U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Decision

Matter of: Small Business Administration—Availability of Appropriations for Loan Modernization and Accounting System

File: B-326941

Date: December 10, 2015

DIGEST

Transfers by the Small Business Administration (SBA) from the Disaster Loan Program Account to its Salaries & Expenses account are not subject to the provisions of section 530 of the fiscal year 2014 and 2012 appropriations acts. In addition, the earmark for the Loan Modernization and Accounting System (LMAS) within the Salaries & Expenses account constitutes a minimum amount available for the LMAS and may be supplemented by funds from the general lump-sum appropriation.

DECISION

The Office of Inspector General (OIG) of the Small Business Administration (SBA) requests a decision under 31 U.S.C. § 3529 regarding the availability of fiscal year (FY) 2014 and 2012 funds to pay for expenses related to SBA's Loan Modernization and Accounting System (LMAS). Letter from Acting Counsel to the Inspector General, SBA OIG, to General Counsel, GAO (May 1, 2015) (Request Letter). As explained below, SBA OIG has requested a decision regarding the extent to which other funds are available to supplement the LMAS earmark. We conclude that transfers by SBA from the Disaster Loan Program Account to its Salaries & Expenses account are not subject to the percentage limitations in section 530 of the FY 2014 and 2012 appropriations acts. In addition, the earmark for the LMAS within the Salaries & Expenses account constitutes a minimum amount available for the LMAS and may be supplemented by funds from the general lump-sum appropriation for Salaries & Expenses.

Our practice when rendering decisions is to obtain the legal views of the relevant agency and to establish a factual record on the subject 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, SBA OIG provided relevant facts and its legal views. SBA

also provided its legal views. Letter from General Counsel, SBA, to Assistant General Counsel for Appropriations Law, GAO (July 15, 2015) (SBA Letter).

BACKGROUND

SBA maintains a loan portfolio of approximately $117 billion in direct and guaranteed loans. SBA Letter, at 1. SBA relies on information technology systems to manage all activities related to the loan portfolio. *Id.* The LMAS is SBA's effort to modernize its loan accounting systems. *Id.*

In FY 2014, Congress included an earmark for the LMAS within the Salaries and Expenses (S&E) appropriation for the SBA. The appropriations language for the FY 2014 S&E account provides: "For necessary expenses . . . of the Small Business Administration . . . $250,000,000 . . . : *Provided further, That $6,100,000 shall be available for the Loan Modernization and Accounting System, to be available until September 30, 2015*." Pub. L. No. 113-76, div. E, title V, 128 Stat. 5, 222-23 (Jan. 17, 2014) (emphasis added).

SBA OIG asked to what extent funds may be transferred from SBA's Disaster Loan Program Account (DLPA) to supplement the amount specified in the LMAS earmark. The FY 2014 DLPA provides: "For administrative expenses to carry out the direct loan program . . . $191,900,000 . . .; of which $181,900,000 is for direct administrative expenses of loan making and servicing to carry out the direct loan program, which may be transferred to and merged with the appropriations for Salaries and Expenses; and of which $9,000,000 is for indirect administrative expenses for the direct loan program, which may be transferred to and merged with the appropriations for Salaries and Expenses." Pub. L. No. 113-76, 128 Stat. at 224.

The FY 2014 appropriations act also contains an administrative provision, section 530, addressing the transfer of funds: "Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Small Business Administration in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: *Provided*, That any transfer pursuant to this paragraph shall be treated as a reprogramming of funds under section 608 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section." Pub. L. No. 113-76, 128 Stat. at 224. Section 608 contains restrictions for reprogrammings subject to that section. Pub. L. No. 113-76, 128 Stat. at 226.

During a review of SBA's LMAS procurement practices, SBA OIG auditors determined that SBA funded the LMAS efforts using an equal mix of funds earmarked for the LMAS within the S&E account and the DLPA. Request Letter, at 1. The DLPA funds applied to the LMAS in FY 2014 exceeded 10 percent of the amount identified in the LMAS earmark in those respective fiscal years. *Id*. SBA OIG questions whether the transfer of DLPA funds that increased the LMAS line-

item appropriation by more than 10 percent was permissible, given the percentage limitations contained in section 530. *Id.*, at 2.

SBA OIG asks the same questions about FY 2012. Although the amounts appropriated differ, the relevant provisions in the FY 2012 appropriations act and the FY 2014 appropriations act are identical with respect to transfer authority and percentage limitations. Pub. L. No. 112-74, div. C, title V, 125 Stat. 786, 921 (Dec. 23, 2011) (S&E account); Pub. L. No. 112-74, 125 Stat. at 922 (DLPA); Pub. L. No. 112-74, § 530 (administrative provision); Pub. L. No. 112-74, 125 Stat. § 608 (reprogramming restrictions). The DLPA funds applied to the LMAS in FY 2012 also exceeded 10 percent of the amount identified in the LMAS earmark in those respective fiscal years. Request Letter, at 1. Accordingly, the analysis in this decision will apply to both fiscal years.

DISCUSSION

In order to answer the questions posed by SBA OIG, we must address two main issues. First, we must determine whether section 530 applied to transfers from the DLPA to S&E. Second, if the transfers from the DLPA to S&E were permissible, we must analyze whether those funds were available to supplement the LMAS earmark.

Application of Section 530 to Transfers From the DLPA to S&E

A transfer of funds from one appropriation to another is permitted only when authorized by law. 31 U.S.C. § 1532. This rule applies equally to transfers from one appropriation to another within the same agency. *See, e.g.*, B-308762, Sept. 17, 2007; B-164912-O.M., Dec. 21, 1977.

On its face, the DLPA provides transfer authority, appropriating funds "which may be transferred to and merged with the appropriations for Salaries and Expenses." Pub. L. No. 113-76, 128 Stat. at 224; Pub. L. No. 112-74, 125 Stat. at 922. Thus, by the express terms of the FY 2014 appropriations act, SBA was authorized to transfer funds from the DLPA to the S&E account. The remaining question is whether such transfers pursuant to the DLPA appropriation are subject to the limitations set forth in section 530 (and, consequently, the reprogramming restrictions set forth in section 608). We conclude that they are not.

We have already addressed this type of situation in our case law. In B-239031, June 22, 1990, section 103 of an appropriations act contained a general grant of transfer authority, providing that "[n]ot to exceed 2 per centum of any appropriations in this Act for the Department of the Treasury may be transferred between such appropriations. However, no such appropriation shall be increased or decreased by more than 2 per centum and any proposed transfers shall be approved in advance by the Committees on Appropriations of the House and Senate." Treasury, Postal Service, and General Government Appropriations Act, 1990, Pub. L. No. 101-136, 103 Stat. 783. We were asked whether these percentage limitations applied to

transfers from the Internal Revenue Service (IRS) to the Treasury OIG under the Inspector General Act Amendments of 1988.

We concluded that these restrictions did not apply to the transfer of funds by Treasury under *any* statutory authority that might exist; rather, these limitations were applicable only to transfers made pursuant to the authority contained in section 103. The first sentence of section 103 established the transfer authority, permitting Treasury to transfer not to exceed 2 percent "of any appropriations in this act … between such appropriations." The second sentence of section 103 placed limits on that grant of authority, referring the reader back to the first sentence and providing that "no such appropriation"—meaning any appropriation in that act—could be increased or decreased by more than 2 percent by a transfer made pursuant to the grant of authority in section103. We noted that if Congress wished to make the percentage limitations applicable to all transfers, it could include language to that effect, such as: "Notwithstanding any authority to transfer funds between appropriations contained in this or any other Act, no transfer may increase or decrease any appropriation in this Act . . . ." B-239031, at 3.

Similarly, section 530 does not purport to prescribe limitations on all existing transfer authority available to SBA. Section 530 is a general grant of transfer authority available to SBA in addition to the more specific transfer authority governing transfers from the DLPA to S&E. It is a well-established principle of statutory construction that the more specific provision will govern over the general. 62 Comp. Gen. 617 (1983). The language of section 530 itself contemplates that there could be transfers made pursuant to authority other than section 530.[1] In subjecting section 530 transfers to the reprogramming restrictions of section 608, it refers to "any transfer *pursuant to this paragraph*." Pub. L. No. 113-76, § 530 (emphasis added). A transfer under the authority contained in the DLPA is not a transfer "pursuant to this paragraph" under section 530 and is not subject to the percentage limitations.

Applying the percentage limitations in section 530 to transfers from the DLPA to the S&E account would render the language in the DLPA superfluous. The authority in section 530 alone would have been adequate to provide SBA with the authority to transfer funds between the DLPA and S&E accounts. To read section 530 as applying to transfers from the DLPA to S&E, notwithstanding the very specific transfer language in the DLPA itself, would make the DLPA language unnecessary and such an interpretation would be contrary to established maxims of statutory construction. *See Alaska Department of Environmental Conservation v. Environmental Protection Agency*, 540 U.S. 461, 489 n.13 ("a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or

[1] SBA receives more than one appropriation, and thus section 530 would grant SBA the authority to transfer funds between its other accounts, *e.g.*, a transfer to S&E from its appropriation for the Office of Advocacy.

word shall be superfluous, void, or insignificant") (citation omitted); B-261522, Sept. 29, 1995 (declining to adopt interpretation that would render statutory phrase meaningless).

We note that the legislative history of the FY 2014 act also supports reading section 530 and the DLPA language as separate grants of transfer authority. For FY 2014, the House report accompanying H.R. 2786 (which contains the language that eventually appeared in the FY 2014 appropriations act) notes that "a number of transfers are allowed" including: "(7) Under Small Business Administration, Disaster Loans Program Account, amounts may be transferred to and merged with the Office of Inspector General, and Salaries and Expenses. (8) Under Administrative Provision-Small Business Administration, amounts may be transferred between appropriations of the Small Business Administration." [2] H.R. Rep. No. 113-172, at 96.

Amount Available for the Loan Modernization and Accounting System

We now turn to whether funds in the lump-sum S&E appropriation are available to supplement the earmark for LMAS.[3]

[2] Similar language appears in the FY 2012 legislative history. The House report accompanying H.R. 2434 (which contains the language that eventually appeared in the FY 2012 appropriations act) notes that "a number of transfers are allowed" including: "(8) under Small Business Administration, Disaster Loans Program Account, amounts may be transferred to the Office of Inspector General, and Salaries and Expenses; (9) under Administrative Provision-Small Business Administration, amounts may be transferred between appropriations of the Small Business Administration." H.R. Rep. No. 112-136, at 86.

[3] SBA asked us to consider the effect of its practice of transferring funds from DLPA to S&E and using what it calls "split funding" of contracts for the LMAS. SBA indicated that, as a matter of practice, it tracks the funds separately to ensure that transferred DLPA funds are used for disaster loan purposes. Telephone Conversation with Assistant General Counsel for Legislation and Appropriations, SBA (Sept. 1, 2015). While SBA may do this for reporting or other reasons, SBA's practice does not obviate the questions posed by SBA OIG. We note that funds transferred to the S&E account under the transfer authority in the DLPA are "transferred to and merged with the appropriations for Salaries and Expenses." Pub. L. No. 113-76, 128 Stat. at 224; Pub. L. No. 112-74, 125 Stat. at 922. When funds are transferred to and "merged with" the appropriations in another account, the transferred funds generally take on the characteristics of the receiving account. B-317878, Mar. 3, 2009.

The FY 2014 lump-sum S&E appropriation for SBA contains an earmark for LMAS: "For necessary expenses . . . of the Small Business Administration . . . $250,000,000 . . . : *Provided further, That $6,100,000 shall be available for the Loan Modernization and Accounting System*, to be available until September 30, 2015." Pub. L. No. 113-76, 128 Stat. at 222-23 (emphasis added). This language serves two purposes: (1) it designates a specific amount that cannot be diverted to purposes other than the LMAS; and (2) it extends the time period those earmarked funds are available for obligation, because otherwise the funds would expire at the end of FY 2014 on September 30, 2014.[4]

We addressed a similar situation in B-231711, Mar. 28, 1989. In that case, the FY 1987 appropriations act provided that out of the lump-sum appropriation of $1,158,294,000 for the Forest Service, "$263,323,000 for reforestation and timber stand improvement, cooperative law enforcement, firefighting, and maintenance of forest development roads and trails shall remain available for obligation until September 30, 1988." Pub. L. No. 99-591, 100 Stat. 3341, 3341-268 (Oct. 30, 1986). We held that this language extended the period of availability of the earmarked funds, but did not constitute a line-item limitation or cap on the amount of money available for obligation for firefighting. B-231711, at 4.

Similarly, the LMAS earmark establishes a limit only on the amount of S&E funds available for two years; it does not create a limitation on the maximum amount of funds available for obligation for LMAS purposes in FY 2014.[5] The FY 2014 appropriations act provides that "[n]one of the funds made available by this Act shall remain available for obligation beyond the current fiscal year . . . unless expressly so provided herein."[6] Pub. L. No. 113-76, § 602. Thus, unless otherwise provided, all appropriations made by the act were available for obligation until September 30,

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[4] As discussed above, funds from the DLPA may be "transferred to and merged with the appropriations for Salaries and Expenses." Pub. L. No. 113-76, 128 Stat. at 224; Pub. L. No. 112-74, 125 Stat. at 922. When these funds are transferred into the S&E account, they take on the time characteristics of the S&E account. Therefore, they would only be available for obligation until September 30, 2014.

[5] The legislative history of the FY 2014 appropriations act also suggests that Congress intended the LMAS earmark to be construed as a minimum available for that purpose. The Senate report accompanying S. 1371 (which contained the language eventually appearing in the FY 2014 appropriations act) discusses the LMAS program, recommends $6,100,000 for LMAS and provides that "[a]dditional funding will be contributed from amounts provided for the administrative expenses of the [DLPA] because the modernization supports that program in addition to SBA's business loan programs." S. Rep. No. 113-80, at 120-21 (2013).

[6] The FY 2012 appropriations act contained a similar general provision. Pub. L. No. 112-74, 125 Stat. at 924.

2014. *See* 50 Comp. Gen. 857 (1971) (finding that the effect of this type of clause "is to require the act making the appropriation to expressly provide . . . for availability longer than 1 year if the enacting clause is to be overcome as to any specific appropriation contained therein"). The SBA S&E account does not contain language extending the time period of the lump-sum generally; however, the LMAS earmark extends the period of availability of $6,100,000 until September 30, 2015.[7]

In addition to extending the time period availability of these funds, this earmarking language also serves a protective purpose. By earmarking $6,100,000 for the LMAS, Congress has ensured that $6,100,000 will be available only for LMAS and not for other purposes.[8] *See, e.g.*, B-278121, Nov. 7, 1997 (funds earmarked for a specific purpose could not be used for other purposes of the lump sum, absent statutory transfer authority). Therefore, $6,100,000 is earmarked for LMAS in FY 2014 and those funds cannot be diverted to other purposes within the S&E appropriation. However, the earmarking language does not prevent SBA from supplementing the earmark with funds from the lump sum within the bounds of its authority.[9]

CONCLUSION

Transfers by the SBA from its Disaster Loan Program Account to its S&E account are not subject to the limitations of section 530 in the FYs 2014 and 2012 appropriations acts. In addition, the LMAS earmark within the S&E account constitutes a floor for the LMAS and can be supplemented by additional funds from the general lump-sum S&E appropriation.

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[7] The FY 2012 S&E appropriation was structured similarly, earmarking $7,100,000 for the LMAS and extending the period of availability of those funds until September 30, 2013. Pub. L. No. 112-74, 125 Stat. at 921.

[8] We reached a similar conclusion when interpreting language such as "not less than," finding that the use of that phrase is intended to serve a protective purpose. *See, e.g.*, B-327003, Sept. 29, 2015 (noting that the use of "not less than" was used to assure that at least a minimum amount would be available for a particular purpose and would not be used for other authorized operating expenses).

[9] To the extent that any reprogramming of funds is needed within its S&E account, SBA should be mindful of the reprogramming restrictions set forth in section 608. Pub. L. No. 113-76, § 608; Pub. L. No. 112-74, § 608.