accountability and Enhancement Act
Section 603, Part 1

File: B-317022

Date: September 25, 2008

DIGEST

The United States Postal Service (USPS) is exempt from “Federal law[s] dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds,” unless otherwise provided. 39 U.S.C. § 410. As a component of USPS, the Office of Inspector General (OIG) is covered by the same exemption.

Since the statutory language authorizing direct appropriations to OIG is ambiguous, OIG should work with Congress to obtain a provision in the continuing resolution to ensure continued funding of OIG operations.

USPS may not supplement OIG’s appropriations with additional funds, because doing so would constitute an augmentation. Agencies may not augment their appropriations because it would interfere with the congressional prerogative to control agency activity.

DECISION

The Office of Inspector General (OIG) of the United States Postal Service (USPS) requests a decision regarding the implementation of section 603 of the Postal Accountability and Enhancement Act, Pub. L. No. 109-435, 120 Stat. 3198, 3240–41 (Dec. 20, 2006). Letter from Ronald K. Stith, Assistant Inspector General for Mission Support, USPS, to Gary L. Kepplinger, General Counsel, GAO, Aug. 18, 2008 (Request Letter). Section 603 authorizes a direct appropriation for the OIG from the Postal Service Fund. OIG asks six questions concerning the appropriation of funds to OIG and the effect such an appropriation will have on statutes that apply to OIG as a component of USPS. We answer three of the six questions below, and will respond to the remaining questions in the future.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and the agency’s legal position on the subject matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/resources.html. In this regard, OIG provided its legal views in a memorandum supplementing its request. In response to our request for information on how USPS currently funds OIG expenses, OIG provided the relevant USPS procedures and practices. E-mail from Robert B. Neill, Senior Attorney, Office of General Counsel, USPS OIG, to Faisal Amin, Senior Staff Attorney, GAO, *Subject: USPS OIG Response to Request for Additional Information*, Aug. 29, 2008 (Neill E-mail).

BACKGROUND

USPS is an independent establishment within the executive branch. 39 U.S.C. § 201. Congress charges USPS to “plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees.”¹ 39 U.S.C. § 403. USPS is managed by an eleven-member Board of Governors. 39 U.S.C. § 202. Nine members of the board are appointed by the President, by and with the advice and consent of the Senate. 39 U.S.C. § 202(a). The Postmaster General and Deputy Postmaster General, selected by the nine appointed members, are the remaining two board members. 39 U.S.C. §§ 202(c), (d).

USPS OIG employs more than 1,100 auditors, investigators, and professional support personnel stationed in more than 90 offices. Office of Inspector General, United States Postal Service, Publication 291, *Discover the Office of Inspector General*, available at www.uspsoig.gov/Pub291_FY08.pdf (last visited Sept. 22, 2008) (Publication 291). To carry out the duties of the Inspector General Act, the USPS Inspector General “may initiate, conduct and supervise such audits and investigations in the United States Postal Service as the Inspector General considers appropriate. . . .” 5 U.S.C. App. 3 § 8G(f)(3)(B)(i). OIG performs such audits, reviews, and investigations to “prevent and detect fraud, theft, and misconduct[;] promote economy, efficiency, and effectiveness[;] promote program integrity[; and] keep the

¹ In 1877, the Supreme Court observed:

“The power vested in Congress [in Article 1 of the Constitution] ‘to establish post-offices and post-roads’ has been practically construed, since the foundation of the government, to authorize not merely the designation of the routes over which the mail shall be carried, and the offices where letters and other documents shall be received to be distributed or forwarded, but the carriage of the mail, and all measures necessary to secure its safe and speedy transit, and the prompt delivery of its contents. . . . The power possessed by Congress embraces the regulation of the entire Postal System of the country.”

Ex parte Jackson, 96 U.S. 727, 732 (1877).

Governors, Congress, and Postal Service management informed of problems, deficiencies, and corresponding corrective actions.” Office of Inspector General, United States Postal Service, *Office of Inspector General Semiannual Report to Congress: October 1, 2007--March 31, 2008*, available at www.uspsoig.gov/sarcs/Spring08.pdf (last visited Sept. 23, 2008) (Semiannual Report), at 2. Ultimately, OIG’s mission is to “help[] maintain confidence in the postal system and improve the Postal System’s bottom line.” Publication 291. In the first half of fiscal year 2008, OIG issued 233 audit reports with a financial impact of almost \$831 million, and completed 3,754 investigations. Semiannual Report at 3, 4, 64.

OIG expenses are paid from the Postal Service Fund, a revolving fund established within the United States Treasury. Request Letter. See 39 U.S.C. § 2003(a). Amounts contained in the fund are considered “no-year funds,” available without fiscal year limitation. 39 U.S.C. § 2003(a). See B-221498, May 2, 1986. USPS assigns “finance number” accounting codes to track expenditures, of which several finance numbers are assigned to OIG. Neill E-mail. USPS OIG personnel costs, contract costs, and travel costs are paid from the Postal Service Fund by Postal Service finance center personnel. *Id.*

The Postal Accountability and Enhancement Act became law on December 20, 2006. Pub. L. No. 109-435. Section 603(b) of the act, amending the Inspector General Act of 1978, authorizes “such sums as may be necessary” to be appropriated to OIG from the Postal Service Fund. Pub. L. No. 109-435, § 603(b). In addition to requiring USPS to provide in its budget a statement of OIG’s request for appropriations, section 603(c) amends the Postal Service Fund statute, 39 U.S.C. § 2003. The amending language provides that the Postal Service Fund “shall be available for the payment of . . . all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under [section 603(b)].” Pub. L. No. 109-435, § 603(c), *codified at* 39 U.S.C. § 2003(e)(1). These amendments “apply with respect to fiscal years beginning on or after October 1, 2008.” Pub. L. No. 109-435, § 603(d)(1).

OIG states that “[a]ppropriations acts are anticipated to specifically provide for payment of the expenses of the Office of Inspector General out of the Postal Service Fund. . . .” Request Letter. For fiscal year 2009, the Financial Services and General Government Appropriations Act, 2009 bill would appropriate for OIG operations “\$239,356,000, to be derived by transfer from the Postal Service Fund and expended as authorized by section 603(b)(3) of [Public Law 109-435].” S. 3260, 110th Cong. (2008). In its request, OIG observes that “clear understanding of the laws governing the obligation, expenditure, and accounting of the Postal Service Fund funds specifically appropriated for the Postal Service OIG is vital to the OIG’s successful implementation of section 603.” Request Letter.

DISCUSSION

1. Do laws “dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds” in title 31, United States Code, such as the miscellaneous receipts provision of 31 U.S.C. § 3302(b) and the Antideficiency

Act, remain inapplicable to the USPS OIG pursuant to 39 U.S.C. § 410(a) after the provisions of section 603 of Public Law 109-435 become effective?

By statute, USPS is exempt from the application of certain fiscal statutes that otherwise apply generally to executive branch agencies. 39 U.S.C. § 410(a). With the exception of certain situations listed in the statute but not relevant here, section 410 of title 39 of the United States Code exempts the “exercise of the powers of [USPS]” from all “Federal law[s] dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds.” The miscellaneous receipts statute requires agencies receiving funds for the government to deposit those funds into the general fund of the Treasury absent statutory authority permitting the agencies to retain those funds. 31 U.S.C. § 3302(b). The Antideficiency Act, among other things, prohibits agencies from obligating or spending appropriated funds before receiving, or in excess of, an appropriation, 31 U.S.C. § 1341(a), and requires agencies to establish a funds control system to ensure compliance with the act, 31 U.S.C. § 1514(a).

The Antideficiency Act and miscellaneous receipts statute are both federal laws dealing with “funds.” We have specifically noted that the Antideficiency Act is “inapplicable to the Postal Service.” B-221498, May 2, 1986 (because the Antideficiency Act is not listed as an exception in section 410(b), nor is the Act applied to USPS under any other statute, the Antideficiency Act does not apply to USPS in the context of franked mail); B-164786, Oct. 8, 1970 (Budget and Accounting Act, as well as Antideficiency Act, are “not applicable” to USPS).²

We have not opined on the applicability of the miscellaneous receipts statute to USPS. However, we note that USPS is directed to deposit all its revenues, its appropriations, its interest on investments, and any transfers from the Forfeiture Fund in a revolving fund established in the U.S. Treasury called the Postal Service Fund, 39 U.S.C. § 2003, which is available to USPS without fiscal year limitation to carry out the functions and powers of USPS. This is, of course, an explicit statutory exception to the miscellaneous receipts statute and supersedes it.

OIG is clearly a component of USPS. The Inspector General Act of 1978, as amended, requires the USPS Board of Governors to “establish[] and maintain[] *in [USPS]* an Office of Inspector General.” 5 U.S.C. App. 3 § 8G(b) (emphasis added). Congress bestows upon the Board the authority to appoint, and if necessary, remove, the

² See also B-291771, Mar. 17, 2003 (“[Because] CICA is not included in the list of statutes expressly made applicable to USPS under section 410(b), we have concluded that USPS is not subject to our bid protest jurisdiction.”); B-138942, Aug. 25, 1980 (USPS exempt from Fly America Act by virtue of 39 U.S.C. § 410); 52 Comp. Gen. 306 (1972) (exemption from the Small Business Act, “as well as other federal laws dealing with federal contracts”); *United States v. American Telephone & Telegraph Co.*, 461 F. Supp. 1314, 1336 n.65 (D.D.C. 1978) (“[USPS] is exempt from consideration of non-postal federal economic policies”).

Inspector General. 39 U.S.C. § 202(e)(1). Furthermore, the Inspector General Act specifically states that the USPS Inspector General “shall be under the authority, direction, and control of the [Board of] Governors with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information. . . .” 5 U.S.C. App. 3 § 8G(f)(3)(A)(i). Under such authority, the Board may, in certain situations “prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena. . . .” 5 U.S.C. App. 3 § 8G(f)(3)(A)(ii). In sum, OIG is a component, albeit one with significant independence, of USPS.

Section 603 of the Postal Accountability and Enhancement Act does not interfere with the statutory exemption afforded USPS, and to OIG as a component of USPS, from federal fiscal statutes. The fact that section 603 authorizes funds to be appropriated from the Postal Service Fund does not implicitly repeal 39 U.S.C. § 410. Repeals by implication are strongly disfavored. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 189 (1978); B-307720, Sept. 27, 2007. Such a repeal “will not be presumed unless the legislature’s intention ‘to repeal is clear and manifest.’” *National Ass’n of Home Builders v. Defenders of Wildlife*, __ U.S. __, 127 S. Ct. 2518, 2523 (2007) quoting *Watt v. Alaska*, 451 U.S. 259, 267 (1981); B-303268, Jan. 3, 2005. If Congress intended that section 603 of the Postal Accountability and Enhancement Act would repeal 39 U.S.C. § 410 by directly appropriating funds for OIG, it would have said so. Neither in the legislation, nor in the legislative history, does any congressional intent to enact such a repeal exist, let alone be clear and manifest.

2. *For fiscal year 2009, may USPS continue to fund OIG activities out of the Postal Service Fund until an appropriations act is enacted absent a continuing resolution provision appropriating funds for the OIG as an anomaly? If not, what language should be included in a continuing resolution to permit the USPS OIG to continue to operate until an appropriations act is enacted?*

Implementation of section 603 of Public Law 109-435 presents a conundrum for OIG. Generally, when Congress does not enact appropriations laws before the beginning of a fiscal year, it passes temporary funding measures called continuing resolutions to continue government operations.³ See B-300673, July 3, 2003 (“continuing resolutions

³ “Continuing resolution” is defined as:

“An appropriation act that provides budget authority for federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year.”

GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, (Washington, D.C.: Sept. 2005), at 35–36.

are intended to be temporary ‘stop-gap’ measures”); *see also* B-308773, Jan. 11, 2007. A continuing resolution generally maintains the status quo until Congress can pass a formal appropriations act. 58 Comp. Gen. 530, 532 (1979). In that regard, during the pendency of a continuing resolution, USPS would be expected to continue to pay OIG’s operating expenses directly from the Postal Service Fund as it has done in the past.

However, section 603 amends the statute establishing the Postal Service Fund to make the revolving fund “available for the payment of . . . all expenses of the Office of Inspector General, subject to the availability of amounts appropriated under [section 603(b)] . . .” Pub. L. No. 109-435, § 603(c)(2). Furthermore, the section provides that amendments made therein “*shall* apply with respect to fiscal years beginning on or after October 1, 2008.” *Id.* § 603(d)(1) (emphasis added). Because the phrase “subject to the availability of amounts appropriated” is susceptible to a construction requiring an enacted appropriation, coupled with the mandatory language of subsection (d)(1), OIG faces a conundrum that may undermine continuing OIG operations. Therefore, it would appear that OIG may not have any funds with which to continue its operations.

For the sake of clarity and to ensure continued funding of OIG operations, as we discussed with your staff, OIG should urge Congress to include a provision in any continuing resolution to guarantee that no matter how one interprets section 603, OIG will continue operations. Should OIG require assistance to craft appropriate language for a continuing resolution, we can provide it informally.

3. *If USPS desires to increase amounts available from the Postal Service Fund for the expenses of the OIG above amounts appropriated for the OIG, how may it lawfully do so?*

Agencies may not augment their appropriations. An augmentation results when an agency obtains and retains money from outside sources without statutory authority. B-307137, July 12, 2006. The principle of augmentation is generally supported by fiscal law statutes, including the miscellaneous receipts statute and the Antideficiency Act. In concert, those statutes prevent an agency from spending more money than Congress appropriates, maintaining Congress’s control over agency activity. As discussed earlier, however, USPS, including OIG, is exempt from the application of the miscellaneous receipts statute and the Antideficiency Act. 39 U.S.C. § 410.

However, section 603 amends the statute establishing the Postal Service Fund to make that fund “available for the payment of . . . *all* expenses of the Office of Inspector General, *subject to the availability of amounts appropriated under section 8G(f) of the Inspector General Act of 1978.*” Pub. L. No. 109-435, § 603(c)(2) (emphasis added). As written, section 603 imposes a limitation on the amount of

expenses OIG may incur.⁴ An agency may not receive additional funds to extend its appropriation if Congress limits that agency's operations to a particular dollar amount. Absent statutory authority, an agency may not operate beyond the level that can be financed by its appropriation. B-308476, Dec. 20, 2006.⁵ In general, augmentations are frowned upon because their effect may be to "nullif[y] completely" the control Congress retains to set agency appropriations. *See* 23 Comp. Gen. 668 (1944). Therefore, USPS may not supplement OIG's appropriation with additional money from the Postal Service Fund.

CONCLUSION

USPS exemptions from federal fiscal laws, unless otherwise excepted by 39 U.S.C. § 410(b), apply to OIG notwithstanding the enactment of section 603 of the Postal Accountability and Enhancement Act. Because Congress may not enact a regular appropriation for OIG operations before October 1, 2008, and the statutory language authorizing appropriations for OIG is ambiguous, OIG should work with Congress to obtain a provision in the continuing resolution to ensure continued funding of OIG operations. Finally, USPS may not augment OIG's appropriations with additional money from the Postal Service Fund.



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⁴ The Financial Services and General Government Appropriations Act, 2009 bill reinforces that limitation by appropriating approximately \$239.4 million to OIG for fiscal year 2009. S. 3260, 110th Cong. (2008).

⁵ For example, transfers between appropriations without statutory authority constitute an augmentation. An unauthorized transfer is an improper augmentation of the receiving appropriation. *See, e.g.*, 23 Comp. Gen. 694 (1944); B-206668, Mar. 15, 1982.