SAM JOHNSON, TEXAS
SUBCOMMITTEE CHAIRMAN

KEVIN BRADY, TEXAS
PAT TIBERI, OHIO
AARON SCHOCK, ILLINOIS
RICK BERG, NORTH DAKOTA
ADRIAN SMITH, NEBRASKA
KENNY MARCHANT, TEXAS

XAVIER BECERRA, CALIFORNIA
SUBCOMMITTEE RANKING MEMBER
LLOYD DOGGETT, TEXAS
SHELLEY BERKLEY, NEVADA
FORTNEY PETE STARK, CALIFORNIA

Congress of the United States
House of Representatives
COMMITTEE ON WAYS AND MEANS
WASHINGTON, DC 20515

SUBCOMMITTEE ON SOCIAL SECURITY

DAVE CAMP, MICHIGAN, CHAIRMAN
SANDER M. LEVIN, MICHIGAN, RANKING MEMBER
COMMITTEE ON WAYS AND MEANS

JENNIFER SAFAVIAN, STAFF DIRECTOR
KIM HILDRED, SUBCOMMITTEE STAFF DIRECTOR

JANICE MAYS, MINORITY CHIEF COUNSEL
KATHRYN OLSON, SUBCOMMITTEE MINORITY STAFF

August 15, 2012

The Honorable Michael J. Astrue
Commissioner of Social Security
Social Security Administration
6401 Security Boulevard
Woodlawn, MD 21207

Dear Commissioner Astrue:

Earlier this year, you announced the termination of the Work Incentives Planning and Assistance (WIPA) program, effective June 30, 2012 and the Protection and Advocacy for Beneficiaries of Social Security (PABSS) program, effective September 30, 2012. You advised the Subcommittee that because the authorizations of appropriations for these programs had expired at the end of fiscal year 2011, absent Congressional action to explicitly extend them, you no longer had legal authority to continue providing services beyond those dates.

I requested the Comptroller General to provide his opinion on whether the enabling statutes establishing WIPA and PABSS serve as necessary and sufficient legal authority for the Social Security Administration (SSA) to continue operating the WIPA and PABSS programs, notwithstanding the expired authorizations of appropriations. Attached to this letter is the Government Accountability Office's (GAO) legal opinion, stating clearly that the enabling statutes for WIPA and PABSS provide legal authority for the SSA to continue these programs and that your agency has an appropriation that is available to cover their costs.

In spite of lengthy discussions among Congress, advocacy groups, and the agency to keep these programs going, you stood by your decision to end them. For months you claimed your hands were tied and blamed Congress for not taking action to continue WIPA and PABSS. The GAO opinion settles for once and for all that the decision to shut these programs down was both yours alone and wrong.

In light of the GAO's opinion, I would appreciate your views as expeditiously as possible regarding the future of these programs.

Sincerely,

SAM JOHNSON
Chairman

Attachment

G A O
Accountability * Integrity * Reliability
United States Government Accountability Office
Washington, DC 20548

B-323433

August 14, 2012

The Honorable Sam Johnson
Chairman
Subcommittee on Social Security
Committee on Ways and Means
House of Representatives

Subject: *Social Security Administration—Work Incentives Planning and Assistance Program (WIPA) and Protection and Advocacy for Beneficiaries of Social Security Program (PABSS)*

Dear Mr. Chairman:

This responds to your request for our legal opinion regarding the availability of appropriations for two programs administered by the Social Security Administration (SSA): (1) the Work Incentives Planning and Assistance (WIPA) program, a mandatory grant program, and (2) the Protection and Advocacy for Beneficiaries of Social Security (PABSS) program, a discretionary grant program. Letter from Chairman, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, to the Comptroller General (Apr. 25, 2012) (Request Letter). You asked whether the enabling statutes establishing these programs serve as necessary and sufficient legal authority for SSA to continue operating the programs, notwithstanding that the most recent authorization of appropriations for these programs expired at the end of fiscal year 2011.

In this case, the enabling statutes establishing these two programs provide legal authority for the agency to carry out these programs despite the absence of authorizations of appropriations. We distinguish between program enabling legislation, which enacts program authority, and a legislative authorization of appropriations. Although the authorizations of appropriations for these programs may have expired, the underlying program authority enacted in the enabling statutes has not expired, and SSA has an appropriation that is available to cover the costs of these programs. We conclude, therefore, that SSA has adequate authority to continue both programs.

Our practice when issuing opinions is to obtain the views of the relevant agencies to establish their legal positions on the subject of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/resources.html. In addition to information provided in the Request Letter, SSA provided us its legal views. Letter from General Counsel, SSA, to Assistant General Counsel for Appropriations and Budget, GAO (July 27, 2012) (Response Letter). We were provided, also, a letter from the Commissioner, SSA, to your subcommittee explaining SSA's views on this issue. Letter from Commissioner, SSA, to Chairman, Social Security Subcommittee, House Committee on Ways and Means (Mar. 9, 2012) (Commissioner Letter). The record in this opinion consists of the Request Letter, the Commissioner Letter, the Response Letter, and other available information.

BACKGROUND

The Ticket to Work and Work Incentives Improvement Act of 1999 established the WIPA program and the PABSS program under sections 1149 and 1150 of the Social Security Act (the Act). Pub. L. No. 106-170, title I, subtitle C, §§ 121-122, 113 Stat. 1860, 1887-1891 (Dec. 17, 1999). Both programs are administered by SSA as part of the agency's efforts to help disabled beneficiaries return permanently to the workforce. Commissioner Letter, at 1.

The WIPA program is a mandatory grant program established under section 1149, which provides that "[t]he Commissioner ... *shall* establish a community-based work incentives planning and assistance program" to disseminate information on work incentives programs to disabled beneficiaries. 42 U.S.C. § 1320b-20(a)(1) (emphasis added). The PABSS program is a discretionary grant program established under section 1150 of the Act, which provides that "the Commissioner *may* make payments in each State" for the purpose of providing certain services to disabled beneficiaries, including providing information and advice about employment services and providing advocacy or other services needed to secure gainful employment. 42 U.S.C. §§ 1320b-21(a)-(b) (emphasis added).

The statutes establishing WIPA and PABSS direct that SSA fund both programs from SSA's Limitation on Administrative Expenses (LAE) appropriation. 42 U.S.C. §§ 1320b-20(b)(4), 1320b-21(f). The funds that make up SSA's LAE account come from the Social Security and Medicare trust funds, general revenue, and certain fees collected by SSA. *See, e.g.*, Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Div. F, title IV, 125 Stat. 786, 1108-1109 (Dec. 23, 2011). Section 201(g)(1) of the Act makes available for expenditure, out of any or all of the trust funds, such amounts as Congress deems appropriate for the costs of administering titles II, VIII, XVI, and XVIII of the Act for which SSA is responsible,[1] among others. 42 U.S.C. § 401(g)(1)(A). The WIPA and PABSS enabling statutes provide specifically that

[1] These titles include the Old-Age and Survivors Insurance program, the Disability Insurance program, the Special Benefits for Certain World War II Veterans program, the Supplemental Security Income program, and the Medicare program.

SSA cover WIPA and PABSS costs "from amounts made available for the administration of title II and ... title XVI." 42 U.S.C. §§ 1320b-20(b)(4), 1320b-21(f). Unlike most appropriations in which Congress authorizes an agency to obligate a specified amount of money from the Treasury, the LAE is actually a limitation on the amounts that may be spent from these sources for SSA's administrative expenses.[2]

For fiscal year 2012, Congress provided that "not more than $10,555,494,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to in such section." Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. at 1108-09. Neither the appropriations act nor the accompanying reports address specifically either the WIPA or PABSS programs.

As part of the enabling statutes establishing program authority for WIPA and PABSS, Congress also enacted authorizations of appropriations for each program for five years. Pub. L. No. 106-170, §§ 121-122, 113 Stat. at 1887-1891. With respect to the WIPA program, section 121 provided:

> "There are authorized to be appropriated to carry out this section $23,000,000 for each of the fiscal years 2000 through 2004."

Pub. L. No. 106-170, § 121. With respect to the PABSS program, section 122 provided:

> "There are authorized to be appropriated to carry out this section $7,000,000 for each of the fiscal years 2000 through 2004."

Pub. L. No. 106-170, § 122. Subsequently, Congress extended the authorizations of appropriations for another 5 years, through fiscal year 2009. Pub. L. No. 108-203, title IV, subtitle A, § 407, 118 Stat. 493, 527 (Mar. 2, 2004). In 2009 and 2010, Congress enacted 1-year extensions of the authorizations of appropriations. Pub. L. No. 111-63, § 2, 123 Stat. 2001, 2001 (Sept. 18, 2009), Pub. L. No. 111-280, § 2, 124 Stat. 2903, 2903 (Oct. 13, 2010). The authorizations of appropriations expired at the end of fiscal year 2011:

> "There are authorized to be appropriated to carry out this section $23,000,000 for each of the fiscal years 2000 through 2011."

> "There are authorized to be appropriated to carry out this section $7,000,000 for each of the fiscal years 2000 through 2011."

---

[2] However, LAE still constitutes an appropriation because it provides budget authority for the agency to incur obligations and to make payments from the Treasury for specified purposes. *See* GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), *available at* www.gao.gov/legal/resources.html, at 21. *See also* B-305349, Dec. 20, 2005; 65 Comp. Gen. 738, 739 (1986); 60 Comp. Gen. 452, 453 (1981).

42 U.S.C. §§ 1320b-20(e), 1320b-21(h). SSA has submitted a legislative proposal to Congress to extend the authorizations of appropriations. Letter from Commissioner, SSA, to Speaker of the House of Representatives (Jan. 5, 2012). Congress has not yet enacted extensions. *See* Social Security Work Incentives Amendments of 2012, H.R. 6061, 112th Cong. (2012).

The Commissioner informed your subcommittee that SSA plans to stop the grant programs when their fiscal year 2011 grants expire unless Congress extends the authorizations of appropriations. Commissioner Letter, at 1. The Commissioner stated that WIPA grants would expire at the end of June 2012,[3] and that PABSS grants would expire at the end of September 2012. *Id.*

DISCUSSION

You ask whether the enabling statutes establishing these programs serve as necessary and sufficient legal authority for SSA to continue operating the programs, notwithstanding that the most recent authorization of appropriations for these programs expired at the end of fiscal year 2011.

In addressing this question, it is important to distinguish between legislative authorizations of appropriations and enabling legislation establishing program authority.[4] Enabling legislation creates an agency, establishes a program, or prescribes a function.[5] Because a federal agency is a creature of statute and can function only to the extent authorized by law,[6] enabling legislation provides the necessary authority for an agency to conduct a program or activity.

An authorization of appropriations is a directive to Congress itself, which Congress is free to follow or alter, up or down, in the subsequent appropriation act. There is no general requirement, either constitutional or statutory, that an appropriation act be preceded by a specific authorization of appropriation. 71 Comp. Gen. 378, 380 (1992).

---

[3] SSA recently advised us that the agency has not awarded any WIPA grants using its fiscal year 2012 appropriations. E-mail from SSA to GAO, dated Aug. 9, 2012.

[4] *See generally Glossary*, at 15 (explaining that the term "authorizing legislation" is used sometimes to describe either: (1) legislation authorizing a program, or (2) legislation authorizing an appropriation).

[5] For a general discussion of the nature of enabling legislation, as well as distinctions from authorizations of appropriations, see GAO, *Principles of Federal Appropriations Law*, vol. 1, 3rd ed., ch. 2, § C.1, GAO-04-261SP (Washington, D.C.: Jan. 2004), at 2-40—2-41.

[6] *See, e.g., Atlantic City Electric Co. v. Federal Energy Regulatory Commission*, 295 F.3d 1, 8 (D.C. Cir. 2002).

Here, although the authorizations of appropriations have expired, SSA has enabling legislation, that has not expired, and it has an appropriation legally available to cover program costs. Section 1149 of the Act requires SSA to administer a work incentives planning and assistance program and section 1150 authorizes it to administer an employment services program for disabled beneficiaries. 42 U.S.C. §§ 1320b-20(a)(1), 1320b-21(a)-(b). SSA also has an appropriation that is legally available to cover the costs of these programs. The enabling statutes for both programs provide that their costs be paid out of SSA's administrative funds, and Congress provided SSA with an LAE appropriation for fiscal year 2012. 42 U.S.C. §§ 1320b-20(b)(4), 1320b-21(f); Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. at 1108-09.

As stated above, there is no general requirement that an authorization of appropriations precede an appropriation. A statute imposing substantive functions on an agency that require funding for their performance, such as sections 1149 and 1150 here, provides the agency with the authority to perform the functions and to obligate its appropriations for that purpose. 71 Comp. Gen. at 380. We do not read the absence of an authorization of appropriations to defeat clearly established program authorities set out in the enabling legislation. We conclude, therefore, that SAA has adequate authority to continue the two programs at issue.

SSA argues that its conclusion that an authorization of appropriation is required to continue the WIPA and PABSS programs is compelled by (1) the legislative history of the acts that extended the authorizations of appropriations for these two programs, and (2) our decision in 55 Comp. Gen. 289 (1975).[7] The acts to extend the authorizations of appropriations certainly provided Members an opportunity to exercise program oversight and to express the need to continue the programs. It is in this context that we read the legislative history that SSA cites. We do not read it to compel a conclusion that would override the existing statutory program authorities and an appropriation legally available to cover program costs. It is well settled that statements in legislative history do not have the force of law and cannot supersede existing provisions of law. *See generally Lincoln v. Vigil*, 508 U.S. 182, 192-94 (1993); B-278121, Nov. 7, 1997.

Nor does SSA's reference to our 1975 decision compel a different conclusion here. In 55 Comp. Gen. 289, we found that the specific inclusion of the School Breakfast Program in a continuing resolution provided sufficient authority for the Department of Agriculture to continue the program despite the expiration of the authorization of appropriations. However, we also noted that a general appropriation in the continuing resolution (providing funding for food programs under "section 32 of the Act of August 24, 1935") was sufficient to continue two other food programs whose authorizations of appropriations would expire during the pendency of the continuing resolution, even though those programs were not specifically mentioned in the continuing resolution. 55 Comp. Gen. at 293. We did not establish a requirement,

[7] SSA also cites 65 Comp. Gen. 318 (1986), which is not applicable here because that decision involved the expiration of program authority.

as SSA suggests, that only a specific program reference in an appropriation act would override the expiration of an authorization of appropriation.

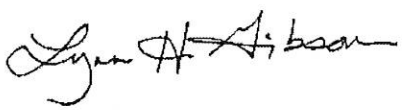
It appears that the crux of SSA's position is the lack of authorizations of appropriations. In that regard, we would note that an appropriation can be its own authorization, 65 Comp. Gen. 524, 527 (1986), particularly in those circumstances, as here, when there is existing program enabling legislation. *See generally* 71 Comp. Gen. 378, 380 (1992).

CONCLUSION

We conclude that the enabling statutes establishing the WIPA and PABSS programs provide legal authority for the agency to carry out these programs despite the absence of authorizations of appropriations. Where an agency has statutory authority or a statutory requirement to carry out a particular activity, the presence or absence of an authorization of appropriations is not determinative. Because the program authority in the enabling statutes has not expired, and SSA has an appropriation that is available to cover the costs of these programs, we conclude that SSA has adequate authority to continue both programs.

We trust that this opinion is responsive to the request. If you have questions, please call Thomas H. Armstrong, Managing Associate General Counsel, at (202) 512-8257, or Julia C. Matta, Assistant General Counsel, at (202) 512-4023.

Sincerely yours,



Lynn H. Gibson
General Counsel