



Decision

Matter of. Appraisal Subcommittee of the Federal Financial Institutions Examination Council-Funds Appropriated or Nonappropriated

File: B-279866

Date: September 11, 1998

DIGEST

1. The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council is an appropriated fund activity even though it has repaid the \$5 million "seed money" received as start-up funding from the Treasury. ASC receives registry fees that state agencies collect from certified and licensed appraisers, 12 U.S.C. § 3337, and uses amounts received for authorized activities. 12 U.S.C. § 3338(b). Statutes that authorize the collection and deposit of fees into a particular fund, and make the fund available for expenditure for a specified purpose without further action by Congress, create a continuing or permanent appropriation.
2. An appropriation includes "not only funds appropriated by the Congress out of the Treasury, but also funds a statute specifically makes available for obligation or expenditure by a Government entity." B-217578, Oct. 16, 1986. The only exception to this rule is if Congress specifically defines by statute an agency's funds to be nonappropriated funds. *Id.*

DECISION

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council has requested our decision on whether the ASC is an appropriated or nonappropriated fund activity. As explained below, we conclude that the ASC is an appropriated fund activity.

Background

As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Congress established the ASC within the Federal Financial Institutions Examination Council. 12 U.S.C. § 3310. The ASC consists of the designees of the heads of the Federal financial institutions regulatory agencies, which are the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration Board. 12 U.S.C. §§ 3310, 3350. Shortly after FIRREA became law, Congress added the

Secretary of the Department of Housing and Urban Development, or his designee, to the ASC. 12 U.S.C. § 1708(e).

The purpose of the legislation establishing the ASC is to "provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision." 12 U.S.C. § 3331. To accomplish these objectives, ASC (1) monitors state established requirements for the certification and licensing of individuals qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; (2) monitors appraisal standards of the federal financial institutions regulatory agencies; and (3) maintains a national registry of state certified and licensed appraisers eligible to perform appraisals in federally related transactions. 12 U.S.C. § 3332.

FIRREA provided ASC's startup funding by directing the Secretary of the Treasury to pay ASC \$5 million on August 9, 1989. 12 U.S.C. § 3337(a). Thereafter, ASC's funding would come from registry fees paid by certified and licensed appraisers.¹ Each state appraisers licensing and certifying agency is required to transmit to ASC a roster of individuals who have received a state certification or license. 12 U.S.C. § 3338(a)(1). For each certified or licensed appraiser who performs or seeks to perform appraisals in federally related transactions, the state agency collects an annual registry fee of not more than \$25 and transmits the fees to ASC on an annual basis. 12 U.S.C. § 3338(a)(2). ASC may use these funds to maintain a registry of appraisers eligible to perform appraisals in connection with federally related transactions. 12 U.S.C. § 3338(b)(1994).

In 1996, Congress amended FIRREA to require the ASC to repay the \$5 million no later than September 30, 1998. 12 U.S.C. § 3337(c)(Supp. 111996). The ASC has repaid the startup funds.

¹The Council may Provide supplemental funding to ASC; otherwise, ASC may receive additional funds only if authorized and appropriated by law. 12 U.S.C. § 3337(b).

Analysis

The issue is whether the ASC is an appropriated or non-appropriated fund agency. The issue is significant because if the ASC is an appropriated fund agency, it must conform its operations and practices to those statutes and regulations that govern the obligation and expenditure of appropriated funds. See, e.g., 31 U.S.C. § 1345 (1998); 48 C.F.R. § 2.101 (1998). Conversely, if Congress defines agency funds to be nonappropriated funds, the restrictions and limitations applicable to appropriated funds do not attach. B-217578, October 16, 1986.

Statutes that authorize the collection and deposit of fees into a particular fund, and make the fund available for expenditure without further action by Congress, create a continuing or permanent appropriation. 63 Comp. Gen. 285, 287 (1984); 57 Comp. Gen. 311, 313 (1978); 50 Comp. Gen. 323, 324 (1970); 35 Comp. Gen. 615, 618 (1956). The basic premise is that a federal agency lacking specific authority to use moneys collected for the benefit of the United States is statutorily required to deposit collections into the general fund of the Treasury as miscellaneous receipts. 31 U.S.C. § 3302(b). Accordingly, legislation that directs an agency to collect monies and use them for specific purposes effectively creates a continuous appropriation of funds for those purposes. E.g., United Biscuit Company of America v. Wirtz, 359 F.2d 206, 212 (D.C. Cir. 1965).

We have previously considered the status of entities that, like ASC, received initial funding from the Treasury and subsequent funding from fees. For example, the Supplemental Appropriation Act, FY 1952, created the Farm Labor Supply Revolving Fund to finance the Department of Labor's administration of a statute governing importation of Mexican labor into the United States. The Supplemental Appropriation Act appropriated an initial \$1 million to the Revolving Fund, to be repaid to the Treasury. Thereafter, the working capital for the Revolving Fund was funded by collecting fees from growers using Mexican labor. In 35 Comp. Gen. 436 (1956), the Comptroller General decided that the fees collected from the growers constituted appropriated funds, stating:

The payments received from the growers who make use of the workers represent moneys collected for the use of the United States and in the absence of specific statutory authority would be required to be deposited into the general fund of the Treasury's miscellaneous receipts In this case, the specific statutory authority to use the moneys is supplied by the ... legislation establishing the Fund. The result of such legislation is to continuously appropriate such collections for the authorized expenditures for which the Fund is available.


Id. at 438.

In response to assertions that funds not annually appropriated by Congress do not constitute appropriated funds, we have concluded that an appropriation includes "not only funds appropriated by the Congress out of the Treasury, but also other funds specifically made available by statute for obligation or expenditure by a Government entity." B-217578, Oct. 16, 1986. Congressional statements that using fees to fund an entity's operations funded by fees "Will not cost the taxpayers a single penny nor result in any appropriations by Congress," 50 Comp. Gen. 545, 546 (1971) (quoting H.R. Rep. No. 91-331 (1970)), only describe the source of funds as other than the general fund of the Treasury. B-210657, May 25, 1984. That Congress derives the funds from some source other than the Treasury does not detract from their treatment as appropriated funds for purposes of statutory restrictions and limitations on the use of such funds. Id.

In this case, FIRREA establishes a funding mechanism for ASC with no indication in the law or its legislative history that Congress viewed the registry funds as nonappropriated funds. That ASC has repaid the \$5 million advanced from the Treasury or that Congress has authorized the appropriation of additional funds does not affect our view.

Conclusion

Congress authorized ASC to collect fees and use them for a specified purpose without the need for further Congressional action each fiscal year. Congress did not define the fees ASC collects as nonappropriated funds. Consistent with our position that statutes that authorize the collection and deposit of fees into a particular fund and make the fund available for expenditure for a specified purpose create a continuing or permanent appropriation, the ASC is an appropriated activity.


for Comptroller General
of the United States