



## Decision

**Matter of:** Social Security Administration Office of the Inspector General—Use of Appropriations in Response to a Council of the Inspectors General on Integrity and Efficiency Investigation

**File:** B-336076

**Date:** April 18, 2024

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### DIGEST

In May 2022, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) initiated an investigation into allegations made against the Inspector General of the Social Security Administration (SSA) and other SSA Office of the Inspector General (OIG) staff. SSA OIG personnel cooperated with the investigation by responding to requests for documents and sitting for interviews.

SSA appropriations are generally available for expenses incurred in carrying out its mission and functions. This includes cooperating with the CIGIE IC investigation as such efforts aid SSA OIG in carrying out its mission and functions, including administering a statutorily authorized SSA program. In addition, SSA OIG did not accept uncompensated services from CIGIE IC and, therefore, SSA OIG did not augment its appropriation. Because SSA OIG did not obligate its appropriation in excess of legally available amounts or in violation of a statutory prohibition on the use of appropriations, SSA OIG did not violate the Antideficiency Act.

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### DECISION

The Inspector General of the Social Security Administration (SSA) requested our decision on whether SSA appropriations are available for expenses incurred as the SSA Office of the Inspector General (OIG) cooperated with an investigation by the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE).<sup>1</sup> The SSA Inspector General also asked whether SSA OIG

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<sup>1</sup> Letter from Inspector General, SSA, to Managing Associate General Counsel (Feb. 23, 2024) (Request Letter).

improperly augmented appropriations by accepting services from CIGIE IC and the Department of Justice (DOJ) OIG.<sup>2</sup> Finally, the SSA Inspector General asked whether either activity also resulted in a violation of the Antideficiency Act.<sup>3</sup>

Our practice when issuing decisions is to obtain the views of relevant agencies to establish a factual record and to establish the agencies' legal positions on the subject matter of the request.<sup>4</sup> In this case, the SSA Inspector General's request letter and attached documentation provided the factual background and SSA OIG's legal position on the matter.<sup>5</sup>

## BACKGROUND

SSA OIG carries out a number of functions in its mission to conduct oversight of SSA programs and operations. See 5 U.S.C. §§ 402, 404. Among other things, the Inspector General Act of 1978 directs SSA OIG to "provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of" SSA and "recommend corrective action concerning . . . problems, abuses, and deficiencies." 5 U.S.C. § 404(a). In addition, SSA OIG administers SSA's civil monetary penalty (CMP) program under a delegation from the SSA Commissioner.<sup>6</sup> Under section 1129 of the Social Security Act, SSA OIG may impose a CMP for certain violations of the Social Security Act. 42 U.S.C. § 1320a-8.

In May 2022, CIGIE IC initiated an investigation into allegations made against the SSA Inspector General and SSA OIG staff. CIGIE is an independent entity within the executive branch charged with addressing the integrity, economy, and effectiveness issues that transcend individual government agencies and aid in the establishment of a well-trained and highly skilled workforce in the offices of Inspectors General. 5 U.S.C. § 424(a)(2). The Integrity Committee, an entity within CIGIE, shall "receive, review, and refer for investigation allegations of wrongdoing that are made against Inspectors General" and their designated staff members. 5 U.S.C. § 424(d)(1).

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<sup>2</sup> Request Letter, at 1.

<sup>3</sup> Request Letter, at 1.

<sup>4</sup> GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 21, 2024), available at <https://www.gao.gov/products/gao-24-107329>.

<sup>5</sup> See Request Letter.

<sup>6</sup> Request Letter, at 4. Pursuant to 42 U.S.C. § 1320a-8(i), the Commissioner of Social Security may delegate authority for the CMP program to the SSA Inspector General. Actions made within the scope of that delegation have the same force and effect as though performed or rendered by the SSA Commissioner. 42 U.S.C. § 902(a)(7).

Specifically, CIGIE IC sought to investigate allegations regarding abuse of authority, mismanagement of SSA's CMP program, and alleged conduct undermining the independence or integrity reasonably expected of a senior official in the Inspector General community.<sup>7</sup> CIGIE IC engaged DOJ OIG to act as the Assisting OIG and to conduct the factual investigation.<sup>8</sup> SSA OIG personnel cooperated with the investigation by responding to requests for documents and sitting for interviews with DOJ OIG.<sup>9</sup>

On December 20, 2023, DOJ OIG sent a Draft Interim Report to SSA OIG detailing its observations of SSA OIG's administration of the CMP program and proposed recommendations for corrective action.<sup>10</sup> Following receipt of the report, SSA OIG personnel spent duty time identifying and detailing to CIGIE IC and DOJ OIG what were, according to SSA OIG, material legal and factual inaccuracies in the report.<sup>11</sup> Additionally, SSA OIG made efforts to raise concerns regarding CIGIE IC's authority to CIGIE and CIGIE IC Chairpersons.<sup>12</sup> The SSA Inspector General also requested an opinion from the Office of Legal Counsel in the Department of Justice on the scope of CIGIE's authority and the proper interpretation of provisions of law pertaining to the CMP program.<sup>13</sup>

## DISCUSSION

In this decision, we address (1) whether SSA appropriations were available under the purpose statute for SSA OIG to cooperate with a CIGIE IC investigation; (2) whether SSA OIG augmented its appropriations by receiving uncompensated services from CIGIE IC and DOJ OIG; and (3) whether SSA OIG violated the Antideficiency Act.

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<sup>7</sup> Letter from Chairperson, CIGIE IC, to Inspector General, SSA, *Re: Integrity Committee Case 22-048: Notification of Investigation* (May 31, 2022).

<sup>8</sup> Letter from Chairperson, CIGIE IC, to Inspector General, SSA, *Re: Integrity Committee Case 22-048: Notification of Investigation* (May 31, 2022).

<sup>9</sup> Request Letter, at 2.

<sup>10</sup> Request Letter, at 2.

<sup>11</sup> Request Letter, at 2; see also Letter from Inspector General, SSA, to Inspector General, DOJ, *Re: Response to Request for Review of Draft Report Dated December 19, 2023* (Jan. 19, 2024).

<sup>12</sup> See Letter from Inspector General, SSA, to Chair, CIGIE, *Re: Integrity Committee Investigation No. 22-048* (Feb. 5, 2024); Letter from Inspector General, SSA, to Chair, CIGIE, *Re: Integrity Committee Investigation No. 22-048* (Feb. 20, 2024).

<sup>13</sup> Letter from Inspector General, SSA, to Assistant Attorney General, Office of Legal Counsel, DOJ (Feb. 23, 2024).

## Purpose Availability

Under the purpose statute, appropriated funds are available only for authorized purposes. 31 U.S.C. § 1301(a). Each authorized expense need not be stated explicitly in an appropriation. B-333826, Apr. 27, 2022; B-306748, July 6, 2006. When an expenditure is not specifically provided for in the appropriation, the expenditure is still permissible if it is reasonably necessary to carry out an authorized function or will contribute materially to the effective accomplishment of that function, and if it is not otherwise prohibited by law.<sup>14</sup> 72 Comp. Gen. 73 (1992); 66 Comp. Gen. 356 (1987).

We have consistently held that an agency may incur expenses necessary to carry out a statutorily authorized function. See e.g., B-310865, Apr. 14, 2008. Statutes that impose substantive functions on an agency provide the agency with authority to perform those functions using applicable appropriations. See 71 Comp. Gen. 378 (1992).

In carrying out their missions and administering federal programs, agencies often must communicate with other entities. Communication is part of the routine business conducted by federal agencies as they work to fulfill their statutory duties. As such, appropriations are generally available for agencies to communicate about their programs. See B-332531, Nov. 16, 2023 (appropriations are available to inform the public about agency programs and activities). In carrying out authorized functions, agencies also have authority to explain and defend their policies. B-319834, Sept. 9, 2010; B-319075, Apr. 23, 2010; B-302504, Mar. 10, 2004. This authority is especially important in the context of oversight. Oversight entities, including Congress and Inspectors General, play a valuable role in ensuring that the government is operating in accordance with the law and that agencies are using appropriated funds properly and effectively. See B-334321, Feb. 8, 2023. Agencies have a duty to respond to congressional and OIG oversight. See B-325124.2, Apr. 5, 2016 (discussing statutory prohibition on preventing a federal officer or employee from communicating directly with Congress); B-332428, Feb. 7, 2022 (discussing agency action taken in response to OIG investigation). Thus, appropriations are available for agencies to cooperate with oversight entities regarding their activities, programs, and policies.

Here, SSA OIG's cooperation with the CIGIE IC investigation furthers legitimate purposes of the agency—namely, the effective administration of the CMP program

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<sup>14</sup> We are unaware of any statute that specifically prohibits the use of SSA appropriations for the purposes at issue here. In the request, the SSA Inspector General notes that the Inspector General Act does not authorize an Inspector General to “publicly disclose information prohibited from disclosure by law.” Request Letter, at 6. Our conclusions in this decision are reserved to matters of appropriations law. We make no comment as to SSA OIG's compliance with statutory prohibitions on the public disclosure of information.

and appropriate management and conduct by SSA OIG officials. Section 1129 of the Social Security Act authorizes the SSA Commissioner to impose CMPs for certain violations of the Social Security Act. 42 U.S.C. § 1320a-8. SSA delegated this authority to SSA OIG.<sup>15</sup>

Responding to requests for documents and sitting for interviews pertaining to the CMP program aids SSA OIG in its efforts to ensure the CMP program is administered effectively, in a legally sound manner, and with appropriate management and conduct by SSA OIG officials. Cooperating with CIGIE IC afforded SSA OIG the opportunity to review its policies and activities under the CMP program. SSA OIG made use of the opportunity by reviewing the Social Security Act to ensure that SSA OIG's procedures for serving notice of a CMP complied with the Act's requirements.<sup>16</sup>

SSA OIG personnel also used duty time to respond to DOJ OIG's Draft Interim Report.<sup>17</sup> In its response to DOJ OIG, SSA OIG states that it identified factual and legal inaccuracies in the report and provided its interpretation of CMP provisions in the Social Security Act.<sup>18</sup> The SSA Inspector General noted that the efforts undertaken by SSA OIG to research, analyze, and respond to the Draft Interim Report appear related to SSA OIG's administration of the CMP program as these are questions of program administration within the purview of SSA OIG's delegated authority.<sup>19</sup> We agree. As previously noted, in carrying out its authorized functions, an agency has authority to explain and defend its policies. B-319834, Sept. 9, 2010; B-319075, Apr. 23, 2010; B-302504, Mar. 10, 2004. SSA OIG did so as it explained its interpretation of the Social Security Act and provided justification for its practices in its response to the Draft Interim Report. Because SSA OIG's cooperation with the CIGIE IC investigation furthered SSA OIG's administration of the CMP program, SSA appropriations were available for this purpose.

The SSA Inspector General's request noted concern regarding CIGIE IC's underlying authority to conduct this investigation and the purpose availability of the CIGIE revolving fund<sup>20</sup> to fund such efforts.<sup>21</sup> The purpose availability of SSA appropriations is not dependent on the underlying authority or appropriations supporting CIGIE IC's efforts. Because we affirmatively determine that SSA

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<sup>15</sup> Request Letter, at 4.

<sup>16</sup> Request Letter, at 3–4.

<sup>17</sup> Request Letter, at 2.

<sup>18</sup> Letter from Inspector General, SSA, to Inspector General, DOJ, *Re: Response to Request for Review of Draft Report Dated December 19, 2023* (Jan. 19, 2024).

<sup>19</sup> Request Letter, at 5.

<sup>20</sup> 5 U.S.C. § 424(c)(3)(B).

<sup>21</sup> Request Letter, at 7–8.

appropriations are available for SSA OIG to cooperate with CIGIE IC on this investigation, we need not consider the purpose availability of CIGIE's revolving fund.

### Augmentation

Agencies may not augment their appropriations. B-327376, Feb. 19, 2016. An augmentation occurs when an agency retains money from an outside source without statutory authority. B-332003, Oct. 5, 2021; B-307137, July 12, 2006. By making an appropriation, Congress establishes an authorized program level for that program. To permit an agency to operate beyond this level with funds derived from an outside source would usurp Congress's power of the purse. See 72 Comp. Gen. 164 (1993); 61 Comp. Gen. 419 (1982); B-300248, Jan. 15, 2004.

Generally, our case law on augmentation involves the receipt of money by an agency. See B-310725, May 20, 2008 (National Science Foundation OIG may not credit to its appropriation amounts recovered under the False Claims Act.). We have also held that an agency improperly augments its appropriations by having another party bear costs for which the agency is responsible. See B-300248, Jan. 15, 2004. For instance, the Small Business Administration (SBA) was required by law to conduct oversight of lenders who made SBA-guaranteed loans. B-300248, Jan. 15, 2004. SBA used a contractor to assist with this oversight function. Rather than using SBA appropriations to pay the contractor, SBA imposed a fee on its lenders and required that fee to be paid directly to the contractor. Because SBA arranged for a third party to pay for its contractual commitment, SBA had constructively augmented its appropriations. *Id.*

In the present case, SSA OIG made no arrangement to have another entity aid in its performance of its statutory function, nor did SSA OIG arrange for a third party to pay for such performance. According to SSA OIG, CIGIE IC and DOJ OIG "took it upon themselves to act as the oversight entity over SSA programs."<sup>22</sup> Unlike SBA, which arranged for a contractor to assist in its statutory duties and for lenders to pay that contractor, SSA OIG took no action to have CIGIE IC or DOJ OIG perform its functions while receiving payment from another party. Thus, no augmentation occurred in this case, despite the possibility that the CIGIE IC investigation may prove beneficial to SSA OIG in its own administration and oversight of the CMP program.

An improper augmentation can also result from an interagency loan of personnel on a nonreimbursable basis. 65 Comp. Gen. 635 (1986); 64 Comp. Gen. 370 (1985). For example, the Department of Labor required the assistance of administrative law judges from other agencies to adjudicate a backlog of black lung cases. 65 Comp. Gen. 635 (1986). Although the Department had statutory authority to receive detailed employees from other agencies, the statute was silent as to reimbursement

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<sup>22</sup> Request Letter, at 6.

for those details. We concluded that absent specific statutory authority, nonreimbursable interagency details were unlawful. Such arrangements would run afoul of the purpose statute because the appropriation funding the detail would be used for the work of the receiving agency rather than being used for the objects for which they had been appropriated. As such, a nonreimbursable detail would have the effect of improperly augmenting the receiving agency's appropriation. 65 Comp. Gen. 635 (1986).

In the present case, neither CIGIE IC nor DOJ OIG detailed employees to SSA OIG. Instead, DOJ OIG investigative attorneys pursued a CIGIE IC investigation of SSA OIG in accordance with CIGIE IC policies and procedures.<sup>23</sup> There is no indication that SSA OIG oversaw or directed the employees of another agency to perform functions reserved to SSA. Because SSA OIG did not arrange to have CIGIE IC, DOJ OIG, or the employees thereof carry out SSA OIG's own duties, SSA OIG did not augment its appropriations.

### Antideficiency Act

An agency violates the Antideficiency Act if it incurs an obligation in excess of legally available amounts or in violation of a statutory prohibition on the use of appropriations. 31 U.S.C. § 1341(a). Here, as explained above, we conclude that SSA appropriations are available to respond to a CIGIE IC investigation and that SSA OIG did not augment its appropriations. Based on the facts before us, there is no evidence that SSA OIG obligated appropriations in excess of its available funding or in violation of a statutory prohibition. As such, SSA OIG did not violate the Antideficiency Act.

### CONCLUSION

In this decision we have considered several fiscal law issues, including the availability of SSA appropriations for various actions and whether such actions augmented the appropriations. We are not taking a position on the allegations regarding SSA OIG's performance of its functions under the CMP program or CIGIE IC's findings and recommendations.

SSA appropriations are available for cooperating with a CIGIE IC investigation as part of the agency's efforts to carry out its mission and authorized programs. Additionally, SSA OIG's cooperation with CIGIE IC and DOJ OIG did not amount to

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<sup>23</sup> Request Letter, at 2; see also 5 U.S.C. § 424(d)(7)(A) (requiring CIGIE IC investigations to be conducted in accordance with the most current Quality Standards for Investigations issued by CIGIE or its predecessor); CIGIE, *Quality Standards for Investigations* (Nov. 15, 2011), available at <https://www.ignet.gov/content/quality-standards> (last visited Apr. 16, 2024); CIGIE, *Integrity Committee Policies and Procedures 2018* (Apr. 13, 2018), available at <https://www.ignet.gov/content/integrity-committee-process-and-policies> (last visited Apr. 16, 2024).

an improper augmentation of its appropriations. Because SSA OIG did not obligate funds in excess of available appropriations, SSA OIG did not violate the Antideficiency Act.

A handwritten signature in black ink that reads "Edda Emmanuelle Perez". The signature is written in a cursive, flowing style.

Edda Emmanuelli Perez  
General Counsel