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December 6, 2011

The Honorable Jo Ann Emerson
Chairwoman
Subcommittee on Financial Services
and General Government
Committee on Appropriations
House of Representatives

Subject: *Department of Health and Human Services—Administrative Expenses*

This responds to your letter dated April 2, 2011, requesting our views with respect to the scope of availability of the Health Insurance Reform Implementation Fund (Fund). Letter from Chairwoman, Subcommittee on Financial Services and General Government, House Committee on Appropriations, to General Counsel, GAO (Apr. 2, 2011) (Request Letter). Your questions relate to: (1) whether the Fund is available to pay for the administrative expenses that other agencies, in addition to the Department of Health and Human Services (HHS), incur as they carry out their responsibilities under the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (hereinafter collectively referred to as PPACA); and (2) whether the Fund is the only appropriation available for federal administrative expenses necessary to carry out PPACA.

We conclude that the Fund is available to pay the administrative expenses of other federal agencies in addition to HHS. As explained below, amounts in the Fund are available to pay administrative expenses incurred by federal agencies in the immediate implementation, upon enactment, of requirements and responsibilities imposed by PPACA. The Fund as created in the authorization act enabled agencies to begin implementation immediately and not await funding in the regular appropriations cycle. Whether the Fund is the only appropriation available for specific administrative expenses depends, necessarily, on the particular agency, program, and activity.

Our practice when issuing decisions and opinions is to obtain the views of the relevant agency and to establish a factual record 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/resources.html. HHS provided us with information and its views. Letter from Deputy General Counsel, HHS, to Assistant General Counsel, GAO, July 12, 2011 (HHS Letter). HHS provided us additional information in a subsequent telephone conference. Telephone conversation with Deputy General Counsel, HHS (Nov. 18, 2011) (November Conversation).

BACKGROUND

In March 2010, Congress enacted the Patient Protection and Affordable Care Act. Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010). Subsequently, Congress enacted the Health Care and Education Reconciliation Act of 2010. Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010) (Reconciliation Act). The Reconciliation Act provides as follows:

“SEC. 1005. IMPLEMENTATION FUNDING.

“(a) IN GENERAL.—There is hereby established a Health Insurance Reform Implementation Fund (referred to in this section as the “Fund”) within the Department of Health and Human Services to carry out the Patient Protection and Affordable Care Act and this Act (and the amendments made by such Acts).

“(b) FUNDING.—There is appropriated to the Fund, out of any funds in the Treasury not otherwise appropriated, \$1,000,000,000 for Federal administrative expenses to carry out such Act (and the amendments made by such Acts).”

Pub. L. No. 111-152, title I, subtitle A, § 1005, 124 Stat. at 1036, 42 U.S.C. § 18121. The legislative history gives no indication of the origin or meaning of the provision.

HHS reports that it has used amounts from the Fund for expenses related to the implementing responsibilities assigned to it by PPACA, including salaries, benefits, contracts, and infrastructure for various health reform initiatives. HHS, *FY 2012 Justification of Estimates for Appropriations Committees: Office of the Secretary, Health Insurance Reform Implementation Fund*, at 2. Additionally, HHS has made amounts from the Fund available to three other agencies: the Internal Revenue Service (IRS); the Office of Personnel Management (OPM); and the Department of Labor’s Employee Benefits Security Administration (Labor). HHS Letter, at 3. HHS, noting that PPACA assigned administrative responsibilities to other federal agencies, concluded that amounts in the Fund are available for the PPACA administrative costs of other federal agencies, not just HHS. HHS Letter, at 1.

DISCUSSION

Availability of the Fund to Agencies Other than HHS

We first consider whether amounts from the Fund are available to pay for administrative expenses incurred by other agencies, in addition to HHS. This question arises because the statute establishing the Fund provided that the Fund is “within” HHS. Pub. L. No. 111-152, § 1005(a).

To ascertain the scope of availability of amounts in the Fund, we begin by examining the statutory language in section 1005 that established the Fund and appropriated amounts to the Fund. See, e.g., B-320091, July 23, 2010; B-318831, Apr. 28, 2010; 5 Comp. Dec. 493 (1899). Words in an appropriations provision are generally construed in accordance with their plain meaning absent a specific statutory definition. B-320329, Sept. 29, 2010.

Section 1005(b) appropriated \$1 billion to the Fund for “*Federal* administrative expenses to carry out” PPACA. Pub. L. No. 111-152, § 1005 (emphasis added). In our view, the word “federal” is commonly understood to refer to the U.S. Government and its three branches and various agencies. Although section 1005(a) establishes the Fund “within” HHS, the word “Federal” indicates to us that the amount appropriated to the Fund is available to federal agencies, not just HHS. As HHS stated in its letter to us, if Congress had wished to limit the Fund to only HHS, Congress could have done so by stating the funds were appropriated for the “Department’s” administrative expenses instead of “Federal” administrative expenses. HHS Letter, at 2. HHS also noted that HHS is not the only federal agency that must carry out PPACA, as the Act assigned responsibilities and granted authorities to other federal agencies. *Id.* We agree with HHS, and conclude that the Fund is available to other federal agencies as well.¹

In this regard, you asked whether section 1005 authorizes HHS to transfer amounts to other federal agencies. Because the Fund is available to agencies throughout the federal government, it is proper for agencies other than HHS to use amounts in the Fund to cover their administrative expenses in implementing PPACA. To make the funds available to other agencies, HHS asked the Financial Management Service of the Department of the Treasury to establish allocation accounts to make defined amounts available to IRS, OPM, and Labor. HHS Letter, at 3. The agency receiving the allocation may obligate up to the amount included in its allocation account. See 1 TFM 2-1500, § 1520.65. Agencies must ensure that their obligations are consistent with the terms of section 1005, which permit amounts from the Fund to be used only for “Federal administrative expenses to carry out” PPACA.

¹ In your letter, you asked whether the word “Federal” was meant to distinguish between federal expenses and state or local expenses. Because of the common, ordinary meaning of the word “Federal,” we do not read section 1005(a) to encompass administrative expenses that may be incurred by state or local governments.

Availability of Other Appropriations for Federal Administrative Expenses

Generally, when an agency has two appropriations that, arguably, are available for the same purpose, the agency must use the more specific appropriation. Consequently, an expenditure that may be reasonably related to a general appropriation may not be paid out of that appropriation where the expenditure falls within the scope of another, more specific appropriation. This rule is well-established in our decisions.² See, e.g., B-321788, Aug. 8, 2011; B-318426, Nov. 2, 2009; B-291241, Oct. 8, 2002; B-139510, May 13, 1959.

We applied this principle in 2002 when we considered the Coast Guard's administration of the Oil Spill Liability Trust Fund (Trust Fund). B-289209, May 31, 2002. Congress enacted two appropriations to the Coast Guard: one for payment of particular claims for damages arising from oil spills; the other specifically for the Coast Guard's "operating expenses" to administer the Trust Fund. The Coast Guard used amounts from the appropriation for damage claims to pay some of the expenses it incurred to administer the Trust Fund. The Chief Counsel of the Coast Guard argued that Congress intended for the appropriation for claims to be used for all costs associated with payment of claims. We disagreed. We noted that "the Chief Counsel's arguments fail to give any weight to the fact that there is another appropriation which makes specific provision for the Coast Guard's administrative expenditures in connection with the Act." *Id.* Coast Guard could not obligate these expenses against the appropriation that was made for claims payments from the Trust Fund.

You asked whether administrative expenses incurred by the federal government to carry out PPACA should be covered by the Fund. In this regard, it is important to recognize the context in which Congress established the Fund. First, Congress established the Fund, and enacted a definite appropriation to the Fund, in program authorization legislation, PPACA, in March 2010, rather than in an appropriations act. This signifies to us that Congress did not expect the Fund to satisfy an ongoing purpose, but to satisfy a more immediate need. Indeed, the appropriation of a definite amount to the Fund confirms that view, as does the fact that Congress has appropriated no additional amounts to the Fund since its creation. Second, Congress entitled section 1005 "Implementation Funding." While the title of a particular section of law cannot limit the plain meaning of the text, it certainly 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 this case, the title, particularly when considered together with the March 2010 appropriation of a definite amount, suggests to us that the Fund was to finance the immediate

² This rule is rooted in a long-held principle of statutory construction: the more specific enactment in statute controls over the more general since it is the more specific expression of legislative intent. *Bloate v. United States*, ___ U.S. ___, 130 S.Ct. 1345, 1354 (2010); *Baltimore National Bank v. State Tax Commission of Maryland*, 297 U.S. 209, 215 (1936).

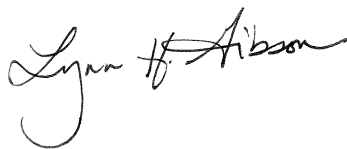
implementation of PPACA rather than awaiting funding in the next regular appropriations cycle. To the extent an agency requires additional amounts for immediate implementation, the agency should request appropriations as part of the regular appropriations cycle.

It is important to note the answer to the question regarding availability of the Fund depends, necessarily, on the particular agency, program, and activity. A particular agency may have a more specific appropriation for the administrative expenses of a particular program or activity; if so, the agency should use that appropriation instead of the Fund. See B-289209 (Coast Guard Oil Spill Liability Trust Fund). PPACA contains a number of appropriations in addition to the Fund. See, e.g., Pub. L. No. 111-148, § 1311 (appropriating funds for grants to establish health insurance exchanges); Pub. L. No. 111-148, § 9023(e) (appropriating funds for grants for particular forms of research).

CONCLUSION

As discussed above, amounts in the Fund are available to pay federal administrative expenses to finance the immediate implementation of PPACA, whether such expenses are incurred by HHS or by other federal agencies. The Fund as created in the authorization act enabled agencies to begin implementation immediately and not await funding in the regular appropriations cycle. Whether the Fund is the only appropriation available for specific administrative expenses depends, necessarily, on the particular agency, program, and activity. We trust that this information is responsive to your request. If you have any questions, please call Thomas H. Armstrong, Managing Associate General Counsel, at (202) 512-8257 or Julia C. Matta, Assistant General Counsel, at (202) 512-4023.

Sincerely yours,

A handwritten signature in cursive script that reads "Lynn H. Gibson". The signature is written in black ink and is positioned above the typed name.

Lynn H. Gibson
General Counsel