G A O
Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Customs and Border Protection—Availability of Appropriations for Credit Monitoring Services

File: B-309604

Date: October 10, 2007

DIGEST

Customs and Border Protection's (CBP) Salaries and Expenses appropriation is not available to pay for credit monitoring services for its employees in the New Orleans area who, as a result of Hurricane Katrina, are, or may become, victims of identity theft. The costs of the services are personal expenses. Without express statutory authority, appropriations are not available to pay personal expenses unless the expenditure primarily benefits the government and the benefit to the employee is incidental. CBP employees individually, not the government, would be the primary beneficiaries of the proposed credit monitoring. Neither government action nor inaction compromised the employees' identities. Government credit cards were not compromised or threatened. The credit monitoring services are part of the employees' overall management of their personal finances.

DECISION

U.S. Customs and Border Protection (CBP) has requested a decision under 31 U.S.C. § 3529 on whether CBP's Salaries and Expenses (S&E) appropriation is available to pay for credit monitoring services for employees in the New Orleans area who are, or may become, victims of identity theft in the wake of the devastation caused by Hurricane Katrina. Letter from Anthony L. Smith, Certifying Officer, CBP, to the Comptroller General of the United States, GAO, May 7, 2007 (Smith Letter). Credit monitoring service costs are personal expenses and, without express statutory authority, are not chargeable to agency appropriations, unless the government is the primary beneficiary of the expenditure. For the reasons explained below, we conclude that CBP's individual employees, not the government, would be the primary beneficiaries of the proposed credit monitoring. Accordingly, CBP's S&E appropriation is not available to pay for credit monitoring services for its employees.

Generally, our practice upon receiving a request for a decision is to obtain the views of the relevant federal agency to establish a factual record and to elicit the agency's legal position in the matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/legal.htm. In this case, the CBP certifying officer, in his request for a decision, provided the facts giving rise to the issue as well as a proposed justification for the use of appropriated funds for credit monitoring services.

BACKGROUND

Following Hurricane Katrina, more than two dozen CBP employees in the New Orleans area have become victims of identity theft. Smith Letter. CBP believes that because of the widespread scope of the problem, "it is certainly possible that additional employees have had their identities compromised and will experience [credit problems] in the near future." *Id.*

CBP would like to assist its employees who are or may become victims of identity theft by purchasing a one-year subscription to a credit monitoring service for the benefit of the affected employees. *Id.* CBP acknowledges that employees will benefit personally, but asserts that the government will benefit as well. *Id.* CBP stated:

> "Employees who are victims of identity theft may be less focused on their jobs and the agency mission since much of their attention may be directed toward rectifying the damage associated with identity theft. In addition, affected employees may need to take significant time off of work in order to resolve outstanding issues related to identity theft."

Id. CBP argues that subscribing to a credit monitoring service for its victimized employees will increase their job performance, reduce their time away from work, minimize disruption to the work environment, and increase employee morale. *Id.*

DISCUSSION

CBP proposes to use its S&E appropriation for this purpose. For fiscal year 2007, CBP received an S&E appropriation of over $5.5 billion "[f]or necessary expenses for enforcement of laws relating to border security, immigration, customs, and agricultural inspections and regulatory activities related to plant and animal imports . . . " Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, title II, 120 Stat. 1355, 1358 (Oct. 4, 2006). An agency may use appropriated funds only for the objects for which the appropriation was made. 31 U.S.C. § 1301(a). Appropriated funds are generally not available for the personal expenses of government employees. B-302548, Aug. 20, 2004.

We have allowed exceptions to the general rule when a particular expenditure for an item that is ordinarily considered to be personal in nature primarily benefits the government, notwithstanding the collateral benefit to the employee. B-302993, June 25, 2004. In cases such as this, the issue presented is the availability of the public's money to supply services that inure to the benefit of individuals. *Id.* We generally resolve this issue by assessing the benefits to the agency from any such expenditure. *Id.* The determining factor is whether, on balance, the agency or the individual receives the primary benefit. *Id.* If the primary beneficiary is the individual, not the agency or the government, the well-established rule is that such expenditure is not an authorized use of appropriated funds. 41 Comp. Gen. 387 (1961); B-259947, Nov. 28, 1995.

For example, in a 2001 decision, we concluded that the United States Geological Survey (USGS) could not use its appropriations to purchase prescription eyeglasses for employees of its Optical Science Laboratory because the expense of prescription eyeglasses is a personal expense. B-283167, Feb. 21, 2001. In that case, the employees performed film inspection, searching for or evaluating objects in fine detail from a near viewing distance and searching for small and subtle defects or abnormalities in the film. We said that "[w]hile the USGS certainly benefits from employees' corrected vision, the primary beneficiary is the employee." In balancing the benefits to the government versus the benefits to the employees, we noted that on the one hand, the government could accomplish its work more expeditiously and satisfactorily because the eyeglasses would allow employees to better perform their assigned tasks. On the other hand, the prescription glasses would be useful only to the individual employees for whom they were prescribed and would be of value to the employees outside of their work for USGS. In our view, while the government certainly received a collateral benefit, the primary beneficiary was the employee.

In this case, CBP employees, not the government, are the primary beneficiaries of the credit monitoring services. Subscribing to a credit monitoring service is a part of an individual's overall management of the individual's personal finances. The expense is in no way related to the purpose of CBP's S&E appropriation. CBP presented no evidence to establish that either government action or inaction compromised the employees' identities, nor is there any indication that government credit cards are compromised as a result of the identity theft. CBP argues that without the services, productivity would suffer because employees who are identity theft victims would be distracted when performing their duties and would be absent from work more than they ordinarily would be. The CBP employees' identity theft concerns are really no different from the concerns that individuals are presented with in the conduct of their personal affairs generally; the resulting distractions are no different from other distractions arising from employees' private lives. We see little, if any, benefit to the government. In the USGS case, there was a direct correlation between corrected vision and work performance; nevertheless, the personal benefits outweighed the benefits to the government. The benefits CBP has asserted in this case are even more attenuated than those found in the USGS case. In our view, the expenses that a government employee incurs in order to manage his or

her finances, such as subscribing to a credit monitoring service to identify the criminal misuse of his or her credit, are personal expenses.

We recognize that in this case, CBP's employees' identity theft concerns arose in the aftermath of an extraordinary natural disaster. Nonetheless, this fact does not transform what is clearly a personal benefit into a governmental benefit. Accordingly, because CBP employees individually, and not the government, would be the primary beneficiaries of the proposed expenditures for credit monitoring services, CBP's S&E appropriation is not available to pay for the service.

CONCLUSION

CBP's S&E appropriation is not available to pay for credit monitoring services for employees in the New Orleans area who, as a result of Hurricane Katrina, are, or may become, victims of identity theft. Credit monitoring service costs are personal expenses and are not chargeable to agency appropriations without express statutory authority. The exception to this rule is when the government is the primary beneficiary of the expenditure and the benefit to the employee is incidental. CBP's employees, not the government, would be the primary beneficiaries of the proposed credit monitoring. Neither government action nor inaction compromised the employees' identities. Government credit cards were not compromised or threatened. The credit monitoring services are part of the employees' overall management of their personal finances.



Gary L Kepplinger
General Counsel