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United States General Accounting Office  
Washington, DC 20548

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B-305349

December 20, 2005

The Honorable Frank R. Lautenberg  
United States Senate

Subject: *Social Security Administration—Use of the Gallup Organization to Poll the Public on Social Security*

Dear Senator Lautenberg:

This responds to your request for our legal opinion regarding the Social Security Administration's (SSA) use of the Gallup Organization to poll the public on Social Security. Among questions included in recent Public Understanding Measurement Systems (PUMS) polls conducted by Gallup on behalf of SSA, Gallup surveyed the general public on its familiarity with how the Social Security program is financed and on elements of various proposals to reform Social Security. You requested our legal opinion on whether the agency may have violated 5 U.S.C. § 3107 by using appropriated funds to pay for the polling. Section 3107 provides that "appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose."

As we explain below, SSA did not violate section 3107 by hiring the Gallup Organization to survey the general public, because Gallup is not a "publicity expert" within the meaning of section 3107. SSA's authority to survey the general public on its knowledge of the Social Security program and program financing stems from the agency's authority to administer that program. 42 U.S.C. § 901(b).

Consistent with our customary practice when rendering opinions, upon receipt of your request, we wrote a letter to SSA's General Counsel to establish a record on the matter you put before us. Letter from Susan A. Poling, Associate General Counsel, GAO, to Lisa de Soto, General Counsel, SSA, July 12, 2005. We requested factual information and official copies of recently conducted PUMS polls and posed a series of questions to the General Counsel designed to permit us to assess SSA's legal authority to conduct the polling in question. We received responses from SSA on August 11, 2005, including copies of all PUMS surveys conducted to date and subsequent reports prepared by the Gallup Organization, SSA's Performance and Accountability Reports (PAR) for fiscal years 1998 through 2004, and three Strategic Plans covering the years 1997 through 2008. Letter from Thomas W. Crawley, Deputy General Counsel, SSA, to Susan A. Poling, GAO, Aug. 11, 2005 (Crawley Letter). We also received copies of a "Library Bookmark Project" survey and an "Electronic Wage

Reporting” survey, which were both conducted in fiscal years 2004 and 2005, and a “Medicare Part D Subsidy Outreach Survey” then underway. *Id.*

## BACKGROUND

According to SSA, it first conducted Public Understanding Measurement Systems (PUMS) surveys in 1998 to meet strategic goals and objectives that the agency had developed under the Government Performance and Results Act (GPRA) of 1993. Crawley Letter. GPRA requires federal agencies to develop and submit to the Congress a strategic plan covering a period of at least 5 years.<sup>1</sup> 5 U.S.C. § 306. Among GPRA goals established in SSA’s first strategic plan, the agency undertook “[t]o strengthen public understanding of the social security programs.” *Social Security: Keeping the Promise*, Strategic Plan 1997–2002, at 31–32 (September 1997). As SSA explained in that strategic plan, one of the agency’s “basic responsibilities to the public is to ensure that they understand the benefits available under the Social Security programs to them individually and to the population as a whole. . . [T]he achievement of this goal supports every other goal of the organization.” *Id.*

To achieve its GPRA goal of strengthening public understanding, SSA adopted as an agency objective that—

“[b]y 2005, 9 out of 10 Americans will be knowledgeable about the social security programs in five important areas: basic program facts; financial value of programs to individuals; economic and social impact of the programs; how the programs are financed today; [and] financing issues and options.”<sup>2</sup>

*Id.* SSA sought to measure “the percent[age] of individuals who are knowledgeable in each of the five subject areas as demonstrated by responses to an objective test.” *Id.* It was with the PUMS surveys that SSA intended “to elicit from the public information that [SSA] might use in meeting its strategic plan objectives.” Crawley Letter. SSA has also used the PUMS survey results to assess the effectiveness of the agency’s communications strategies and products, including the *Social Security Statement*, which SSA mails annually to over 140 million workers age 25 and older. *Id.*

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<sup>1</sup> The strategic plan must contain a comprehensive mission statement covering the major functions and operations of the agency, general goals and objectives for those major functions and operations, and how those goals and objectives are to be achieved. 5 U.S.C. § 306. *See also* 31 U.S.C. § 1115 (requiring agencies to submit annual performance plans).

<sup>2</sup> This opinion does not consider SSA’s development of, or whether the agency achieved, its GPRA goals and objectives. Rather, we address here the legal question of whether SSA violated 5 U.S.C. § 3107 in conducting recent PUMS surveys.

Beginning in the fall of 1998 and continuing through the fall of 2004, the Gallup Organization (Gallup) conducted six PUMS surveys on behalf of SSA. *Id.* All surveys were conducted as recorded telephone interviews, typically between August and December.<sup>3</sup> *Id.* The surveys asked a series of general demographic questions designed to ensure a representation of specific demographic groups—Caucasians, African-Americans, Hispanic-Americans, and Asian-Americans.<sup>4</sup> *See* PUMS VI National Survey, *prepared by* The Gallup Organization *for* SSA, Office of Communication, March 2005 (PUMS VI Report).

The PUMS surveys also posed a series of approximately 24 to 32 substantive questions. Among these, Gallup pollsters would ask respondents questions such as:

- What type of benefits does Social Security provide;
- What is the youngest age at which someone can retire and receive full Social Security retirement benefits;
- Were Social Security retirement benefits, by themselves, designed to provide enough money for retirees to live on;
- What percentage of Social Security tax dollars goes towards paying administrative and other expenses; and
- Had they contacted SSA for information in the last year?

Beginning in 2003 the PUMS survey was significantly revised consistent with the agency's new strategic goals and objectives under GPRA, and to provide SSA "with a baseline measure of the 'percentage of Americans who are knowledgeable about the current social security program and related issues, including long range financing.'" Fiscal Year 2003 PUMS V National Survey, *prepared by* The Gallup Organization *for* SSA, Office of Communication (December 2003), at 4 (PUMS V Report). Among the goals in SSA's current strategic plan, the agency seeks "[t]o achieve sustainable solvency [of the Social Security trust funds] and ensure [that] Social Security programs meet the needs of current and future generations." SSA, *Strategic Plan*

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<sup>3</sup> PUMS I survey was conducted October through November 1998; PUMS II, November 1999–January 2000; PUMS III, October–December 2000; PUMS IV, August–October 2001; PUMS V, August–September 2003; PUMS VI, November–December 2004.

<sup>4</sup> For example, respondents were asked their age, race, ethnicity, highest level of education, employment status, income bracket, marital status, number of adults living in their household, whether they have internet access, and the number of telephone lines in their home. The Gallup pollster would also note the respondent's gender. This opinion does not evaluate, nor did GAO verify or test, the Gallup Organization's methodology for conducting the PUMS surveys.

2003–2008, at 29.<sup>5</sup> To achieve this goal, SSA undertook a strategic objective to support reforms, through education and research efforts, to ensure sustainable solvency and more responsive retirement and disability programs. *Id.* The PUMS survey was also substantially revised to include information to help SSA gauge the interest level of Americans in getting information about Social Security. PUMS V Report.

As Commissioner Barnhart expressed in SSA’s fiscal year 2004 Performance and Accountability Report, “[a]s the debate moves forward on how best to strengthen social security for the future, the agency must continue to educate the public about long-range financing issues affecting solvency, ensuring the program meets the needs of today’s and tomorrow’s beneficiaries.”<sup>6</sup> Crawley Letter (referring to SSA, *Performance and Accountability Report for Fiscal Year 2004* (Nov. 10, 2004), at 2). *See also Social Security Improvements for Women, Seniors and Working Americans: Hearing before the House Ways and Means Committee, Subcommittee on Social Security*, 107<sup>th</sup> Cong. 22-23 (Feb. 28, 2002) (testimony of SSA Commissioner Jo Anne B. Barnhart describing the PUMS surveys and expressing concern that the general public does not understand social security’s current pay-as-you-go funding system).

Besides the general demographic questions, and substantive questions similar to those discussed above, PUMS V and PUMS VI included additional questions such as:

- “Currently, Social Security takes in more money in taxes each year than it needs to pay benefits for that year. Which of the following do you think best describes what happens to the excess tax money? [The pollster was directed to read the following three statements.]
  - 1 The money is kept by the government as cash in the bank.
  - 2 The money is invested in government treasury bonds.
  - 3 The money is invested in the stock market.” PUMS V, App. A, q. 15 (Statistical findings omitted.)

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<sup>5</sup> Available at [www.ssa.gov/strategicplan.html](http://www.ssa.gov/strategicplan.html) (last visited Nov. 15, 2005). GPRA requires federal agencies to update and revise their strategic plans at least every 3 years. 5 U.S.C. § 306(b).

<sup>6</sup> The serious solvency and sustainability challenges facing the social security trust funds have been widely reported. *See, e.g.,* GAO, *Social Security Reform: Early Action Would Be Prudent*, GAO-05-397T (Washington, D.C.: Mar. 9, 2005); *Social Security Reform, Answers to Key Questions*, GAO-05-193SP (Washington, D.C.: May 2005); *Social Security: Restoring Long-Term Solvency Will Require Difficult Choices*, GAO/T-HEHS-98-95 (Washington, D.C.: Feb. 10, 1998). *See also The 2005 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds*, H.R. Doc. No. 109-18, at 1–3 (2005).

- “Currently, the government loans out the extra money from the bonds to help pay for other government programs. Do you believe that Social Security would be able to pay all future benefits if the government did not loan out the extra money?” PUMS VI q. 21.
- “Currently, the government uses the money from the bonds to pay for other government programs. Some people believe that Social Security would be able to pay all planned benefits if the government held the money specifically for Social Security instead of using it for other government programs. Do you agree or disagree with this statement?” PUMS V, App. A, q. 21 (statistical findings omitted.)
- “Now, I’m going to read [to you] several ways that have been suggested for changing social security. Please tell me whether you have ever heard about any of the following ideas: [The pollster was directed to read and rotate six ideas, and to ask a follow-up question.] Have you heard a lot or a little?”
  - Letting workers decide whether to shift some of their Social Security tax payments into personal Savings Accounts that they would invest on their own
  - Allowing workers to pay an extra tax into personal [savings] accounts that they would invest on their own
  - Having the government invest a portion of Social Security [trust funds] in the stock market
  - Increasing the tax rate employers and employees pay to Social Security
  - Making workers pay Social Security taxes on all of their earnings
  - Raising the age at which people are eligible to receive their full Social Security benefits.” PUMS V App. A, q. 23; PUMS VI q. 23 paraphrased (statistical findings omitted.)

## ANALYSIS

You asked us to determine whether the Social Security Administration (SSA) violated 5 U.S.C. § 3107 by hiring the Gallup Organization to conduct public understanding polls. Section 3107 provides that “[a]ppropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.” 5 U.S.C. § 3107.

This restriction applies to the use of all appropriated funds.<sup>7</sup> The provision, which is now section 3107, was enacted in 1913 and has not been amended.

The language of section 3107 focuses on paying a “publicity expert.” While we have had few occasions to address section 3107, our cases have noted difficulty in applying the provision due to the lack of definitional guidance in the statute and the need to protect an agency’s legitimate interest in informing the public regarding its activities and programs. *See* B-302992, Sept. 10, 2004; B-139965, Apr. 16, 1979 (noting the lack of definitional guidance in section 3107); A-82332, Dec. 15, 1936 (noting that the provision was not intended to restrict legitimate informational activities). Given the absence of definitional guidance in the statute, we referred to the legislative history of the provision to ascertain what Congress meant to prohibit when it passed in 1913 what is now section 3107. The legislative history of section 3107 suggests that the provision seeks to prohibit the hiring of publicity experts “to extol or to advertise” the agency or individuals within the agency. B-302992. Our decisions have applied this standard in analyzing section 3107 cases.

In the circumstances at issue here, we do not view the Gallup Organization as a “publicity expert” within the meaning of section 3107. *Id.* SSA did not hire Gallup to—nor did Gallup in fact—extol or advertise SSA or individuals within SSA. SSA hired Gallup to survey the general public on its familiarity with the Social Security program and how that program is currently financed, and on its familiarity with various proposals to reform the program. In fact, SSA hired Gallup to engage in the legitimate agency activity of collecting information that the agency needs in order to carry out its Social Security program responsibilities.

SSA’s authority to survey the general public on its knowledge of the Social Security program and program financing is inherent in the agency’s authority to administer that program, 42 U.S.C. § 901(b). As a general matter, an agency may use appropriations to engage in information gathering related to its specific program authorities. Indeed, our decisions reflect societal values favoring a robust exchange of information between the government and the public it serves. *See, e.g.*, B-184648, Dec. 3, 1975 (discussing an agency’s “legitimate interest in communicating with the public”).

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<sup>7</sup> SSA paid Gallup to conduct the PUMS surveys from its Limitation on Administrative Expenses appropriations. Crawley Letter. *See, e.g.*, Labor, Health and Human Services, and Education, and Related Agencies Appropriations, 2004, Pub. L. No. 108-199, div. E, title IV, 118 Stat. 3, 274–75 (Jan. 23, 2004). The costs of carrying out the functions of SSA are derived from the Social Security trust funds, as appropriated annually by Congress. *See* 42 U.S.C. § 401(g); Pub L. No. 108-447, div. F, title IV, 118 Stat. 2809, 3161 (Dec. 8, 2004).

Further, SSA's reference to the Government Performance and Results Act (GPRA) as a basis for conducting such polling is reasonable and consistent with the Act's provisions and purpose to "improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction." Pub. L. No. 103-62, § 2(b)(3), 107 Stat. 285 (Aug. 3, 1993).

## CONCLUSION

The Social Security Administration did not violate 5 U.S.C. § 3107 by hiring the Gallup Organization to survey the general public on its familiarity with the Social Security program and how that program is currently financed, and on its familiarity with various proposals to reform the program. For this purpose, Gallup is not a "publicity expert" within the meaning of section 3107. SSA's authority to survey the general public on its knowledge of the Social Security program and program financing derives from the agency's authority to administer that program.

/signed/

Anthony H. Gamboa  
General Counsel

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## DIGEST

The Social Security Administration did not violate 5 U.S.C. § 3107 by hiring the Gallup Organization to survey the general public on its familiarity with the Social Security program and how that program is currently financed, and on its familiarity with various proposals to reform the program. For this purpose, Gallup is not a “publicity expert” within the meaning of section 3107. SSA’s authority to survey the general public on its knowledge of the Social Security program and program financing derives from the agency’s authority to administer that program.