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Washington, DC 20548

B-324857

August 6, 2015

Eric M. Thorson
Inspector General
Department of the Treasury

Dear Mr. Thorson:

This is in response to the letter from your office questioning the proper disposition of the amounts the Office of the Comptroller of the Currency (OCC) receives through its lease of office space. Letter from the Assistant Inspector General for Audit, Department of the Treasury Office of the Inspector General, to General Counsel, GAO (June 14, 2013) (Request Letter). As explained below, OCC has statutory authority to retain the amounts it receives from the lessees. OCC's specific statutory authority to retain the amounts it receives through assessments on banks, certain fees, and other charges imposed, establishes an exception to the miscellaneous receipts statute, which requires that federal officials and agents deposit money for the government received from any source into the Treasury.¹

BACKGROUND

OCC is a bureau in the Department of Treasury that is responsible for chartering, regulating, and supervising national banks and federal savings associations. See 12 U.S.C. § 1. Request Letter, at 2. OCC is funded primarily by the payments made by national banks and federal savings associations for the examinations performed by OCC. *Id.*, at 2. Congress has statutorily directed that the funds derived from OCC's assessments on banks and savings associations, as well as fees, or other

¹ Our practice when rendering opinions is to obtain the views of the relevant agency to establish a factual record and the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP. In its request to us, your office provided background information as well as a legal opinion prepared by OCC for the Treasury OIG. Request Letter, Enclosure 1. OCC also provided our office with additional factual information and its legal views on the subject of the request. Letter from Senior Deputy Comptroller and Chief Counsel, OCC, to Assistant General Counsel for Appropriations Law, GAO (Sept. 16, 2013) (OCC Letter).

charges imposed and collected by OCC, are not to be considered appropriated funds. 12 U.S.C. § 481. However, while Congress has decided to fund OCC operations primarily through the funds OCC receives from its assessments on national banks and federal savings associations, OCC is not a nonappropriated fund entity. B-236399, May 29, 1991.

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) abolished the Office of Thrift Supervision (OTS), and transferred many of OTS's functions, personnel, and property to OCC. Pub. L. No. 111-203, title III, subtitle A, §§ 312, 313, 124 Stat. 1376, 1521–23 (July 21, 2010), *classified at* 12 U.S.C. §§ 5412, 5413; Pub. L. No. 112-203, § 323, *classified at* 12 U.S.C. § 5433. The OTS property transferred to OCC included OTS's headquarters building located in Washington, D.C. Request Letter, at 1.

Dodd-Frank provides that OCC may “hold, maintain, sell, lease, or otherwise dispose of . . . property . . .” Pub. L. No. 111-203, § 319, *classified at* 12 U.S.C. § 5416. The transfer of OTS's headquarters building to OCC resulted in OCC becoming the successor lessor to a federal agency, as well as to retail lessees. Request Letter, at 1. As the lessor, OCC receives amounts from its lessees and has used the amounts to pay OCC's operating and office expenses. OCC Letter, at 3.

You have asked whether the miscellaneous receipts statute requires OCC to deposit amounts received from its leases into the Treasury.

DISCUSSION

The general rule concerning the crediting of collections to appropriations and other fund accounts is based on the requirements of the miscellaneous receipts statute. It provides, in relevant part, as follows:

“[A]n official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.”

31 U.S.C. § 3302(b).

The miscellaneous receipts statute is one of a number of laws that Congress has enacted over the years to effectuate the Appropriations Clause of the Constitution.² B-302825, Dec. 22, 2004. The miscellaneous receipts statute controls agency spending by requiring that money received for the government be deposited into the Treasury, thereby making it unavailable for agency spending unless otherwise appropriated by Congress. B-322531, Mar. 30, 2012. Absent specific statutory

² The Appropriations Clause of the U.S. Constitution states that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7.

authority to the contrary, agencies must deposit in the general fund of the Treasury any fees or other amounts paid to the government for activities relating to official duties. B-302825. In considering whether a statute can properly be construed as creating an exception to the miscellaneous receipts statute, we have held that in light of the constitutional principles on which the miscellaneous receipts statute is grounded, a statutory exception must direct that an agency's receipts be deposited in an account other than the general fund of the Treasury. B-322531; B-302825 ("a generally expressed grant of authority . . . is insufficient to supersede the miscellaneous receipts statute," particularly given its constitutional purpose). In the area of property leases, this rule is reinforced by 40 U.S.C. § 1302, which provides that amounts derived from the rental of buildings shall be deposited in the Treasury as miscellaneous receipts, unless an agency has statutory authority to do otherwise.

At issue here is whether OCC has the statutory authority for some other disposition of the amounts it receives from its lessees of the OTS headquarters building, or whether the amounts received must be deposited into the general fund of the Treasury as miscellaneous receipts.

Section 482 of title 12 of the U.S. Code provides in relevant part that OCC "may impose and collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the office[] of the Comptroller." 12 U.S.C. § 482. The transfer of OTS's functions, personnel, and property to OCC by Dodd-Frank provides additional responsibilities to OCC within the meaning of section 482. Additionally, Dodd-Frank specifically authorized OCC to lease the former OTS headquarters building transferred to OCC. 12 U.S.C. §§ 5416, 5433. When read together, sections 482, 5416, and 5433 authorize OCC to lease the former OTS headquarters building, and impose and collect charges, such as rent, to carry out OCC's responsibilities with regard to the former OTS headquarters building. See Response Letter, at 2.

However, none of these sections (section 482, 5416, or 5433) address the proper disposition of the amounts received by OCC as a result of its collection of charges such as rent. For such direction, we turn to 12 U.S.C. § 481. Section 481, set forth in relevant part, provides as follows:

"The examiners and assistant examiners making the examinations of national banking associations and affiliates . . . shall be employed by the Comptroller of the Currency . . . ; the employment and compensation of examiners . . . is and shall be paid from assessments on banks or affiliates thereof or from other fees or charges imposed pursuant to this subchapter The funds derived from such assessments, fees, or charges may be deposited by the Comptroller of the Currency in accordance with the provisions of section 192 of this title and shall not be construed to be Government funds or appropriated monies."

12 U.S.C. § 481 (emphasis added). That is, under section 481, and section 192 of title 12 referenced therein, OCC may deposit, most importantly for our purposes here, “fees or charges imposed pursuant this *subchapter*,” into any regular government depository, or into any State or national bank. 12 U.S.C. §§ 192, 481 (emphasis added). Section 481 further directs that such funds “shall not be not be construed to be Government funds or appropriated monies.” Because section 482 has been classified in the same subchapter as section 481, the amounts collected by OCC from its lessees under the authority of section 482 may therefore be deposited in accordance with the terms of section 481, and, as described above, shall not be construed to be Government funds or appropriated monies.³ In short, sections 481 and 482, when read together, set forth an explicit exception to the miscellaneous receipts statute.

However, because title 12 has not been enacted into positive law, our inquiry cannot end here. Positive law codification is the process of the Office of Law Revision Counsel preparing, and Congress enacting, one title at a time, a revision and restatement of the general laws of the United States. 2 U.S.C. § 285b(1); B-323357, July 11, 2012. Positive law codification is meant to “remove ambiguities, contradictions, and other imperfections both of substance and of form,” while “conform[ing] to the understood policy, intent, and purpose of the Congress in the original enactments.” 2 U.S.C. § 285(b)(1). A title of the United States Code that has been enacted into positive law is itself legal evidence of the law. 1 U.S.C. § 204(a). In contrast, language appearing in a non-positive law title is only *prima facie* evidence of the wording of the law, and may be rebutted by a showing that the text of the underlying provision differs. *Id.*; B-323357.

Since title 12 has not been enacted into positive law, the relevant federal statutes as enacted are controlling. In this regard, the provisions of 12 U.S.C. §§ 481 and 482 are a classification of section 5240 of the Revised Statutes, as amended. As relevant here, section 5240, as amended, includes the phrase “fees or charges imposed pursuant to this *section*.” In contrast, and as noted above, 12 U.S.C. § 481 includes the phrase “fees or charges imposed pursuant to this *subchapter*.” However, the change from “section” to “subchapter” as a result of the classification of section 5240, as amended, into sections 481 and 482 of title 12 effectuated no change to the substantive law. This is so because the relevant provisions of sections 481 and 482 appear in the same section (section 5240) of the Revised Statutes, as amended, and now appear in the same subchapter of the United States Code.⁴

³ Classification is the process by which the Office of Law Revision Counsel of the House of Representatives determines whether a provision of law should go into the United States Code and, if so, where. 2 U.S.C. § 285b(4).

⁴ Sections 481 and 482 are classified in subchapter 15 of chapter 3 of title 12 of the United States Code.

In reaching the conclusion that the statutes referenced above permit OCC to retain the amounts it receives through its lease of office space, we are mindful of concerns raised in the Request Letter that 12 U.S.C. §§ 481 and 482 were enacted well prior to Dodd-Frank, and, according to your office, have been previously applied only in the context of bank examinations and fees. Request Letter, at 4. Your office also points out that Dodd-Frank, while providing that OCC may “hold, maintain, sell, lease, or otherwise dispose of . . . property,” does not provide any direction regarding the proper disposition or character of potential proceeds. 12 U.S.C. § 5416; Request Letter, at 4.

It is a well-settled presumption that Congress is aware of existing law when it legislates. *Albernaz v. United States*, 450 U.S. 333, 341-42 (1981).⁵ As such, the fact that 12 U.S.C. §§ 481 and 482 were enacted well prior to Dodd-Frank, and that Dodd-Frank does not address the disposition of the amounts collected from the lessees of the former OTS headquarters building, does not affect our conclusion. We interpret Congress’s enactment of Dodd-Frank as acceptance of existing law applicable to OCC, which permits OCC to impose charges to carry out its responsibilities and expressly provides that the amounts collected are not to be considered government funds or appropriated monies. See B-256245, May 29, 1994.

CONCLUSION

The amounts OCC receives through its lease of the former OTS headquarters building may be retained and used by OCC, and need not be deposited into the general fund of the Treasury as miscellaneous receipts. OCC’s statutory authority to impose and collect charges includes the amounts OCC receives through its lease of the former OTS headquarters building.

Sincerely yours,



Susan A. Poling
General Counsel

⁵ As stated in *Albernaz*:

"Congress cannot be expected to specifically address each issue of statutory construction which may arise. . . . [I]f anything is to be assumed from the congressional silence on this point, it is that Congress was aware of the [established] rule and legislated with it in mind. It is not a function of this Court to presume that 'Congress was unaware of what it accomplished'"

450 U.S. at 341–42 (citations omitted).