



161046

Health, Education, and
Human Services Division

B-280480

August 26, 1998

The Honorable Jim Bunning
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives

Subject: SSA: The Agency's Relationship With the Office of Management and Budget Since Becoming an Independent Agency

Dear Mr. Chairman:

On March 31, 1995, the Social Security Independence and Program Improvements Act of 1994 separated the Social Security Administration (SSA) from the Department of Health and Human Services (HHS) and established SSA as an independent agency in the executive branch of government. SSA administers the nation's largest federal program--Social Security¹--as well as the largest cash welfare program, Supplemental Security Income (SSI). In 1997, the agency paid \$385 billion in benefits to 51 million recipients.

Since SSA became an independent agency, you have raised questions about the extent and nature of the agency's dealings with the Office of Management and Budget (OMB). This correspondence contains information you requested concerning this issue. Specifically, we will (1) describe SSA's current practices when dealing with OMB on budget, legislative, and policy matters and (2) discuss whether these current practices are in compliance with the law. To answer these questions, we met with officials from OMB and SSA, analyzed pertinent laws and regulations, and drew from our prior work on the challenges SSA faces as an independent agency.²

¹Social Security includes the Old-Age and Survivors Insurance and Disability Insurance programs.

²Social Security Administration: Effective Leadership Needed to Meet Daunting Challenges (GAO/HEHS-96-196, Sept. 12, 1996) and Social Security Administration: Leadership Challenges Accompany Transition to an Independent Agency (GAO/HEHS-95-59, Feb. 15, 1995).

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BACKGROUND

SSA has had several administrative structures over the years. When the Social Security program was created in 1935, a three-member independent Social Security Board was established to administer the nation's Social Security program.³ The Board's chairman reported directly to the president until 1939, when the Board was placed under a new agency, the Federal Security Agency (FSA). Then, in 1946, the Board was abolished, and its functions were transferred to the newly established SSA, still within FSA. From 1946 until its independence in 1995, SSA continued to operate as a part of a larger federal agency—first FSA, then the Department of Health Education and Welfare, and finally HHS.

The effort that culminated in independence for SSA began as early as 1984. The impetus for independence stemmed from concerns expressed in congressional hearings and reports about a variety of issues, including (1) improving management and continuity of leadership at SSA; (2) fostering greater public confidence in the long-term viability of Social Security benefits; and (3) removing the program's policies and budgets from the influence of HHS, OMB, and others in the executive branch. Committee chairmen expressed a desire to make SSA more accountable to the public for its actions and more responsive to the Congress' attempts to address SSA's management and policy concerns.

The Social Security Independence and Programs Improvement Act of 1994 (P.L. 103-296) separated SSA from HHS and established SSA as an independent agency in the executive branch of government. The law also made a number of other changes affecting SSA. For example, the law created three positions at SSA: deputy commissioner, inspector general, and chief financial officer. It also strengthened the role of SSA's commissioner, who is appointed by the president and confirmed by the Senate. Until independence, the president could remove the commissioner for any reason at any time. The independence law provided for a fixed 6-year term and protection against arbitrary removal by the president; the commissioner can now be removed by the president only for cause—neglect of duty or malfeasance in office. In addition, the independence law added a new requirement for SSA's budget submission process. It stated that "the Commissioner shall prepare an annual budget for the [Social Security] Administration, which shall be submitted by the President to the Congress without revision, together with the President's annual budget for the

³At the time, Social Security consisted only of retirement benefits to the elderly. Additional benefits, such as survivors and disability insurance, were added later.

Administration." The law does not explicitly address SSA's operations on legislative and policy matters.

Executive branch agencies are required to interact with OMB, whose overall mission is to help the president carry out the constitutional and statutory duties of the office. As part of the Executive Office of the President, OMB assists the president in preparing the federal budget and in managing its execution in departments and agencies. OMB works to ensure that proposed legislation and regulations, agency testimony, reports, and policies are consistent with the administration's policies. On behalf of the president, OMB often assumes the leadership role in presenting and justifying major policies and initiatives related to the budget and government management before the Congress.

Federal agencies within the executive branch are subject to title 31 of the U.S. Code, which sets forth the general rules for budget preparation. Title 31 centralizes responsibility for the federal budget in the president, requires agencies to prepare and submit to the president each appropriation request for the agency, and specifically authorizes the president to change any appropriation requests. The president's responsibility for budget formulation is executed by OMB. OMB Circular A-11 prescribes the process federal agencies are to use in preparing budget estimates. Moreover, under OMB Circular A-19, federal agencies must seek and receive OMB clearance before expressing views to the Congress in the form of proposed legislation, comments on pending bills, and testimony.

SSA CONTINUES TO RECEIVE GUIDANCE FROM OMB

Since becoming an independent agency, SSA has continued to work with OMB on all budget, legislative, and policy matters, as do other executive branch agencies. According to SSA officials, two key differences in SSA's relationship with OMB since independence are (1) the agency now works directly with OMB rather than going through HHS and (2) the president is now required to submit the commissioner's budget for SSA to the Congress along with the president's own budget.

SSA Receives Guidance From OMB on Budgetary and Legislative Matters

During the annual budget process, SSA, like other agencies, receives guidance from OMB to help it prepare a budget proposal. SSA and other agencies submit their budget proposals to OMB in September of each year, and the agencies work with OMB to revise their proposals over the next several months. Once

approved by OMB, SSA's budget, along with other executive branch agency budgets, is transmitted to the Congress as part of the president's budget. SSA's independence law states that when the president submits his annual budget, the president also is required to submit the commissioner's budget for SSA without revision. Under this provision, the Congress receives an additional source of information about SSA's needs. To comply with this new provision, the President's budget appendix for fiscal year 1999 includes a paragraph summarizing the Commissioner's budget request as follows:

"The Commissioner's annual budget for fiscal year 1999 includes a total of \$6,782 million in discretionary resources. This represents \$6,734 million for SSA administrative expenses (including \$420 million in funds not subject to the discretionary spending caps for conducting continuing eligibility reviews and \$50 million in no-year Capital Investment funds) and \$48 million for the Office of Inspector General."

The President's budget request for SSA's administrative expenses for fiscal year 1999 includes a total of \$6,448 million—approximately \$260 million less than SSA's budget request. The President's budget for fiscal years 1997 and 1998 contained a similar paragraph summarizing the Commissioner's budget request. In both cases, the Commissioner's budget request was higher than the President's request.

In addition to working with OMB on the annual budget, SSA continues to submit its legislative and regulatory proposals and testimonies to OMB for review prior to publication. OMB reviews proposals of executive branch agencies like SSA to ensure that they are consistent with the fiscal, economic, regulatory, and information policy priorities of the President. OMB also reviews SSA's testimonies to ensure that these communications accurately reflect the administration's policies. OMB officials told us that OMB's relationship with SSA is similar to that of other agencies within the executive branch of the government.

Independence Heightens SSA's Visibility in the Executive Branch

The conversion of SSA to an independent agency has created an opportunity for the agency to assert and defend its own priorities. Before independence, SSA's concerns and views were expressed to the Congress and OMB under the umbrella of HHS. According to SSA officials, SSA's independence gives the agency more visibility within the executive branch and allows it to express agency concerns and views directly to OMB and the Congress. For example,

after the president's budget has been submitted, SSA provides additional explanations and clarifications directly to the Congress, rather than through HHS. Most recently, during a hearing on the agency's fiscal year 1999 appropriations, the Congress requested SSA to submit additional information on the agency's budget request and how it differs from the President's budget. Moreover, SSA officials told us that the budget provision in SSA's independence law, which requires the commissioner to identify his budget needs separately in the president's budget, strengthens the agency's position in budget negotiations with OMB.

SSA'S PRACTICES COMPLY WITH THE REQUIREMENTS OF THE INDEPENDENCE ACT

SSA officials believe that the agency's current relationship with OMB complies with the law. These officials told us they believe that, even though SSA is independent, it is still part of the executive branch, and nothing in the legislation exempts the agency from the general requirements of title 31 and OMB guidance. Therefore, they believe SSA still needs to obtain OMB clearance when promulgating regulations, presenting testimony, and making legislative recommendations. We agree that SSA is not constrained by the independence legislation from submitting its regulations, testimony, and legislative recommendations to OMB. Some independent agencies are explicitly precluded by law from obtaining OMB clearance prior to sharing their budget and other information with the Congress. For example, the Commodity Futures Trading Commission and the Railroad Retirement Board, like SSA both independent agencies in the executive branch, are explicitly required to submit copies of their budget estimates or requests, legislative recommendations, testimony, and comments on legislation to their oversight and appropriations committees at the same time they submit them to the president or OMB. The Commission and Railroad Retirement Board are also expressly exempt from any requirement for review or approval before they transmit these documents to the Congress.

OMB and SSA officials also told us that they believe the paragraph describing the Commissioner's budget, as submitted in the President's budget, complies with the budget requirement in SSA's independence law. We agree that SSA's budget presentation, prepared in consultation with OMB and as submitted by the President, complies with the independence law and the federal budget process. Even so, the Congress has other options should this information not satisfy its needs. The budget provision in SSA's independence law is intended to provide information to the Congress on SSA's budget needs, yet in practice the information provides a brief summary only and omits detail. If the Congress would like more detailed or different information on SSA than what appears in

the president's budget submission, the law authorizes the Congress to obtain this information directly from SSA. The statute governing the budget process authorizes agencies to provide additional information directly to the Congress if asked to do so by either House.⁴

The Congress could also seek agreement with OMB and SSA on a more detailed presentation than the brief narrative now used in the president's budget. The Postal Service provides an example of a somewhat more detailed budget presentation under comparable statutory authority.⁵ Although in 2 of the last 4 years, the Postal Service's unrevised budget appeared in the President's budget in a narrative form similar to that used for SSA, the fiscal years 1996 and 1997 budgets showed the Postal Service's request in a format that displayed a number of costs, not only for the budget year, but for current and previous years. If the Congress found that this format or some other format offered the potential for being more informative than the currently used narrative, it could seek agreement on a similar format for SSA. Or, as mentioned above, the Congress could ask for the information directly from SSA after the president's budget has been issued.

AGENCY COMMENTS

We obtained comments on a draft of this report from SSA. SSA believes the report correctly portrays its relationship with OMB and provides an accurate presentation of the agency's budget process. SSA also provided technical comments, which we incorporated in this report where appropriate. SSA's comments appear in the enclosure.

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We will make copies of this correspondence available to those who are interested upon request. If you or your staff have any questions, please call me

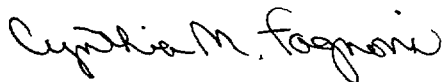
⁴31 U.S.C. 1108(e).

⁵The Postal Service, although unlike other government entities in most respects, is like SSA in that it is "independent" and "in the executive branch," and its budget is required to be submitted by the president to the Congress "without revision." 39 U.S.C. 201, 2009.

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or Kay Brown, Assistant Director, on (202) 512-7215. Other staff who contributed to this correspondence include Vernetta Shaw, Evaluator; Barry Bedrick, Associate General Counsel; and Roger Thomas, Senior Attorney.

Sincerely yours,

A handwritten signature in cursive script that reads "Cynthia M. Fagnoni".

Cynthia M. Fagnoni
Director, Income Security Issues

ENCLOSURE

ENCLOSURE

COMMENTS FROM THE SOCIAL SECURITY
ADMINISTRATION



SOCIAL SECURITY
Office of the Commissioner

AUG 19 1998

Ms. Cynthia M. Fagnoni
Director, Income Security
Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Fagnoni:

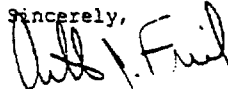
Thank you for the opportunity to comment on the General Accounting Office report, "SSA's Relationship With the Office of Management and Budget Since Becoming an Independent Agency" (GAO/HEHS-98-235R). We believe the report correctly portrays SSA's relationship with the Office of Management and Budget and provides an accurate presentation of SSA's budget process.

We agree that if Congress requires more detailed information on the Commissioner's budget request than that which appears in the President's budget, the information can be obtained directly from the Social Security Administration. This practice was followed this year when Members of Congress requested additional specific information on the Commissioner's budget request.

Enclosed are several technical changes that we believe will enhance the readability of your report.

If you have any questions, please call me or have your staff contact Barbara Doering at (410) 965-2290.

Sincerely,


Arthur Fried
General Counsel
Social Security Administration

Enclosure

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