



U.S. CONSUMER PRODUCT SAFETY COMMISSION
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BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

November 19, 2013

Gene Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
Room 7165
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report, as required by 31 U.S.C. § 1351, two violations of the Antideficiency Act (ADA) by the U.S. Consumer Product Safety Commission (CPSC). Two violations of 31 U.S.C. § 1341(a) occurred in the CPSC Salaries and Expenses Account, Treasury Symbols 61-12-0100 and 61-11-0100, during a two-year period in the total amount of \$11,633.21. The violations cover fiscal year FY 2012 (\$7,555.70) and FY 2011 (\$4,077.51); these funds have been fully obligated and expended. The violations resulted in exceeding an appropriation limit on Reception and Representation (R&R) expenses and did not result in a breach of the total Salaries and Expenses appropriation in either year. CPSC received an unqualified audit opinion on our financial statement audit in both FY 2011 and FY 2012.

The CPSC Salaries and Expenses appropriation included a statutory limitation on R&R expenses for FY 2012 and FY 2011. The statutory limitation for FY 2012 was \$4,000 and the statutory limitation for FY 2011 was \$2,000.

In FY 2012, the CPSC's Office of Education, Global Outreach and Small Business Ombudsman (Office) hosted outside stakeholders for several CPSC mission-related meetings. On occasion, the Office used R&R funds to purchase light refreshments for stakeholders and gifts for foreign dignitaries. In some instances, the Office failed to adhere to the R&R funds approval process, to the subsequent transaction reporting process, or both, resulting in inaccurate accounting of the R&R funds in the agency's financial records. As a result, the available R&R fund balance was overstated, which allowed spending from the R&R fund to continue beyond the statutory limitation for FY 2012. The lack of adherence to policies and procedures in both the approval and transaction reporting processes by the Office contributed to the first violation in FY 2012.

In fiscal years 2011 and 2012, the Office also hosted conferences for external stakeholders at which light refreshments were purchased using appropriated funds consistent with the U.S. Government Accountability Office's (GAO) decision B-300826 and GAO's published guidance on the same (<http://www.gao.gov/products/C00478>). These expenditures were supported by agency legal opinions referencing the aforementioned GAO decisions and received proper management approvals at the time the expenses were incurred. These expenditures were charged to the agency's general appropriated funds and were not counted against the R&R statutory limitation in FY 2011 or 2012. However, in the course of investigating the FY 2012 violation caused by lack of adherence to policies and procedures, the CPSC's Office of General Counsel became aware of a legal opinion dated April 5, 2007, issued by the U.S. Department of Justice's Office of Legal Counsel (OLC). The OLC opinion interprets 31 U.S.C. § 1345 as prohibiting the use of appropriated funds to purchase light refreshments, contradicting the GAO decision and guidance upon which the CPSC had relied. The CPSC was unaware of this opinion prior to the ADA investigation.

After consulting with the Office of Management and Budget (OMB), the CPSC determined that the CPSC should follow the OLC opinion. Therefore, the basis upon which appropriated funds were approved and used for light refreshments at meetings in fiscal years 2011 and 2012 was improper. Relying instead upon the OLC opinion, the agency determined that expenses for light refreshments at CPSC hosted conferences for external stakeholders should have been accounted for as R&R expenses subject to the statutory limitation. Upon the agency properly reclassifying the charges in fiscal years 2011 and 2012 as R&R expenses, the FY 2012 ADA violation caused by a lack of adherence to policies and procedures increased, and a subsequent ADA violation was triggered by exceeding the FY 2011 R&R statutory limitation.

An internal investigation revealed that the violations were the result of insufficient awareness of and compliance with agency policies and procedures, errant record keeping, and conflicting legal precedents in the form of contradictory GAO and OLC opinions. No evidence was discovered during the investigation that the individuals involved acted with knowledge or willful intent to violate the law. The responsible employees have separated from the agency, have transferred into new positions within the agency, or have received verbal counseling and training on agency policies and procedures.

The CPSC has taken corrective action to prevent future violations by improving related policies and procedures and training employees on those policies and procedures. Personnel with responsibilities relating to the expenditure of R&R funds or the planning of conferences for external stakeholders have now been made aware of the applicability of the R&R appropriations limit to any appropriated funds used to pay for light refreshments at conferences. The agency has updated its Administrative Control of Funds directive, which is currently under review at OMB, and has established a new R&R policy directive to improve clarity and awareness on the proper use and approval of R&R funds.

Very truly yours,



Inez M. Tenenbaum