



Decision

Matter of: Department of Homeland Security—Application of an Appropriations Act Prohibition and the Antideficiency Act to the Disinformation Governance Board

File: B-334308

Date: May 14, 2026

DIGEST

Section 513 of Division F of the Consolidated Appropriations Act, 2022 (section 513) prohibits the Department of Homeland Security (DHS) from using funds “to carry out section 872 of the Homeland Security Act of 2002 (6 U.S.C. [§] 452) unless explicitly authorized by the Congress.” Section 872 of the Homeland Security Act of 2002 addresses the Secretary’s authority to “allocate or reallocate functions among the officers of [DHS]” and “establish, consolidate, alter, or discontinue organizational units within [DHS].” The Disinformation Governance Board (Board) was created by a charter, which became effective upon signature of the DHS Secretary. DHS did not have statutory authority to create the Disinformation Governance Board. DHS obligated and expended funds to allocate or reallocate functions among DHS officers at the point that the Secretary signed the Charter. Therefore, DHS violated section 513 and the Antideficiency Act.

DECISION

This responds to a request for a decision as to whether the Department of Homeland Security (DHS) violated section 513 of Division F of the Consolidated Appropriations Act, 2022 (section 513) and therefore, the Antideficiency Act when it created the Disinformation Governance Board (Board).¹ For the reasons discussed below, we conclude that DHS violated section 513, and thus, the Antideficiency Act when it obligated and expended funds in Fiscal Year 2022 to charter the Board.

¹ Letter from Senator Hagerty to Comptroller General (May 5, 2022).

Our practice when rendering decisions is to contact the relevant agencies to obtain their legal views on the subject of the request.² Accordingly, we reached out to DHS to obtain the agency’s legal views.³ We received DHS’s response on August 26, 2022.⁴

BACKGROUND

On February 24, 2022, the DHS Secretary signed a charter for the Disinformation Governance Board (Board).⁵ The Charter was developed based on guidance from the DHS Secretary to Headquarters and Component leadership, which were directed “to pursue a governance board model to coordinate efforts to counter mis-, dis-, and mal-information (MDM) across the Department.”⁶ The directions were that “operational efforts to counter MDM should largely be carried out by Components, which would be responsible for their respective mission areas subject to the oversight of the governance board.”⁷

Under the Charter, the Board would be co-chaired by representatives of the Office for Strategy, Policy, and Plans (OSPP) and the Office of General Counsel (OGC).⁸ There would be standing Board members from many DHS components.⁹ The Board co-chairs would designate a DHS senior official to serve as Executive Director for

² GAO, *GAO’s Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>.

³ Letter from Assistant General Counsel, GAO, to General Counsel, DHS (July 15, 2022).

⁴ Letter from Assistant General Counsel, DHS, to Assistant General Counsel, GAO (Aug. 26, 2022) (Response Letter).

⁵ See DHS, DHS Disinformation Governance Board Charter (Feb. 24, 2022) (Charter).

⁶ Memorandum for DHS Secretary from the Under Secretary for the Office for Strategy, Policy, and Plans and the Acting Principal Deputy General Counsel (Jan. 31, 2022).

⁷ *Id.*

⁸ See Charter, at 1.

⁹ *Id.*

the Board.¹⁰ The Executive Director would be detailed or assigned to OSPP.¹¹ According to the Charter, the Board would “guide and support the Department’s efforts to address [MDM].”¹² Department components would “lead on operational responses to MDM in their relevant mission spaces” while the Board would “ensure DHS efforts are coordinated, deconflicted, and harmonized, both within DHS and across the interagency, to ensure efficiency, unity of effort, and promotion of applicable compliance and best practices.”¹³

The Charter included a section outlining Board responsibilities.¹⁴ Among other things, the Board would be “responsible for developing MDM-related guidance, best practices, and recommendations regarding . . . procurement guidelines for contracting or funding third parties to support the Department’s MDM efforts; grant funding and cooperative agreements; [and] development and implementation of new technological and data management tools . . .”¹⁵ The Board would also “coordinate, deconflict, and harmonize departmental efforts to address MDM including by . . . serving as the Department’s internal and external point of contact for coordination with state, local, tribal, and territorial partners, the private sector, and non-governmental actors regarding MDM” and “as the Department’s internal and external point of contact for receiving, coordinating, responding to, and interacting with interagency partners, including the Executive Office of the President, for policy matters generally related to mis-, dis-, and mal-information, but not related to the performance of intelligence activities.”¹⁶

The Charter also established processes and procedures for “Board decisions” and included the responsibility for Board members and Steering Group members to “ensure that their respective Components implement, execute, and follow Board decisions.”¹⁷ As described in the processes and procedures section, matters would generally be resolved by consensus, but if there was a disagreement, “the Board

¹⁰ *Id.*, at 2.

¹¹ *Id.*

¹² *Id.*, at 1.

¹³ *Id.*

¹⁴ Charter, at 2–3.

¹⁵ *Id.*, at 2.

¹⁶ *Id.*, at 2–3.

¹⁷ Charter, at 3–4.

[would] resolve the matter before it by majority vote.”¹⁸ If there was not consensus, a Board member could elevate “an issue to the Secretary or Deputy Secretary where they believe that a decision made by the Board implicates their statutory or other assigned authorities.”¹⁹

Effective March 2, 2022, DHS appointed an Executive Director for the Board.²⁰ The Executive Director position was placed in OSPP.²¹ On April 27, 2022, the DHS Secretary announced during a hearing of the House of Representatives Appropriations Committee that DHS had created the Board.²² However, on May 18, 2022, DHS announced that the Board would not convene and its work would be paused while the Homeland Security Advisory Council (HSAC) led a review and assessment of DHS’s disinformation work.²³ On this same date, the Executive Director of the Board resigned.²⁴

On May 26, 2022, DHS published a notice indicating that the DHS Secretary directed HSAC to establish a subcommittee entitled *Assessment of Disinformation*

¹⁸ *Id.*, at 4.

¹⁹ *Id.*

²⁰ See Notification of Personnel Action (Mar. 2, 2022).

²¹ *Id.*

²² *Fiscal Year 2023 Budget Request for the Department of Homeland Security; Hearing Before the Subcommittee on Homeland Security of the House Committee on Appropriations*, 117th Cong. (2022) (testimony of Secretary Alejandro Mayorkas) (available at 1:41:23 of video at <https://democrats-appropriations.house.gov/events/hearings/fiscal-year-2023-budget-request-for-the-department-of-homeland-security> (last visited Jan. 26, 2026)).

²³ See @DHSgov, X (May 18, 2022), available at <https://x.com/DHSgov/status/1526988380155924481?mx=2> (last visited Jan. 26, 2026). See also Letter from Secretary Alejandro N. Mayorkas to William J. Bratton and Jamie Gorelick, HSAC (May 18, 2022), available at <https://www.dhs.gov/sites/default/files/2022-06/FINAL%20S1%20APPROVED%20HSAC%20TASKING%205-18.pdf> (last visited Jan. 26, 2026); Notice, *Homeland Security Advisory Council New Projects*, 87 Fed. Reg. 32047 (May 26, 2022).

²⁴ See Notification of Personnel Action (May 18, 2022).

Best Practices and Safeguards.²⁵ The HSAC subcommittee and, subsequently, HSAC recommended that DHS terminate the Board.²⁶

On August 24, 2022, consistent with HSAC’s recommendation, the DHS Secretary terminated the Board and rescinded the Charter.²⁷ In its Response Letter, DHS indicated that the Board never met prior to its termination.²⁸

In fiscal year (FY) 2022, when DHS chartered the Board, section 513 prohibited DHS from using funds “to carry out section 872 of the Homeland Security Act of 2002 (6 U.S.C. [§] 452) unless explicitly authorized by the Congress.”²⁹

DISCUSSION

At issue here is whether DHS violated section 513, and thus the Antideficiency Act, when it obligated and expended funds to create the Board. We consider two distinct actions taken by DHS: (1) the developing and signing of the Charter and (2) the hiring of the Executive Director. For the reasons described below, we conclude that, when the DHS Secretary signed the Charter, DHS obligated and expended funds to allocate or reallocate functions among the DHS officers.³⁰ Therefore, DHS violated section 513 and the Antideficiency Act. However, as explained below, the hiring of the Executive Director did not implicate section 513.³¹

²⁵ 87 Fed. Reg. 32047.

²⁶ *Homeland Security Advisory Council Disinformation Subcommittee Final Report*, available at <https://www.dhs.gov/publication/homeland-security-advisory-council-disinformation-subcommittee-final-report> (last visited Jan. 26, 2026).

²⁷ *Following HSAC Recommendation, DHS Terminates Disinformation Governance Board*, available at <https://www.dhs.gov/news/2022/08/24/following-hsac-recommendation-dhs-terminates-disinformation-governance-board#:~:text=%E2%80%9CIn%20accordance%20with%20the%20HSAC's,today%2C%20August%2024%2C%202022> (last visited Jan. 26, 2026).

²⁸ Response Letter, at 1.

²⁹ Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. F, title V, § 513(a), 136 Stat. 49, 337 (Mar. 15, 2022).

³⁰ Because we have determined that the signing of the Charter constituted an allocation or reallocation of functions, we did not determine whether this action established an “organizational unit.”

³¹ GAO is aware of ongoing litigation in *Robert F. Kennedy Human Rights et al. v. Department of Homeland Security et al.*, No. 1:25-cv-01270 (D.D.C.), where plaintiffs
(continued...)

Section 513 provides, in pertinent part, that no funds are available “to carry out section 872 of the Homeland Security Act of 2002 (6 U.S.C. [§] 452) unless explicitly authorized by the Congress.”³² Section 872 of the Homeland Security Act of 2002 would ordinarily permit the Secretary to “allocate or reallocate functions among the officers of [DHS]” and “establish, consolidate, alter, or discontinue organizational units within [DHS]” after providing notice to the appropriate congressional committees.³³

Based on section 513, in FY 2022, DHS was prohibited from obligating or expending any funds to allocate or reallocate functions among DHS officers or to establish, consolidate, alter, or discontinue organizational units within DHS, unless explicitly authorized by Congress. In order to determine whether DHS violated this prohibition, we must examine the language of the prohibition and each of the actions for which DHS obligated or expended funds, including developing and signing into effect the Charter and appointing an Executive Director for the Board.

In general, when interpreting a statute, we begin by looking at the text, giving ordinary meaning to terms that are not specifically defined.³⁴ “Where Congress has not specifically defined a statutory term, the plain meaning of a term can be resolved by consulting a dictionary.”³⁵

The term “functions” is defined in the Homeland Security Act of 2002. It includes “authorities, powers, rights, privileges, immunities, programs, projects, activities, duties and responsibilities.”³⁶ However, the term “allocate” is not specifically defined

have argued that DHS exceeded its authority under 6 U.S.C. § 452 when eliminating other DHS offices and reorganizing functions. Plaintiff’s Motion for a Preliminary Injunction, *Robert F. Kennedy Human Rights et al. v. Department of Homeland Security et al.*, No. 1:25-cv-01270 (D.D.C., May 8, 2025); Memorandum of Law in Support of Plaintiffs’ Motion for Summary Judgment, *Robert F. Kennedy Human Rights et al. v. Department of Homeland Security et al.*, No. 1:25-cv-01270 (D.D.C., Jan. 17, 2026). If the court decides in a manner that impacts the analysis in this decision, we will update this decision as necessary.

³² Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, div. F, title V, § 513(a), 136 Stat. 49, 337 (Mar. 15, 2022).

³³ 6 U.S.C. § 452(a).

³⁴ See B-331312, Mar. 8, 2021 (citing *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013); *BP America Production Co. v. Burton*, 549 U.S. 84, 91 (2006)).

³⁵ B-331312, Mar. 8, 2021 (citations omitted).

³⁶ 6 U.S.C. § 101(9).

by the statute. The Oxford English Dictionary defines the term “allocate” as “[t]o set aside or designate as being the special share or responsibility of a particular person, department, etc. . . .”³⁷ “Reallocate” is defined as “[t]o allocate or assign again.”³⁸

The Charter

We turn first to whether DHS violated section 513 by developing and signing into effect the Charter. In its Response Letter, DHS points out that the Board never convened.³⁹ Therefore, we must determine (1) whether the Charter would have resulted in an allocation or reallocation of functions to the Board and (2) whether there was an allocation or reallocation of responsibilities even though the Board did not convene and perform its responsibilities in accordance with the Charter.

DHS asserts, “As designed, the Board provided a mechanism for all its component members to perform their already statutorily assigned functions in a coordinated way. As a co-chair, the Board provides a mechanism for [OSPP] to carry out its statutory policy development and coordination functions regarding MDM. The Board’s other co-chair—[OGC]—is statutorily assigned the function of providing legal advice and support to the Department’s offices and components.”⁴⁰

However, as described in the Charter, the Board as a whole would be assigned “responsibilities” such as developing guidance and recommendations and coordinating, deconflicting, and harmonizing DHS efforts to address MDM, and Board decisions would generally be made by consensus.⁴¹ Although the Board functions could have been performed by independent members of the Board acting in the capacity of their existing positions within their respective components, moving the functions to the Board as a whole would result in the reallocation of the function.

For example, as part of its statutory functions, OSPP must “lead, conduct, and coordinate Department-wide policy development and implementation and strategic planning” and “develop and coordinate policies to promote and ensure quality, consistency, and integration for the programs, components, offices, and activities

³⁷ Oxford English Dictionary Online, *Allocate*, available at https://www.oed.com/dictionary/allocate_v?tab=meaning_and_use#6654649 [https://doi.org/10.1093/OED/8886639811] (last visited Jan. 26, 2026).

³⁸ Oxford English Dictionary Online, *Reallocate*, available at https://www.oed.com/dictionary/reallocate_v?tab=meaning_and_use#26854422 [https://doi.org/10.1093/OED/4431838838] (last visited Jan. 26, 2026).

³⁹ Response Letter, at 1.

⁴⁰ Charter, at 3–4.

⁴¹ Charter, at 3–4.

across the Department.”⁴² Many of the Board’s responsibilities fall within the statutory functions of OSPP. However, the Board is not wholly within OSPP. It is co-chaired by OGC, and Board members are from DHS components. To the extent the Board would have been responsible for coordinating DHS MDM efforts, this would have reallocated OSPP functions.

Under 6 U.S.C. § 349(e), a component must coordinate with OSPP when establishing or modifying policies.⁴³ Conversely, the Board’s charter describes a process where the Board would review MDM governance policies and practices across the Department and, based in part on this review, would be responsible for developing MDM-related guidance, best practices, and recommendations.⁴⁴ Here again, the Board assumes OSPP’s statutory responsibility of coordinating policies with each component.

Additionally, under the Charter, issues before the Board are generally resolved by consensus, and Board members are expected to “ensure that their respective Components implement, execute, and follow Board decisions.”⁴⁵ Even though DHS asserts that the Board simply provides “a mechanism for all its component members to perform their already statutorily assigned functions in a coordinated way,”⁴⁶ the Charter’s requirement that components implement consensus decisions means that a Board member from one component could impact the policies of other components, instead of just their own component.

We acknowledge that the Charter’s processes and procedures provided a mechanism for Board members to protect their statutory functions in the event that there was no consensus on a particular matter.⁴⁷ However, this is only in the absence of consensus and would require elevation of the issue to the Secretary or Deputy Secretary. This would not be enough to prevent an allocation or reallocation

⁴² 6 U.S.C. § 349(c).

⁴³ 6 U.S.C. § 349(e) (“To ensure consistency with the policy priorities of the Department, the head of each component of the Department shall coordinate with [OSPP] in establishing or modifying policies or strategic planning guidance with respect to each such component.”).

⁴⁴ Charter, at 2.

⁴⁵ Charter, at 3–4.

⁴⁶ Response Letter, at 8.

⁴⁷ Charter, at 4 (permitting a Board member, when there is not consensus, to elevate an issue to the Secretary or Deputy Secretary where the member believes that a decision made by the Board implicates their statutory or other assigned authorities).

of functions as described above. Accordingly, we conclude that the Charter would have resulted in an allocation or reallocation of functions to the Board.

Because the Board never convened, we must next determine at which point, if any, during the development and execution of the Charter that an allocation or reallocation of functions would or did occur. In prior caselaw, we have looked at the definitions of the actions that are prohibited to determine whether the agency has taken such prohibited actions.

For example, in B-331312, we examined whether the Mayor and D.C. Council had obligated and expended funds in violation of a prohibition applicable to its FY 2019 appropriation.⁴⁸ Based on the prohibition, they could not “enact or carry out” any law to legalize or otherwise reduce penalties for certain controlled substances offenses.⁴⁹ In FY 2019, they took actions to draft, introduce, and refer a bill to “create a comprehensive regulatory scheme for the cultivation, manufacture, distribution, and sale of marijuana.”⁵⁰ To determine whether they violated the prohibition, we looked at the ordinary meaning of the term “enact,” and concluded that “enact” means to take actions to give legal effect to a measure.⁵¹ The term did not include other actions that preceded enactment such as to draft, consider, or hold hearings.⁵²

As we did in B-331312, we must look closely at the definitions and the actions taken. “Allocate” is defined as “[t]o set aside or designate as being the special share or responsibility of a particular person, department, etc. . . .”⁵³ As indicated in the Charter, it went into effect when signed by the Secretary. It was at that point that the responsibilities outlined in the Charter were set aside or designated as being the responsibility of the Board. Thus, we conclude that, at the point that the Secretary signed the Charter, the functions were allocated or reallocated. On the other hand, the task of drafting the Charter and other actions leading up to its signing, like the preparatory or preceding actions taken by the Mayor and D.C. Council in B-331312, did not allocate or reallocate functions among DHS officers.

⁴⁸ B-331312, Mar. 8, 2021.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Oxford English Dictionary Online, *Allocate*, available at https://www.oed.com/dictionary/allocate_v?tab=meaning_and_use#6654649 [https://doi.org/10.1093/OED/8886639811] (last visited Jan. 28, 2026).

The Executive Director

Hiring an Executive Director for the Board did not allocate or reallocate functions among the officers of DHS, nor did it establish, consolidate, alter, or discontinue any organizational units. The role of Executive Director of the Board was created in OSPP, which has a statutory basis and is responsible for coordinating with components. Under “functions,” section 349(c) of title 6, United States Code, provides that the Under Secretary for Strategy, Policy, and Plans shall “lead, conduct, and coordinate Department-wide policy development and implementation and strategic planning” and “develop and coordinate policies to promote and ensure quality, consistency, and integration for the programs, components, offices, and activities across the Department.”⁵⁴ OSPP’s creation of the Executive Director role is consistent with this statutory authority. Although signing of the Charter allocated or reallocated responsibilities to the Board as a whole, the Executive Director was not listed as a member of the Board. Instead, the Executive Director’s responsibilities, as described in the Charter, were activities that could be characterized as coordinating departmentwide policy development and implementation, activities which on their face could fall within the statutory functions of OSPP.⁵⁵ Therefore, the hiring of the Executive Director did not result in the allocation or reallocation of functions among the officers of DHS.

The Antideficiency Act

The Antideficiency Act prohibits an officer or employee of the United States from making or authorizing an obligation or expenditure in excess of the amount appropriated for the obligation or expenditure.⁵⁶ If Congress specifically prohibits the use of appropriated funds for a particular purpose, any obligation or expenditure for that purpose is in excess of the amount available and violates the Antideficiency Act.⁵⁷

Although the Board did not meet and no further funds were expended, DHS obligated and expended funds to allocate or reallocate functions among DHS officers at the point that the Secretary signed the Charter without the required statutory authority. In the context of other violations of other appropriations provisions, we have found Antideficiency Act violations even where the violation

⁵⁴ 6 U.S.C. § 349(c).

⁵⁵ See Charter, at 4.

⁵⁶ 31 U.S.C. § 1341(a)(1)(A).

⁵⁷ B-321982, Oct. 11, 2011.

involves a minimal expenditure of appropriated funds.⁵⁸ The prohibition in section 513 does not include an exception for a *de minimis* violation. Accordingly, DHS violated the Antideficiency Act by signing the Charter because it allocated or reallocated functions among DHS officers without the required statutory authority.

CONCLUSION

DHS obligated and expended funds to allocate or reallocate functions among DHS officers at the point that the Secretary signed the Charter. Therefore, DHS violated section 513 and the Antideficiency Act. DHS should determine the cost associated with the prohibited conduct and report the violation as required by the Antideficiency Act.⁵⁹



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⁵⁸ See B-329368, Dec. 13, 2017; B-285298, May 22, 2000.

⁵⁹ See 31 U.S.C. § 1351.