



B-328325

September 12, 2016

The Honorable Richard C. Shelby
Chairman
Subcommittee on Commerce, Justice, Science,
and Related Agencies
Committee on Appropriations
United States Senate

Subject: *National Telecommunications and Information Administration—Effect of Section 539 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016 on Amounts Appropriated Under a Continuing Resolution*

Dear Mr. Chairman:

In section 539(a) of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016, Congress enacted a provision barring the National Telecommunications and Information Administration (NTIA) from relinquishing its responsibilities with respect to the Internet domain name system.¹ This responds to your request for our opinion regarding whether section 539(a) would apply to funds appropriated by a continuing resolution if Congress were to enact a continuing resolution for fiscal year 2017 to make appropriations for the activities funded in the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016 (2016 Appropriation).²

We conclude that section 539(a) would apply to amounts appropriated by a continuing resolution for fiscal year 2017. As explained below, a continuing resolution would make appropriations to continue the activities funded in the 2016 Appropriation while incorporating the terms and conditions that applied to those appropriations in fiscal year 2016.

¹ Pub. L. No. 114-113, div. B, § 539, 129 Stat. 2242, 2286, 2332 (Dec. 18, 2015).

² Letter from Chairman, Subcommittee on Commerce, Justice, Science, and Related Agencies, United States Senate, to General Counsel, GAO, Aug. 8, 2016.

When issuing legal decisions and opinions, it is our usual practice to solicit the legal views of the agencies concerned. 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. The Office of Management and Budget (OMB) provided its views. Letter from Acting Deputy General Counsel, OMB, to Assistant General Counsel for Appropriations Law, GAO, Sept. 2, 2016 (OMB Letter).

BACKGROUND

According to NTIA, “[t]he Internet domain name system (DNS) is a critical component of the Internet infrastructure.”³ The DNS associates user-friendly domain names (such as www.gao.gov) with the numeric network addresses (such as 161.203.16.77) required to deliver information on the Internet, making the Internet easier for the public to navigate.⁴ “Critical to the DNS is the continued performance of the Internet Assigned Numbers Authority (IANA) functions.”⁵ NTIA has contracted with the Internet Corporation for Assigned Names and Numbers (ICANN) for performance of the IANA functions.⁶

In March 2014, NTIA announced that if a suitable plan could be formed, it would allow its contract with ICANN to expire and transition the U.S. government’s oversight role to a global multi-stakeholder community, thus ending the U.S. government’s role in these functions.⁷ It was in this context that Congress enacted the 2016 Appropriation, which provided \$39,500,000 to NTIA for necessary expenses, to remain available until September 30, 2017. Pub. L. No. 114-113, 129 Stat. at 2289. Such amounts are available for obligation to NTIA for two fiscal years: both fiscal year 2016 and fiscal year 2017. The 2016 Appropriation also contained section 539, which provided:

³ NTIA, *Domain Name System*, available at www.ntia.doc.gov/category/domain-name-system (last visited September 9, 2016).

⁴ *Id.*

⁵ NTIA, *IANA functions*, available at www.ntia.doc.gov/category/iana-functions (last visited September 9, 2016). Such functions include the coordination of the assignment of technical Internet protocol parameters and the allocation of Internet numbering resources. *Id.*

⁶ *Id.*

⁷ GAO, *Internet Management: Structured Evaluation Could Help Assess Proposed Transition of Key Domain Name and Other Technical Functions*, GAO-15-642 (Washington, D.C.: Aug. 2015), at 2.

“Sec. 539. (a) None of the funds made available by this Act may be used to relinquish the responsibility of the National Telecommunications and Information Administration, during fiscal year 2016, with respect to Internet domain name system functions, including responsibility with respect to the authoritative root zone file and the Internet Assigned Numbers Authority functions.

(b) Notwithstanding any other law, subsection (a) of this section shall not apply in fiscal year 2017.”

Pub. L. No. 114-113, 129 Stat. at 2332.

On August 16, 2016, NTIA announced that ICANN had informed NTIA that it has completed or will complete all tasks that were a necessary prerequisite to NTIA’s relinquishment of these functions.⁸ NTIA announced that it found ICANN’s report on this matter to be satisfactory and that NTIA intended to allow its contract with ICANN to expire as of October 1, 2016.⁹

DISCUSSION

At issue in this opinion is whether the prohibition of section 539(a) would apply to amounts appropriated by a continuing resolution if Congress were to enact a continuing resolution to make fiscal year 2017 appropriations to fund the activities that received appropriations under the 2016 appropriation.

A continuing resolution makes appropriations under the authorities and conditions provided in the previous year’s appropriation act

Under the Constitution, “[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const., art. I, § 9, cl. 7. One manner in which Congress may enact such appropriations is through what has become known as a “continuing resolution.” Notwithstanding the use of the word “resolution,” a continuing resolution is an appropriation act that provides budget authority for federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year. See B-324481, Mar. 21, 2013; 58 Comp. Gen. 530 (1979). As with any law, a continuing resolution takes effect only after the process of bicameral passage and presentment to the President, as set forth in article I, section 7 of the Constitution.

⁸ NTIA, *Update on the IANA Transition*, available at www.ntia.doc.gov/blog/2016/update-iana-transition (last visited September 9, 2016).

⁹ *Id.*

Recent continuing resolutions have generally contained the same standard provisions that govern most agencies, programs, and activities covered by the continuing resolution. GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879 (Washington, D.C.: Sept. 2009), at 34. One of these provisions, known as the “rate for operations” provision, appropriates amounts necessary for continuing projects or activities that (1) are not otherwise specifically provided for in the continuing resolution; (2) were conducted during the previous fiscal year; and (3) for which appropriations, funds, or other authority were made available under one or more specifically enumerated acts that made appropriations for the prior fiscal year. See, e.g., Continuing Appropriations Act, 2016, Pub. L. No. 114-53, § 101(a), 129 Stat. 502, 505 (Sept. 30, 2015). The rate for operations provision makes appropriations “under the authorities and conditions provided” under the applicable appropriations acts for the prior fiscal year. See *id.* Another standard provision, known as the “extent and manner” provision, incorporates restrictions from the prior year’s appropriations acts. See, e.g., Pub. L. No. 114-53, § 103, 129 Stat. at 506 (“Appropriations made by section 101 shall be available to the extent and in the manner that would be provided by the pertinent appropriations Act.”).

In the 2016 Appropriation, Congress appropriated amounts for NTIA, while providing specifically that during fiscal year 2016, NTIA could not use the amounts so appropriated to relinquish its responsibilities with regard to the Internet domain name system functions. If Congress were to enact a continuing resolution for fiscal year 2017 with the traditional standard provisions, the rate for operations provision would make an appropriation to NTIA. However, both the extent and manner provision and the rate for operations provision would require NTIA to observe the same restrictions that applied to its execution of its appropriation for fiscal year 2016. Thus, because Congress barred NTIA from using the funds appropriated under the 2016 Appropriation to relinquish its responsibilities pertaining to the Internet domain name system during fiscal year 2016, so, too, would a 2017 continuing resolution bar NTIA from using the funds it appropriates to relinquish those responsibilities.

The purpose of a continuing resolution reinforces the conclusion that the prohibition of section 539(a) would continue in force under a continuing resolution. Historically, as we have noted on previous occasions, the purpose of a continuing resolution is to maintain the previous year’s *status quo* with regard to government funding and operations. B-324481. Continuing resolutions “are intended by Congress to be temporary stop-gap measures enacted to keep existing federal programs functioning after the expiration of previous budget authority.” 58 Comp. Gen. 530, at 532; see also B-324481; B-300673; 66 Comp. Gen. 484 (1987); B-209583, Jan. 18, 1983. We have also said that a “continuing resolution generally maintains the *status quo* until Congress can pass a formal appropriations act.” B-317022, Sept. 25, 2008, at 6. See also 58 Comp. Gen. 530 (“In enacting continuing resolutions, there is a clear indication that Congress intends and expects that the normal authorization and

appropriation process will eventually produce appropriation acts which will replace the budget authority contained in the resolution.”). Because of section 539(a), the *status quo* of fiscal year 2016 is that NTIA could not use amounts appropriated under the 2016 Appropriation to relinquish responsibilities related to the domain name system.

Effect of section 539(b)

Section 539(b) provides that “Notwithstanding any other law, subsection (a) of this section shall not apply in fiscal year 2017.” However, section 539(b) would have no effect on the applicability of the prohibition contained in section 539(a) to funds appropriated by a typical continuing resolution. As noted above, a continuing resolution maintains the *status quo* of the previous fiscal year. In this case, section 539(a), not section 539(b), established the *status quo* for NTIA for fiscal year 2016, and it bars NTIA from using amounts to relinquish the U.S. government’s responsibilities for the domain name system. Unless a 2017 continuing resolution were to contain a provision specifying otherwise, the 2017 continuing resolution and the typical standard provisions would carry forward this *status quo* and, therefore, prohibit the agency from using amounts appropriated under the continuing resolution to relinquish responsibilities related to the domain name system.

As we noted, the 2016 Appropriation enacted a two-year appropriation, available in both fiscal years 2016 and 2017. In this regard, under section 539(b), if amounts appropriated under the 2016 Appropriation are unobligated at the end of fiscal year 2016 and, thus, remain available for obligation in fiscal year 2017, these funds are not subject to the prohibition of section 539(a). Because these amounts have already been appropriated in the 2016 Appropriation, they are available independent of a fiscal year 2017 continuing resolution unless Congress, in the continuing resolution, were to act to override section 539(b).

OMB asserts that the fiscal year 2016 appropriation established a *status quo* for fiscal year 2017 and that a continuing resolution would carry forward the *status quo* such as it was putatively established for fiscal year 2017 in section 539(b). OMB Letter, at 2. Although OMB correctly points out that a continuing resolution carries forward the *status quo*, OMB makes a temporal error when it asserts that a continuing resolution would carry forward the fiscal year 2017 *status quo*. Instead, as discussed, a continuing resolution carries forward the *status quo* as was reflected in the government’s operations for fiscal year 2016. OMB also states that it would be contrary to Congress’s clear intent to interpret section 539(b) as insufficient to prevent section 539(a) from continuing under a continuing resolution. Although section 539(b) does not affect the applicability of section 539(a) to amounts appropriated under a continuing resolution, our conclusion does recognize the legal significance of section 539(b). Section 539(b) does extinguish the prohibition of

section 539(a) for any amounts appropriated in the 2016 Appropriation that remain available for obligation during fiscal year 2017.

CONCLUSION

If Congress enacts a continuing resolution making appropriations for fiscal year 2017 for the activities funded in the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016, the prohibition of section 539(a) would apply to amounts appropriated by the continuing resolution. Therefore, NTIA could not use amounts appropriated under a continuing resolution to relinquish its responsibilities with respect to the Internet domain name system. However, for fiscal year 2017, section 539(b) extinguishes the prohibition of section 539(a) for any balances of the two-year appropriations (for fiscal years 2016 and 2017) enacted under the 2016 Appropriation that remain available for obligation in fiscal year 2017. Thus, absent any legislation to the contrary, in fiscal year 2017, NTIA could use unobligated balances appropriated by the 2016 Appropriation to relinquish these responsibilities.

We trust this is responsive to your request. If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853, or Julia C. Matta, Assistant General Counsel for Appropriations Law, at (202) 512-4023.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Poling".

Susan A. Poling
General Counsel