



Comptroller General
of the United States

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The Honorable Dennis DeConcini
Chairman, Subcommittee on Treasury,
Postal Service, and General Government
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

This is in response to your request for our opinion concerning the scope of section 103 of the Treasury, Postal Service, and General Government Appropriations Act, 1990 (Treasury Appropriations Act), Pub. L. No. 101-136, 103 Stat. 783. Specifically, you asked whether the restrictions on the transfer of funds contained in section 103 prohibited the Treasury Secretary from transferring \$1.6 million from the Internal Revenue Service (IRS) to the Treasury Office of Inspector General (OIG) under authority of the Inspector General Act Amendments of 1988 (IG Act Amendments), Pub. L. No. 100-504, 102 Stat. 2515. In our opinion, the restrictions on the transfer of funds contained in section 103 apply only to transfer authority contained in that section. As such, they do not apply to funds transferred under authority of the IG Act Amendments. Therefore, the Treasury Secretary properly effected the transfer of funds in question.

BACKGROUND

Your staff has advised us that the Treasury Secretary transferred to OIG the function of conducting certain investigations within the Internal Revenue Service (IRS) and also transferred \$1.6 million to perform that function. We are asked whether the Secretary had authority to effect the transfer of funds since the amount transferred exceeded 2 percent of OIG's appropriation and section 103 restricts transfers to no more than 2 percent of any appropriation to the Department of the Treasury.

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S. Rep. No. 406, 99th Cong., 2d Sess. 4 (1986).

The second sentence of section 103 requires advance approval by the Committees on Appropriations before a transfer and stipulates that in making transfers Treasury may not increase or decrease any appropriation by more than 2 percent. However, we do not believe that these restrictions apply to the transfer of funds by Treasury under any statutory authority. The fact that this sentence begins with "However" and refers to "such appropriations" suggests that it is referring back to the first sentence and thus is no more than a limitation on the transfer authority contained in the first sentence. We see nothing either in the language of the provision or the legislative history of its predecessor provisions to suggest that the Congress intended to restrict Treasury's transfer authority contained in other laws. Therefore, we conclude that the restrictions contained in the second sentence of section 103 apply only to the limited transfer authority contained in section 103.

Since the restrictions in section 103 apply only to transfer authority granted by section 103, the Secretary may transfer funds without regard to those restrictions if he is otherwise authorized to do so. Under the IG Act Amendments of 1988, the Treasury Secretary may transfer to OIG certain functions that he determines are properly related to the functions of OIG. 5 U.S.C. App. § 9(a)(2). Under the statute any transfer of function also effects the transfer of the resources available to perform such functions. 5 U.S.C. App. § 9(b). Therefore, the Secretary had independent authority under the IG Act Amendments to effect the transfer of funds and the transfer was proper.

A member of the Subcommittee staff requested that in the event we determined that section 103 did not apply to the transfer in question, we suggest language to make section 103 generally applicable to Treasury's authority to transfer funds. To make the restrictions in section 103 applicable to transfer authority contained in other laws, the Committee should delete "However, no such appropriation shall be increased or decreased" from the beginning of the second sentence of section 103 and substitute the following:

"Notwithstanding any authority to transfer funds between appropriations contained in this or any other Act, no transfer may increase or decrease any appropriation in this Act"