



Decision

Matter of: U.S. Department of the Treasury—Reimbursable Agreements

File: B-330046

Date: September 12, 2022

DIGEST

During fiscal year 2015, the Office of the Assistant Secretary for Management (Management) in the U.S. Department of the Treasury (Treasury) incurred obligations to provide services to other Treasury offices before the corresponding Economy Act agreements were executed. Also, during fiscal year 2015, Management provided services to the Consumer Financial Protection Bureau (CFPB) and charged these obligations against appropriations available for fiscal year 2016.

Treasury had authority under 31 U.S.C. § 1534, the account adjustment statute, to initially obligate Management's appropriation to provide services to other Treasury offices and then adjust the accounts of each benefiting appropriation based on the value each appropriation received. Sufficient amounts were available in Management's appropriation and the benefiting appropriations to cover the obligations, and Management's appropriation was reimbursed. Further, Management had sufficient amounts in its 2015 account to cover the costs of providing services to CFPB and has already adjusted its accounts to record the obligations against the 2015 account. As Treasury had appropriations properly available for all its obligations, Treasury's actions do not violate the Antideficiency Act.

DECISION

The U.S. Department of the Treasury (Treasury) requested our decision on whether it violated the Antideficiency Act when it incurred obligations before intra-agency agreements were executed and when it charged fiscal year 2016 appropriations for

services provided in fiscal year 2015 under an interagency agreement.¹ As discussed below, we conclude that Treasury did not violate the Antideficiency Act.

The Request Letter set forth the relevant factual information and Treasury's legal views on this matter. The *OIG Report* also provided pertinent facts. In addition to these materials, we asked and received responses to follow-up questions from Treasury.²

BACKGROUND

Treasury's Office of the Assistant Secretary for Management (Management) is funded by an annual appropriation for the salaries and expenses of departmental offices (S&E Appropriation).³ Management obligates its S&E Appropriation for,

¹ Letter from Assistant General Counsel, General Law, Ethics and Regulation, Treasury, to General Counsel, GAO, Feb. 1, 2018 (Request Letter). The Request Letter referred to a report issued by Treasury's Office of Inspector General (OIG) which found that Treasury potentially violated the Antideficiency Act, and recommended that Treasury seek our decision. Request Letter, at 1; Treasury OIG, *Treasury's Office of Budget and Travel Potentially Violated the Antideficiency Act and Needs to Improve Its Reimbursable Agreement Process*, OIG-18-024 (Dec. 8, 2017) (*OIG Report*).

² E-mail from Senior Attorney, GAO, to Senior Counsel, Treasury, *Subject: Questions re: Treasury Request for GAO Decision on Reimbursable Agreements (B-330046)* (Dec. 22, 2020); E-mail from Senior Counsel, Treasury, to Senior Attorney, GAO, *Subject: RE: Questions re: Treasury Request for GAO Decision on Reimbursable Agreements (B-330046)* (Jan. 28, 2021) (Follow-up Response).

³ See, e.g., Financial Services and General Government Appropriations Act, 2015, Pub. L. No. 113-235, div. E, title I, 128 Stat. 2130, 2332 (Dec. 16, 2014); Request Letter, at 1. The lump-sum appropriation is available for one fiscal year. Management is the principal policy advisor to Treasury leadership on the budget and internal management of Treasury and its bureaus. Treasury, *Management*, available at home.treasury.gov/about/offices/management (last accessed Aug. 16, 2022).

among other things, its administrative support, such as information technology services.⁴

Other Treasury offices, which are funded separately from Management,⁵ do not have their own administrative support.⁶ Therefore, Management enters into intra-agency agreements under the Economy Act to provide these services to other Treasury offices.⁷ Management also enters into interagency agreements under the Economy Act to provide administrative support services to the Consumer Financial Protection Bureau (CFPB).⁸ Management obligates its S&E Appropriation to provide services under intra- and interagency agreements, and is reimbursed by the requesting entities.⁹

In fiscal year 2015, Management incurred obligations to provide services to other Treasury offices before the agreements were executed by both parties.¹⁰ In addition, in fiscal year 2015, Management provided administrative support services to CFPB under an interagency agreement and charged fiscal year 2016 appropriations for the costs.¹¹

DISCUSSION

At issue here is whether Treasury violated the Antideficiency Act when Management (1) incurred obligations in fiscal year 2015, before intra-agency agreements were executed, and (2) charged fiscal year 2016 appropriations for services provided in

⁴ Follow-up Response; Request Letter, at 1.

⁵ For example, the Office of Financial Stability and Office of Financial Research are funded with permanent appropriations and the Office of Terrorism and Financial Intelligence receives an annual appropriation for its salaries and expenses. Request Letter, at 1; Pub. L. No. 113-235, 128 Stat. at 2333.

⁶ Request Letter, at 1.

⁷ *Id.* These agreements are negotiated on an annual basis. *OIG Report*, Appendix 2, at 43.

⁸ Request Letter, at 1.

⁹ See Follow-up Response; see also *OIG Report*, at 6–10 (setting forth the process through which Management is reimbursed by requesting entities).

¹⁰ Request Letter, at 1; *OIG Report*, at 13. Of the agreements that were not executed prior to the start of fiscal year 2015, the parties executed the agreements during fiscal year 2015, in the majority of cases. Follow-up Response, Attachment. One agreement was signed in fiscal year 2016, and in another case Treasury could not locate a signed agreement, but confirmed that Management was reimbursed for the services provided. *Id.*

¹¹ Request Letter, at 3–4; Follow-up Response.

fiscal year 2015 under an interagency agreement. The Antideficiency Act prohibits agencies from obligating or expending in excess or in advance of an available appropriation unless otherwise authorized by law.¹²

Obligations Incurred Before Execution of Intra-Agency Agreements

Agencies must have statutory authority, such as the Economy Act, to enter into intra- or interagency agreements, in order to avoid running afoul of federal fiscal laws.¹³ The Economy Act provides that “[t]he head of an agency or major organization unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if . . . amounts are available,” among other requirements.¹⁴ A fully completed and executed Economy Act agreement is a key tool to establish terms and responsibilities and to evidence the order.¹⁵ For example, the U.S. Department of Agriculture (USDA) used the Economy Act to support reimbursable agreements between its separately funded offices under which personnel would be detailed from one office to another office.¹⁶

In contrast, another statutory authority can be used by an agency to fund the provision of resources that are to be shared across its separately funded offices that does not require a written agreement. Under 31 U.S.C. § 1534, known as the account adjustment statute, an agency may temporarily charge one of its appropriations for an expenditure benefiting other appropriations of the agency, as long as amounts are available in the charging and benefiting appropriations at the

¹² 31 U.S.C. § 1341.

¹³ Indeed, the purpose statute, 31 U.S.C. § 1301(a), provides that appropriations shall only be used for the objects for which they were made; transfers between appropriation accounts are prohibited, 31 U.S.C. § 1532; and, finally, the miscellaneous receipts statute, 31 U.S.C. § 3302(b), requires that amounts received by an agency from any source be deposited in the Treasury.

¹⁴ 31 U.S.C. § 1535(a). “Congress enacted the Economy Act to permit the utilization of the materials, supplies, facilities, and personnel belonging to one department by another department” B-331739, Mar. 18, 2021, at 2 (internal quotation and punctuation omitted).

¹⁵ GAO, *Principles of Federal Appropriations Law*, 3rd ed., Vol. III, ch. 12, § B.1.a.(5), GAO-08-978SP (Washington, D.C.: Sept. 2008). In addition, under the recording statute, 31 U.S.C. § 1501(a), an amount shall be recorded as an obligation only when supported by documentary evidence of a binding agreement between an agency and another person, including an agency.

¹⁶ B-328477, Sept. 26, 2017. We ultimately concluded that USDA violated the purpose statute because personnel were not actually detailed to the requesting office, even though the requesting office had obligated its appropriations to cover the salaries and expense of those personnel.

time of the initial charge and the accounts are adjusted to reimburse the appropriation initially charged during, or by the end of, the same fiscal year.¹⁷ “An agency generally has the discretion to use either the Economy Act or the account adjustment statute to share resources across appropriations.”¹⁸

For example, the Department of Homeland Security (DHS) had authority under the account adjustment statute to charge one appropriation for certain shared services and adjust the accounts of benefiting appropriations before the end of the fiscal year based on use of the services.¹⁹ We determined, however, that DHS failed to adjust the benefiting appropriation accounts.²⁰ We concluded that DHS should adjust its accounts, and if balances were not available to cover the adjustments, it should report an Antideficiency Act violation.²¹ We determined further that DHS did not enter into valid Economy Act agreements and thus could not rely on the Economy Act to justify the shared services transactions.²²

Here, Management had authority pursuant to the account adjustment statute to initially obligate its S&E Appropriation to provide administrative services to other Treasury offices and then adjust the accounts of each benefiting appropriation based on the value each appropriation received. At the time that Management incurred obligations for the services provided, there was sufficient budget authority in the 2015 S&E Appropriation to cover Management’s obligations.²³ Further, there is nothing to suggest that benefiting appropriations lacked sufficient budget authority to cover the services received. Rather, these were standard administrative services provided to Treasury offices on an annual basis.²⁴ In accordance with Treasury’s standard process, Treasury offices reimbursed Management’s S&E Appropriation for the services in appropriate amounts by the close of fiscal year 2015.²⁵

Therefore, we conclude that the account adjustment statute provided authority for Management to incur obligations to provide administrative support services to other

¹⁷ 31 U.S.C. § 1534.

¹⁸ B-308762, Sept. 17, 2007, at 9.

¹⁹ B-308762.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Request Letter, at 3; Follow-up Response.

²⁴ See Request Letter, at 1–2.

²⁵ See *OIG Report*, at 9–10 (describing the process for collecting reimbursements from Treasury customers). The information before us does not indicate that there were any issues with charging the benefiting appropriations or reimbursing Management’s S&E Appropriation.

Treasury offices, notwithstanding the absence of executed Economy Act agreements. Amounts were available in Management's S&E Appropriation and the benefiting appropriations, and the accounts were adjusted to reimburse the S&E Appropriation. Therefore, there were no obligations in excess or in advance of appropriations and Treasury did not violate the Antideficiency Act

Treasury asserts that there was no violation of the Antideficiency Act because the circumstances support that intra-agency agreements were implied.²⁶ In support of its position, Treasury points to a number of decisions and cases in which GAO concluded that one entity was required to reimburse another entity even in the absence of a written agreement. For example, in A-85201, Apr. 15, 1937, we concluded that it was permissible for the U.S. Tariff Commission, now the U.S. International Trade Commission (Commission), to reimburse the Department of Commerce (Commerce) for services that Commerce provided to the Commission, even in the absence of a written agreement, because an agreement had been in place for several prior years, and there was evidence that the agencies intended to continue the agreement. Also, courts have held that in the absence of a written agreement, a recipient of services was required to pay for the services under certain conditions, including where the recipient benefitted from the services.²⁷ We do not need to reach any conclusions on Treasury's assertions regarding implied Economy Act agreements. Management had authority to provide administrative services to other offices under the account adjustment statute, which does not require an agreement.

Use of 2016 Appropriations for Services Provided in 2015

Under 31 U.S.C. § 1502(a), "an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability." In other words, an appropriation made for a specific fiscal year is only available to fulfill a genuine or "bona fide" need of the fiscal year for which the appropriation was made.²⁸ Management's fiscal year 2015 S&E Appropriation was

²⁶ Request Letter, at 2–3.

²⁷ *Bloomgarden v. Coyaer*, 479 F.2d 201, 208–209 (1973).

²⁸ B-332430, Sept. 28, 2021.

available for the *bona fide* needs of fiscal year 2015, and its fiscal year 2016 S&E Appropriation was available for the *bona fide* needs of fiscal year 2016.²⁹

Services are generally considered a *bona fide* need of the fiscal year in which they are performed.³⁰ The conference support services that Management provided to CFPB during fiscal year 2015 were a *bona fide* need of fiscal year 2015. Therefore, Management's obligations should have been charged to the fiscal year 2015 S&E Appropriation, not the fiscal year 2016 S&E Appropriation.³¹

In our prior decisions, we have stated that agencies should adjust their accounts when they obligate the incorrect account for a particular expenditure, and if an agency lacks sufficient budget authority to make the adjustment, then it should report a violation of the Antideficiency Act.³² For example, in B-331888, Customs and Border Protection (CBP) obligated the wrong appropriation. We stated that CBP should adjust its accounts to obligate the correct account, and if CBP lacked sufficient funds for the adjustment, then it should report a violation of the Antideficiency Act. In another case, B-308969, the Department of the Interior (Interior) incorrectly obligated its fiscal year 2004 appropriation for contract costs when it should have obligated its fiscal year 2003 appropriation. We stated that Interior should deobligate amounts from the 2004 appropriation, and charge the obligations to its 2003 appropriation. If 2003 appropriations were insufficient to cover the adjustment, then Interior should report a violation of the Antideficiency Act.

Here, sufficient amounts existed in the 2015 S&E Appropriation to cover the conference support services that Management provided to CFPB.³³ In addition, Management has already deobligated the costs from the 2016 appropriation and recorded them against the 2015 S&E Appropriation.³⁴ Therefore, there were no

²⁹ Pub. L. No. 113-235, 128 Stat. at 2332; Pub. L. No. 114-113, div. E, title I, 129 Stat. 2242, 2423 (Dec. 18, 2015).

³⁰ GAO, *Principles of Federal Appropriations Law*, 3rd ed., Vol. I, ch. 5, § B.5, GAO-04-261SP (Washington, D.C.: Jan. 2004).

³¹ Management and CFPB did not initially include the conference support services in their 2015 Economy Act agreement. Request Letter, at 3–4. However, they subsequently amended the 2015 agreement to include the services. *Id.* We note that without statutory authority, such as the Economy Act, Treasury had no authority to use its appropriations for the expenses of CFPB, and CFPB had no authority to transfer its appropriations to reimburse Treasury. 31 U.S.C. § 1301(a); 31 U.S.C. § 1532.

³² B-333281, Oct. 19, 2021; B-331888, June 11, 2020; B-328477, Sept. 26, 2017; B-308969, May 31, 2007.

³³ Request Letter, at 4; Follow-up Response.

³⁴ Request Letter, at 4.

obligations in excess or in advance of appropriations and we conclude that Treasury did not violate the Antideficiency Act.

CONCLUSION

Management did not violate the Antideficiency Act when it incurred obligations to provide services before corresponding intra-agency agreements were executed because Management had authority under 31 U.S.C. § 1534, the account adjustment statute, to incur the obligations, the affected accounts have been adjusted, and there were no obligations in excess or in advance of appropriations. Management did not violate the Antideficiency Act when it charged fiscal year 2016 appropriations for services provided in fiscal year 2015 under an interagency agreement because once the accounts were adjusted, obligations recorded against the 2015 account did not exceed available appropriations.

A handwritten signature in cursive script that reads "Edda Emmanuelle Perez".

Edda Emmanuelle Perez
General Counsel