

**UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION**



**OFFICE OF INSPECTOR GENERAL  
AUDIT OF THE GOVERNMENT PURCHASE CARD PROGRAM  
Issued: August 27, 2012**



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
BETHESDA, MD 20814

**Memorandum**

Date: August 27, 2012

TO : Inez Moore Tenenbaum, Chairman  
Nancy A. Nord, Commissioner  
Robert S. Adler, Commissioner  
Anne Meagher Northup, Commissioner

FROM : Christopher W. Dentel  
Inspector General

SUBJECT : Audit of the CPSC's Purchase Card Program

The Office of Inspector General has completed its audit of the CPSC's Purchase Card Program. A copy of the report is attached.

Management (EXFM and OEX) has been briefed regarding the findings and recommendations of this audit and given an opportunity to respond to them. Management concurred with the all but one of the findings and agreed to implement corrective actions regarding these findings. Management's responses concurring with the audit's findings are summarized throughout the report. Management's response regarding the finding with which they did not concur may be found in its entirety as an attachment to the report.

If you have any questions about this report or wish to discuss it, please feel free to contact me at 301-504-7644 or [cdentel@cpsc.gov](mailto:cdentel@cpsc.gov).

  
Christopher W. Dentel  
Inspector General

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## **EXECUTIVE SUMMARY**

### **BACKGROUND**

The U.S. Consumer Product Safety Commission (CPSC) Office of Inspector General (OIG) conducted a follow-up audit of the government purchase card (purchase card) program. This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). The purpose of our audit was to review purchase card activity during fiscal year (FY) 2011, and management's remediation efforts regarding the findings and recommendations issued in the purchase card audit conducted by WithumSmith + Brown (WS+B) in FY 2010. We reviewed applicable documentation to gain an understanding of the operations of the purchase card program and the internal controls that were in place for the purchase card program at the time of our audit. In addition, we identified applicable laws, regulations, policies, and procedures; and we evaluated the agency's compliance with these. Finally, we reviewed the FY 2010 CPSC Purchase Card Audit Report to determine whether management had taken timely corrective actions based on the report's findings and recommendations.

### **RESULTS OF EVALUATION AND FINDINGS**

This report covers the CPSC's purchase card program for FY 2011. Overall, we found that the CPSC does have a functioning purchase card program in place; however, despite direction from the Chairman of the agency, management officials have not taken timely corrective action to address the deficiencies found in the 2010 audit. We found that the program still has a number of internal control weaknesses and does not comply with a number of the policies and procedures governing the purchase card program. Our findings regarding these issues include the following:

1. **Lack of Adherence to CPSC Policies and Procedures:**

The CPSC does not follow its policies and procedures related to performing timely reviews and updates to the CPSC Directive, 1540.1 – *Government-wide Commercial Purchase Card program* and the related Directive, 1540.1a - *Appendix A, Government-wide Commercial Purchase Card Handbook*. No one has updated the directive since 2004. In addition, neither the Division of Financial Services (FMFS), nor the Division of Procurement Services (FMPS) performed a proper annual review of the purchase card program, as required by CPSC Directive 1540.1. The last review of the program by FMFS or FMPS took place during FY 2009, and that review did not follow the policies and procedures in CPSC Directive 1540.1.

2. **Noncompliance with Government-Wide Policies and Procedures:**

The CPSC does not comply with various government-wide regulations associated with the purchase card program. We noted failures to comply with the following regulations:

- a) Management did not complete audit remediation efforts properly in accordance with OMB Circular A-50, *Audit Follow-Up*;
- b) FMFS did not follow properly the guidelines for purchase card recovery procedures and internal controls set out in OMB Circular A-123, *Management's Responsibility for Internal Control*, including Appendix B, *Improving the Management of Government Charge Card Programs*;
- c) The CPSC had multiple cardholders who initiated split purchases. Instead of detecting and correcting these purchases, Approving Officials (AO) authorized the purchases, which does not comply with Federal Acquisition Regulation (FAR) Part 13, *Simplified Acquisition Procedures*.

3. **Lack of Properly Designed, Implemented, and Effective Internal Controls:**

Internal controls are processes designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (a) Effectiveness and efficiency of operations; (b) Reliability of financial reporting; and (c) Compliance with laws and regulations. Therefore, in our assessment of P-card internal controls, we first determined whether the internal controls were created (designed) and placed into operation (implemented). Based on the initial assessment of internal controls, we able to determine whether controls placed into operation, were in fact, performed by those involved in the program (operating effectiveness). The results of the evaluation, found that the purchase card program lacks adequate internal controls. Problems were found with the design, implementation, and/or effectiveness of the internal controls tested. We identified internal control weaknesses in multiple areas of the purchase card program, including the following:

- a) FMFS established internal controls that enabled circumvention by the cardholders and AOs, leading to the inconsistent use of the controls and creating an overall weak internal control environment;
- b) Cardholders and AOs are not following the internal control guidance provided by FMFS;
- c) Without authorization, one office within the CPSC created its own internal control structure separate and distinct from the one administered by FMFS;
- d) The internal controls in place failed to detect or prevent the improper/unallowable purchases of certain goods and services; and
- e) The internal controls in place failed to detect or prevent the improper approval or execution of purchases exceeding the micro-purchase limit.

4. **Accountable Property:**

Property purchased using the purchase card is not being properly accounted for; nor is it being entered into the CPSC's Property Management System (PMS) in a timely manner.

## **MANAGEMENT’S RESPONSE**

Overall, management concurred with all of our findings and recommendations, with the exception of those related to the purchase of three Apple iPad 2s with the government purchase card (Finding 3d above). This finding resulted from the CPSC’s inability to produce documentation supporting the existence of a legitimate government need for the purchase, plus the purchase’s violation of CPSC Directive 1540.1’s prohibition on the purchase of telecommunications supplies. Further, no one accounted for these items properly in the CPSC PMS until after their discovery by the OIG (Finding 4 above). See management’s full response to these audit findings at Appendix A. Also, see the OIG’s response to management’s response at Appendix B.

## **INTRODUCTION**

### **BACKGROUND**

The General Services Administration (GSA) developed the Government-Wide Commercial Purchase Card program to promote the use of the government purchase card by federal agencies. GSA intended the purchase card program to streamline federal agency acquisition processes by providing a low-cost, efficient vehicle for obtaining goods and services directly from vendors. The CPSC, which is subject to the FAR, promulgates its purchase card policies and procedures through a directive and handbook. The Government Accountability Office (GAO) has reviewed purchase card programs for many years and issued reports highlighting weaknesses that expose agencies to fraudulent, improper, and abusive purchases and losses of assets. Some of the common deficiencies cited by GAO include:

- Failure to authorize purchases properly;
- Failure to document independent receipt and acceptance; and
- Inability to account for easily pilfered goods obtained with purchased cards.

The use of the purchase card benefits the government by saving time, money, and resources. FAR Part 13.301 authorizes the use of the purchase card to make “micro-purchases.” FAR Part 2.101 sets the micro-purchase threshold at \$3,000 for most items; however, the CPSC’s purchase card micro-purchase limit is currently set at \$2,500.

### **OBJECTIVES**

The primary objective of this audit was to assess the CPSC’s remediation efforts regarding the findings and recommendations from the FY 2010 Purchase Card Audit conducted by WS+B. The prior WS+B audit identified internal control and compliance deficiencies within the CPSC’s purchase card program. Thus, we expanded our primary audit objective to the following:

1. To determine and assess the adequacy of the remediation efforts made by the CPSC regarding the audit findings and recommendations from the FY 2010 Purchase Card Audit conducted by WS+B.
2. To conduct an evaluation of the CPSC's current purchase card program's internal controls structure to determine whether internal controls have been designed and implemented appropriately and are operating effectively to ensure that purchase card program objectives are met.
3. To evaluate the CPSC's compliance with the federal laws, regulations, and provisions governing the purchase card program.

## **SCOPE**

This audit covers purchase card transaction activity during FY 2011 (October 2010 to September 2011), as administered by the Office of Financial Management, Planning, and Evaluation (EXFM) at CPSC headquarters in Bethesda, MD. During the audit scope, the CPSC had approximately 169 cardholders and \$1,311,088.95 in net purchases. All purchase cardholders at CPSC headquarters and field locations throughout the United States were included in the scope of the audit. Audit fieldwork took place from January 2012 through March 2012.

## **METHODOLOGY**

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish our audit objectives, we obtained an understanding of the CPSC purchase card program to include the design, implementation, and operating effectiveness of internal controls, compliance with CPSC governing policies and procedures, and compliance with applicable federal laws, regulations, and provisions. Furthermore, to assess the control environment, we also gained an understanding of the CPSC's remediation efforts from the prior FY 2010 Purchase Card Audit findings. To obtain this understanding, we conducted interviews with key EXFM personnel, performed walkthroughs of the CPSC purchase card internal controls and execution of policies and procedures, inspected relevant supporting documentation, and examined purchase card data and reports from the contracted vendor, U.S. Bank.

Based on the information gathered, we identified specific risks and opportunities for fraudulent, improper, or abusive purchases within the CPSC's program, and then we determined what key control activities were in place to prevent or detect such occurrences. Additionally, we performed a preliminary assessment of whether the controls were likely to be effective, and we identified any control design inefficiencies based on the control process. As a result of the preliminary assessment, we designed the

audit procedures (test of controls) to assess the internal controls' operating effectiveness, to review specific attributes of the program, and to determine compliance with the identified laws, regulations, and provisions governing the program.

In order to perform our audit procedures at the transactional level, we obtained a population of purchase card transactions from the U.S. Bank System and verified the completeness of the population by comparing the population totals to master bank statements for the audit period. However, the U.S. Bank statement cycle close is mid-month for transactions; thus, our sampled items were selected from the period September 17, 2010 through September 16, 2011. As such, this period includes a universe of 5,717 transactions totaling a net amount of \$1,311,088.95. However, given the different attributes surrounding credit (refund) transactions, we deemed it appropriate to extract and test credit transactions as a separate sample. The separate credit transactions extracted totaled 203 items amounting to \$34,513.

To determine which transactions to review, we developed a dual-purpose sample to increase the efficiencies of audit procedures. The dual-purpose sample allowed for the testing of internal control effectiveness and the testing of the completeness and accuracy of transactions simultaneously. As such, we developed the dual-purpose sample using a Monetary Unit Sampling (MUS) approach. This approach resulted in a statistical sample of 64 purchase card transactions drawn from a universe of 5,695 transactions (based on a 95 percent confidence level ((reliability)), and had an expected error rate of 5 percent.)

Using the dual-purpose sample, we were able to perform additional procedures for the review of specific attributes. For each specific attribute, we extracted transactions from the dual-purpose sample that met that attribute for the related auditing procedures (see the chart below for specific attribute samples). As such, for any of the selected transactions that were identified as "purchases of easily pilfered goods," we performed additional procedures to verify that the goods still existed, could be located, and were being used for government purposes. In addition to the dual-purpose sample, we performed audit procedures over key control elements related to the training of cardholders and approving officials, card limits (single purchase and monthly), and purchasing and reviewing authorities, as well as tests to determine if the purchase card program was in compliance with the appropriate regulations. After completion of our control testing, the results were analyzed, summarized, and projected (Dual-Purpose sample only).

Summary of Additional Samples			
Sample	Type	Description	Total Transactions
MUS (Dual Purpose)	Statistical	Random sample of transactions	64
Split Purchase	Specific Attribute	Two or more transactions made to the same vendor, re-occurring in a short period of time	48
Over Micro Limit	Specific Attribute	Individual purchases over the micro-purchase limit of \$2,500	7
Credits	Specific Attribute	Credit transactions selected for review	10
Rounded Amounts	Specific Attribute	Round dollar amounts	9
Accountable Property	Specific Attribute	Property Purchases and proper recording of the asset	5

## RESULTS AND FINDINGS

### **1. *Lack of Adherence to CPSC Policy and Procedures***

The Office of Financial Management (FMFS) does not comply with its own internal policies and procedures regarding the operation and monitoring of the CPSC purchase card program. They also neglect to update their written policies and procedures to reflect changes made to the purchase card program's operations.

During our review of the CPSC Directive 1540.1, *Government-wide Purchase Card program*, and its Appendix 1540.1a, *Purchase Card Handbook*, we noted that both documents were inconsistent with the current internal control structure and operations of the purchase card program at the CPSC. We noted the following issues:

- In FY 2011, FMFS modified the purchase card program's processes and internal controls. FMFS communicated these modifications to CPSC employees and documented them in a training presentation provided to attendees/cardholders. FMFS did not, however, update the purchase card program directive to reflect these changes. As written, the current directive and handbook fail to reflect the purchase card program internal controls currently used by the CPSC. The last update to the Directive was made on December 1, 2004 and the Handbook was last updated on November 3, 2003.

- As previously noted, WS+B conducted a CPSC purchase card audit during FY 2010 covering the audit period of December 2008 through December 2009. WS+B issued the results of the audit to management on October 6, 2010, with recommendations to update the CPSC Directives to address specific internal control weaknesses identified during the audit. As of the start of FY 2011, FMFS had prepared an internal draft update to the handbook, dated July 2011, but no other updates or finalizations had occurred.

Inconsistencies found between how FMFS operated the purchase card program and how the CPSC's policies and procedures state the purchase card program is to operate include the following:

- FMFS is required to perform an annual review of the purchase card program using the GSA's Blueprint for Success: Purchase Card Oversight Guide. The annual review should include an assessment of the CPSC's purchase card program: policies, training requirements, delegations of authority, integrity of the purchase process, compliance with procurement regulations, receipt and acceptance procedures, records retention, and handling of inactive accounts. The Procurement Division (FMPS), under the direction of FMFS, conducted the last review of the purchase card program, which took place in FY 2009. That review did not use the GSA Blueprint for Success, as required by CPSC Directive 1540.1. In their audit, WS+B found the review performed to be inadequate and recommended that future reviews be performed using the GSA Blueprint for Success

Per our discussion with FMFS management regarding annual reviews, the reason they did not conduct annual reviews is that FMFS management considered the WS+B audit performed in FY 2010 and the OIG audit currently underway, as reviews that FMFS could rely upon to monitor the program. This interpretation, however, is not consistent with CPSC directive 1540.1, which explicitly requires that FMFS perform an annual review using the GSA's Blueprint for Success: Purchase Card Oversight Guide as the basis for the review.

Regarding CPSC Directive 1540.1a (Purchase Card Handbook), we identified the following contradiction between policy and practice:

- The CPSC Purchase Card Handbook, as well as the training guidance provided by FMFS to cardholders and AOs in FY 2011, states: *"If an individual no longer needs a card because of a change in duties, transfer, separation, etc., the Approving Official must immediately notify FMFS to cancel the card and then must destroy the card. Cards may not be retained as 'souvenirs.' Cardholders must also turn over to the Approving Official all unbilled purchase card purchase requests and all files pertaining to the use of the card."*

FMFS does not comply with its own policy. It has not required the subject cardholder's AO to take responsibility for the cancellation of the cardholder's purchase card. Instead, FMFS is taking the purchase cardholders at their word and trusting them to dispose of the card properly without any independent verification. Further, the guidance above is not clear about whether the ultimate responsibility for canceling the card rests with the AO or FMFS. In either case, the cardholder is not the individual authorized to dispose of the card.

## **2. Noncompliance with Government-Wide Policies and Procedures:**

The CPSC does not comply with the following regulations governing the purchase card program:

- a) *OMB Circular A-50, Audit Follow-Up.* FMFS and FMPS management did not comply with the audit follow-up guidance set forth in OMB Circular A-50. This guidance requires FMFM and FMPS to take corrective action on audit recommendations within 6 months of the agency receiving the final audit report. The agency received the final audit report regarding the FY 2010 Purchase Card Audit performed by WS+B on March 31, 2011.

The CPSC Chairman, in a letter dated April 20, 2011, directed agency management to send the Chairman's office and the OIG a status report concerning their implementation of the recommendations set out in the WS+B audit report within 30 days of their receipt of the letter.

At the start of our audit fieldwork (January 20, 2012), FMFS management indicated that a Corrective Action Plan (CAP) had not been submitted to the OIG, Executive Director, and/or Chairman to address the audit recommendations from the FY 2010 audit by WS+B. Ultimately, the final CAP for the FY 2010 Purchase Card Audit recommendations was not finalized until February 22, 2012.

*OMB Circular A-123, Management's Responsibility for Internal Control.* OMB Circular A-123 states that agency management is responsible for establishing and maintaining internal controls to achieve the objectives of effective and efficient operations, reliable financial reporting, and compliance with applicable laws and regulations. We found many areas in which internal controls were designed inappropriately and/or were not effective at meeting the objectives of the CPSC purchase card program. These controls also failed to prevent and correct errors. See further discussion related to the "Lack of Proper Design, Implementation, and Effective Internal Controls" section below.

*OMB Circular A-123, Appendix B, Improving the Management of Government Charge Card programs.* FMFS's purchase card recovery procedures do not comply with OMB Circular A-123 Appendix B. OMB Circular A-123, Appendix B, Section 2.3, provides agencies guidance on the "required elements" of an agency's charge card management plan. It requires the agency to recover

purchase cards from all *employees who terminate their employment with the agency*. FMFS does not recover purchase cards from all employees who terminate their employment with the agency. We noted that FMFS lacked a consistent process for recovering purchase cards from cardholders who leave the agency. During our discussion with FMFS regarding the process used to recover purchase cards when employees separate or are terminated from the agency, FMFS indicated that some employees bring the card to FMFS upon separating from the CPSC and at other times, the cardholder disposes of the card on their own and gives notice of this fact to FMFS.

- b) *Federal Acquisition Regulation (FAR) Part 13- Simplified Acquisition Procedures*. The Federal Acquisition Regulation (FAR) designates the purchase card as the preferred method for making micropurchases. At the time of our audit, a “micropurchase” was defined as any purchase equal to or under \$2,500.<sup>1</sup> Cardholders are authorized explicitly to make purchases of up to \$2,500.00 but should not use the card for purchases above the \$2,500 threshold. During our review of purchase card transactions, we identified 24 split purchase transactions made by the Office of Facilities, 5RP (the Lab), and the Office of Information Technology (EXIT). These transactions were identified as split purchases, as these purchases were made to the same vendor, on the same day, or within a short timeframe up to a few months, totaling amounts in excess of the micro-purchase limit of \$2,500. In further analysis of these transactions, many of these split purchases, when aggregated throughout the year, resulted in amounts in excess of \$7,000. These purchases consisted mainly of goods and services that should have been acquired through a Blanket Purchase Agreement (BPA) due to the repetitive nature and dollar amount of the purchase.

## ***2. Lack of Proper Design, Implementation, and Effective Internal Controls***

Management was aware from a prior audit of a number of weaknesses in its existing internal controls over the purchase card program. As such, at the time of this audit, they were in the process of finalizing new internal controls in the form of a draft directive and handbook. At management’s request, we reviewed this draft agency guidance rather than the existing guidance, which all parties acknowledged needed to be revised.

### ***a) Review Over Internal Controls***

Throughout the CPSC purchase card program, we identified that internal controls implemented by FMFS are insufficiently designed and/or are not operating effectively to prevent and correct errors and misuse. The reasons for these deficiencies are ineffective communication of the internal control structure to cardholders and their respective AOs and the previously noted inconsistencies between actual operations and the agency’s written policies and procedures.

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<sup>1</sup> Micropurchase means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micropurchase threshold, except for construction or in other specific instances.

We identified weaknesses in the following areas:

- *Approval from the Funds Controller is required prior to a purchase being made by the cardholder (Directive 1540.1a§4a (3) DRAFT July 2011).* The Funds Controller is responsible for ensuring the funds are available prior to the purchase and obligated properly. However, when an employee is not only the cardholder, but also the Funds Controller for their office, a situation that exists in a number of offices, there is currently no specific guidance on what the employee should do. Thus, this creates a lapse in the operation of the internal control. We identified 38 instances in which the cardholders did not obtain approval from the Funds Controller prior to the purchase. The majority of these instances occurred in offices where the cardholders also functioned as their respective office's Funds Controllers. In addition, the Office of Compliance and Field Investigations (CFI) determined arbitrarily that when dealing with amounts of \$200 or less, they do not have to comply with this internal control. This decision overrides the internal control established by FMFS, which requires Funds Controller approval for all purchases, regardless of amount.
- *Documentation on cardholder order/purchase log for the transaction (Directive 1540.1a§4a (3) DRAFT July 2011).* We identified 11 instances in which cardholders were not properly using an order log to record their purchase card purchases. Furthermore, some cardholders did not record the final amount paid on the order log and instead used the amounts initially quoted by the vendor.
- *AO Approval on the order log before the purchase is made (Directive 1540.1a§4a (3) DRAFT July 2011).* We found that this control was not communicated properly to cardholders and AOs during the FY 2011 training conducted by FMFS. Based on an inquiry among cardholders, some did not understand when and how to execute this control. We identified 12 instances in which the cardholders did not have the required AO approval and a number of other instances in which AO approval was obtained but not documented on the order log.
- *Cardholder Retains a copy of the approved statement, order log, and all charges and credit card slips for inclusion in the procurement file (Directive 1540.1a§8a (9) DRAFT July 2011).* We found 12 instances in which the cardholders did not retain their invoice or receipt for purchases, or did they keep their AO-approved statements.

- *Independent receipt by a third party for purchases (Directive 1540.1a§8b DRAFT July 2011).* Based on discussions with FMFS, FMFS management deemed this internal control to be impractical for the Field Investigation cardholders; therefore, these cardholders received an exemption from this internal control. Further weakening this control is the fact that, as drafted, it allows individual cardholders to use their discretion about when the control is to be performed. As currently designed, this internal control is only applicable to personnel assigned at the CPSC headquarters and when deemed “practical.” We identified six instances where independent receipt by a third party was not performed.
- *Cardholder certification of purchases on the bank statements are to be signed and dated (Directive 1540.1a§8a (5) DRAFT July 2011).* We identified 22 instances in which cardholders did not certify and/or date their statements.
- *The appropriate and assigned AO signs the US Bank Statement (Directive 1540.1a§3e DRAFT July 2011).* We found five instances where a cardholder did not have the appropriate AO approval on the statement, the AO did not date the statement upon approving, and/or the AO approved the statements before the cardholder had certified them.
- *Sales Tax being recouped when charged (Directive 1540.1a §6 DRAFT July 2011).* We found five instances where the cardholders incurred sales tax on their charges and did not recoup the money from the vendor.

b) *Override of control*

We further note that telecommunication services, which are a type of purchase that is explicitly not authorized to be made with the purchase card (*Directive 1540.1§11 (December 1, 2004)*), were being purchased by cardholders. We also found that a cardholder circumvented the purchase card process controls to make a purchase that was to be paid by another organization.

c) *Internal Control Override in the Field Investigations Directorate*

Without the knowledge or approval of FMFS staff or management, the Field Investigations Directorate developed a separate process for using the purchase card that contradicted agency policy and procedures. This process was developed despite explicit guidance from the then-Chief Financial Officer (CFO) to the Field Investigation Directorate to comply with existing agency purchase card policies and procedures. Further, we obtained e-mail sent to Field Investigations Directorate cardholders and AOs in response to the former CFO’s guidance on purchase cards, which instructed Field Investigations Directorate employees to continue with their method of use for the purchase card program, even though it was against agency policy. The following control overrides were identified:

- Cardholders did not need to obtain approval before purchase from Funds Controllers for amounts less than \$200;
- Cardholders did not send their documentation and statement approvals directly to the AO;
- Cardholders did not retain a copy of the AO-approved statement; and
- Cardholders are allowed to charge telecommunication services using their purchase card.

*d) Improper/Unauthorized/Abusive Purchases*

OMB Circular A-123, Appendix B, Section 4.6, states that an “improper purchase” is any purchase that should not have been made under statutory, contractual, administrative, or other legally applicable requirements. An improper purchase can be one of two types: (1) unauthorized, or (2) incorrect. An “unauthorized purchase” is defined as a purchase that is made intentionally and outside of the authority of the purchase cardholder. “Abusive purchases” are defined by the GAO as occurring “. . . where the conduct of a government organization, program, activity, or function fell short of societal expectations of prudent behavior . . . examples of abusive purchases (include) where the cardholder (1) purchased goods or services at an excessive cost (*e.g.*, gold plated), or (2) purchased an item for which government need was questionable.

We identified the following improper purchases made in violation of the CPSC directive governing the use of the P-Card, which explicitly states that purchase cards cannot be used for any expense related to telecommunications:

- Our initial review found two instances in which telecommunication services had been purchased. Further analysis of the entire population of purchase card transactions found 269 improper purchases of telecommunications services.
- Three Apple iPad 2s with 3G and 64 GB capabilities (the most expensive configuration sold at the time), each for \$825.00, were purchased for use by the three most senior management officials in the Office of Information and Technology (EXIT). Management maintains that the iPad 2s were purchased to meet a legitimate government need (testing the compatibility of the iPad 2s with the CPSC’s network) and that they did not constitute “telecommunications” devices, so their purchase did not violate the CPSC directive governing the use of the purchase card. However, management also acknowledged that there was no “testing plan” or other documentary evidence to substantiate that the purpose for which the iPad 2s were purchased was for “testing”; nor did management explain why the most expensive configuration had to be purchased rather than a less expensive one. Similarly, there was no documentation to show the results of whatever tests were performed. We further note that the iPad 2s were purchased in July 2011, and were not properly accounted for by management within the CPSC’s Property Management System (PMS) until March 2012, after the failure to account properly for them was brought to management’s attention by this audit. (See Appendixes A & B)

*e) Improper Approval for Purchases Exceeding Micropurchase Limit*

Two out of the seven samples we reviewed did not have proper approval for purchases exceeding the micro-purchase limit of \$2,500.

**3. Accountable Property**

We identified two instances in which property purchased using the purchase card was not properly accounted for and timely entered into the property management system (PMS). The PMS serves as the system of record to account for accountable and sensitive property, and without proper recording of the asset, such assets are susceptible to fraud and misuse. The noted items found included a label maker (received on 8/24/11) and three iPad 2s (received on 7/21/11) entered into the PMS system only after our audit identified their improper recording in March 2012.

**CONCLUSION**

Based on the results and findings noted above, the CPSC has not complied with its or the general federal government purchase card program regulations, policies, and procedures. Moreover, the CPSC's purchase card program has significant internal control weaknesses. We have discussed our recommendations with management. Management plans to take the proper action to remediate the issues noted and will implement policies and procedures to strengthen the program through the development of a CAP.

**RECOMMENDATIONS**

To ensure that internal controls related to the CPSC's purchase card program are effective in mitigating the risk of abuse or fraud, we recommend that the Chairman of the U.S. Consumer Product Safety Commission direct the Chief Financial Officer to:

1. Update and finalize, with approval from the Chairman or Executive Director, the CPSC purchase card Directive (1540) and associated Handbook (1540.1a) in the near future in order to ensure compliance with program laws and regulations and specifically to address:
  - a. Proper management approvals and when to obtain them in the process (*i.e.*, funds controller, AO);
  - b. Headquarters vs. Field Process;
  - c. Independent Receipt;
  - d. Definitions of unauthorized purchases;
  - e. Split Purchase Guidance;
  - f. Sales Tax Exemption;
  - g. Signing and Dating the US Bank Statements for cardholders and AOs;
  - h. Actual vs. Final prices recorded on the Order Log;
  - i. Safeguarding Accountable Property;

- j. Allowing Others to Use the Purchase Card; and
  - k. Approval of purchases over the Micro-Purchase limit.
2. Ensure that after the updated purchase card directive and handbook are finalized, FMFS conducts mandatory internal training for all cardholders and AOs, regardless of their participation in GSA training, to provide guidance on the updated changes to the purchase card program contained in the directive and handbook.
  3. Devise and execute, at a minimum, an annual review for FMFS to perform over the purchase card program to identify unusual or fraudulent purchases, and to ensure cardholder and AO compliance with the program.
  4. Revise the current purchase card Corrective Action Plan to incorporate the findings and recommendations associated with the FY 2011 audit and perform the necessary corrective actions in a timely manner.
  5. Monitor assets purchased with the purchase card to ensure that cardholders communicate properly with property custodians and that the purchased assets are bar-coded and recorded in the PMS system.
  6. We recommend that the Commission hold the certifying official personally liable for the funds spent related to the purchase of the three Apple iPad 2s discussed above in the amount of \$2,480.00.
  7. Perform continuous monitoring of the purchase card program throughout the fiscal year to reduce the risk of noncompliance with laws and regulations.

### **MANAGEMENT RESPONSE**

Management concurred with all audit findings except one. Management did not concur with the finding and recommendation related to the improper purchasing by EXIT of the Apple iPad 2s. See Management's response to the audit finding at Appendix A. See OIG's response to Management's assertions at Appendix B.

**APPENDIX A: MANAGEMENT RESPONSE**

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## **APPENDIX B: OIG'S RESPONSE TO MANAGEMENT'S RESPONSE**

During the course of the audit, we found that three Apple iPad 2s with 3G and 64 GB capabilities had been purchased, each in the amount of \$825.00, for use by the three senior management officials in the Office of Information and Technology Services (EXIT). These purchases were viewed as improper (as they violated the CPSC directive governing the use of the purchase card), questionable (in terms of whether there was a legitimate government need for the purchase), and there was a lack of documentation supporting the government's decision to make the purchase. As a result, we issued a finding that the purchase was improper, unauthorized, and abusive.

Management disagreed with this finding and the resulting recommendation that the certifying official responsible for the purchase should be held personally liable for the government funds expended. Management issued a lengthy response to our finding and recommendation. After thoroughly reviewing management's response, for the reasons set out below, the finding and recommendation stand as originally issued.

Both OMB and GAO have issued guidance regarding what they view as improper, unauthorized, or abusive purchases.

OMB Circular A-123, Appendix B, Section 4.6, defines an "improper purchase" as, ". . . any purchase that should not have been made . . . under statutory, contractual, administrative, or other legally applicable requirements. . . ." GAO Report 08-333 offers a similar definition, ". . . those purchases that although intended for government use, are not permitted by law, regulation, or government/agency policy."

OMB Circular A-123, Appendix B, further defines unauthorized purchases to ". . . consist of items that are intentionally purchased and are outside of the cardholder's purchasing authority. For instance, using a government charge card to purchase a tennis racket is an unauthorized purchase."

CPSC Directive 1540.1 governs the CPSC's purchase card program. This directive contains a prohibition against CPSC employees using the purchase card to acquire telecommunications services or supplies. Although, the directive contains no definition of the term "telecommunication," the most common definitions (Webster's Dictionary, Wikipedia, etc.) refer to "communication at a distance" and "technology that deals with telecommunication" with special reference to the Internet and social media. The subject iPad 2s with 3G would appear to fall squarely within the prohibition contained in this directive.<sup>2</sup> As such, their purchase, made without authority, violates the agency's regulation governing the use of the purchase card.

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<sup>2</sup> The CPSC's Office of the General Counsel has issued an opinion that comes to a contrary conclusion. Despite acknowledging: "The telecommunication features of the iPad 2 include being able to 'run on a wireless network, a 3G cellular network, or third generation mobile telecommunications' . . .," they ultimately concluded that the iPad 2 was not a telecommunications device for the purposes of this audit. (See the unsigned draft legal review attached to management response at Appendix 1.) The OIG is not bound by the reasoning of the OGC and does not find it persuasive in this matter.

GAO Report 08-333 defines “abusive purchases” as follows: “. . . where the conduct of a government organization, program, activity, or function fell short of societal expectations of prudent behavior . . . examples of abusive purchases (included) where the cardholder (1) purchased goods or services at an excessive cost (*e.g.*, gold plated), or (2) purchased an item for which government need was questionable.”

The “starting price” of an iPad 2 in 2011, according to the Apple website, was \$499.00. The iPad 2 comes in 16GB, 32 GB, and 64 GB configurations. The configuration purchased by the CPSC was the most expensive or “gold plated” model. In its response, management has stated that this configuration was necessary to meet the needs of the investigators to whom it might be issued. No explanation or documentation was ever provided regarding how it was determined that the investigators in question needed those specific requirements. Similarly, no explanation was made as to why the agency’s testing of “device management tools and device integration,” the original rationale given for the purchase (see below), would require more than 16GB of storage capacity.

When we inquired about why EXIT made the purchase (*i.e.*, querying what government need was the purchase made to address?), EXIT management stated that the iPad 2s were being used to perform “informal market research on device management tools and device integration.” However, when we requested a copy of the test plan or the results of the analysis or research performed, to date, EXIT management indicated that there was no documentation of either. This raises questions regarding the validity of the justification for purchasing the assets, which had been in EXIT’s possession for almost a year prior to the audit, apparently with no documented research or analysis performed.

In Management’s response to the finding, we noted that Management stated EXIT was performing “other types of reviews” on the products, as well as “Staff met with several vendors to determine how they have addressed security requirements . . .” However, none of the reviews and/or discussions have been documented and provided to the OIG for review. Although, Management asserts that the purchase of the iPad 2s by the agency is “justifiable by the business needs of the agency,” there is no documentation to support this position.

Also troubling is the fact that the three iPad 2s were received by EXIT on July 21, 2011, but as of March 1, 2012, the iPad 2s had not been entered into the Property Management System (PMS). Thus, for more than 6 months, the iPad 2s remained unaccounted for by the agency. Although, Management stated in its response that the items were “assigned barcodes on September 20, 2011 (one iPad 2) and September 28, 2011 (two iPad 2s),” this does not establish that on those dates EXIT properly accounted for the items. The bar-coded asset actually must be entered into the PMS to be accounted for properly. “Assigning” a barcode or physically attaching the barcode sticker to an asset is not a proper process for recording an asset; nor does simply placing the barcode sticker on property mean the purchaser has accounted for the property. Until the barcode sticker and the item are “married together” within the property management system, there is no accountability for the asset.

In addition, the OIG obtained an e-mail on March 6, 2012, from the cardholder who purchased the iPad 2s, stating: “. . . the equipment was not tagged but it seems they were tagged in November 2011.” Thus, this adds a third possible date suggesting when the process began of accounting for the iPad 2s. The confusion about when the placement of the “bar code stickers” on the iPads occurred underscores the fact that there is no accurate method to determine if, and when, tagging an asset occurs, unless the purchaser properly enters the asset into the PMS system of record. These types of sensitive and expensive telecommunication devices that are highly susceptible to theft should have been properly barcoded and entered into the PMS by the property custodian, and transferred and accepted within the PMS in a timely manner by the senior management personnel to whom they were issued.

Based on the current agency directive governing the purchase card program, the lack of documentation provided by management, along with the definitions provided by OMB and GAO, we find that the purchase of the iPad 2s was improper (it was in violation of CPSC Directive 1540.1), unauthorized (it was an intentional purpose that was outside of the cardholders purchasing authority), and abusive (the purchase fell short of societal expectation, both in terms of excessive cost and questionable need). The lack of documentation supporting government need, the lack of documentation regarding to what legitimate use the iPad 2s were put, and the failure to log the iPad 2s into the PMS properly, potentially could create the perception that the purchase may have been for a fraudulent purpose (personal use).

The original finding and recommendation stand, as written. The official who approved/certified the purchase of the iPad 2s should be held personally financially liable for the full amount of the unauthorized purchase. Under 31 U.S.C. Sec. 3528, the certifying official who signs the voucher is responsible for the existence and correctness of the facts cited in the certificate, voucher, or supporting papers. In addition, the certifying official is responsible for the legality of the proposed payment and is liable for any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certification he or she makes, as well as for any payment prohibited by law, or that did not represent a legal obligation. As discussed previously, the purchase of the iPad 2s was improper and unauthorized because it violated the CPSC’s directive governing the purchase card program.

# Management's Response to the Office of the Inspector General's Notice of Finding and Recommendation, Finding #11, *Improper Purchase*, CPSC FY 2011 Purchase Card Review Audit

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Management disagrees with the OIG finding that the purchase of the three iPad 2s was improper, unauthorized, and abusive, according to OMB Circular A-123 and GAO Report 08-333. Management accepts the recommendation that an oversight program be established in the Division of Financial Services (FMFS); however, given that the purchase of the iPad 2s was proper, an oversight program would not have identified the purchase as improper. Management agrees that the iPad 2s should have been entered into the Property Management System in a timelier manner and is reviewing its standard operating procedures to correct that issue.

## ***Purchase Was Not Improper or Unauthorized***

The Office of Management and Budget (OMB) and the Government Accountability Office (GAO) provide definitions of improper purchases. According to OMB Circular A-123, an improper payment is “. . . any purchase that should not have been made . . . under statutory, contractual, administrative, or other legally applicable requirements.” The GAO Report 08-333 defines improper transactions as purchases that “are not permitted by law, regulation, or government/agency policy.” The CPSC’s administrative requirements and agency policy relating to this purchase are set in CPSC Directive 1540.1, *Government Commercial Purchase Card Program*. Considering these guidance documents and relevant agency policy, the CPSC’s Office of the General Counsel (“OGC”) determined that “the purchase of the iPads is not prohibited [by the CPSC directive], and thus, the purchases were not improper under the criteria established in OMB Circular A123, appendix B.”<sup>1</sup> OGC also found that the purchases “were appropriately authorized under the OMB Circular.”<sup>2</sup> Based on OGC’s legal determinations, as well as Management’s own understanding of the relevant guidance documents and agency policies, Management believes the purchase of the iPad 2s was not improper, unauthorized or abusive.

An iPad 2 is a tablet computer that performs traditional computer hardware functions and also contains many telecommunications features. While the directive prohibits the use of a purchase card to purchase a telecommunication device, it permits the use of a purchase card to purchase computer hardware. The traditional computer hardware functions of the iPad 2 include allowing “an employee to access files, edit documents, create forms, take notes, create invoices, analyze reports, brainstorm ideas, and create presentations.”<sup>3</sup> The telecommunication features of the iPad 2 include being able to “run on a wireless network, a 3G cellular network, or third generation mobile telecommunication.”<sup>4</sup> The hybrid nature of the device means it “does not fall

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<sup>1</sup> May 29, 2012 memorandum from Pamela L. Brinker to Kenneth R. Hinson, Purchase Card Use for iPads, at 1 (Attachment A) (“OGC memo”).

<sup>2</sup> Id.

<sup>3</sup> Id. at 2.

<sup>4</sup> Id.

squarely into the definition of either computer hardware or a telecommunication device.”<sup>5</sup> In light of these factors, the Office of the General Counsel concluded that “the use of the purchase card to purchase these devices [was] not expressly prohibited by CPSC Directive 1540.1, as written.”<sup>6</sup>

In light of the legal finding that the purchase of the iPads was not outside of the cardholder’s purchasing authority proscribed by the CPSC directive, there can be no unauthorized purchase pursuant to OMB guidance.<sup>7</sup> Accordingly, the purchase of the iPads was not unauthorized pursuant to the OMB Circular.<sup>8</sup> Further, since the purchase was not unauthorized, the purchase was also not an improper purchase under the OMB Circular.”<sup>9</sup>

Although Management finds that the purchase of the iPad 2s was not improper or unauthorized, it is apparent that CPSC’s directive did not envision the existence of items such as the tablet computer. Accordingly, Management is updating the directive to be more consistent with its original intent<sup>10</sup> and to reflect advances in technology.

### *Purchase Was Not Abusive or Fraudulent*

Management disagrees that the iPad 2 purchase fits into the definition applied from GAO Report 08-833 that the purchase was abusive, meaning it was either excessive or of questionable need. Management also disagrees that the purchase was fraudulent and intended for personal use.

Evaluating and recommending information technology (IT) equipment and solutions is an integral part of the Office of Information & Technology Services’ (EXIT’s) mission to implement and operate an IT infrastructure that helps the agency’s program areas meet their goals. iPads, other tablets, and smart phones are evolving at an extremely rapid pace. Although they have become pervasive across business and government, they do not always mesh neatly into an existing IT infrastructure. At any given time, EXIT is actively reviewing and testing many different information technology solutions.

All IT initiatives that involve product selection and implementation also involve risk. EXIT attempts to mitigate that risk by rigorously testing any technology being considered. When possible, EXIT attempts to acquire evaluation units from vendors at no cost and on a temporary basis. When EXIT cannot acquire evaluation units and when the cost of the evaluation suite is relatively small, as was the \$2,400 cost for the three iPad 2s, EXIT procures the equipment as an expediency. EXIT also purchases units when the evaluation is likely to be of an undetermined period.

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<sup>5</sup> Id.

<sup>6</sup> Id. at 3.

<sup>7</sup> OMB A 123, appendix B sec. 4.6, states that “unauthorized purchases consist of items that are intentionally purchased and are outside of the cardholder’s purchasing authority.” (emphasis added). Since the CPSC directive did not prohibit the cardholder from making the purchase of the iPads, the purchase was not “outside of the cardholder’s purchasing authority” and thus, there is no unauthorized purchase.

<sup>8</sup> See OGC memo at 4.

<sup>9</sup> See id.

<sup>10</sup> The prohibition of using purchase cards for telecommunications was intended to ensure that employees used Federal Telecommunications Services (FTS) cards when making voice calls and not purchase cards.

EXIT's approach with respect to the evaluation of new technology, such as the iPad 2, has been focused on CPSC's business needs. EXIT included requirements unique to tablet computers and smart phone devices as part of the Headquarters wireless network implementation. EXIT also reviews the application integration capabilities of these devices to see how they can be used with CPSC's existing office automation suite and potentially as tools for field and import investigators, where a tablet solution appears to afford great utility. The plan was to have implemented the wireless solution last fall, but because of technical problems that the vendor was slow in addressing, the project was delayed. EXIT did continue other types of reviews with the products, such as a Shortel app, a VPN app, several calendar apps, word processing apps, and utility programs, such as One Note. Staff also met with several vendors to determine how they have addressed the security requirements in the Federal Information Processing Standard Publication 140-2. Staff's review addressed two factor authentication, VPN connection, and data encryption. Currently, staff is testing the devices to determine how well they fit into CPSC's architecture.

In order to test the iPad 2 as staff would use them in production, EXIT purchased the model with 3G capability, a requirement for field and import investigators. Staff purchased the 64GB units because the devices need to be able to support the document and image storage requirements of an investigator. These requirements include being able to download information prior to going on site to conduct an investigation as well as the ability to add large amounts of data to the device when gathering facts during an investigation. The smaller units with only 16GB or 32GB of memory, which cost about \$200 less than the 64GB units, would not meet the needs of the investigators. Thus, Management does not consider the purchase of the 64 GB version to be excessive or unwarranted.

EXIT has a small staff for the level of work required. EXIT managers and supervisors play important roles above and beyond their management duties. At the CPSC, the Chief Information Officer (CIO) performs many of the functions performed by the Chief Technical Officer in a larger agency. The CIO had full responsibility for the recommendation to evaluate the iPad 2 and continues to drive the tablet computer's evaluation for suitability at CPSC. The CIO is also the functioning Program Manager for CPSRMS and is integrally involved in product selection, testing, and purchase. Because of his involvement in every IT initiative at CPSC, he uniquely is positioned to review all requirements in the systems that EXIT implements. The CIO, Deputy CIO, and senior supervisor who tested the devices represent a wide range user types. The senior supervisor, EXIT's Director of Technical Services, is extremely well versed in networking and security challenges. The Deputy CIO has knowledge of the agency's program areas and brings a firm understanding of their needs at many levels. The CIO, as noted, is CPSC's chief technology officer. The CIO works most closely with the Deputy CIO and the Director of Technical Services on a daily basis and is able to assign them areas for evaluation that helped test the units.

Based on these factors, Management does not believe that the purchase of the iPad 2s was excessive—the purchase is justified by the business needs of the agency. Management also does not believe that the iPad 2s were purchased for questionable need or personal use; rather, they were part of an ongoing review of application integration capabilities to determine how emerging technology can be used with CPSC's existing office automation suite, and potentially, as tools for field and import investigators where a tablet solution appears to afford great utility.

For these reasons, Management does not consider the purchase of the iPad 2s to be abusive or fraudulent.

### *Monitoring of Purchase Card Program*

Management accepts the recommendation that an oversight program be established in the Division of Financial Services (FMFS); however, given that the purchase was proper, an oversight program would not have identified the purchase as improper.

The GSA guidance and criteria for identifying fraud or misuse of purchase cards are as follows:

- Purchases that exceed the cardholder's limit,
- Purchases not authorized by the agency,
- Purchases for which no funding exists,
- Purchases for personal consumption,
- Purchases that do not comply with the FAR and/or other applicable procurement statutes and regulations, and
- Purchases billed by the merchant but not received by the agency.

The purchase card transaction for the iPad 2s does not meet the GSA criteria for fraud or misuse. In addition, the iPad 2 purchase is in compliance with the CPSC's Approval/Authorization requirements. There was supporting documentation for the purchase card transaction and items were delivered to the CPSC business address. The items were received on July 21, 2011, and assigned barcodes on September 20, 2011 (one iPad 2) and on September 28, 2011 (two iPad 2s).

Furthermore, the iPad 2 purchase is in compliance with the GSA Blueprint for Successful Purchase Card Oversight, meeting the requirements for card usage, documentation, and processing, so had FMFS used that as a guide, the purchase would have been deemed proper and thus, not flagged for further review.

Management does agree that the iPad 2s should have been entered into the Property Management System in a timelier manner and is reviewing its standard operating procedures to correct that issue.

### *Response to Recommendations*

Based on the guidance provided by OMB and GAO, and the legal determinations of CPSC's OGC, Management does not agree that the purchase of the iPad 2s was improper, unauthorized, or abusive. Management also does not agree that due to the lack of documentation supporting government need, the purchase created the perception that it was for a fraudulent purpose. Thus, Management does not accept the recommendation to hold the official who approved/certified the purchase of the iPad 2s personally financially liable for the full amount of the purchase of the devices.

Management accepts the recommendation that an oversight program should be established within FMFS. FMFS will set up procedures to periodically review purchases to determine if any appear to be improper, outside the scope of business use for the organization, or fraudulent.

Management also agrees to review and revise as necessary its standard operating procedures to ensure that property is entered timely into the Property Management System.

5/30/2012

Attachment A: OGC memo



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

MEMORANDUM

May 29, 2012

TO: Kenneth R. Hinson, Executive Director

THROUGH: Cheryl A. Falvey, General Counsel  
Mary T. Boyle, Acting Deputy General Counsel  
Melissa D. Buford, Assistant General Counsel for General Law

FROM: Pamela L. Brinker, Attorney, General Law Division

SUBJECT: Purchase Card Use for iPads

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ISSUES

- 1) Is the purchase of an iPad 2 using a CPSC purchase card permitted by CPSC policy?
- 2) Based on the purchase documentation, was the purchase of the three iPad 2s proper under the criteria established in OMB A 123, appendix B?
- 3) Based on the purchase documentation, was the purchase of an iPad 2 appropriately authorized under OMB A 123, appendix B?

ANSWERS

- 1) While not expressly permitted, the purchase card Directive does not prohibit the purchase of the iPad 2 because it is a hybrid device that combines telecommunications features with traditional computer functions.
- 2) Yes. Given the lack of clarity in the CPSC directive regarding hybrid devices, the purchase of the iPads is not prohibited, and thus, the purchases were not improper under the criteria established in OMB Circular A123, appendix B.
- 3) Yes. Given the lack of clarity in the CPSC directive regarding hybrid devices, the purchases were not prohibited by the CPSC Directive, and thus, they were appropriately authorized under the OMB Circular.

DISCUSSION

The CPSC purchase card Directive permits the purchase of computer hardware, but does not permit the purchase of a telecommunications device.<sup>1</sup> Thus, to assess whether the iPad purchase was

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<sup>1</sup> The CPSC purchase card directive (1540.1, paragraph 11) prohibits the use of the card to purchase telecommunications.

permissible under the purchase card Directive, we must determine whether the iPad is computer hardware or whether it is a telecommunication device.

According to Webster's Dictionary and Wikipedia, telecommunication is defined as "communication at a distance" and "technology that deals with telecommunication." Wikipedia notes further that email and other transmission of data via the internet technically constitutes telecommunication. Webster's dictionary defines "computer" as "a programmable usually electronic device that can store, retrieve, and process data." Initially, computer hardware consisted of desktop computers that employees could not transport, a bright line that made the demarcation between computer hardware and telecommunication devices relatively straightforward. However, as technology progressed, laptop computers incorporated telecommunication features, allowing employees to work from remote locations, thereby blurring the line between telecommunication devices and traditional computers. At the CPSC, this line was further blurred when employee laptops were equipped with ShoreTel telephone features, providing a traditional telecommunications attribute—telephone capability—through a portable computer.

Building on the laptop concept, technological advances led to the development of even smaller and lighter computer systems known as tablet computers. Wikipedia defines "tablet computers" as "a mobile computer" that is "integrated into a flat touch screen and primarily operated by touching the screen rather than using a physical keyboard."<sup>2</sup> Wikipedia defines the iPad as a tablet computer,<sup>3</sup> that is used "primarily as a platform for audio-visual media including books, periodicals, movies, music, games, apps and web content." The iPad is a small and lightweight device that allows an employee to access files, edit documents, create forms, take notes, create invoices, analyze reports, brainstorm ideas, and create presentations. These are clearly functions traditionally performed by computer hardware. Apple does not define its iPad 2 as either a telecommunication device or tablet computer, advertising it as performing functions traditional to both a computer and a telecommunication device.<sup>4</sup> Thus, with the advent of the tablet computer, the dividing line between telecommunication devices and computer hardware became even less clear. Indeed, all computer hardware currently incorporates some telecommunication aspects.<sup>5</sup>

Although the iPad 2 performs traditional computer hardware functions, it also contains many telecommunications features, underscoring the hybrid nature of a product that does not fall squarely into the definition of either computer hardware or a telecommunication device. For example, iPads can run on wireless internet, a 3G cellular network, or third generation mobile telecommunication,<sup>6</sup> facts that place it in the telecommunication realm. The iPad can also perform traditional telecommunication tasks such as allowing an employee to connect to the office to participate in a meeting or give a presentation remotely, functions that are also available on a laptop computer. Additionally, the device operates on iOS, an operating system designed specifically for mobile

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<sup>2</sup> Although Wikipedia may seem like an unreliable source to be citing in a legal memorandum, Webster's Dictionary, which courts turn to for ordinary dictionary meaning of terms, does not define tablet computer.

<sup>3</sup> See Wikipedia definition.

<sup>4</sup> See <http://www.apple.com/ipad/built-in-apps/> (claiming the device is good for messaging, reminders, calendar, music, email, web browser, photos, tweeting, reading, video calls, and maps.)

<sup>5</sup> Email, Skype, and webcasts are examples.

<sup>6</sup> The iPad 2 had 3G capabilities; however, the newest model, the iPad 3, runs on 4G so Apple, AT&T and Verizon sites often reference 4G but it is, for our purposes, interchangeable as both are cellular networks.

telecommunications devices<sup>7</sup> and can be operated on the third generation mobile telecommunication (3G cellular) network.<sup>8</sup>

The iPad 2 comes in a variety of models including models that only transmit data through a wireless internet connection and models that have the ability to transmit data through both a wireless internet connection and 3G cellular networks. Both types of models are available in 16 gigabytes, 32 gigabytes, or 64 gigabytes. The CPSC purchased the 64 gigabyte model with both wireless internet and 3G capabilities. The purchase of the more expensive device with 3G capabilities suggests that the employees intended to use the devices on the 3G cellular network. To operate any of the applications that require internet or to download additional applications without using wireless internet, the user must use a 3G cellular network. If the iPad has 3G capability, the user may purchase a data plan from the appropriate carrier.<sup>9</sup> Both carriers use 3G as their cellular network.<sup>10</sup> There is no indication as to whether the CPSC actually purchased 3G data plans for the devices. However, because the CPSC does not currently have wireless internet capability and the iPad cannot be hooked up to landline internet, the devices would have needed a 3G cellular network at CPSC headquarters for any tasks requiring internet access. Absent a 3G cellular network, the employees would have been unable to download any application, which would prevent the iPad from being used productively for CPSC business.<sup>11</sup> The recent announcement that CPSC intended to acquire wireless capability at headquarters suggests that such a plan was contemplated at some point. The timing as to when staff began developing wireless plans for headquarters would be relevant to this inquiry particularly in light of the employees' statement that they wanted to test the device within the existing technology architecture. If the devices were used at other locations to access wireless internet, that would weaken the argument that they were being used to test the current CPSC infrastructure. At the same time, if the iPads were used no differently than laptop computers, even at a remote location, it is hard to parse the difference between the two products given the amorphous blend of functions and features created by technological advances.<sup>12</sup>

Accordingly, in light of the fluid definitions of telecommunication and computers as well as evolving technologies, the purchase of an iPad falls within a gray area not contemplated by the Directive. While it would have been prudent for staff to have sought guidance prior to making the purchase, the Directive does not definitively forbid the purchase of iPads, which are an amalgam of technologies and functions that fall between the clearly permissible—computer hardware—and the clearly prohibited—telecommunications devices. Thus, the use of the purchase card to purchase these devices, while not expressly permitted, is also not expressly prohibited by CPSC Directive 1540.1 as written.

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<sup>7</sup> <http://www.apple.com/ipad/ios/>.

<sup>8</sup> <http://www.apple.com/ipad/specs/>.

<sup>9</sup> iPads with 3G are specifically designed to either operate on the Verizon or AT&T cellular networks. See <http://www.att.com/ipad/?fbid=Ih2ovXRcwKg> and <http://www.verizonwireless.com/b2c/device/tablet/ipad> for the data plans offered.

<sup>10</sup> Again, at the time it was 3G, currently it is 4G.

<sup>11</sup> The applications that come installed on the device that do not require internet would not be beneficial to the agency.

<sup>12</sup> The purchaser and recipients of the devices are technology experts and would recognize that the 3G capability was present and since no effort was made to return or exchange the device for wifi only models, it can only be assumed the recipients intended to procure the telecommunications features inherent in the high-end model they purchased.

OMB states that “unauthorized purchases consist of items that are intentionally purchased and are outside of the cardholder’s purchasing authority.”<sup>13</sup> The iPads were intentionally purchased but, as hybrid telecommunication devices not contemplated by the Directive, cannot be deemed to fall outside the cardholder’s purchasing authority pursuant to CPSC Directive 1540.1. Accordingly, the iPads were not unauthorized pursuant to the OMB Circular. Further, since the purchase was not unauthorized, the purchase was also not an improper purchase under the OMB Circular.<sup>14</sup>

In addition to the issues discussed above, one other potential area of concern involves the inadequate property management process applied to the iPad purchase. The iPads were provided barcodes, one on September 20, 2011 and two on September 28, 2011, but were not properly entered into the Property Management System. Entering the devices into the Property Management System entails a formal process that is more involved than merely equipping property with barcodes. Moreover, because the items were purchased together, it is reasonable to assume they were also received simultaneously. Yet, they were barcoded eight days apart. If that were a mere oversight, it raises the question as to how the same mistake could occur on two separate occasions (September 20 and 28). Finally, the items were purchased on July 21, 2011, yet they were not barcoded until two months later, on September 20<sup>th</sup> and 28<sup>th</sup>. These apparent failures in process raise serious concerns that warrant further attention.

### CONCLUSION

In light of technological advances, the Directive provides insufficient direction as to how to distinguish between permissible and prohibited purchases of hybrid products that incorporate both computer and telecommunication features. Given the dual features of the iPads, their purchase, while not expressly permitted, was also not expressly prohibited by the Directive. In light of the fact that the iPads offer computer functions that make it comparable to laptops in many respects, it was not unreasonable for the EXIT Director, the staff member in the Agency most knowledgeable about technology, to conclude that this was a permissible computer purchase under the Directive. Because the directive is outdated, it should be rewritten to address the technological advances that have made the bright line distinction between telecommunication and computer hardware a false dichotomy.

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<sup>13</sup> OMB A 123, appendix B sec. 4.6.

<sup>14</sup> See Id. (finding that an “improper purchase can be one of two types: 1) unauthorized or 2) incorrect.”