



Decision

Matter of: U.S. Postal Service Office of the Inspector General—Receipt of Department of Justice Forfeiture Funds

File: B-334906

Date: December 5, 2024

DIGEST

The Office of the Inspector General (OIG) of the U.S. Postal Service receives an annual appropriation in a definite amount from the Postal Service Fund (Fund). OIG’s expenses are paid from the Fund, subject to the availability of appropriated amounts. Although OIG participates in joint criminal investigations with Department of Justice (DOJ) law enforcement agencies pursuant to its independent law enforcement authority, there is no statutory authority for DOJ to transfer forfeiture funds resulting from those investigations to OIG. In accordance with OIG’s statutory funding framework, OIG’s funding is limited to the particular dollar amount appropriated by Congress unless statutory authority provides otherwise. Without such authority, the transfer of forfeiture funds would augment OIG’s appropriation.

DECISION

The Office of the Inspector General (OIG) of the U.S. Postal Service (USPS) requested our decision on whether OIG may “receive funds from forfeiture activities without violating appropriations law.”¹ Specifically, OIG is concerned about whether it may receive forfeiture funds from the Department of Justice (DOJ) above amounts appropriated to OIG without augmenting OIG’s appropriation.² OIG also asked us to clarify B-317022, Sept. 25, 2008, a decision in which we determined that, under OIG’s statutory funding framework, OIG may not receive transfers from the Postal Service Fund (Fund) in addition to the amounts appropriated by Congress from the

¹ Letter from Inspector General, USPS, to Comptroller General, GAO, at 1 (Dec. 21, 2022) (Request Letter).

² See *id.* at 2–3; Telephone Conversation with OIG Attorneys (Oct. 24, 2023) (October 24 OIG Conversation); Telephone Conversation with OIG Attorneys (Nov. 6, 2023) (November OIG Conversation).

Fund.³ Congress authorizes appropriations to be made for OIG from the Fund and establishes that OIG's expenses will be paid from the Fund, "subject to the availability" of appropriated amounts. 5 U.S.C. § 415(f)(6); 39 U.S.C. § 2003(e)(1)(C). In B-317022, we found that transfers in addition to appropriated amounts would augment OIG's appropriations because, absent statutory authority, an agency may not operate beyond the level that can be funded by its appropriation. Here, there is no statutory authority for DOJ to transfer forfeiture funds to OIG or for OIG to receive DOJ forfeiture funds above amounts appropriated to OIG. Accordingly, we conclude, in accordance with B-317022, that OIG may not receive DOJ forfeiture funds in excess of OIG's appropriations.

Our practice when rendering a decision is to obtain the views of the relevant agencies to establish a factual record and the agencies' legal position on the subject matter.⁴ OIG provided facts and its legal views in its Request Letter and subsequent conversations and correspondence.⁵ We requested the views of the USPS Law Department and the Postal Inspection Service (PIS).⁶ The Law Department provided a written response with facts and its legal views.⁷ The Law Department and PIS also provided their views in a telephone conversation.⁸ We requested DOJ's views, and DOJ provided a written response with facts and its legal position.⁹

³ Request Letter, at 1.

⁴ 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.

⁵ Telephone Conversation with OIG Attorneys (Oct. 10, 2023) (October 10 OIG Conversation); October 24 OIG Conversation; November OIG Conversation; Email from Senior Attorney, OIG, to Senior Attorney, GAO (Oct. 16, 2023) (OIG Email).

⁶ Letter from Acting Assistant General Counsel, GAO, to General Counsel and Executive Vice President, USPS Law Department (Mar. 6, 2023); Email from Senior Attorney, GAO, to Chief Counsel, PIS (Jan. 5, 2024).

⁷ Letter from General Counsel and Executive Vice President, USPS Law Department, to Acting Assistant General Counsel, GAO (Mar. 22, 2023) (USPS Letter) (attaching Memorandum to General Counsel and Executive Vice President, USPS Law Department (Sept. 2, 2022) (USPS Memorandum)).

⁸ Telephone Conversation with USPS Law Department and PIS Attorneys (Jan. 11, 2024) (Law Department & PIS Conversation).

⁹ Letter from Assistant General Counsel, GAO, to Acting Assistant Attorney General, DOJ, Criminal Division (Jan. 30, 2024); Letter from General Counsel, DOJ, Justice (continued...)

BACKGROUND

OIG's Mission and Forfeiture Activities

OIG is an independent office within USPS that is responsible for oversight of USPS and the Postal Regulatory Commission. Request Letter, at 2; 39 C.F.R. § 230.1. As part of its mission, OIG conducts audits and investigations, including criminal investigations pursuant to its law enforcement authority.¹⁰ Request Letter, at 1–2; see 18 U.S.C. § 3061; 39 C.F.R. § 230.4. OIG participates in joint criminal investigations with DOJ law enforcement agencies. Request Letter, at 2; October 24 OIG Conversation; November OIG Conversation. These joint investigations often result in the seizure and forfeiture of property connected to criminal activities. Request Letter, at 2. While OIG is authorized to seize property, it is not authorized to forfeit property.¹¹ Request Letter, at 2; October 24 OIG Conversation; OIG Email. DOJ conducts most of the forfeitures in OIG's cases, which are generally criminal forfeitures. October 24 OIG Conversation; November OIG Conversation.

Management Division, to Assistant General Counsel, GAO (May 16, 2024) (DOJ Letter).

¹⁰ OIG investigates contract, financial, and healthcare fraud; narcotics crimes; official misconduct; and internal mail theft. OIG, *Semiannual Report to Congress*, October 1, 2023–March 31, 2024, at 3, 46 (2024), available at https://www.uspsoig.gov/sites/default/files/reports/2024-05/FY2024_Spring_SARC.pdf (last visited Dec. 3, 2024).

¹¹ Seizure is the “physical restraint” of property by the government or the transfer of property into the government’s “custody or control.” DOJ, *Asset Forfeiture Policy Manual* (2023), ch. 2, sec. I, available at <https://www.justice.gov/criminal-afmls/file/839521/download> (last visited Dec. 3, 2024). Seizure is often performed by a law enforcement agency pursuant to a warrant. *Id.* Numerous statutes authorize the seizure of property involved in a crime. *E.g.*, 8 U.S.C. § 1324(b); 18 U.S.C. §§ 981(b), 3061(a)(5), 3107; 21 U.S.C. §§ 853(f), 878(a)(4), 881(b); 26 U.S.C. § 7608(a)(4). Forfeiture is a means “[t]o enforce the age-old adage that ‘crime does not pay’ [by] depriv[ing] criminals of both the tools they use to commit crime and the fruits . . . of their crime.” H.R. Rep. No. 105-358, at 35 (Oct. 30, 1997). The multitude of forfeiture statutes allow the government to take ownership of contraband, property involved in specified crimes, and property that is the proceeds of specified crimes. *E.g.*, 18 U.S.C. §§ 492, 981(a); 21 U.S.C. § 881(a); see also DOJ, *Asset Forfeiture & Money Laundering Statutes* (2019), available at <https://www.justice.gov/media/996396/dl?inline> (last visited Dec. 3, 2024). Federal law authorizes three types of forfeitures: criminal, civil judicial, and administrative. DOJ Letter, at 1.

DOJ's forfeiture proceeds are deposited in DOJ's Asset Forfeiture Fund (AFF).¹² 28 U.S.C. § 524(c)(4); DOJ Letter, at 3. AFF comprises "all amounts from the forfeiture of property under any law enforced or administered by" DOJ, with certain exceptions. 28 U.S.C. § 524(c)(4)(A). DOJ operates AFF through its Asset Forfeiture Program (AFP), which has thirteen member agencies consisting of DOJ components and agencies outside of DOJ.¹³ DOJ Letter, at 2–3. AFP members receive an annual allocation from AFF, as well as payment or reimbursement for certain AFP-related expenses. DOJ Letter, at 3–4; see 28 U.S.C. § 524(c)(1).

PIS and TFF program members may request a fund-to-fund transfer from AFF based on their efforts leading to a DOJ forfeiture.¹⁴ DOJ Letter, at 4; see 28 U.S.C. § 524(c)(10). For approved requests, DOJ will transfer funds from AFF to the USPS asset forfeiture fund or TFF; DOJ will not transfer funds directly to the agency. DOJ Letter, at 4; October 10 OIG Conversation. Agencies that are not members of AFP or another forfeiture fund program cannot receive allocations or fund-to-fund transfers from DOJ. DOJ Letter, at 3–4; see 28 U.S.C. § 524(c). Although OIG

¹² As relevant here, federal forfeiture proceeds are deposited in one of three asset forfeiture funds: AFF, the Department of the Treasury Forfeiture Fund (TFF), or the USPS asset forfeiture fund, which is a subaccount of the Fund. DOJ Letter, at 1–2; October 10 OIG Conversation; Law Department & PIS Conversation.

¹³ Like DOJ, the Department of the Treasury (Treasury) has an asset forfeiture program that operates TFF and whose members consist of certain Treasury and Department of Homeland Security agencies. 31 U.S.C. § 9705(o); see Treasury, *Treasury Executive Office for Asset Forfeiture (TEOAF)*, <https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/treasury-executive-office-for-asset-forfeiture-teoaf> (last visited Dec. 3, 2024). Unlike DOJ and Treasury, USPS does not operate a statutory forfeiture program with member agencies; PIS manages USPS's asset forfeiture fund and conducts USPS's administrative forfeitures. 39 C.F.R. § 233.7(a), (b); Law Department & PIS Conversation; October 24 OIG Conversation.

¹⁴ Law enforcement agencies often conduct joint investigations that lead to forfeitures, and such investigations may include agencies that are members of different forfeiture fund programs. See Request Letter, at 2; DOJ Letter, at 4. Forfeiture proceeds will be deposited in the lead agency's forfeiture fund. DOJ Letter, at 2, 4; November OIG Conversation. DOJ must transfer from AFF to TFF "amounts appropriate to reflect the degree of participation" of TFF program members. 28 U.S.C. § 524(c)(10). Similarly, Treasury must transfer to AFF and the Fund "amounts appropriate to reflect the degree of participation" of AFP members or USPS. 31 U.S.C. § 9705(n). Unlike other AFP members, PIS is eligible for allocations as an AFP member and fund-to-fund transfers resulting from judicial forfeitures conducted by DOJ involving laws enforced by PIS. DOJ Letter, at 3, 4–5.

conducts investigations with DOJ agencies, OIG is not a member of AFP or another forfeiture fund program. DOJ Letter, at 5; Law Department & PIS Conversation.

OIG's Statutory Funding Framework

The Fund is a revolving fund “available to the Postal Service without fiscal-year limitation to carry out the purposes, functions, and powers authorized,” with certain exceptions, by Title 39 of the United States Code. 39 U.S.C. § 2003(a). The corpus of the Fund is made up of amounts specified in section 2003. See 39 U.S.C. § 2003(b). The Fund is available to pay for “all expenses of [OIG], subject to the availability of amounts appropriated.” *Id.* § 2003(e)(1)(C). OIG receives an annual appropriation “derived by transfer from the Postal Service Fund and expended as authorized by” 5 U.S.C. § 415(f)(6), which authorizes the appropriation of “such sums as may be necessary” for OIG out of the Fund. 5 U.S.C. § 415(f)(6); e.g., Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. B., title V, 138 Stat. 460 (Mar. 23, 2024).

GAO's Prior Decision in B-317022 Regarding OIG's Statutory Funding Framework

OIG requested a decision in 2008 regarding the statutory funding framework established by 5 U.S.C. § 415(f)(6) and 39 U.S.C. § 2003(e)(1)(C).¹⁵ B-317022, Sept. 25, 2008. Among other questions, OIG asked us: “If USPS desires to increase amounts available from the Postal Service Fund for the expenses of the OIG above amounts appropriated for the OIG, how may it lawfully do so?” *Id.* at 6 (emphasis omitted). We considered the question under the rule against augmentation, which establishes that an agency may not obtain and retain money from an outside source without statutory authority. *Id.*; see B-336076, Apr. 18, 2024. An appropriation reflects Congress’s judgment on the level at which an agency’s program should operate, and it would “usurp Congress’s power of the purse” were an agency to exceed that level using funds from an outside source without statutory authority to do so. B-336076, at 6. The prohibition against augmentation generally derives from the application of several fiscal statutes, including the miscellaneous receipts statute and the Antideficiency Act. B-327376, Feb. 19, 2016; see B-310725, May 20, 2008. But in our 2008 decision, we determined that USPS, including OIG, is exempt from the miscellaneous receipts statute and the Antideficiency Act. B-317022. We concluded instead that OIG’s statutory funding framework prevented OIG from augmenting its appropriations with additional funds. B-317022; 5 U.S.C. § 415(f)(6); 39 U.S.C. § 2003(e). OIG’s funding framework “limits [OIG’s] operations to a particular dollar amount” and, without statutory

¹⁵ OIG’s request concerned “the implementation of section 603 of the Postal Accountability and Enhancement Act, Pub. L. No. 109-435, 120 Stat. 3198, 3240–41.” B-317022, at 1. Section 603 amended the Inspector General Act of 1978, 5 U.S.C. § 415(f)(6), and the Fund statute, 39 U.S.C. § 2003(e)(1)(C), to create the statutory funding framework we consider here. See *id.*

authority, OIG cannot operate beyond that level by supplementing its appropriation with additional funds from the Fund. B-317022, at 6–7.

Since then, there has been concern within USPS regarding whether OIG may receive transfers of forfeiture funds in addition to OIG’s appropriated funds. According to OIG, in fiscal year 2022 PIS—the administrator of USPS’s asset forfeiture fund—“restricted [OIG] from accessing asset forfeiture funds that it had previously accessed for the past 17 years.” OIG, *Congressional Budget Justification Fiscal Year 2024*, at 7, available at <https://www.uspsoig.gov/reports/other/usps-oig-fy-2024-congressional-budget-justification> (last visited Dec. 3, 2024); see Law Department & PIS Conversation. PIS “opined that OIG use of funds threatened an inappropriate augmentation of the OIG’s appropriation.” *Congressional Budget Justification Fiscal Year 2024*, at 7 n.3; see Law Department & PIS Conversation. Also in fiscal year 2022, the Law Department reviewed B-317022 and considered whether OIG could receive transfers from the Fund in addition to OIG’s annual appropriation. USPS Memorandum. In a memorandum on the issue, the Law Department stated that “GAO said in no uncertain terms that the Postal Service lacked the authority to” transfer funds to OIG “beyond what Congress has appropriated.” *Id.* at 1. The Law Department noted that “[w]e have no basis to question GAO’s conclusion on this issue of appropriations law” and suggested that OIG would need to seek GAO’s opinion on why B-317022 would not apply to forfeiture funds. *Id.* at 2.

DISCUSSION

At issue here is whether OIG can receive transfers of DOJ forfeiture funds in addition to amounts appropriated to OIG. OIG asks the same question that it asked in 2008 with respect to a specific source of funds it seeks to receive—DOJ forfeiture funds.

The movement of forfeiture funds from DOJ to OIG would shift funds from one appropriation or fund account to another, which is a transfer.¹⁶ Transfers are prohibited without statutory authority. 31 U.S.C. § 1532; B-333396, July 14, 2022. Section 1532 “facilitate[s] congressional control over appropriated funds and agency programs . . . by keeping agency programs at levels approved by Congress and preventing agencies from circumventing congressional decisions about the use of appropriations.” B-333396, at 4. For example, we reviewed transfers by the Department of Defense (DOD) from its Defense Emergency Response Fund (DERF) to two regular DOD operation and maintenance (O&M) appropriations. B-303145, Dec. 7, 2005. We found that the transfers were authorized because “Congress explicitly provided DOD with statutory authority to transfer” DERF funds to the O&M accounts. *Id.* at 10. In contrast, an unauthorized transfer violates 31 U.S.C. § 1532 and augments the receiving appropriation. See B-317022; B-278121, Nov. 7, 1997.

¹⁶ GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, at 95 (Sept. 2005).

OIG suggests that DOJ's "statutory power to transfer awards to law enforcement partners, and the OIG's statutory power to directly participate in seizures and forfeitures, are clear indicators of a Congressional grant of authority more than sufficient to overcome any concerns about forfeiture funds working an impermissible augmentation of the OIG's budget." Request Letter, at 3. OIG and DOJ, however, do not share the same understanding of DOJ's authority. DOJ explains that it has the authority to transfer forfeiture funds to agencies that are members of the AFP or to other forfeiture funds for the benefit of those funds' member agencies that collaborate with AFP members. DOJ Letter, at 3-4; see 28 U.S.C. § 524(c). But DOJ does not have the authority to transfer forfeiture funds to OIG because OIG is neither an AFP member nor a participant in another forfeiture fund. DOJ Letter, at 5 ("[W]e are not aware of any avenue by which USPS-OIG can currently receive funding from the AFF.").¹⁷

In our 2008 decision, we concluded that OIG's statutory funding framework establishes the level at which Congress authorizes OIG to operate and OIG cannot augment its appropriation without statutory authority. B-317022.¹⁸ Here, DOJ lacks authority to transfer forfeiture funds for OIG and, consistent with our prior decision, we conclude that OIG may not receive DOJ forfeiture funds without augmenting OIG's appropriation.

CONCLUSION

DOJ does not have the authority to transfer amounts to OIG. We previously recognized that OIG's funding is limited to the specific dollar amount that Congress appropriates unless statutory authority provides otherwise. Consequently, OIG may not receive DOJ forfeiture funds without augmenting its appropriation.



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¹⁷ We do not address whether OIG could receive transfers of DOJ forfeiture funds were it an AFP member.

¹⁸ Similarly, we previously determined that the National Science Foundation Inspector General (NSF IG), like OIG in this case, received a definite appropriation to fund its activities, including its false claims investigations, and NSF IG could not credit its appropriation with amounts recovered due to those investigations. B-310725. NSF IG's appropriation "established a maximum authorized level at which the [NSF] IG should operate," and, without statutory authority, crediting NSF IG with false claims recoveries would be an augmentation. *Id.* at 4.