

# Decision

**Matter of:** U.S. Commission on Civil Rights—Availability of Funds for the Commission on the Social Status of Black Men and Boys Act

**File:** B-332530

**Date:** February 18, 2021

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## DIGEST

Due to a recurring provision in the acts providing appropriations for the U.S. Commission on Civil Rights (USCCR), USCCR generally may not use its annual lump-sum appropriation for any activity or expense that is not explicitly authorized by 42 U.S.C. § 1975a. However, USCCR may obligate the earmarked amounts in USCCR's fiscal year 2021 appropriation, which constitute a minimum amount that USCCR may use to fund the recently established Commission on the Social Status of Black Men and Boys (Commission), for activities and expenses that are not explicitly authorized by § 1975a because such amounts are not subject to the limiting proviso. If USCCR also obligates amounts from its fiscal year 2021 lump-sum appropriation to fund the Commission, however, USCCR must determine that the use of funds in excess of the earmarked amount is consistent with the limiting proviso.

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## DECISION

The Staff Director of the U.S. Commission on Civil Rights (USCCR) requests an advance decision under 31 U.S.C. § 3529 on whether USCCR may use its appropriation for the Commission on the Social Status of Black Men and Boys, which was established by law in August 2020. Letter from Staff Director, USCCR, to Comptroller General (Sept. 9, 2020) (Request Letter). As explained below, we conclude that, due to a recurring provision in the acts providing USCCR's appropriation, USCCR generally may use its annual lump-sum appropriation to carry out activities of the Commission on the Social Status of Black Men and Boys Act only if USCCR determines that such activities are authorized by 42 U.S.C. § 1975a. We also conclude that the earmark in USCCR's fiscal year 2021 appropriation constitutes a minimum amount that is available to fund the Commission on the Social Status of Black Men and Boys, and that USCCR may obligate such amount for activities and expenses that are not explicitly authorized by § 1975a.

Our practice when rendering decisions is to obtain the legal views of the relevant agency and to establish a factual record on the subject of the request. See 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](http://www.gao.gov/products/GAO-06-1064SP). USCCR provided its legal views in its request letter and we also reached out to USCCR to request additional factual information. Request Letter; E-mail from Senior Staff Attorney, GAO, to General Counsel, USCCR, *Subject: B-332530, Request for Additional Information* (Oct. 6, 2020); E-mail from General Counsel, USCCR, to Senior Staff Attorney, GAO, *Subject: Re: B-332530, Request for Additional Information* (Oct. 9, 2020) (USCCR Response).

## BACKGROUND

On August 14, 2020, the President signed into law the Commission on the Social Status of Black Men and Boys Act (the Act). Pub. L. No. 116-156, 134 Stat. 700 (Aug. 14, 2020), 42 U.S.C. § 1975 note. The Act establishes the Commission on the Social Status of Black Men and Boys (Commission) within USCCR’s Office of the Staff Director and authorizes the Commission to “conduct a systematic study of the conditions affecting Black men and boys.” 42 U.S.C. § 1975 note. In addition to outlining the duties of the new Commission, the Act prescribes procedures for the appointment of members to the Commission, requires that members be appointed no later than 90 days after the Commission is established, and provides that members appointed to the Commission will serve without compensation. *Id.* The Act also assigns certain duties to the USCCR Staff Director. For example, the Act designates the USCCR Staff Director as an appointing authority and requires that the Office of the Staff Director provide staff and administrative support for the new Commission.<sup>1</sup> *Id.*

USCCR receives an annual lump-sum appropriation for its necessary expenses. See, e.g., Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. B, title IV, 134 Stat. 1182, 1273 (Dec. 27, 2020). In fiscal years 2020 and 2021, such appropriation included a proviso directing that “none of the funds appropriated in this

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<sup>1</sup> USCCR anticipated that support for the following activities of the new Commission would require appropriated funds: (1) acquire meeting space, (2) receive logistics and contract support for meetings, (3) publish and disseminate reports, (4) conduct website development and maintenance, (5) receive information technology hardware and support, (6) purchase supplies, and (7) receive professional staff support to perform civil rights research and writing duties. Letter from Chair, USCCR, and Staff Director, USCCR, to Chairman, Senate Committee on the Judiciary, Ranking Member, Senate Committee on the Judiciary, Chairman, House Committee on the Judiciary, and Ranking Member, House Committee on the Judiciary (June 16, 2020), at 4.

paragraph shall be used for any activity or expense that is not explicitly authorized by section 3 of the Civil Rights Commission Act of 1983 (42 U.S.C. [§] 1975a).” Pub. L. No. 116-260, 134 Stat. at 1273; Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, div. B, title IV, 133 Stat. 2317, 2422 (Dec. 20, 2019) (section 3 proviso). Such proviso also applied to amounts appropriated to USCCR under the fiscal year 2021 continuing resolutions.<sup>2</sup> See, e.g., Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. No. 116-159, div. A, §§ 101, 103, 134 Stat. 709, 710, 711 (Oct. 1, 2020) (incorporating conditions and restrictions from USCCR’s fiscal year 2020 appropriation); see also B-324481, Mar. 21, 2013, at 3–4 (explaining that agencies operating under a continuing resolution are to preserve the *status quo* as established by the appropriations acts identified in the continuing resolution until Congress completes action on appropriations acts for the remainder of the fiscal year).

Congress did not appropriate any amounts specifically for the Commission in fiscal year 2020, but, in fiscal year 2021, USCCR’s appropriation included a \$500,000 earmark to separately fund the Commission. Pub. L. No. 116-260, 134 Stat. at 1273. The earmark provided that such amounts were available notwithstanding the section 3 proviso. *Id.*

## DISCUSSION

At issue here is the availability of USCCR’s appropriation for activities of the Commission on the Social Status of Black Men and Boys Act under (1) the act providing USCCR’s fiscal year 2020 appropriation, (2) the fiscal year 2021 continuing resolutions, and (3) the act providing USCCR’s fiscal year 2021 appropriation.

### Fiscal Year 2020 Appropriation and Fiscal Year 2021 Continuing Resolutions

We first consider USCCR’s use of funds under the act providing USCCR’s fiscal year 2020 appropriation and under the fiscal year 2021 continuing resolutions. Each of these acts included the section 3 proviso and none of these acts appropriated amounts specifically to fund the Commission.

Appropriated funds are available only for the purposes for which Congress has provided them. 31 U.S.C. § 1301(a). Determining whether an appropriation is available for a particular purpose requires a three-step analysis: the obligation or expenditure must (1) bear a logical relationship to the appropriation charged, (2) not

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<sup>2</sup> Congress enacted five continuing resolutions in fiscal year 2021. Pub. L. No. 116-246, 134 Stat. 1119 (Dec. 22, 2020); Pub. L. No. 116-226, 134 Stat. 1099 (Dec. 20, 2020); Pub. L. No. 116-225, 134 Stat. 1098 (Dec. 18, 2020); Pub. L. No. 116-215, div. A, § 101, 134 Stat. 1041, 1041 (Dec. 11, 2020); Pub. L. No. 116-159, div. A, §§ 101, 103, 134 Stat. 709, 710, 711 (Oct. 1, 2020).

be prohibited by law, and (3) not be otherwise provided for. See, e.g., B-330776, Sept. 5, 2019.

Here, USCCR's appropriation is available for the necessary expenses of activities authorized by § 1975a. See Pub. L. No. 116-93, div. B, title IV, 133 Stat. at 2422. Generally, we have found that when Congress assigns new duties to an agency, the agency may use an existing appropriation to carry out the new duties if the duties bear a sufficient relationship to the purpose of the existing appropriation. *E.g.*, B-290011, Mar. 25, 2002; B-211306, June 6, 1983; 46 Comp. Gen. 604 (B-158371, Jan. 10, 1967). Here, Congress enacted a law that requires the USCCR Office of the Staff Director to provide staff and administrative support for the new Commission. 42 U.S.C. § 1975 note. The law also designates the USCCR Staff Director as an appointing authority for the new Commission and houses the Commission within the USCCR Office of the Staff Director. *Id.* USCCR's lump-sum appropriation is available for the necessary expenses of activities authorized by § 1975a, and so, it would generally be available for activities of the Act that are also authorized under that section. See B-211306, June 6, 1983; 46 Comp. Gen. 604 (B-158371, Jan. 10, 1967); see also *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993) (“[T]he very point of a lump-sum appropriation is to give an agency the capacity to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the most effective and desirable way.”).

USCCR, however, provided its view that, although there is overlap between USCCR's authorities and the activities authorized by the Act, the new Commission has some responsibilities and duties that do not arise out of or directly relate to USCCR's work. See Request Letter, at 2, 8, 9. USCCR did not delineate which of the Commission's responsibilities and duties would not be authorized under § 1975a, nor did it ask us to opine on any specific activity. To the extent there are, in fact, responsibilities and duties that do not arise out of or directly relate to USCCR's work, USCCR must be mindful of the section 3 proviso that limits the use of its appropriation to activities explicitly authorized by § 1975a. See Pub. L. No. 116-93, div. B, title IV, 133 Stat. at 2422; B-308715, Apr. 20, 2007 (appropriations are not available for new duties where a specific provision of law prohibits the use of funds for such purposes).

In other words, USCCR may use its appropriation to carry out activities authorized by the Act only to the extent USCCR determines that such activities are also authorized by § 1975a. To determine the availability of USCCR's appropriation for any particular task or activity, USCCR must evaluate the attendant facts and circumstances and determine whether the activity is also authorized under § 1975a. *Cf.* B-329446, Sept. 17, 2020, at 6 (noting that an agency has a degree of discretion to determine how to carry out its authorized activities). Though we do not currently have the requisite facts to determine whether USCCR's lump-sum appropriation is

available for any particular activity or expense related to the Commission,<sup>3</sup> we welcome USCCR to request future decisions from us regarding specific obligations. See B-329372, June 27, 2018.

### Fiscal Year 2021 Appropriation

We next consider USCCR's use of funds under the act appropriating amounts for fiscal year 2021. Like the act providing USCCR's fiscal year 2020 appropriation and the fiscal year 2021 continuing resolutions, the act providing USCCR's fiscal year 2021 appropriation includes both the section 3 proviso and a lump-sum appropriation for USCCR's necessary expenses. Pub. L. No. 116-260, 134 Stat. at 1273. Unlike the prior acts, however, the fiscal year 2021 appropriations act earmarks amounts specifically to fund the Commission within USCCR's lump-sum appropriation:

*“ . . . Provided further, That none of the funds appropriated in this paragraph shall be used for any activity or expense that is not explicitly authorized by section 3 of the Civil Rights Commission Act of 1983 (42 U.S.C. 1975a): Provided further, That notwithstanding the preceding proviso, \$500,000 shall be used to separately fund the Commission on the Social Status of Black Men and Boys.”*

Pub. L. No. 116-260, 134 Stat. at 1273 (underline added). The language of the new proviso serves two purposes. First, it designates a specific amount within USCCR's lump-sum appropriation that cannot be diverted to purposes other than funding the Commission. B-326941, Dec. 10, 2015, at 6, 7; B-278121, Nov. 7, 1997. Second, the inclusion of the phrase “notwithstanding the preceding proviso” establishes an amount that is available to fund the Commission even if such use would be inconsistent with the section 3 proviso. *See generally National Labor Relations Board v. SW General, Inc.*, 137 S. Ct. 929, 939 (2017) (explaining that the use of the term “notwithstanding” in a statute “shows which provision prevails in the event of a clash”); *Cisneros v. Alpine Ridge Group*, 508 U.S. 10, 18 (1993) (finding that the use of a notwithstanding clause “clearly signals the drafter's intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section”). In other words, the language makes the entire \$500,000 available only for the purpose of funding the Commission, and exempts such amount from the requirement that the activities or expenses be explicitly authorized by 42 U.S.C. § 1975a.

The remaining question, then, is whether funds in USCCR's fiscal year 2021 lump-sum appropriation are also available to supplement the earmark for funding the Commission.

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<sup>3</sup> As of the date of its most recent response, USCCR had not obligated any amounts for the new Commission. USCCR Response.

In general, where both a general and a specific appropriation are available for a given expenditure, an agency must use the specific appropriation to the exclusion of the more general appropriation. See 31 U.S.C. § 1301(a); B-330693, Oct. 8, 2019. However, where there is clear congressional intent to make one appropriation available to supplement a different appropriation for the same object, both appropriations are available for such object. See, e.g., B-272191, Nov. 4, 1997. In some cases, Congress may explicitly provide that certain amounts are “in addition to” other available funding, or may indicate that an earmark establishes a minimum amount for a specific purpose by including a phrase such as “not less than.” B-330984, May 27, 2020, at 5; B-327003, Sept. 29, 2015, at 4. Even without such modifiers, however, we have found that certain statutory language may constitute a minimum amount available for a specific purpose that an agency may supplement with a general appropriation. B-326941, Dec. 10, 2015; B-231711, Mar. 28, 1989.

For example, in fiscal year 2014 the Small Business Administration (SBA) received an annual lump-sum appropriation for Salaries and Expenses. B-326941, Dec. 10, 2015, at 2, 6. Within that lump-sum, Congress included an earmark for the Loan Modernization and Accounting System and extended the period of availability of the earmarked funds by one fiscal year. *Id.*, at 6. We found that the earmark did not impose a line-item limitation or cap on the amount of funds available for obligation for the earmarked purpose; rather, it served two other functions: (1) it specified a particular amount that could be used only for the Loan Modernization and Accounting System, and (2) it limited the amount of funds that would remain available for obligation beyond the one-year default period of availability. *Id.*, at 6–7.

Similarly, the earmark in this case does not establish a limit on the amount of funds in USCCR’s fiscal year 2021 appropriation that are available for funding the Commission. Rather, the earmark establishes a limit on the amount of funds in USCCR’s fiscal year 2021 appropriation that are exempt from the section 3 proviso. The earmark also serves a protective purpose by ensuring that at least \$500,000 will be available for funding the Commission and not for other purposes.<sup>4</sup> However, this does not prevent USCCR from supplementing the earmark with funds from USCCR’s fiscal year 2021 lump-sum appropriation within the scope of USCCR’s authority. In other words, USCCR may also obligate amounts from its lump-sum appropriation for activities authorized by the Act if it determines that the use of funds in excess of the earmarked amount is consistent with the section 3 proviso. In that regard, we remind USCCR that we would welcome a request for a future decision from us regarding specific obligations.

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<sup>4</sup> The legislative history of the fiscal year 2021 appropriations act suggests that Congress intended the \$500,000 earmark to be used for first-year costs to establish the Commission. 166 Cong. Rec. H7879, H7948 (Dec. 21, 2020) (explanatory statement).

## CONCLUSION

Due to a recurring provision in the acts providing USCCR's appropriation, USCCR generally may not use its annual lump-sum appropriation for any activity or expense that is not explicitly authorized by § 1975a. However, USCCR may obligate the earmarked amounts in USCCR's fiscal year 2021 appropriation, which constitute a minimum amount that USCCR may use to fund the Commission, for activities and expenses that are not explicitly authorized by § 1975a because such amounts are not subject to the limiting proviso. If USCCR also obligates amounts from its fiscal year 2021 lump-sum appropriation to fund the Commission, USCCR must determine that the use of funds in excess of the earmarked amount is consistent with the limiting proviso.

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is written in a cursive style with a prominent horizontal line above the first name.

Thomas H. Armstrong  
General Counsel