



MEMORANDUM

April 15, 2015

To: Senate Committee on the Judiciary
Attention: Stephen Tausend

From: Edward C. Liu, Legislative Attorney, x7-9166
Jon O. Shimabukuro, Legislative Attorney, x7-7990

Subject: Analysis of S.Amdt. 1120 to S. 178

This memorandum responds on an expedited basis to your request for an analysis of specific questions you have posed regarding a draft amendment denoted “ALB15639” which appears to be identical to S.Amdt. 1120 to S. 178. Your questions have been reproduced below verbatim followed by our responses.

“1. Does the text of ALB15639 require all special assessments to be deposited in the General Treasury Fund?”

Yes. Section 3302(b) of Title 31 of the United States Code, also known as the miscellaneous receipts statute, requires that all money received for the federal government must be deposited in the General Fund of the Treasury unless disposition of the receipts is otherwise specified by law. S. 178, as amended by S.Amdt. 1120 does not appear to specify a different treatment for the assessments received.

The new § 3014(d) created by S.Amdt. 1120 would specify that “consistent with [the miscellaneous receipts statute], there shall be transferred to the [Domestic Trafficking Victims’] Fund from the General Fund of the Treasury an amount equal to the amount of the assessments collected under this section, which shall remain available until expended.”¹ The transfer of funds from the General Fund does not affect the disposition of the assessments in a way that would supersede the miscellaneous receipts statute, though the end result for the respective balances of the General Fund and the Domestic Trafficking Victims’ Fund appears to be mathematically equal to directly depositing the assessments into the Domestic Trafficking Victims’ Fund. The conclusion that the assessments are deposited into the General Fund is reinforced by the clause requiring that the transfer occur “consistent with” the miscellaneous receipts statute.²

¹ The word “which” in this sentence presumably refers to the amounts transferred from the General Fund, and not the assessments collected under § 3014.

² If the assessments were deposited directly into the Domestic Victims’ Trafficking Fund, that would be an exception to and (continued...)

“2. Once the special assessments in ALB15369 are deposited into the General Treasury Fund, would they be classified as federal funds?”

Yes, amounts in the General Fund are considered “federal funds” by the Office of Management and Budget (“OMB”). In the *Analytical Perspectives* volume of the *Budget for FY2016*, OMB provides background information on budget accounts. This information would seem to be instructive for determining how funds, *i.e.*, amounts, in the Treasury account will be classified. OMB observes:

When money is received by the federal government, it is credited to a budget account, All budget accounts belong to one of two groups of funds: federal funds and trust funds. . . . *The federal funds group includes the “general fund,” the largest fund in the government used for the general purposes of government* and special funds and revolving funds, both of which receive dedicated collections for spending on specific purposes. Where the law requires that federal fund collections be dedicated to a particular program, the collections and associated disbursements are recorded in special fund receipt and expenditure accounts. . . . Money in a special fund must be appropriated before it can be obligated and spent. The majority of special fund collections are derived from the government’s power to impose taxes or fines, or otherwise compel payment.³

“3. Do precedents exist for applying the Hyde amendment to mandatory spending from the General Treasury Fund?”

Yes. Mandatory spending can be generally defined as federal spending which is controlled by laws other than appropriations acts.⁴ In recent years the Hyde Amendment has included a clause extending its scope to trust funds to which money was appropriated in that same annual appropriations act. For example, the consolidated appropriations act for FY2015 includes a Hyde Amendment with this clause,⁵ and also appropriates funds from the General Fund to the Federal Hospital Insurance Trust Fund.⁶ The Federal Hospital Insurance Trust Fund is used to pay for services provided to Medicare beneficiaries under Part A

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arguably inconsistent with, the miscellaneous receipts statute.

³ Office of Management and Budget, *Budget of the U.S. Government: Analytical Perspectives 2016*, 373 (2015) (emphasis added).

⁴ CRS Report RL33074, *Mandatory Spending Since 1962*, by Mindy R. Levit, D. Andrew Austin, and Jeffrey M. Stupak, at 2. See also Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, at 66 (Sept. 2005).

⁵ P.L. 113-235, div. G, Title V, § 506(a) (“None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.”) (emphasis added). Whether any trust fund money has been used for abortions is not clear. The Hyde Amendment was intended to limit the use of Medicaid dollars for abortion. *Harris v. McRae*, 448 U.S. 297, 302 (“Since September 1976, Congress has prohibited -- either by an amendment to the annual appropriations bill for the Department of Health, Education, and Welfare or by a joint resolution -- the use of any federal funds to reimburse the cost of abortions under the Medicaid program except under certain specified circumstances.”).

⁶ Aside from annual appropriations, the Hospital Insurance Trust Fund also receives an appropriation from amounts in the Treasury not otherwise appropriated, 100% of certain payroll taxes. 42 U.S.C. § 1395i(a).

of the program. Because these payments from the Federal Hospital Insurance Trust Fund are controlled by the Social Security Act and are considered to be mandatory spending, this would appear to constitute an example of mandatory spending that was subject to the versions of the Hyde Amendment.

“4. Is not the language in Section 221(c) of H.R. 2 (Hyde language in House-passed SGR legislation) attached to mandatory spending from the General Treasury Fund ?”

Yes. Section 221(a) of H.R. 2 amends § 10503 of the Patient Protection and Affordable Care Act (ACA) which appropriates funds to the Community Health Center Fund (CHC Fund) for certain fiscal years, out of any monies in the Treasury not otherwise appropriated.⁷ Section 221 extends the funding provided in § 10503 for fiscal years 2016 and 2017. Pursuant to § 10503, amounts in the CHC Fund are available until expended, and are to be used by the Secretary to increase funding of community health centers and the National Health Service Corps.⁸ Subsection 221(c) of H.R. 2 further provides that:

Amounts appropriated pursuant to this section for fiscal year 2016 and fiscal year 2017 are subject to the requirements contained in Public Law 113-235 for funds for programs authorized under sections 330 through 340 of the Public Health Service Act.

On its face, this restriction would appear to apply to the amounts appropriated to the CHC Fund for fiscal years 2016 and 2017. The spending of funds appropriated for those fiscal years would appear to be controlled by § 10503 of ACA, and would not appear to be controlled by an appropriations act.⁹ Therefore, spending from the CHC Fund would appear to be classified as mandatory spending subject to the restriction in subsection 221(c) of H.R. 2.

“5. Is the language on page 4, lines 8-14 of ALB15639 (Hyde language) also attached to mandatory spending from the General Treasury Fund”

Yes. The new 18 U.S.C. § 3014(e)(3), as added by S.Amdt. 1120, states that:

Amounts transferred from the [Domestic Trafficking Victims’] Fund pursuant to this section for each of fiscal years 2016 through 2019 are subject to the requirements contained in Public Law 113-235 for funds for programs authorized under sections 330 through 340 of the Public Health Service Act.

S.Amdt. 1120 further provides that amounts in the Domestic Trafficking Victims’ Fund shall be used by the Attorney General, in coordination with the Secretary of Health and Human Services, to award grants or enhance victims’ programming, “without further appropriation.” This provision is found in an authorizing measure which amends Title 18 of the United States Code, and not an appropriations act.

⁷ 42 U.S.C. § 254b-2(b)(1)(E), (2)(E).

⁸ 42 U.S.C. § 254b-2(d), (e).

⁹ *Id.*

Therefore, using the same definition of mandatory spending as provided above, the Domestic Trafficking Victims' Fund would appear to be mandatory spending that is subject to the restrictions in the new 18 U.S.C. § 3014(e)(3) that would be added by S.Amdt. 1120.