



Decision

Matter of: Office of the Special Inspector General for the Troubled Asset Relief Program—Use of Amounts for Oversight Activities

File: B-330984

Date: May 27, 2020

DIGEST

Amounts provided to the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) by the Public-Private Investment Program Improvement and Oversight Act of 2009 (PPIP Act) are available to SIGTARP to carry out its authorities under the Emergency Economic Stabilization Act of 2008 (EESA). Though the PPIP Act requires SIGTARP to “prioritize” particular activities when utilizing amounts provided by such act, it may still use these amounts for other authorized purposes, such as to carry out activities authorized by EESA. Because the amounts made available to SIGTARP in the PPIP Act are available as an additional amount to carry out activities authorized by EESA, SIGTARP may use these amounts and its other appropriations, including its annual salaries and expenses appropriation, to carry out such activities.

DECISION

The General Counsel of the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), on behalf of the Special Inspector General, has requested an advance decision under 31 U.S.C. § 3529 on the propriety of using funding provided by the Public-Private Investment Program Improvement and Oversight Act of 2009 (PPIP Act),¹ to support oversight activities for all programs established under the Troubled Asset Relief Program (TARP). Letter from General Counsel, SIGTARP, to General Counsel, GAO, Apr. 19, 2019 (Request Letter). As explained below, we conclude that amounts provided by the PPIP Act are available to SIGTARP to carry out its authorities under the Emergency Economic Stabilization

¹ Pub. L. No. 111-22, div. A, title IV, § 402, 123 Stat. 1656 (May 20, 2009), *codified at* 12 U.S.C. § 5231a.

Act of 2008, in addition to any other amounts SIGTARP has available for such activities.

BACKGROUND

The Emergency Economic Stabilization Act of 2008 (EESA) authorized the Secretary of the Treasury (Secretary) to establish the Troubled Asset Relief Program (TARP) to purchase, or make commitments to purchase, troubled assets from any financial institution, and to establish a program to guarantee troubled assets issued before March 14, 2008. 12 U.S.C. §§ 5211(a)(1), 5212(a)(1). To ensure appropriate oversight of this new program, EESA also established the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) to “conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets . . . under any [TARP program],” and provided \$50,000,000 for SIGTARP to carry out these duties. 12 U.S.C. § 5231(a), (c), (j).

In the Public-Private Investment Program Improvement and Oversight Act of 2009 (PPIP Act), Congress provided \$15,000,000 to “be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.” 12 U.S.C. § 5231a(c)(1). Congress also directed that in using these amounts, SIGTARP should “prioritize the performance of audits or investigations of recipients of non-recourse Federal loans . . . to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General.” 12 U.S.C. § 5231a(c)(2). However, there has been little to no recent financial activity concerning non-recourse federal loans so “those areas of oversight are not consistent with the current and expected future mission of SIGTARP.” Request Letter, at 1.

SIGTARP believes that it may use the \$15,000,000 provided by the PPIP Act to fund oversight investigations of any ongoing TARP programs, in part, because there has been little to no recent activity on non-recourse federal loans. Request Letter, at 2. However, out of an abundance of caution, SIGTARP has requested an advance legal decision on the propriety of using these amounts to carry out such activities. *Id.*

DISCUSSION

Appropriated funds are available only for authorized purposes. 31 U.S.C. § 1301(a). When an appropriation does not specifically enumerate all of the items for which it is available, we apply the necessary expense rule to determine if an appropriation is available for a particular expenditure. B-303170, Apr. 22, 2005; 66 Comp. Gen. 356 (1987). The rule requires the identification of a reasonable, logical relationship between the proposed expenditure and the appropriation. B-303170, Apr. 22, 2005. To determine whether such a reasonable, logical relationship exists, the starting point is the language making the appropriation. B-323365, Aug. 6, 2014. Subsection (c)(1) of the PPIP Act provides \$15,000,000 to SIGTARP. Such subsection reads as follows:

(c) ADDITIONAL APPROPRIATIONS FOR THE SPECIAL INSPECTOR GENERAL.—

(1) IN GENERAL.—Of amounts made available under section 115(a) of [EESA, 12 U.S.C. § 5225(a)]², \$15,000,000 shall be made available to the Special Inspector General, which shall be in addition to amounts otherwise made available to the Special Inspector General.

(2) PRIORITIES.—In utilizing funds made available under this section, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under any program that is funded in whole or in part by funds appropriated under [EESA], to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. . . .

12 U.S.C. § 5231a(c). Subsection (c)(1) of the PPIP Act does not enumerate the particular activities for which it makes amounts available. However, because the \$15,000,000 is derived from a larger sum made available in EESA, which also established SIGTARP, the provisions of EESA inform the purposes for which these amounts are available.

EESA authorized the Special Inspector General to conduct audits and investigations of all TARP programs. 12 U.S.C. § 5231(c). Reading the broad appropriations language in conjunction with SIGTARP’s organic legislation in EESA suggests that the amounts provided by the PPIP Act are available to carry out SIGTARP’s authorities, as enumerated by EESA. In this respect, the amounts Congress provided to SIGTARP under the PPIP Act are similar to lump-sum appropriations made available to agencies for broad purposes, such as for “salaries and expenses” or for “necessary expenses.” The purposes of such appropriations are similarly informed by the agency’s underlying organic legislation. See B-323365, Aug. 6, 2014 (where an agency received an annual appropriation broadly available for “expenses of” the agency, the appropriation was available for a grant program that was consistent with the agency’s statutory mission as stated in its authorizing legislation).

Subsection (c)(2) of the PPIP Act requires SIGTARP to “prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made under any program that is funded in whole or in part by funds appropriated under [EESA], to

² Section 115(a) of EESA imposed a \$700 billion limit on the Secretary of the Treasury’s authority under section 118 of the act to use the proceeds of the sales of any securities issued under chapter 31 of title 31, United States Code, to carry out the program to purchase troubled assets from financial institutions and the program to guarantee troubled assets. Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 115(a), 122 Stat. 3765, 3780 (Oct. 3, 2008). Congress subsequently lowered this limit to \$475 billion. 12 U.S.C. § 5225(a).

the extent that such priority is consistent with other aspects of the mission of the Special Inspector General.” 12 U.S.C. § 5231a(c)(2). This language does not restrict the availability of amounts provided by subsection (c)(1) of such section so that they are available *only* for the purposes described in subsection (c)(2). Rather, SIGTARP must “prioritize” these activities—that is, assign them precedence. See American Heritage Dictionary (5th Ed. 2020) (definition of “prioritize”). The directive for SIGTARP to prioritize certain activities still permits SIGTARP to carry out other activities, so long as the activities described in subsection (c)(2) receive higher priority.

Furthermore, subsection (c)(2) of the PPIP Act provides that the prioritization of certain investigations is necessary only if otherwise consistent with the mission of the Special Inspector General. 12 U.S.C. § 5231a(c)(2). As SIGTARP has explained, there has been little to no recent financial activity concerning non-recourse federal loans and, accordingly, that “those areas of oversight are not consistent with the current and expected future mission of SIGTARP.” Request Letter, at 1. Since the investigations that are required to be prioritized under subsection (c)(2) are not consistent with SIGTARP’s current mission, SIGTARP is not required to prioritize such investigations over ones that are consistent with its current mission. Because the amounts provided by subsection (c)(1) are available to carry out activities authorized by EESA and subsection (c)(2) does not strictly limit the purposes for which the amounts are available, we see no reason to question SIGTARP’s determination that it may use amounts provided under the PPIP Act to carry out other activities consistent with SIGTARP’s statutory authorities under EESA.³

We understand that SIGTARP currently has two funding sources available to carry out activities authorized by EESA: amounts provided by subsection (c) of the PPIP Act; and amounts appropriated to SIGTARP in the annual appropriations act. 12 U.S.C. § 5231a(c)(1); Financial Services and General Government Appropriations Act, 2020, Pub. L. No. 116-93, div. C, title I, 133 Stat. 2434, 2436 (Dec. 20, 2019). Under the necessary expense rule, an appropriation is not available for an expenditure where the expenditure is covered by another

³ SIGTARP also argues that a provision in section 127 of the Financial Services and General Government Appropriations Act, 2018, shows that Congress intended to permanently override the requirement to prioritize investigations of non-recourse federal loans. Request Letter, at 2; Pub. L. No. 115-141, div. E, § 127, 132 Stat. 535, 545 (Mar. 23, 2018). This provision was in an appropriations act and therefore was only in effect through fiscal year 2018. See B-288511, Aug., 22, 2001 (provisions in appropriations acts are presumed effective only for the covered fiscal year unless Congress makes clear that they are permanent). Although this provision was not permanent, the directive in subsection (c)(2) of the PPIP Act for SIGTARP to prioritize certain activities does not preclude SIGTARP from using the amounts provided by subsection (c)(1) for other activities authorized by EESA.

appropriation or funding source. B-321788, Aug. 8, 2011. In general, an agency must use the appropriation most specifically available for a particular object. B-307382, Sept. 5, 2006. And where two appropriations are equally available for a particular object, the agency generally must elect which appropriation to charge for such object and must continue to use that same appropriation. *Id.* Although rare, there are situations in which Congress makes multiple appropriations available for the same object. B-322062, Dec. 5, 2011; B-272191, Nov. 4, 1997.

Here, subsection (c)(1) of the PPIP Act expressly provides that amounts made available by such subsection are available “*in addition to amounts otherwise made available* to the Special Inspector General.” 12 U.S.C. § 5231a(c)(1) (emphasis added). This language makes clear that these amounts are available in addition to other funding available to SIGTARP, such as amounts Congress appropriates annually for SIGTARP’s salaries and expenses.⁴ See B-322062, Dec. 5, 2011; B-272191, Nov. 4, 1997.

CONCLUSION

Amounts provided to SIGTARP under the PPIP Act are available to SIGTARP to carry out its authorities under EESA, in addition to other appropriations that are available to carry out this work.



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⁴ This conclusion is consistent with the legislative history of the annual appropriations made available to SIGTARP, which suggests that Congress intended for SIGTARP to use its annual appropriations and amounts provided in permanent statute to carry out its activities under EESA. See, e.g., H. Conf. Rep. No. 111-366, at 894 (2009) *accompanying the Consolidated Appropriations Act, 2010*, Pub. L. No. 111-117, 123 Stat. 3034 (Dec. 16, 2009) (stating that funding EESA provided to SIGTARP would finance its activities for only a portion of fiscal year 2010 and that the Congress was providing through an annual appropriation sufficient amounts for SIGTARP activities to continue for the entirety of fiscal year 2010).