



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Securities and Exchange Commission—Supplemental Appropriation

File: B-322062

Date: December 5, 2011

DIGEST

The Securities and Exchange Commission (SEC) had two appropriations available in fiscal years 2009 and 2010 for expenses related to the investigation of securities fraud: its regular, lump-sum appropriation and an appropriation in the Supplemental Appropriations Act, 2009. The language of the Supplemental Appropriations Act makes clear that Congress intended to make additional funds available to SEC for the investigation of securities fraud.

DECISION

The Securities and Exchange Commission (SEC) requested a decision regarding SEC's use of its regular and supplemental appropriations to fund expenses related to the investigation of securities fraud during fiscal years 2009 and 2010. Letter from Associate Executive Director and Chief Financial Officer (CFO), SEC, to General Counsel, GAO, *Re: Request for Legal Opinion on Propriety of Use of Annual and Supplemental Appropriations for the Same Purpose* (May 26, 2011) (Request Letter). SEC used funds for this purpose from its regular, lump-sum "Salaries and Expenses" appropriation enacted in the Omnibus Appropriations Act, 2009,¹ as well as funds from a supplemental appropriation to its "Salaries and Expenses" appropriation specifically for "the investigation of securities fraud" enacted in the Supplemental Appropriations Act, 2009.² SEC asks whether the use of both appropriations violated the purpose statute, 31 U.S.C. § 1301(a). The question arises because SEC's Office of Inspector General (OIG) expressed concerns that the supplemental appropriation was the only appropriation available for this purpose. As explained below, we conclude that because the supplemental appropriation was

¹ Pub. L. No. 111-8, div. D, title V, 123 Stat. 524, 671–72 (Mar. 11, 2009).

² Pub. L. No. 111-32, title V, 123 Stat. 1859, 1879 (June 24, 2009).

enacted as additional amounts to the regular lump-sum appropriation, both amounts were available to SEC to fund expenses related to the investigation of securities fraud in fiscal years 2009 and 2010.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, [GAO-06-1064SP](#) (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal/lawresources/resources.html. The CFO's request letter contained the pertinent facts and the legal views of SEC.

BACKGROUND

The SEC is the primary agency responsible for the administration and implementation of federal securities laws, and its functions include the investigation and prosecution of securities fraud.³ Historically, SEC receives a regular, lump-sum, no-year "Salaries and Expenses" appropriation for all of SEC's operations. In March 2009, SEC received its Salaries & Expenses appropriation under the Omnibus Appropriations Act, which provided as follows: "For necessary expenses for the Securities and Exchange Commission . . . \$943,000,000, to remain available until expended. . . ."⁴ Pub. L. No. 111-8, 123 Stat. at 671-72.

In May 2009, Congress passed the Fraud Enforcement and Recovery Act of 2009 (FERA) and authorized substantial funding for a number of agencies, including the Department of Justice and SEC, to enhance their respective capacities to pursue

³ See, e.g., 15 U.S.C. §§ 78n(e) (prohibiting certain fraudulent acts related to securities solicitation and requiring SEC to issue rules to prevent such acts), 78u(a)(1) (authorizing SEC to investigate violations of securities laws, rules, and regulations). In addition to investigating securities fraud, SEC reviews corporate filings, oversees major market participants, regulates the investment management industry, and identifies developing risks and trends in financial markets. SEC, *The Investor's Advocate: How the SEC Protects Investors, Maintains Market Security, and Facilitates Capital Formation*, available at www.sec.gov/about/whatwedo.shtml (last visited Nov. 23, 2011).

⁴ The Omnibus Appropriations Act also provided that amounts appropriated from the general fund for Salaries & Expenses shall be reduced as SEC collects fees and charges during the fiscal year "so as to result in a final total fiscal year 2009 appropriation from the general fund estimated at not more than \$0." Pub. L. No. 111-8, 123 Stat. at 671-72. In December 2009, the Financial Services and General Government Appropriations Act, 2010 appropriated \$1.1 billion for SEC's Salaries and Expenses to remain available until expended. . . . Pub. L. No. 111-117, 123 Stat. 3034, 3159, 3197 (Dec. 16, 2009). The 2010 appropriation similarly provided for offsetting collections of fees and charges. *Id.*

mortgage, corporate and other financial fraud. Pub. L. No. 111-21, 123 Stat. 1617, 1619–21 (May 20, 2009); see also S. Rep. No. 111-10, at 2 (2009). With respect to SEC, FERA authorized appropriations “for investigations and enforcement proceedings involving financial institutions.” Pub. L. No. 111-21, § 3(e), 123 Stat. at 1620. Congress entitled section 3, “Authorization of Additional Funding to Combat Mortgage Fraud, Securities and Commodities Fraud, and Other Frauds Involving Federal Economic Assistance,” and stipulated that these amounts “are in addition to amounts otherwise authorized in other Acts.” *Id.*, § 3(g), 123 Stat. at 1621. A month later, the Supplemental Appropriations Act provided funds for the types of investigative activities authorized under FERA. With respect to SEC specifically, the Supplemental Appropriations Act appropriated additional funds to SEC’s Salaries and Expenses account: “For an additional amount for necessary expenses for the Securities and Exchange Commission, \$10,000,000, to remain available until September 30, 2010, for investigation of securities fraud.” Pub. L. No. 111-32, 123 Stat. at 1879.

Prior to the enactment of the Supplemental Appropriations Act, SEC used its regular, lump-sum Salaries and Expenses appropriation to fund the investigation of securities fraud. Request Letter, at 1. However, after enactment of FERA and the Supplemental Appropriations Act, SEC used both the lump-sum appropriation enacted in March 2009, and the supplemental appropriation enacted in June 2009, to fund certain projects related to the investigations of securities fraud. *Id.* at 3. SEC’s contract managers responsible for securing contracts related to these projects treated the appropriations as “fungible between one another, and managed their accounts to maximize the use of the funds available to them.” *Id.*

SEC’s OIG, as part of a review conducted under its annual audit plan, raised concerns about whether the application of both appropriations was consistent with 31 U.S.C. § 1301(a), which is known as the purpose statute. The purpose statute provides that “[a]ppropriations shall be applied only to the objects for which the appropriations were made, except as otherwise provided by law.” 31 U.S.C. § 1301(a). OIG recommended that SEC request a decision from this office.⁵

DISCUSSION

The issue here is whether SEC properly charged its regular appropriation and the supplemental appropriation for expenses related to the investigation of securities fraud in fiscal years 2009 and 2010.

As a general matter, if an agency receives an appropriation for a specific purpose, the agency must continue to use that appropriation to the exclusion of a more

⁵ SEC OIG, Office of Audits, *Audit of the SEC Budget Execution Cycle* (Mar. 29, 2011) (SEC OIG Audit), Finding 1, at 6–10, *available at* www.sec-oig.gov/Reports/AuditsInspections/2011/488.pdf; Request Letter at 1.

general appropriation that may be broad enough to cover the same purpose. B-289209, May 31, 2002; 68 Comp. Gen. 337, 339 (1989); 59 Comp. Gen. 518, 520 (1980). However, where one appropriation clearly supplements another appropriation, then both appropriations may be used for the same purpose. See B-272191, Nov. 7, 1997; B-13900, Dec. 17, 1940. A supplemental appropriation is defined as an act appropriating funds in addition to those already enacted in another appropriations act. See GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 93. To determine the purpose of an appropriation, the starting point is the plain meaning of a statute. B-318831, Apr. 28, 2010; B-303845, Jan. 3, 2006.

We addressed the availability of two appropriations for the same purpose in B-272191, Nov. 7, 1997. In that case, we considered whether the Army was required to make an election between two appropriation accounts available for major repairs and minor construction projects. In the Department of Defense appropriation for fiscal years 1992 and 1993, Congress appropriated two-year funds under the heading “Real Property Maintenance, Defense” (RPM,D) to finance maintenance and repair projects. Prior to the enactment of appropriations for RPM,D, the military departments had used their fiscal year operations and maintenance (O&M) appropriations to finance maintenance and repair projects. With the enactment of an RPM,D appropriation, however, the Department of Defense concluded that the RPM,D, not O&M, appropriation was the appropriation available for real property major repair and minor construction projects. In light of this, Congress enacted legislation providing: “In addition to using funds specifically appropriated for real property maintenance under the heading ‘REAL PROPERTY MAINTENANCE, DEFENSE’ . . . , [the Army] may also use funds appropriated for operation and maintenance in order to carry out [major repair and minor construction projects].” We concluded that this language made clear that O&M funds appropriated to the Army were available for major repair and minor construction projects “[i]n addition to” funds specifically appropriated for real property maintenance under RPM,D. *Id.* at 5 (emphasis added).

Here, the Supplemental Appropriations Act provided: “For an additional amount for necessary expenses for the Securities and Exchange Commission, \$10,000,000, to remain available until September 30, 2010, for investigation of securities fraud.” Pub. L. No. 111-32, 123 Stat. at 1879. The language, “*an additional amount* for necessary expenses,” similarly makes clear that Congress intended such funds to be an amount in addition to SEC’s regular, lump-sum appropriation. *Id.* (emphasis added). The fact that the Supplemental Appropriations Act directs a specific use for such funds does not change its supplemental nature.

The legislative history of the Supplemental Appropriations Act and the preceding authorization contained in FERA confirm this view.⁶ The additional amounts for SEC's investigation of securities fraud appeared in S. 1054, 111th Cong. (2009).⁷ The committee report accompanying S. 1054, states: "The committee recommends an additional \$10 million for necessary expenses for the Securities Exchange Commission. *The additional funds will support increased staffing and related expenses for enhanced investigation of securities fraud. . . .*" S. Rep. No. 111-20, at 61 (May 14, 2009) (emphasis added). The provision in S. 1054 appropriating additional funds to SEC was adopted in conference in substantially the same form.⁸ The conference report accompanying the Supplemental Appropriations Act states that "[t]he conference agreement includes an *additional appropriation of \$10,000,000, as proposed by the Senate, for the Securities and Exchange Commission for investigation of securities fraud.*" H.R. Conf. Rep. No. 111-51, at 109 (2009) (emphasis added).

It is particularly important, we believe, to read SEC's supplemental appropriation consistent with its authorization, FERA. In this regard, FERA clearly established the intent to authorize appropriations to increase SEC's capacity to execute an existing responsibility, the investigation of securities fraud, for which it already had an appropriation. Section 3 of FERA, the authorization of appropriations, was entitled "Authorization of Additional Funding to Combat . . . Securities and Commodities Fraud . . ." ⁹ Section 3(g) stipulated that these amounts "are in addition to amounts otherwise authorized in other Acts."

⁶ Legislative history, while not determinative, may be helpful to illuminate the congressional objectives underlying language in a statute. 55 Comp. Gen. 307, 325 (1975).

⁷ S. 1054 was the Senate companion bill to H.R. 2346, 111th Cong. (2009), the House bill that was ultimately enacted as the Supplemental Appropriations Act. The original version of H.R. 2346 did not provide for the additional funding authorized in FERA.

⁸ S. 1054 also provided an additional \$35 million for "Salaries and Expenses" to the Federal Bureau of Investigation and an additional \$15 million for "Salaries and Expenses" to the United States Attorneys. The Senate committee report accompanying these provisions, which were substantially adopted in conference and enacted as part of the Supplemental Appropriations Act, similarly makes clear that such amounts were in addition to each agency's existing appropriations and for the purpose of increasing its capacity to investigate mortgage and other financial fraud. See S. Rep. No. 111-20, at 9–10.

⁹ While the title of a particular section of law cannot limit the plain meaning of the text, it gives an indication of Congress's understanding of the text of the section. See, e.g., *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998).

In our view, the language of the Supplemental Appropriation Act, particularly when read in the context of its legislative history and FERA, indicates that Congress intended to increase amounts available for SEC's investigation of securities fraud, not to limit amounts for such purpose.¹⁰ Therefore, SEC's application of both its regular, lump-sum and supplemental appropriations in fiscal years 2009 and 2010 for projects supporting the investigation of securities fraud was consistent with 31 U.S.C. § 1301(a).¹¹

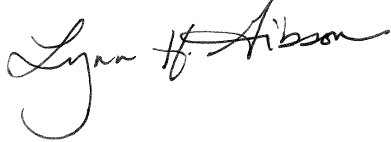
We note that SEC's regular, lump-sum appropriation is available until expended, while SEC's supplemental appropriation was only available until September 30, 2010. Pub. L. No. 111-8, 123 Stat. at 671–72; Pub. L. No. 111-32, 123 Stat. at 1879. An appropriation available for a fixed period of time expires on the last day of its period of availability and is no longer available to incur new obligations. 31 U.S.C. § 1552(a). A no-year appropriation, such as SEC's regular appropriation, is available until fully expended or properly canceled under 31 U.S.C. § 1555. Thus, SEC's supplemental appropriation was only available for its *bona fide* needs of fiscal years 2009 and 2010, whereas its regular appropriation is available for its *bona fide* needs of any fiscal year.

¹⁰ We note, also, that neither the fiscal years 2011 or 2012 appropriations bills for SEC would have enacted specific amounts for fraud investigations, signaling an understanding that SEC's regular, lump-sum appropriation is otherwise available for that purpose. See S. 1573, 112th Cong. (2011); S. 3677, 111th Cong. (2010); H.R. 2434, 112th Cong. (2011).

¹¹ The facts here are distinguishable from those in B-321788, Aug. 8, 2011. In that case, the Commodity Futures Trading Commission (CFTC) asked whether it should use a specific revolving fund available for whistleblower awards and consumer education programs or its regular, lump-sum appropriation to pay for certain personnel and administrative expenses associated with the implementing such programs. *Id.* While the lump-sum appropriation was broad enough to encompass personnel and administrative expenses generally, we determined that the revolving fund was the more specific appropriation for expenses incidental to the implementation of the purposes of the fund and should be used to the exclusion of the lump-sum appropriation for those purposes. *Id.* Unlike the legislation before us here, there was no indication in either the legislation creating the revolving fund or CFTC's lump-sum appropriation that Congress intended the lump-sum appropriation to supplement the revolving fund for expenses incidental to whistleblower and consumer education initiatives.

CONCLUSION

SEC's regular, lump-sum appropriation and its supplemental appropriation in fiscal years 2009 and 2010 were both available for expenses related to the investigation of securities fraud. The use of both appropriations for this purpose is consistent with the purpose statute, 31 U.S.C. § 1301(a).

A handwritten signature in black ink that reads "Lynn H. Gibson". The signature is written in a cursive style with a large initial "L" and a distinct "H" and "G".

Lynn H. Gibson
General Counsel