



Decision

Matter of: U.S. Election Assistance Commission—Application of Account Closing Law to Election Security Grants Awarded and Disbursed to States

File: B-331892

Date: November 19, 2020

DIGEST

The account closing law, in 31 U.S.C. § 1552, provides that five fiscal years after the period of availability of a fixed-period appropriation account ends, such account shall be closed and any remaining balance in the account shall be canceled. The U.S. Election Assistance Commission (EAC) has already awarded and disbursed to states amounts appropriated for election security grants for fiscal years (FY) 2018 and 2020, the years at issue here, and such amounts are not remaining balances for purposes of the account closing law. Therefore, the FY 2018 and 2020 election security grant funds that have already been disbursed to states remain available for state expenditure consistent with the terms of the underlying grant agreements.

DECISION

The Executive Director and Commissioners of the U.S. Election Assistance Commission (EAC) request a decision under 31 U.S.C. § 3529 on the applicability of the account closing law, in 31 U.S.C. § 1552, to amounts appropriated in fiscal years (FY) 2018 and 2020 for election security grants. Letter from then-Acting Executive Director and Commissioners, EAC, to Comptroller General (Feb. 21, 2020) (Request Letter), at 1–2. Specifically, EAC asks whether amounts that have already been awarded and disbursed to states are subject to cancellation under the account closing law. *Id.* As explained below, we conclude that the disbursed funds are not subject to the provisions of such law and remain available for state expenditure consistent with the terms of the underlying grant agreements.

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. See 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. EAC provided its legal views in its request letter and we also reached out to EAC to request additional factual information.

Request Letter; E-mail from Senior Staff Attorney, GAO, to Grant Manager and Grants Consultant, EAC, *Subject: B-331892, Request for Additional Information* (Oct. 15, 2020); E-mail from Grant Manager, EAC, to Senior Staff Attorney, GAO, *Subject: B-331892, Re: Request for Additional Information* (Oct. 15, 2020) (EAC Response).

BACKGROUND

The Help America Vote Act of 2002 (HAVA), as amended, authorizes three funding programs through which the federal government makes payments to states to improve the administration of federal elections. 52 U.S.C. §§ 20901, 20902, 21001. HAVA authorizes appropriations for payments made to states pursuant to these programs and directs that such payments shall be available to the states without fiscal year limitation. *Id.* §§ 20904(b), 21007(b). Though Congress has appropriated no-year funds for EAC to make payments to states under HAVA in the past,¹ in FY 2018 and 2020 Congress appropriated 1-year funds for EAC to make such payments.² See, e.g., Pub. L. No. 116-93, div. C, title V, 133 Stat. 2317, 2461 (Dec. 20, 2019); Pub. L. No. 115-141, 132 Stat. 348, 561–562, div. E, title V (Mar. 23, 2018).

In addition, EAC explained that it provides HAVA grant funds to states up front and that states retain the funds in their own interest-bearing accounts. Request Letter, at 2, 5–6. In accordance with this practice, EAC has already awarded and disbursed to states funds appropriated in FY 2018 and 2020 for election security grants. See EAC Response; see also Pub. L. No. 116-93, 133 Stat. at 2461 and Pub. L. No. 115-141, 132 Stat. at 562 (requiring that EAC make payments to states not later than 45 days after the respective statute’s enactment).

DISCUSSION

In general, appropriated funds are subject to the account closing law, unless otherwise specified. 31 U.S.C. § 1551(b), (c). This law provides that any appropriation that is available for a definite time period expires at the end of its period of availability. *Id.* § 1552(a). Once the appropriation expires, it is available to record, adjust, and liquidate obligations properly chargeable to it for a period of five

¹ See, e.g., Pub. L. No. 111-117, div. C, title V, 123 Stat. 3034, 3184 (Dec. 16, 2009); Pub. L. No. 111-8, div. D, title V, 123 Stat. 524, 657 (Mar. 11, 2009).

² Appropriations provided in an annual appropriations act are available for obligation only during the fiscal year for which they were provided, unless otherwise specified by the act. See, e.g., 31 U.S.C. 1301(c)(2); B-319734, July 26, 2010, at 3. Because the amounts appropriated in FY 2018 and 2020 were provided in annual appropriations acts and the acts did not specify that such amounts were to be available for obligation for more than one fiscal year, such amounts were available for obligation only during the fiscal year in which they were appropriated.

fiscal years. *Id.* § 1553(a). After these five fiscal years, the account closing law requires the closure of the appropriation account in which the appropriation was deposited and the cancellation of any remaining balance—whether obligated or unobligated—in such account. *Id.* § 1552(a).

Absent a statutory exception, and we are aware of none here, the account closing law applies to funds appropriated to EAC in FY 2018 and 2020. As a result, five fiscal years after the end of the period of availability for such funds, the appropriation accounts in which the funds were deposited will close, the “remaining balance” in those accounts will cancel, and EAC may not use the funds for any purpose. See 31 U.S.C. § 1552(a). Here, the only question is whether the phrase “remaining balance” as used in the account closing law includes funds appropriated to EAC in FY 2018 and 2020 that EAC has already awarded and disbursed to states.

Generally, to interpret a statute, we begin with the text, giving ordinary meaning to statutory terms unless otherwise defined. *United States v. American Trucking Ass’ns*, 310 U.S. 534, 543 (1940) (“There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes.”). And where Congress defines statutory terms, these definitions take precedence over other sources. See, e.g., *Burgess v. United States*, 553 U.S. 124, 129 (2008).

Under the account closing law, the phrase “remaining balance” includes “obligated” and “unobligated” balances, with the terms “obligated balance” and “unobligated balance” having specific definitions for the purposes of the law. 31 U.S.C. §§ 1551(a), 1552(a). Congress expressly defines an “obligated balance” as the “amount of unliquidated obligations applicable to the appropriation less amounts collectible as repayments to the appropriation.” *Id.* § 1551(a)(1). In addition, it expressly defines an “unobligated balance” as “the difference between the obligated balance and the total unexpended balance.” *Id.* § 1551(a)(2). Both definitions describe amounts that remain in an appropriation account, but neither describe amounts that have already been disbursed from such account. That is, the phrase “remaining balance” as used in the account closing law does not include funds that have already been disbursed from an account. Accordingly, the law does not apply to disbursed funds. See *id.* §§ 1551(a), 1552(a). *But see* B-302366, July 12, 2004, at 5 n.8 (explaining that when disbursed amounts are refunded to a fixed-period appropriation, the amounts are credited to the appropriation account initially obligated and, where such account has closed, the agency must deposit the refund into the miscellaneous receipts of the Treasury).

Because disbursed funds do not constitute a remaining balance under the account closing law, the funds EAC awarded and disbursed to states for FY 2018 and 2020 election security grants are not subject to the account closing law. Accordingly, the funds remain available for state expenditure consistent with the terms of the underlying grant agreements.

CONCLUSION

The account closing law applies to funds appropriated to EAC in FY 2018 and 2020. However, EAC has both awarded and disbursed its FY 2018 and 2020 election security grant funds to states. As such, the disbursed funds are not remaining balances subject to cancellation under the account closing law. Rather, these funds remain available for state expenditure consistent with the terms of the underlying grant agreements.

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is written in a cursive style with a long horizontal stroke at the end.

Thomas H. Armstrong
General Counsel