



## Decision

**Matter of:** Daniel K. Inouye Asia-Pacific Center for Security Studies—Use of Appropriated Funds to Purchase COVID-19 Self-Test Kits

**File:** B-333691

**Date:** February 8, 2022

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### DIGEST

The Daniel K. Inouye Asia-Pacific Center for Security Studies (the Center) asks whether its appropriation is available to purchase coronavirus disease 2019 (COVID-19) self-test kits for persons located on its premises. Appropriated funds are available only for the purposes authorized by Congress. 31 U.S.C. § 1301(a). If not otherwise specified in law, an expense is authorized where it bears a reasonable, logical relationship to the purpose of the appropriation to be charged. The Center may use its appropriation to purchase COVID-19 self-test kits where the use of the test kits will allow the Center to carry out engagements in support of its statutory mission.

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### DECISION

This responds to a request for our decision regarding whether the Daniel K. Inouye Asia-Pacific Center for Security Studies (the Center) may use appropriated funds to purchase COVID-19 self-test kits for use by persons located on its premises.<sup>1</sup> We conclude that the Center may use its appropriated funds to purchase COVID-19 self-test kits because their use will allow the Center to safely host courses, workshops, and other engagements in support of its statutory mission.

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<sup>1</sup> Letter from Director, Daniel K. Inouye Asia-Pacific Center for Security Studies, to Comptroller General, GAO (Oct. 15, 2021) (Request Letter).

The Center included with its request for a decision relevant factual information and its legal views on this matter.<sup>2</sup> In accordance with our regular practice, we contacted the Center for additional information.<sup>3</sup>

## BACKGROUND

On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency in response to COVID-19.<sup>4</sup> By March 11, 2020, the World Health Organization (WHO) had designated COVID-19 as a pandemic.<sup>5</sup> According to the Centers for Disease Control and Prevention (CDC), over 840,000 Americans have died from COVID-19 to date.<sup>6</sup> To prevent the spread of COVID-19, the CDC, along with other public health agencies, have recommended numerous preventive measures, such as mask wearing, vaccination, testing, and social distancing.<sup>7</sup> In

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<sup>2</sup> Legal Review Memorandum for Director, Daniel K. Inouye Asia-Pacific Center for Security Studies (Oct. 15, 2021) (Legal Review Memorandum).

<sup>3</sup> 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](http://www.gao.gov/products/GAO-06-1064SP); E-mail from Staff Attorney, GAO to Attorney-Adviser, Daniel K. Inouye Asia-Pacific Center for Security Studies (Nov. 2, 2021); E-mail from Attorney-Adviser, Daniel K. Inouye Asia-Pacific Center for Security Studies, to Staff Attorney, GAO (Nov. 2, 2021).

<sup>4</sup> U.S. Department of Health and Human Services, *Determination that a Public Health Emergency Exists* (Jan. 31, 2020), available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> (last visited Jan. 21, 2022).

<sup>5</sup> World Health Organization, *WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020* (Mar. 11, 2020), available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited Jan. 21, 2022).

<sup>6</sup> According to the CDC, this number includes all instances where COVID-19 was listed as a cause of death or where COVID-19 was listed as a “probable” or “presumed” cause of death on corresponding death certificates. CDC, *Daily Updates of Totals by Week and State*, available at <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm> (last visited Jan. 21, 2022).

<sup>7</sup> See, e.g., CDC, *How to Protect Yourself & Others*, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited Jan. 21, 2022); CDC, *Testing for COVID-19*, available at <https://www.cdc.gov/coronavirus/2019-ncov/testing/index.html> (last visited Jan. 21, 2022); WHO, *Advice for the public: Coronavirus disease (COVID-19)* (Oct. 1, 2021), available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public> (last visited Jan. 21, 2022); WHO, *Recommendations for*

addition, on January 20, 2021, the President created the Safer Federal Workforce Task Force to provide the federal government with up-to-date guidance on preventive measures to keep federal employees safe.<sup>8</sup>

The Center is established in 10 U.S.C. § 342 to serve as an international venue for research, communication, training, and exchange of ideas among military and civilian participants. Request Letter. In response to the pandemic, the Center has incorporated the CDC's COVID-19 guidance into its policies and practices. Request Letter. For example, the Center has implemented policies related to vaccinations, mask wearing, social distancing, air filtration, cleaning and disinfecting, and testing. *Id.* Now, the Center's Director seeks a decision regarding whether its appropriated funds are available to purchase self-test kits for use by individuals located on its premises. *Id.*

## DISCUSSION

At issue here is whether the Center may use its appropriated funds to purchase COVID-19 self-test kits for use by individuals located on its premises. The Center posits that it can use its funds to purchase COVID-19 self-test kits because the kits are equipment necessary to maintain the health and safety of a federal premises. Thus, the kits are an official expense of the government, rather than a personal expense of employees and visitors.<sup>9</sup> For the reasons outlined below, we find that the Center may use its appropriated funds to purchase COVID-19 self-test kits.

Under the purpose statute, appropriated funds are available only for the purposes authorized by Congress. 31 U.S.C. § 1301(a). Each authorized expense need not be stated explicitly in an appropriation. Rather, to determine whether an expense would violate the purpose statute, we apply a three-part necessary expense test. An expense is authorized where it (1) bears a reasonable, logical relationship to the purpose of the appropriation to be charged; (2) is not prohibited by law; and (3) is not otherwise provided for. See, e.g., B-330862, Sept. 5, 2019; GAO, *Principles of Federal Appropriations Law*, Ch. 3, § B (4th ed. rev. 2017) GAO-17-797SP (Washington, D.C.: Sept. 2017). At issue here is step 1.<sup>10</sup>

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*national SARS-CoV-2 testing strategies and diagnostic capacities* (June 25, 2021), available at <https://apps.who.int/iris/rest/bitstreams/1352897/retrieve> (last visited Jan. 21, 2022).

<sup>8</sup> Exec. Order No. 13,991, *Protecting the Federal Workforce and Requiring Mask-Wearing*, 86 Fed. Reg. 7045 (Jan. 20, 2021).

<sup>9</sup> Legal Review Memorandum, at 2.

<sup>10</sup> We only address step 1 of the necessary expense analysis because steps 2 and 3 are not at issue. No law prohibits the use of DOD appropriations to purchase COVID-19 self-test kits, and the Center only has one appropriation available for its expenses so the kits could not otherwise be provided for. See E-mail from Attorney-

The Center seeks to use its appropriation<sup>11</sup> to purchase COVID-19 self-test kits for use on premises.<sup>12</sup> This appropriation is available for “expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law.” Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. C, title II, 134 Stat. 1182, 1289 (Dec. 27, 2020). We have long held that where funds are available for a broad purpose, such as “operation and maintenance,” the purpose of the appropriation is informed by the underlying program or organic legislation. See, e.g., B-323365, Aug. 6, 2014. Thus, the Center’s appropriation is available for any expenses necessary to carry out the Center’s statutory responsibilities and we analyze the proposed expense in that framework.

The Center “serves as a forum for bilateral and multilateral research, communication, exchange of ideas, and training involving military and civilian participants.”<sup>13</sup> To facilitate this mission, the Center hosts courses, workshops, and other engagements that are attended by security practitioners from throughout the Indo-Pacific region.<sup>14</sup> Hosting events during a pandemic requires various safety measures, informed by local and national guidelines, including testing of some individuals, to prevent the spread of the disease.<sup>15</sup> Providing self-test kits to

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Adviser, Daniel K. Inouye Asia-Pacific Center for Security Studies, to Staff Attorney, GAO (Nov. 2, 2021).

<sup>11</sup> The Center is funded by the annual Department of Defense, Operation and Maintenance, Defense-Wide appropriation. See E-mail from Attorney-Adviser, Daniel K. Inouye Asia-Pacific Center for Security Studies, to Staff Attorney, GAO (Nov. 2, 2021). The Center is currently operating with funds appropriated by section 101 of the Continuing Appropriations Act, 2022, as amended by the Further Extending Government Funding Act. See Pub. L. No. 117-43, div. A, 135 Stat. 344-45 (Sept. 30, 2021); Pub. L. No. 117-70, div. A, 135 Stat. 1499–1500 (Dec. 3, 2021).

<sup>12</sup> Request Letter.

<sup>13</sup> 10 U.S.C. § 342.

<sup>14</sup> Request Letter.

<sup>15</sup> Regarding event planning, the CDC recommends physical distancing, mask wearing, vaccination and/or testing for unvaccinated individuals as prevention strategies. See CDC, *Event planning FAQs* (Sept. 24, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/event-planners-and-attendees-faq.html> (last visited Jan. 21, 2022). Additionally, the counties of Hawaii each have guidelines for social gatherings and other events within their counties. See, e.g., The City and County of Honolulu, *Safe Access O’ahu* (Nov. 23, 2021), available at <https://www.oneoahu.org/safe-access-oahu> (last visited Jan. 21, 2022) (requiring employees, contractors, and customers of certain businesses to show proof of full vaccination or a recent negative COVID-19 test result).

individuals on the premises will enable the Center to continue the events it was created by Congress to host.

We have previously explained that agencies have a responsibility to provide a safe workplace environment. See, e.g., B-302993, June 25, 2004. More specifically, we have held that when an agency determines that there is a threat to the safety of its employees and premises, appropriations are available to purchase equipment or services that are considered an “appropriate, reasonable, and responsible response to such threat”. See B-301152, May 28, 2003. For example, in response to the threat of terrorist attacks on government facilities, our Office found that GAO could purchase protective hoods for use in the event of an attack involving explosives or chemical or biological weapons. See *id.*

In the midst of a global pandemic, COVID-19 self-test kits are one means of maintaining a safe workplace environment. The spread of COVID-19 remains a threat to individual health and federal workplace functionality, and to minimize its spread, agencies may need to limit entry on their premises to those who do not carry the virus. The use of self-test kits is a reasonable way to identify those infected with COVID-19 before they enter federal premises.

To determine whether the Center’s appropriations are available to purchase COVID-19 self-test kits, we also must consider whether they are personal expenses. We have long held that appropriations are not available for personal expenses, such as employee medical expenses, absent specific statutory authority. B-323449, Aug. 14, 2012; B-253159, Nov. 22, 1993. However, an agency may use appropriated funds for an expense that is ordinarily understood to be personal in nature where such expense primarily benefits the government. B-329479, Dec. 2, 2020. For example, our Office found that the Weather Bureau could purchase X-rays for personnel being assigned to its Alaska office to ensure that employees would not spread tuberculosis to the local population, notwithstanding the collateral benefit for personnel to receive such diagnosis at the government’s expense. B-108693, Apr. 8, 1952.

Here, while employees and non-employees will surely receive the benefit of learning whether they have COVID-19, the primary beneficiary of the test kits is the Center. Given that the use of COVID-19 self-test kits will allow the Center to facilitate courses, workshops, and other engagements in support of its statutory mission and maintain a safe workplace environment, the Center may use its appropriated funds to purchase COVID-19 self-test kits for use by individuals on its premises.

## CONCLUSION

The Daniel K. Inouye Asia-Pacific Center for Security Studies may use its appropriated funds to purchase COVID-19 self-test kits where the use of the test kits

will allow the Center to safely carry out engagements in support of its statutory mission.

A handwritten signature in black ink, reading "Edda Emmanuelli Perez". The signature is written in a cursive, flowing style.

Edda Emmanuelli Perez  
General Counsel