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United States Government Accountability Office
Washington, DC 20548

B-318426

November 2, 2009

Mr. Peter J. Nickles
Attorney General for the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 409
Washington, D.C. 20004

Subject: *District of Columbia Courts—Authority to Pay Settlements and Judgments*

Dear Mr. Nickles:

This responds to your June 22, 2009 letter asking whether the District of Columbia Courts (Courts) may use its congressionally appropriated funds to pay settlements of claims and suits under \$10,000, consistent with the Risk Management for Settlements and Judgments Amendment Act of 2000 (Risk Management Act), D.C. Code Ann. § 2-402(3)(A). We previously addressed this question in B-300009, July 1, 2003. As explained therein, the Courts may not pay settlements and judgments from the funds that Congress has appropriated for its operating expenses unless Congress specifically authorizes such payments. We are not aware of, and your office has not referred us to, statutory authority for the Courts to use its appropriation for this purpose. Congress appropriates money to the District specifically for the payment of settlements and judgments incurred by the District government. District of Columbia Funds Division of Expenses, *Fiscal Year 2009 Proposed Budget and Financial Plan*, title III (2009 Proposed Budget), *incorporated by reference in* District of Columbia Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 649, 655 (Mar. 11, 2009). The District must use this appropriation for payments of settlements and judgments of the Courts unless specifically allowed otherwise by law.

BACKGROUND

The District of Columbia defends itself, its officers, employees, or agents, from civil actions and assumes any liability resulting from the action or proceeding. National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, 111 Stat. 712, 786 (Aug. 5, 1997) (Revitalization Act). The District is responsible for the payment of judgments in connection with such suits and is empowered, at its discretion, to settle civil claims and suits arising out of acts of negligence by District officers or employees. D.C. Code Ann. § 2-402. D.C. Courts and its judges, officials, and employees, as part of the District government, are covered under this provision. *See* Letter from Corporation Counsel to Executive Officer, District of Columbia

Courts, Nov. 6, 1997. The Revitalization Act also transferred the administration and financing of the Courts from the District government to the federal government. Revitalization Act, 111 Stat. at 751. Accordingly, each year Congress appropriates federal funds to finance the salaries and expenses of the Courts. *E.g.*, District of Columbia Appropriations Act, 2009, 123 Stat. at 650.

Payment of Settlements and Judgments Generally

For fiscal year 2009¹ Congress included a general provision in the District appropriations act that appropriated an indefinite amount for the payment of settlements or judgments:

“There are appropriated from the applicable funds of the District of Columbia such sums as may be necessary for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government.”

District of Columbia Appropriations Act, 2009, § 803.² In addition to this indefinite appropriation, Congress also appropriated a specific amount for the payment of settlements and judgments:

“Settlements and Judgments - for making refunds and for the payment of legal settlements or judgments that have been entered against the District of Columbia government, \$21,477,000 from local funds.”

2009 Proposed Budget, at 15, *incorporated by reference in* District of Columbia Appropriations Act, 2009, 123 Stat. at 655. This appropriation of a specific amount is known as the Settlements and Judgments Fund. Congress also enacted language

¹ The Courts and the District government are currently operating under a continuing resolution. Continuing Appropriations Resolution, 2010, Pub. L. No. 111-68, div. B, 123 Stat. 2023, 2043 (Oct. 1, 2009).

² Congress first enacted a provision similar to section 803 at least 50 years ago. District of Columbia Appropriation Act, 1960, Pub. L. No. 86-104, § 14, 73 Stat. 225, 238 (July 23, 1959). Congress has enacted similar language every year for the past several years. *See, e.g.*, Financial Services and General Government Appropriations Act, 2008, Pub. L. No. 110-161, § 803, 121 Stat. 1972, 2035 (Dec. 26, 2007). The District of Columbia Home Rule Act provides that no amount may be obligated or expended by a District government officer or employee unless such amount has been approved by an act of the Congress. D.C. Code Ann. § 1-204.46.

providing that the appropriation for the Settlements and Judgments Fund did not modify or affect the provisions of the general appropriation in section 803. *Id.*³

The Risk Management Act

The D.C. Council enacted the Risk Management for Settlements and Judgments Amendment Act of 2000 (Risk Management Act), which provides:

“In any case, claim, or suit, either at law or in equity, which the Mayor of the District of Columbia is empowered to settle, the payment for such settlement or judgment shall come from the current fiscal year operating budget of the agency or office named in the suit; provided that: (i) The settlement or judgment is less than \$10,000; and (ii) The case was originally filed not more than 2 years before the settlement or judgment.”

D.C. Code Ann. § 2-402(3)(A). Before the enactment of the Risk Management Act, the Settlements and Judgments Fund would be charged with any settlements reached in tort cases.⁴

We previously addressed the issue of the applicability of the Risk Management Act to the Courts in B-300009, July 1, 2003. The District of Columbia Appropriations Act, 2002 provided authority for the District to implement the Risk Management Act:

“Sec. 137. RISK MANAGEMENT FOR SETTLEMENTS AND JUDGMENTS. In addition to any other authority to pay claims and judgments, any department, agency, or instrumentality of the District government may pay the settlement or judgment of a claim or lawsuit in an amount less than \$10,000, in accordance with the Risk Management for Settlements and Judgments Amendment Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code, sec. 2-402).”

Pub. L. No. 107-96, § 137, 115 Stat. 923, 957 (Dec. 21, 2001). The District of Columbia Appropriations Act, 2003 contained similar language. Pub. L. No. 108-7, div. C, title III, § 133, 117 Stat. 11, 107, 128 (Feb. 20, 2003). Although these two sections provided explicit statutory authority allowing all District agencies to implement the payment provisions of the Risk Management Act, the authority was not permanent.

³ Congress has appropriated amounts specifically for the Settlements and Judgments Fund since at least fiscal year 2003. *See* District of Columbia Appropriations Act, 2003, Pub. L. No. 108-7, 117 Stat. 11, 107, 119 (Feb. 20, 2003).

⁴ Historically, each District government agency pays out of its own budget all settlements and judgments that arise from the agency’s own contract and personnel transactions. B-300009, July 1, 2003, at 2.

B-300009, at 5. Because both these provisions lacked language indicating future applicability, each was effective for only one fiscal year. *Id.* We concluded that upon the expiration of the temporary authority, the Courts' operating funds could not be used to pay settlements and judgments in accordance with the Risk Management Act; instead, they must be paid out of other available appropriated funds. *Id.* Subsequently, Congress enacted section 429 of the District of Columbia Appropriations Act, 2004, which provides:

“During fiscal year 2004 and any subsequent fiscal year, in addition to any other authority to pay claims and judgments, any department, agency, or instrumentality of the District government *may use local funds* to pay the settlement or judgment of a claim or lawsuit in an amount less than \$10,000, in accordance with the Risk Management for Settlements and Judgments Amendment Act of 2000”

Pub. L. No. 108-199, div. C, title IV, § 429, 118 Stat. 3, 111, 140 (Jan. 23, 2004) (emphasis added).

DISCUSSION

At issue here is whether section 429 or section 803 gives the Courts authority to use its appropriations for payment of settlements and judgments. Citing the reasoning in our 2003 decision, Courts officials assert that neither section 429 nor section 803 grants authority to the Courts to use federal funds to pay settlements and judgments in accordance with the Risk Management Act. *See* E-mail from General Counsel, District of Columbia Courts, to Tort Liability Manager, Executive Office of the Mayor, District of Columbia, Apr. 15, 2009.

Most District agencies have authority to pay settlements and judgments in accordance with the Risk Management Act because section 429 allows District agencies to “use local funds” to pay settlements and judgments. The Courts, however, do not operate from local funds. Instead, Congress appropriates a separate federal payment specifically for the Courts. *E.g.* District of Columbia Appropriations Act, 2009, 123 Stat. at 650. Section 429, therefore, does not authorize the Courts to use its appropriations to pay settlements and judgments. While the language of section 429 resembles the language of similar, non-permanent measures enacted for fiscal years 2002 and 2003, *see supra* p. 3, section 429 allows the use only of “local funds” to pay settlements and judgments; the provisions for fiscal years 2002 and 2003 contained no such restriction. The provisions enacted for fiscal years 2002 and 2003 allowed the Courts to follow the Risk Management Act because these provisions applied to “any department, agency, or instrumentality” of the District government, without regard to the source of the funds.

Section 803 of the District of Columbia Appropriations Act, 2009 appropriates “from the applicable funds of the District of Columbia” necessary amounts to pay settlements and judgments. The District has one General Fund, as well as additional

special funds that the Council has established. D.C. Code Ann. §§ 1-204.50, 47-373. Prior to the enactment of the Revitalization Act, expenditures for the Courts were paid from the General Fund. *See, e.g., District of Columbia, Fiscal Year 1997 Budget and Multiyear Plan*, at 33–35, *reprinted in District of Columbia Appropriations for 1997: Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives*, 104th Cong., pt. 2, at 27, 85–87 (1997). Undoubtedly, “applicable funds of the District of Columbia” would include the District’s General Fund. The Revitalization Act, however, transferred the administration and financing of the Courts to the federal government. Revitalization Act, 111 Stat. at 751. Accordingly, expenditures of the Courts are no longer paid from the District’s General Fund. We do not view the phrase “applicable funds of the District of Columbia” to include the Courts’ federal appropriation. The Courts’ appropriation provides that “all amounts . . . shall be apportioned quarterly by the Office of Management and Budget and obligated and expended in the same manner as funds appropriated for salaries and expenses of other Federal agencies.” Pub. L. No. 111-8, 123 Stat. at 650. In contrast, the Mayor apportions funds to finance the operations of other District agencies. D.C. Code Ann. § 1-204.48(a)(9). Furthermore, all money received by the Courts must be deposited in the U.S. Treasury. D.C. Code Ann. § 1-204.50. In contrast, most other money received by the District government, including funds from the federal government, must be paid to the Mayor for deposit in one of the appropriate District funds. D.C. Code Ann. §§ 1-204.48(a)(6), 1-204.50.

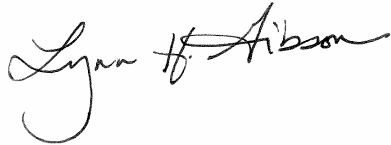
After the enactment of the Revitalization Act, District financial documents ceased to reflect any expenditures for the Courts from the General Fund or from any other fund. Indeed, the Mayor’s annual budget request does not request funds for the Courts; instead, the Courts annually submit its appropriation request to the Director of the Office of Management and Budget for inclusion in the President’s budget submission. D.C. Code Ann. § 1-204.45. In addition, the District Auditor has no authority to audit the operations of the Courts, and the Courts is explicitly excluded from the District government’s annual financial audit. D.C. Code Ann. §§ 1-204.55(g), 47-119(d).

Thus, neither section 803 nor section 429 authorizes the Courts to use the federal funds appropriated for its use to pay settlements and judgments. Section 803 appropriates amounts only from “the applicable funds of the District of Columbia.” The amounts available for the use of the Courts are not in the District’s General Fund or any other District fund; instead, amounts for the Courts remain in the U.S. Treasury and are under greater federal control than amounts in the District funds. Therefore, amounts available for use of the Courts are not from “the applicable funds of the District of Columbia.” Similarly, section 429 authorizes District agencies to “use local funds” to pay settlements and judgments; however, the amounts available for the Courts’ use are not “local funds.”⁵ The phrase “local funds” generally does not

⁵ Though there is some overlap between section 803 and section 429, we note that there are also some differences between the two provisions, so neither provision is superfluous. For example, section 429 is a permanent provision, while section 803

encompass sources such as federal payments. *See, e.g., District of Columbia Fiscal Year 2010 Proposed Budget and Financial Plan*, volume 1, at 3-1 (Sept. 28, 2009).

As a rule, an appropriation for a specific object is available for that object to the exclusion of a more general appropriation that might otherwise be considered for the same object. B-289209, May 31, 2002. No language in the appropriation for the Courts specifically indicates that the Courts' operating funds are available for the payment of settlements and judgments. Thus, the Courts' operating funds are not available for such payments. Instead, the District government is required to use the Settlements and Judgments Fund or other funds as specifically authorized by law to pay the settlements and judgments of the Courts. If the D.C. government wants the Courts to pay settlements and judgments in accordance with the Risk Management Act, it may ask Congress to enact appropriate legislation.

A handwritten signature in black ink, reading "Lynn H. Gibson". The signature is fluid and cursive, with the first name "Lynn" being more prominent than the last name "Gibson".

Lynn H. Gibson
Acting General Counsel

cc.: Valentine M. Cawood, General Counsel
District of Columbia Court System

lacks language indicating future applicability and, therefore, has effect only for fiscal year 2009. 65 Comp. Gen. 588 (1986). Therefore, if Congress did not enact a provision similar to section 803 in future years, agencies would still have authority under section 429 to use local funds to pay settlements and judgments in accordance with the Risk Management Act. We also note that section 803 appropriates amounts "from the applicable funds of the District of Columbia," Pub. L. No. 111-8, div. D, title VIII, § 803, while section 429 allows the District government to "use local funds" to pay settlements and judgments "in an amount less than \$10,000," Pub. L. No. 108-199, div. C, title IV, § 429.