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Comptroller General
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United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Consumer Product Safety Commission—Period of Availability and Permissible Uses of Grant Program Appropriations

File: B-319734

Date: July 26, 2010

DIGEST

The fiscal year 2009 salaries and expenses appropriation for the Consumer Product Safety Commission (CPSC) made \$2 million available until the end of fiscal year 2010 specifically for a grant program established by the Virginia Graeme Baker Pool and Spa Safety Act (Safety Act). The Safety Act authorized appropriations for the program to remain available until expended. We found that the \$2 million appropriation is available for obligation for the expenses of this program only until September 30, 2010, as expressly stated in the appropriation act. In addition, the appropriation act requires that these funds be used solely for the Safety Act grant program, and thus funds are not available for any other CPSC programs or activities.

DECISION

This responds to a request for decision from the General Counsel of the U.S. Consumer Product Safety Commission (CPSC) on the period of availability of appropriations made to CPSC in the Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 524, 656 (Mar. 11, 2009), to carry out a CPSC grant program authorized under the Virginia Graeme Baker Pool and Spa Safety Act (Safety Act), Pub. L. No. 110-140, title XIV, 121 Stat. 1492, 1794 (Dec. 19, 2007), *codified at* 15 U.S.C. §§ 8001–8007, and the purposes for which those funds may be used. Letter from General Counsel, CPSC, to Acting General Counsel, GAO, May 6, 2010 (Request Letter).

In CPSC's fiscal year 2009 Salaries and Expenses appropriations, Congress provided that \$2 million would be available until September 30, 2010, for the Safety Act grant program. In 2007, in the Safety Act, Congress had authorized the \$2 million appropriation; however, Congress had also authorized CPSC to retain unexpended and unobligated balances at the end of fiscal year 2010 for

use for enforcement activities. The General Counsel asks two questions: (1) How long is the \$2 million available, given the language in the authorization act and the appropriation act? (2) Are the funds available solely for carrying out the Safety Act grant program or can any remaining funds be credited to the CPSC's general Salaries and Expenses appropriations and used for CPSC enforcement?

For the reasons stated below, we conclude that the \$2 million is available for obligation for the expenses of the Safety Act grant program until September 30, 2010, as expressly stated in the appropriation. This \$2 million must be used solely for the purposes of the Safety Act grant program; it is not available for any other CPSC programs or activities.

Our practice when issuing decisions is to obtain the views of the relevant agency to establish a factual record and to establish the agency's legal position 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/legal/resources.html. The General Counsel included the relevant factual material and CPSC's legal views in her request for a decision.

BACKGROUND

The Safety Act required CPSC to establish rules and programs, including a grant program to provide financial assistance to states to improve pool and spa safety through the use of anti-entrapment and other safety devices. 15 U.S.C. §§ 8001–8007. For each of fiscal years 2009 and 2010, the act authorized the appropriation of \$2 million, to remain available until expended, to carry out the Safety Act grant program. 15 U.S.C. § 8004(e). Further, the act provided that any unexpended and unobligated amounts at the end of fiscal year 2010 shall be retained by the Commission and credited to the appropriations account that funds CPSC enforcement activities. *Id.*

Subsequently, on March 11, 2009, Congress enacted a multiyear appropriation of \$2 million for the grant program. The \$2 million was enacted as part of CPSC's fiscal year 2009 Salaries and Expenses appropriation. Congress provided that of the lump sum for Salaries and Expenses, "\$2,000,000 shall remain available for obligation until September 30, 2010 to implement the [Safety Act] grant program as provided by section 1405 of Public Law 110-140 (15 U.S.C. 8004)." Pub. L. No. 111-8, 123 Stat. at 656.

DISCUSSION

CPSC raises both a time question—whether CPSC may use the \$2 million beyond September 30, 2010, and a purpose question—whether the funds are available, after September 30, 2010, for carrying out CPSC programs and activities other than the Safety Act grant program. At issue is the intersection of the Safety Act's authorization of appropriations and the fiscal year 2009 appropriations act.

Period of Availability

As a general matter, all appropriations in annual appropriations acts, such as the CPSC Salaries and Expenses appropriation in the Omnibus Appropriations Act, 2009, are construed to be available for obligation only during the fiscal year for which they were appropriated, unless the act expressly provides otherwise. 31 U.S.C. § 1301(c)(2);¹ B-249087, June 25, 1992. Section 602 of the Omnibus Appropriations Act, 2009, underscores this; it states, “None of the funds appropriated in this Act shall remain available for obligation beyond the current fiscal year [2009], nor may any be transferred to other appropriations, unless expressly so provided herein.” Pub. L. No. 111-8, § 602. In this case, the appropriations act expressly provides that the \$2 million of the annual Salaries and Expenses appropriation shall be available for obligation until September 30, 2010, for the Safety Act grant program.

CPSC, referring to the language in the Safety Act’s authorization of appropriations, asks whether the \$2 million is available for obligation after September 30, 2010. The Safety Act “authorized to be appropriated to the Commission for each of fiscal years 2009 and 2010 \$2,000,000 to carry out this section [the grant program], such sums to remain available until expended.” 15 U.S.C. § 8004(e). It is a fundamental principle of statutory construction that when two laws are in irreconcilable conflict, the later enactment of Congress takes precedence over the earlier. B-247119, Mar. 2, 1992. In this case, the appropriations act, enacted subsequent to the Safety Act, expressly provides that the \$2 million is available “until September 30, 2010.”²

We note that the appropriations act also states that the \$2 million appropriation is available to implement the grant program “as provided by section 1405 of Public Law 110-140 (15 U.S.C. 8004) [Safety Act].” We read that clause as more specifically defining the purpose for which the \$2 million is available. A general cross-reference like this in an annual appropriations act is insufficient to make the appropriation available until expended, notwithstanding the language of the authorization of appropriation, in light of section 602 of the appropriations act. B-249087; 50 Comp. Gen. 857 (1971). In the 1971 decision, referring to language similar to section 602, we found that—

¹ “An appropriation in a regular, annual appropriation law may be construed to be permanent or available continuously only if the appropriation . . . expressly provides that it is available after the fiscal year covered by the law in which it appears.” 31 U.S.C. § 1301(c)(2). *See also* 1 U.S.C. § 105 (“The style and title of all Acts making appropriations for the support of Government shall be as follows: ‘An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year).’”).”

² In addition, the appropriations act is more specific as to the terms and conditions imposed on the availability of the appropriation; an authorization of appropriations act does not appropriate any funds to an agency. 16 Comp. Gen. 1007, 1008 (1937).

“the effect of such language is to require the act making the appropriation to expressly provide (rather than by incorporation by reference) for availability longer than 1 year if the enacting clause is to be overcome as to any specific appropriation contained therein. Otherwise, the use of such language in an appropriation act would appear to serve little if any purpose.”

50 Comp. Gen. at 859–60. Although a one-year appropriation was at issue in the 1971 decision, we see no reason why the result should be different when Congress includes express language in the appropriations act specifying any other fixed period of availability.

Permissible Uses of the \$2 Million Appropriation

The second question CPSC asks is whether the \$2 million appropriation is available only to implement the grant program or whether it may credit remaining amounts to CPSC’s Salaries and Expenses appropriation to be used for enforcement. CPSC notes that the Safety Act provides that amounts “that remain unexpended and unobligated at the end of fiscal year 2010 shall be retained by the Commission and credited to the appropriations account that funds enforcement of the Consumer Product Safety Act.” 15 U.S.C. § 8004(e).

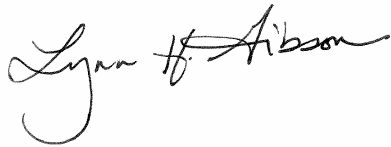
As explained above, the \$2 million appropriation is available only until September 30, 2010. At that point, the appropriation expires and is no longer available for new obligations. *See* B-319349, June 4, 2010. As an expired appropriation, it is “available for recording, adjusting, and liquidating obligations properly chargeable” to that appropriation, in this case, to implement the grant program. 31 U.S.C. § 1553(a). *See* B-318831, Apr. 28, 2010; B-317413, Apr. 24, 2009.

With regard to amounts that CPSC may determine are no longer needed for the grant program, both the purpose statute and the terms of the appropriation prohibit their use for enforcement purposes. The purpose statute, 31 U.S.C. § 1301(a), permits CPSC to obligate funds “only to the objects for which the appropriations were made except as otherwise provided by law.” The appropriation act clearly makes the appropriation available only to implement the grant program. We find no indication elsewhere in the Omnibus Appropriation Act, 2009, making the appropriation available for enforcement or some other purpose. Therefore, consistent with the purpose statute, CPSC may use the \$2 million only for the Safety Act grant program.

Indeed, the language of section 602 of the Omnibus Appropriations Act, 2009, limits the purposes for which the \$2 million may be used with the words: “nor may any be transferred to other appropriations, unless expressly so provided herein.” An appropriation made for specific purposes is not available for related but more extended purposes contained in the authorization act but not included in the appropriation. 19 Comp. Gen. 961 (1940). The language in the appropriations act restricts the use of the appropriation to the Safety Act. As we have said of an

authorizing act's expansive language, "it must give way to the express provisions of the later act which appropriated funds but limited their use." B-24341, Apr. 1, 1942.

Accordingly, the \$2 million appropriation for the Virginia Graeme Baker Pool and Spa grant program will expire on September 30, 2010, and this appropriation may not be obligated to cover the CPSC's enforcement activities.

A handwritten signature in black ink that reads "Lynn H. Gibson". The signature is written in a cursive style with a large initial "L" and a stylized "H".

Lynn H. Gibson
Acting General Counsel