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Washington, DC 20548

Decision

Matter of: Department of Commerce Office of Inspector General—Application of Reprogramming Notification Requirement

File: B-330108

Date: December 23, 2020

DIGEST

Section 505 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 requires agencies to notify both the House and Senate Appropriations Committees when funds are reprogrammed for certain purposes. We conclude that the Department of Commerce Office of Inspector General (Commerce OIG) did not reprogram funds when it reorganized its audit, evaluation, and administrative functions because it did not shift funds among the relevant subdivisions of its lump-sum appropriation. As a result, Commerce OIG was not required to follow the notification procedures prescribed by section 505.

DECISION

This responds to a request for our decision concerning whether Commerce OIG violated a reprogramming notification requirement when it realigned various functions within the organization. Letter from Counsel to the Inspector General, Department of Commerce, to General Counsel, GAO (May 7, 2018) (Request Letter). Section 505 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018 requires agencies to notify both the House and Senate Appropriations Committees 15 days in advance of a reprogramming of funds that reorganizes an office or programs. Commerce, Justice, Science, and Related Agencies Appropriations Act, 2018, Pub. L. No. 115-141, div. B, title V, § 505, 132 Stat. 400, 436 (Mar. 23, 2018). Commerce OIG asked whether it violated this provision when it realigned its functions. Request Letter.

As explained below, we conclude that Commerce OIG did not reprogram funds when it reorganized. As a result, Commerce OIG was not required to follow the consultation and notification procedures prescribed by section 505.

In accordance with our regular practice, we contacted Commerce OIG to seek factual information and its legal views on this matter. 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; Letter from Assistant General Counsel for Appropriations Law, GAO, to Counsel to the Inspector General, Department of Commerce (Mar. 25, 2020). In response, Commerce OIG provided its explanation of the pertinent facts and its legal analysis. Email from Senior Assistant Counsel, Commerce OIG, to Staff Attorney, GAO (Apr. 9, 2020) (Response Letter).

BACKGROUND

In April of 2018, Commerce OIG realigned its functions in order to “more efficiently and effectively achieve” its oversight mission. Request Letter, Enclosure 2. This realignment included the creation of a Chief of Staff position, as well as the reorganization of the office’s audit, evaluation, and administrative functions. See Request Letter, Enclosures 1–3.

For fiscal year (FY) 2018, Congress provided a lump-sum appropriation for “necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978.” Pub. L. No. 115-141, div. B, title I, 132 Stat. 400, 407 (Mar. 23, 2018). In addition, Congress directed that funds be transferred from the National Oceanic and Atmospheric Administration (NOAA), the Bureau of the Census, and the Patent and Trademark Office (PTO), for Commerce OIG’s use for audits and oversight of these agencies. Pub. L. No. 115-141, 132 Stat. at 406 (directing the transfer of funds from NOAA to Commerce OIG); Pub. L. No. 115-141, 132 Stat. at 402 (directing the transfer of funds from the Bureau of the Census to Commerce OIG); Pub. L. No. 115-141, 132 Stat. at 403–04 (directing the transfer of funds from PTO to Commerce OIG).

DISCUSSION

At issue here is whether Commerce OIG’s reorganization of functions triggered section 505’s notification requirement. Section 505 states that:

None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2018, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that . . . (5) reorganizes or renames offices, programs or activities; . . . unless the House and Senate Committees on Appropriations are notified 15 days in advance of such reprogramming of funds.

Pub. L. No. 115-141, § 505, 132 Stat. at 436. Therefore, section 505 required notification if (1) Commerce OIG reprogrammed funds and (2) Commerce OIG used

those reprogrammed funds for the reorganization of its functions. See B-323792, Jan. 23, 2013.

As we have noted previously, a reprogramming is a shifting of funds from one purpose to another, or from one object class to another, *within* a single appropriation. B-329964, Oct. 8, 2020; B-323792, Jan. 23, 2013; GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 85 (Budget Glossary). Therefore, the appropriations act itself does not set forth the subdivisions that are relevant to determine whether an agency has reprogrammed funds. B-329964, Oct. 8, 2020. Instead, we must look elsewhere to determine the relevant subdivisions of the appropriation at issue.

In many instances, Congress appropriates amounts to agencies in lump sums, as it did here. Agencies maintain executive flexibility to reprogram funds within a particular lump-sum appropriation so they may make necessary adjustments for changing circumstances and programmatic needs. *Id.* The resulting obligations must remain consistent with the terms of the lump-sum appropriation and with any other applicable law. See 55 Comp. Gen. 307, 318 (1975); see also *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993); B-215002, Aug. 3, 1987. Where Congress does not intend to permit an agency flexibility, but intends to impose a legally binding restriction on an agency's use of funds, it does so by means of explicit statutory language. 55 Comp. Gen. at 318.

Reprogramming notification requirements embody a compromise between the agency flexibility that lump-sum appropriations afford and the congressional control of explicit statutory restrictions. B 329964, Oct. 8, 2020. Such notification requirements allow agencies to adapt their budget execution to respond to changed circumstances. However, they also require agencies to notify Congress if the resulting obligations will differ from Congress's understanding of how the agency would obligate its lump-sum appropriation. *Id.*

Therefore, to determine whether a reprogramming occurred, we must first establish how Congress understood that an agency would obligate its lump-sum appropriation. We do so by looking to congressional documents, the agency's budget documents, and the President's budget submission. See B-323792, Jan. 23, 2013. In the reprogramming analysis, we look to these documents to ascertain the subdivisions of a lump-sum appropriation among which funds might have been reprogrammed. See B-319009, Apr. 27, 2010 (referring to an itemization in a joint explanatory statement); see also B-323792, Jan. 23, 2013 (referring to an agency's budget request and the President's budget). After complying with any notification requirements that are specified by law, the agency then retains the authority to reprogram—that is, to obligate its appropriations in a manner that departs from the

amounts specified in the relevant non-statutory documents but in a manner that is otherwise consistent with law.¹

Here, Congress provided Commerce OIG with a lump-sum appropriation and directed that additional funds from several other appropriations be transferred to Commerce OIG.² These transferred funds were available only for purposes specified in the appropriations act, and Commerce OIG did not obligate any of these transferred amounts in carrying out the reorganization. Response Letter. These funds are therefore not relevant to our analysis. We therefore turn to the relevant subdivisions of the funds appropriated directly to Commerce OIG.

In determining the relevant subdivisions of a particular appropriation, we look first to the joint explanatory statement and other congressional documents. B-329964, Oct. 8, 2020. In this case, the explanatory statement accompanying Commerce OIG's appropriation provides no relevant subdivisions for the funds at issue. See 164 Cong. Rec. H2090, H2102 (2018). The relevant committee reports also provide no relevant subdivisions. See S. Rep. No. 115-139 (2018); H.R. Rep. No. 115-231 (2018).

We turn, therefore, to Commerce's budget documents—the FY 2018 operating plan and the FY 2018 budget justification. See B-323792, Jan. 23, 2013. Commerce's FY 2018 operating plan did not subdivide Commerce OIG's lump-sum appropriation. See Response Letter, Attachment 1. However, Commerce OIG's FY 2018 budget justification divided the appropriation into the following programmatic categories: Executive Direction and Counsel, Audit and Evaluations, and Investigations. U.S. Department of Commerce, Office of Inspector General, *FY 2018 Congressional Justification*, at 19, available at https://www.osec.doc.gov/bmi/budget/fy18_cbj.html (last visited Dec. 16, 2020). In addition, the budget justification also subdivided

¹ Amounts specified in non-statutory documents do have the full force of law where Congress incorporates them by reference. See B-316010, Feb. 25, 2008. In such instances, an agency must obligate its appropriation in a manner consistent with the amounts specified in the incorporated document, except as permitted by law. See 31 U.S.C. § 1532 (agencies may transfer amounts only as authorized by law).

² See Pub. L. No. 115-141, 132 Stat. at 407 (providing “for necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978”); Pub. L. No. 115-141, 132 Stat. at 406 (directing that funds transferred from NOAA be used for “investigations and audits related to satellite procurement, acquisition, and construction”); Pub. L. No. 115-141, 132 Stat. at 402 (directing that funds transferred from the Bureau of the Census be used for “investigations and audits related to the Bureau of the Census”); Pub. L. No. 115-141, 132 Stat. at 403–04 (directing that funds transferred from PTO be used for “investigations and audits related to the USPTO”).

Commerce OIG's appropriation by object classification.³ *Id.* at 45. As noted above, a reprogramming is a shifting of funds from one purpose to another, or from one object class to another, within a single appropriation. Budget Glossary, at 85. Here, a reprogramming would occur if Commerce OIG were to shift funds among either the programmatic categories or the object classifications identified in its budget justification.

In reorganizing its audit, evaluation, and administrative functions, Commerce OIG did not shift funds between the three programmatic categories identified in its budget justification: Executive Direction and Counsel, Audit and Evaluations, and Investigations. Response Letter. Similarly, Commerce OIG did not shift funds among the object classifications identified in its budget justification. *Id.* Therefore, Commerce OIG did not reprogram funds as a part of its reorganization. As a result, Commerce OIG was not required to follow the notification procedures proscribed by section 505.

CONCLUSION

Commerce OIG did not shift funds within its lump-sum appropriation when it realigned its functions. As a result, Commerce OIG did not reprogram funds and therefore was not required to notify Congress under section 505.



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³ The object classifications identified in the budget justification are: personnel compensation (subdivided into personnel compensation, full-time permanent non-wage, other than full-time permanent, and other personnel compensation); civilian personnel benefits; benefits to former personnel; travel and transportation of persons; transportation of things; rental payments to GSA; rental payments to others; communications utilities, and miscellaneous charges; printing and reproduction; advisory and assistance services; other services; purchase of goods and services from government accounts; supplies and materials; equipment; and insurance claims and indemnities. The President's budget similarly divided Commerce OIG's appropriation by the following object classifications: personnel compensation: full-time permanent; civilian personnel benefits; travel and transportation of persons; rental payments to GSA; other services from non-Federal sources; other goods and services from Federal sources; and equipment. *Appendix, Budget of the United States Government, Fiscal Year 2018*, (May 23, 2017), at 180 available at <https://www.govinfo.gov/content/pkg/BUDGET-2018-APP/pdf/BUDGET-2018-APP.pdf> (last visited Dec. 16, 2020).