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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Consumer Product Safety Commission—Purchase of Gift Cards

File: B-323122

Date: August 24, 2012

DIGEST

The Consumer Product Safety Commission's (CPSC) appropriated funds are not available to purchase and distribute gift cards as an incentive to join the Neighborhood Safety Network (NSN). CPSC has not established that the distribution of gift cards is essential to achieve a specific CPSC statutory responsibility. Further, under the facts considered here, CPSC may not direct its contractor to use contract funds to purchase gift cards for distribution as an incentive to increase NSN membership.

DECISION

The General Counsel of the Consumer Product Safety Commission (CPSC) requests a decision under 31 U.S.C. § 3529(a) regarding whether CPSC may use appropriated funds to purchase gift cards that it would give to members of the public who join CPSC's Neighborhood Safety Network (NSN). Letter from General Counsel, CPSC, to General Counsel, GAO, Jan. 20, 2012 (Request Letter). The General Counsel asks, alternatively, whether CPSC may allow its contractor to use contract funds to give away gift cards. As explained below, the gifts cards are in the nature of personal gifts and are not necessary to further a statutorily-established CPSC requirement. Accordingly, CPSC's appropriation is not available for this purpose. For similar reasons, CPSC may not direct its contractor to purchase and distribute gift cards.

Our practice when issuing decisions and opinions is to obtain the views of the relevant agencies to establish a factual record and to establish the agencies' legal positions 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/products/GAO-06-1064SP. The record in this case consists of the Request Letter, CPSC's response to a letter from GAO seeking further information relevant to this matter, and the record of a telephone

conversation between GAO and CPSC staff members. Letter from Attorney, CPSC, to General Counsel, GAO, Mar. 14, 2012 (Response Letter); Telephone Conversation between Attorney, CPSC, and Senior Attorney, GAO (Apr. 4, 2012) (Telephone Conversation).

BACKGROUND

CPSC's statutory mission is to protect the public from unreasonable risks of serious injury or death from consumer products under the agency's jurisdiction. 15 U.S.C. § 2051(b); Request Letter, at 1. To further this mission, CPSC has launched the NSN, a project designed to encourage and support individuals and organizations that wish to distribute product safety information to what CPSC considers "hard to reach" populations, such as the elderly, low-income families, and some minority groups. *Id.* See also "About the Neighborhood Safety Network," at <http://www.cpsc.gov/nsn/about.html> (last visited August 7, 2012). The NSN website provides the public with free access to product safety posters, publications, checklist, and tools that can be downloaded and used to create a neighborhood safety program. Request Letter, at 1. The goal of the project is to have individuals and organizations "become partners in [CPSC's] campaign to share lifesaving safety information with consumers who may not be aware of the many hazards that exist in and around the home." "Neighborhood Safety Network Database Signup Form" at <http://www.cpsc.gov/nsn/signup.html> (last visited August 7, 2012).

Individuals and organizations may elect to become a member of NSN free of charge by submitting, through the NSN website, their contact information and information regarding the population they wish to serve in their communities (elderly, low-income, etc.). Request Letter, at 1. Only NSN members receive biweekly electronic newsletters with current product safety information. Response Letter, at 1. While the newsletters consist largely of information already available to the public on CPSC's website, according to CPSC, they "are created in order to make it easier for the members to use to develop their own communication vehicles for their communities." *Id.*

In September 2011, CPSC engaged a contractor to develop and implement a "membership drive" to increase membership in NSN. Request Letter, at 1. The contract provides that the contractor, among other things, "shall carry out a campaign to increase the visibility of NSN by signing up to 3,000 . . . service providers, associations, and organizations for the Network." Contract between CPSC and Stratacomm LLC, dated September 29, 2011. CPSC proposes to purchase and distribute \$5.00 gift cards as an incentive to join NSN. Request Letter, at 1. CPSC would purchase the cards directly or, alternatively, ask the contractor to use contract funds to purchase the cards. *Id.* at 1–2. CPSC believes that offering the gift cards as an incentive will significantly increase the number of individuals who join NSN during the membership drive. *Id.* CPSC proposes to purchase up to 2,000 gift cards and charge the cost of the cards to its annual lump sum appropriation for

salaries and expenses, which is available for the “necessary expenses” of CPSC.¹
Id.

ANALYSIS

At issue here is the use of appropriated funds to pay for an item that is ordinarily considered to be a personal gift. Appropriated funds generally are not available for personal items. Because of the clear potential for abuse, we find exceptions to the general rule only rarely. See, e.g., B-318386, Aug. 12, 2009; B-310981, Jan. 25, 2008; B-309604, Oct. 10, 2007; B-309715, Sept. 25, 2007. We recognize that, occasionally, some gift items in some contexts may advance legitimate agency goals and policies as opposed to simply attracting attention to the agency and its programs. Thus, we have held that appropriated funds are available to purchase and distribute personal items where an agency has demonstrated that the gift item will directly advance an agency’s statutory requirement. See, e.g., B-318386, B-310981. In such a circumstance, the benefit accruing to the government outweighs the personal nature of the expense, and the expenditure is, therefore, considered a necessary expense of the agency.

In B-310981, we concluded that the National Telecommunications and Information Administration (NTIA) could use appropriated funds to purchase gift cards as an incentive to encourage individuals to complete and return a survey. As part of the United States’ 2009 transition from analog to digital television broadcasts, NTIA was directed by statute to execute a program to provide households needing to purchase digital-to-analog converter boxes with coupons, redeemable at electronics retailers, as a subsidy towards the purchase. Before consumers began redeeming coupons on a large scale, NTIA conducted a pilot program to test its coupon distribution and redemption program processes and systems to ensure smooth distribution and redemption. NTIA asked participants in the pilot program to fill out a survey regarding their experience, and NTIA planned to use information gleaned from the surveys to address problems with the coupon program before launching it nationwide. In order to ensure timely responses and a response rate sufficiently high to obtain meaningful information from the pilot program, NTIA proposed to offer as an incentive a gift card to each participant who returned a completed survey.

We agreed with NTIA that identifying glitches or failures through consumer feedback was essential to the success of the coupon program NTIA was statutorily required to administer, and that the use of gift cards was an appropriate incentive to obtain information essential to NTIA’s success in satisfying a statutory objective—the execution of an effective and efficient program for distributing and redeeming

¹ See Financial Services and General Government Appropriations Act, 2012, Pub. L. No. 112-74, div. C, title V, 125 Stat. 786, 907 (Dec. 23, 2011).

coupons for converter boxes. Therefore, we did not object to the purchase of gift cards in that circumstance. *Id.*

Similarly, in B-318386, we did not object to the U.S. Fish and Wildlife Service's (FWS) proposed use of appropriated funds to purchase and distribute caps and other items to hunters at public outreach meetings where agency staff spoke about the conservation of an endangered species, the eider. These gift items contained images of the protected eider and general conservation messages. FWS had previously attempted numerous, more traditional outreach activities to educate communities, yet the population of the eiders remained in decline. In our view, FWS, in response to the effects of hunting on the population of threatened eiders and having had limited success with more traditional means of educating hunters, had identified an approach strategically designed to reach and educate a particular community of hunters in furtherance of its eider conservation plan. *Id.* at 4–5.

By contrast, in 57 Comp. Gen. 385, the Environmental Protection Agency (EPA) used its appropriation to purchase as gifts to the public plastic novelty garbage cans filled with candy shaped as items of solid waste, such as tin cans, tires, and shoes. EPA gave the novelty garbage cans to attendees who visited EPA's exhibit at an international waste equipment and technology exhibition. The gift was an effort to attract attendees to EPA's exhibit where they could receive information on requirements and implementation of recent environmental legislation. While we did not question EPA's assertion that the garbage cans induced a great many people to visit the EPA booth, we concluded that there was nothing to show that without the distribution of the novelties, the EPA would have been unable to reach its intended audience and disseminate its informational brochures.

Offering a monetary incentive for individuals who agree to receive future information from an agency, as CPSC proposes doing here, is not a proper use of an agency's appropriated funds.² We have consistently held that, even where the agency's overall objective is laudable, an agency may not purchase personal items with appropriated funds unless they are essential, as opposed to preferable, to the achievement of an authorized purpose. See 70 Comp. Gen. 248, 251 (1991). In attempting to attract "hard to reach" groups to CPSC's safety message by issuing gift cards, NSN may further CPSC's overall mission. Nevertheless, CPSC has not established that the issuance of gift cards is essential to, or will directly result in, an increased flow of safety information to "hard to reach" populations. Compare 70 Comp. Gen. 248 (cash prizes to individuals providing information critical to achieving statutorily required research) with 53 Comp. Gen. 770 (1974) (distribution of ashtrays with the agency seal at agency-sponsored conference to attract attention to

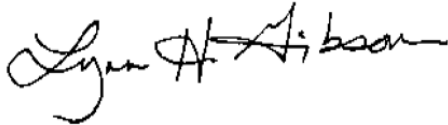
² CPSC asks whether its purchase of the gift cards would be permissible if individuals were required to complete a survey in order to receive the gift card and become NSN members. Request Letter at 2. We cannot answer this question without knowing the purpose of the survey and the information it would elicit.

the agency's mission). In fact, CPSC has no mechanism in place for assessing how NSN members distribute the information they receive from the NSN newsletters. Telephone Conversation between Attorney, CPSC, and Senior Attorney, GAO (Apr. 4, 2012). In sum, the facts presented here do not justify an exception to the general rule that appropriated funds may not be issued for personal gifts absent statutory authority.

CPSC has asked also whether it may allow its contractor to use contract funds to purchase the gift cards. Request Letter, at 1. As a general rule, an agency cannot direct a contractor to undertake activities on behalf of the agency that the agency itself could not undertake. See 68 Comp. Gen. 226 (1989); 62 Comp. Gen. 531 (1983). Consequently, under the facts considered here, CPSC may not enter into a contract directing its contractor to purchase and distribute gift cards.

CONCLUSION

CPSC's appropriation is not available for CPSC's purchase of gift cards for distribution as an incentive to join NSN. In this case, CPSC has not established that the distribution of gift cards is essential to achieve a specific CPSC statutory responsibility. Further, CPSC may not direct its contractor to use contract funds to purchase and distribute gift cards.

A handwritten signature in black ink, appearing to read "Lynn H. Gibson". The signature is fluid and cursive, with the first name "Lynn" being the most prominent.

Lynn H. Gibson
General Counsel