



GAO

Accountability * Integrity * Reliability

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 2

File: B-317878

Date: March 3, 2009

DIGEST

Amounts appropriated by transfer to the United States Postal Service (USPS) Office of Inspector General (OIG) from the Postal Service Fund remain available for OIG obligations without fiscal year limitation and will not revert to the Postal Service Fund. Amounts transferred between appropriations accounts do not lose their fiscal year character.

Governmentwide rescissions do not apply to USPS OIG appropriations. The Postal Service Fund is exempt from general statutory budget limitations by operation of 39 U.S.C. § 2009a(2). Because OIG is a component of USPS and is funded by amounts transferred from the Postal Service Fund, its appropriations are exempt from across-the-board rescissions.

Although the Economy Act does not apply to USPS and its components, including OIG, OIG may engage in interagency transactions with other federal entities under authority provided by 39 U.S.C. § 411. However, OIG may not enter into intra-agency transactions with other USPS components in the absence of other authority to permit such action.

DECISION

The Office of Inspector General (OIG) of the United States Postal Service (USPS) requested 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. In its request, OIG asked six questions concerning the appropriation of

funds to OIG and the effect such an appropriation will have on the applicability of statutes as regards OIG as a component of USPS. In a prior decision, we answered three of those questions. B-317022, Sept. 25, 2008. We respond to the remaining three questions here, as well as an additional question that OIG asked subsequent to our September decision.

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). In addition, in a telephone conversation subsequent to our September decision, OIG provided clarifying information regarding the four questions addressed in this decision. Telephone Conversation between Robert B. Neill, Office of General Counsel, USPS OIG; Faisal Amin, Senior Staff Attorney; and Thomas H. Armstrong, Assistant General Counsel, GAO, Oct. 3, 2008 (October Telephone Conversation).

BACKGROUND¹

In the past, OIG expenses have been 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 “no-year funds,” available without fiscal year limitation. 39 U.S.C. § 2003(a). *See* B-221498.26, May 2, 1986. Section 603(b) of the Postal Accountability and Enhancement Act (PAEA), which became law on December 20, 2006, amended the Inspector General Act of 1978 to authorize “such sums as may be necessary” to be appropriated to OIG from the Postal Service Fund. Pub. L. No. 109-435, § 603(b). 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).

¹ In our September 2008 decision, we provided the details about USPS and OIG that gave rise to the questions OIG asked us. B-317022, Sept. 25, 2008. In this decision, we provide information specific to the questions addressed herein. We refer readers to the September decision for additional information.

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, Memorandum at p.8. The appropriations bill pending for fiscal year 2009, the Financial Services and General Government Appropriations Act, 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); H.R. 7323, 110th Cong. (2008). In its request, OIG observes that a “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. Currently, OIG operations are funded by the governmentwide continuing resolution; the continuing resolution appropriated “\$233,440,000, to be derived by transfer from the Postal Service Fund.” Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, div. A, § 141, 122 Stat. 3574, 3580 (Sept. 30, 2008). It expires on March 6, 2009.

DISCUSSION

1. Will funds appropriated for the OIG from the Postal Service Fund pursuant to section 603 remain “no-year” funds available to pay all expenses incurred by the OIG no matter when the expenses are incurred?

Unless Congress provides otherwise, appropriations are available only for the fiscal year for which the funds are appropriated. 71 Comp. Gen. 39, 40 (1991). In the continuing resolution, Congress appropriated \$233,440,000 to fund OIG operations, “to be derived *by transfer* from the Postal Service Fund.” Pub. L. No. 110-329, § 141 (emphasis added). The pending fiscal year 2009 Financial Services and General Government Appropriations bill uses the same terminology: “\$239,356,000, to be derived by transfer from the Postal Service Fund and expended as authorized by section 603(b)(3) of [PAEA].” S. 3260. Congress’s use of the term “transfer” is key to answering OIG’s question. Instead of directly “appropriating” amounts from the Fund to OIG, Congress makes amounts available by “transfer” to OIG.² When an amount is

² This language differs from other appropriations made from dedicated accounts, which, for example, use the phrase “to be derived from.” *See, e.g.*, Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. K, title I, 121 Stat. 1844, 2389 (Dec. 26, 2007) (Federal Motor Carrier Safety Administration was appropriated “\$229,654,000, to be derived from the Highway Trust Fund. . . .”); *id.* at 2391 (for highway safety research and development, National Highway Traffic Safety Administration was appropriated “\$107,750,000, to be derived from the Highway Trust Fund. . . .”); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, div. D, title V, 121 Stat. at 1998 (Federal Deposit Insurance Corporation was appropriated “\$26,848,000, to be derived from the Deposit Insurance Fund and the FSLIC Resolution Fund.”).

transferred from one appropriation account to another, that amount is “subject to the same limitations provided by the law appropriating the amount.” 31 U.S.C. § 1532. Consequently, unless statutory transfer authority provides otherwise,³ appropriated funds do not lose their time character when they are moved from one appropriation to another. *See* B-288142, Sept. 6, 2001.

The Postal Service Fund, a revolving fund, is a permanent indefinite appropriation, and the amounts in the fund are available without fiscal year limitation. 39 U.S.C. § 2003(a). Therefore, when Congress enacts a transfer from that fund to OIG, amounts transferred remain no-year funds.

2. Will funds appropriated for the OIG out of the Postal Service Fund that remain unobligated and unexpended at the end of a fiscal year remain in the Postal Service Fund revolving fund at the end of the fiscal year? If not, will any such unobligated and unexpended funds appropriated for the OIG have to be accounted for separately in order to remain available for adjustment of existing OIG obligations for some period of time before ultimately being returned to the Postal Service Fund?

Unobligated and unexpended funds transferred to OIG from the Postal Service Fund should remain in the OIG account at the end of the fiscal year. As explained in our answer to question 1, amounts appropriated by the continuing resolution, in effect, provide OIG with no-year funds. If the fiscal year 2009 appropriations bill before Congress is enacted as currently written, it, too, will provide OIG with no-year funds. Because OIG’s appropriation is available without fiscal year limitation, such funds do not expire at the end of the fiscal year when appropriated. *See* 31 U.S.C. §§ 1552–1553. Nevertheless, OIG will need to account for amounts transferred to it separately from balances in the Postal Service Fund. OIG explained to us that the Department of Treasury will establish a separate account for OIG. October Telephone Conversation. Once the funds are withdrawn from the Postal Service Fund and transferred and credited to OIG’s account, they should no longer be accounted for in the Postal Service Fund.

³ For example, where Congress transfers funds to another account to be merged therein, the funds take on the conditions and characteristics of the receiving account. *See, e.g.*, Pub. L. No. 110-329, div. B, title I, ch. 1, § 10101, 122 Stat. at 3587 (“The Secretary of Agriculture may transfer to the Rural Development Disaster Assistance Fund, and merge with other amounts generally appropriated to the Fund, the available unobligated balance of [amounts appropriated] before the date of the enactment of this Act for programs and activities of the Rural Development Mission Area . . .”).

3. *What effect, if any, will any governmentwide rescission have on amounts appropriated to USPS OIG?*⁴

Congress from time to time may enact “across-the-board” rescissions that apply governmentwide.⁵ For example, the Emergency Supplemental Appropriations Act to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006 (2006 Supplemental) rescinded “an amount equal to 1 percent of . . . the budget authority provided (or obligation limit imposed) for fiscal year 2006 for any discretionary account of this Act and in any other fiscal year 2006 appropriation Act.” Pub. L. No. 109-148, div. B, title III, ch. 8, § 3801(a), 119 Stat. 2680, 2791 (Dec. 30, 2005) (chapter 8 is entitled “Government-Wide Rescissions” and section 3801 is entitled “Across-the-Board Rescissions”). OIG’s question goes to an “across-the-board,” or governmentwide, rescission. In those cases, the rescission applies to all agencies and all appropriations within a particular act, or all appropriated amounts in a fiscal year, as in the case of the 2006 Supplemental. Unless specific statutory authority excepts OIG from an across-the-board rescission, the rescission would apply to any amount appropriated to OIG from the Postal Service Fund.

However, a statute does exempt the Postal Service Fund “from any general budget limitation imposed by statute on expenditures” 39 U.S.C. § 2009a. As a component of USPS, and as an activity funded by amounts transferred from the Postal Service Fund, OIG enjoys the same exemption 39 U.S.C. § 2009a(2) affords USPS as a whole. *See* B-317022, Sept. 25, 2008. Congress enacted the exemption, at least in part, in reaction to the application of the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, title II (Dec. 12, 1985), commonly referred to as Gramm-Rudman-Hollings, which prescribed deficit reduction targets each fiscal year, to USPS. H.R. Rep. No. 101-247, at 850 (1989). In its report, the House committee stated that the Postal Service should not be subjected to the provisions of Gramm-Rudman-Hollings, and explained that the exemption “will allow the Postal Service to operate . . . free from budget pressures unrelated to its operation.” *Id.* “Mail delivery should respond to the demands of Postal Service customers; it should not be scaled up or down depending on federal budget considerations. . . . [USPS] should not be included in deficit reduction plans.” *Id.* The committee noted: “Under current law [Postal Service] administrative expenses

⁴ Although OIG originally asked a question about the application of the Impoundment Control Act to OIG appropriations, OIG clarified, in a telephone conversation with GAO staff, that it questions the application of a governmentwide rescission. October Telephone Conversation.

⁵ Sometimes, Congress rescinds amounts in response to a presidential rescission proposal. The Impoundment Control Act of 1974 provides that whenever the President determines that budget authority is not required to carry out programs or that the budget authority should be rescinded for fiscal policy, or other reasons, the President may transmit a special message to Congress proposing a rescission, specifying all the facts and circumstances bearing thereon. 2 U.S.C. § 683(a).

are considered sequestrable resources and are subject to across-the-board reductions. [The Postal Service Off-Budget Act] would exempt all Postal Service resources from sequestration.” *Id.* at 846. The effect of a governmentwide rescission is the same as that of a sequestration in that a certain proportion of funds appropriated to an entity is not available. Viewed in the context of this legislative history, a governmentwide rescission, such as that contained in the 2006 Supplemental, is a general budget limitation and, as such, would not apply to amounts appropriated to OIG.

4. Would receipt of reimbursement from other organizations for services performed by OIG improperly augment OIG’s appropriation?

In our September 2008 decision, we addressed OIG’s question regarding whether USPS may supplement OIG’s appropriation. B-317022, Sept. 25, 2008. We concluded that USPS may not supplement OIG’s appropriation because doing so would constitute an impermissible augmentation. *Id.* Congress controls agency activity by establishing funding levels; allowing an agency to credit and expend additional funds dilutes congressional control over agency finances, thereby weakening congressional control over agency activity.

After we issued our decision, OIG asked an additional, related question: whether reimbursement from another USPS entity for services performed would constitute an improper augmentation of OIG’s appropriation.⁶ E-mail from Robert Neill, USPS OIG, to Thomas H. Armstrong, GAO, *Subject: Question Concerning Decision: B-317022* (Oct. 3, 2008). For example, the Postal Inspection Service may wish to utilize OIG’s expertise to install video surveillance equipment. Telephone Conversation between Robert Neill, USPS OIG and Faisal Amin, GAO, Dec. 10, 2008 (December Telephone Conversation). OIG also asked whether providing services to inspectors general at other agencies on a reimbursable basis constitutes an impermissible augmentation. October Telephone Conversation.

OIG’s questions involve interagency (between agencies) and intra-agency (between agency components) transactions. Generally, the Economy Act, 31 U.S.C. § 1535, authorizes federal agencies to perform intra-agency and interagency services on a reimbursable basis. Specifically, the Economy Act permits “[t]he head of an agency or major organizational unit within an agency” to place orders for goods or services

⁶ We understand OIG’s question to encompass those requests for services for which OIG does not already receive an appropriation. Agencies may not charge or receive money for activities funded by Congress. *See* 61 Comp. Gen. 419 (Merit Systems Protection Board may not accept reimbursement from other agencies for hearing officer travel expenses; Congress appropriates money to the Board to cover such expenses). *See also* B-308476, Dec. 20, 2006 (Federal Motor Carrier Safety Administration may not retain restitution award to defray obligations for which Congress provides an appropriation).

with a “major organizational unit of the same agency or another agency” if specified conditions are met. *Id.* USPS is exempt from federal laws dealing with “contracts, property, works, officers, employees, budgets, or funds.” 39 U.S.C. § 410. Thus, we have found that the Economy Act does not apply to USPS. 58 Comp. Gen. 451, 459 (1979). USPS, and OIG as a component thereof, have statutory authority to engage in transactions with executive branch agencies or the Government Printing Office for the furnishing of property or services. 39 U.S.C. § 411. Clearly, this permits OIG, like USPS, to enter into transactions with other agencies. However, the question about intra-agency transactions then remains.

If the Economy Act does not apply to USPS and no other authority exists to allow intra-agency transactions between OIG and other USPS components, then OIG may not provide goods or services to USPS. This may, indeed, be an unintended consequence of the statutory structure of 39 U.S.C. § 411, which permits *interagency* transactions but is silent about *intra-agency* transactions. USPS previously funded all its activities, including OIG activities, directly from the Postal Service Fund, so independent authority to permit intra-agency transactions was unnecessary. Where an entity like USPS only has one appropriation, no question arises about intra-agency transactions requiring the debiting and crediting of multiple appropriations. The establishment of independent funding for OIG activities as a result of the Postal Accountability and Enhancement Act and subsequent appropriations from the Postal Service Fund creates the present situation. If OIG and other USPS components wish to enter into reimbursable intra-agency agreements, OIG may want to seek statutory authority permitting such activity.

CONCLUSION

If Congress continues to appropriate funds to OIG by transferring amounts from the no-year Postal Service Fund, amounts transferred do not lose their character as no-year funds. Funds remaining at the end of the fiscal year shall remain in OIG’s account, to be available until expended. In addition, governmentwide rescissions do not apply to USPS OIG appropriations by operation of 39 U.S.C. § 2009a, which exempts the Postal Service from general budget limitations enacted by statute. Finally, regarding interagency and intra-agency transactions, OIG has statutory authority to be reimbursed for interagency transactions. However, it has no authority for intra-agency agreements.



Gary L. Keplinger
General Counsel