



## Decision

**Matter of:** Social Security Administration—Application of Reprogramming Notification Requirement

**File:** B-329964

**Date:** October 8, 2020

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### DIGEST

The Social Security Administration (SSA) did not violate a reprogramming notification requirement when it established a new office within the agency. SSA established the Office of Analytics, Review and Oversight (OARO) by realigning the functions of six existing offices within the agency. Section 514(a) of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2017 required SSA to notify and consult with both the House and Senate Appropriations Committees when funds were reprogrammed for certain purposes.

We conclude that SSA did not reprogram funds when it created OARO. As a result, SSA was not required to follow the consultation and notification procedures prescribed by section 514(a).

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### DECISION

This responds to a request for our decision concerning whether SSA violated a reprogramming notification requirement when it established a new office within the agency.<sup>1</sup> Section 514(a) of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2017 required SSA to notify both the House and Senate Appropriations Committees 10 days in advance of a reprogramming of funds that reorganized an office or programs, as well as consult those committees 15 days in advance of “an announcement of intent relating to such reprogramming.” Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2017, Pub. L. No. 115-31,

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<sup>1</sup> Letter from Representative Tom Cole, then-Chairman, Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, to Comptroller General, GAO (Jan. 23, 2018).

div. H, title V, § 514(a), 131 Stat. 502, 563–64 (May 5, 2017). The requester asked whether SSA violated this provision when it established OARO by realigning six existing offices performing data analysis, quality, review, and anti-fraud activities.

As explained below, we conclude that SSA did not reprogram funds when it created OARO. As a result, SSA was not required to follow the consultation and notification procedures prescribed by section 514(a).

In accordance with our regular practice, we contacted SSA to seek factual information and its legal views on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP); Letter from Assistant General Counsel for Appropriations Law, GAO, to General Counsel, SSA (Sept. 17, 2018). In response, SSA provided its explanation of the pertinent facts and its legal analysis. Letter from General Counsel, SSA, to Assistant General Counsel for Appropriations Law, GAO (Oct. 16, 2018) (Response Letter); Letter from General Counsel, SSA, to Assistant General Counsel for Appropriations Law, GAO (July 19, 2019) (Supplemental Response).

## BACKGROUND

On August 8, 2017, SSA's Acting Commissioner announced she would establish OARO in order "to maximize [agency] resources and better organize efforts to explore and develop the future of analyses and oversight." Response Letter at 2–3; Social Security Administration, Memorandum to Senior Staff, *Organizational Realignment - INFORMATION* (Aug. 8, 2017), at 2. To achieve this goal, the Acting Commissioner consolidated several existing agency offices into OARO. Response Letter, at 2. The work performed by these offices includes SSA's anti-fraud efforts, data analysis, and oversight of the disability adjudication system. *Id.* In moving these offices to create OARO, SSA did not change their functions. *Id.*, at 8.

SSA obligates the vast majority of its operating expenses, including OARO's operating expenses, against a lump-sum appropriation titled "Limitation on Administrative Expenses" (LAE). Response Letter, at 4; see also Pub. L. No. 115-31, 131 Stat. at 559–60. Obligations against the LAE appropriation support administrative expenses for various programs for which SSA bears statutory responsibility.<sup>2</sup> The explanatory statement accompanying SSA's 2017 appropriation

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<sup>2</sup> Such programs include the Old-Age Survivors Insurance and Disability Insurance program, the Hospital Insurance and Supplemental Medical Insurance program, the Social Security Advisory Board, the Supplemental Security Income (SSI) program, and support for the Centers for Medicare and Medicaid Services in administering their programs. See Pub. L. No. 115-31, 131 Stat. at 559–60; SSA Fiscal Year 2017 Budget Justification, at 128, available at <https://www.ssa.gov/budget/FY17Files/2017FCJ.pdf> (last visited Apr. 22, 2020).

subdivided the total amount appropriated for LAE to specify particular amounts for SSA's administration of various programs.<sup>3</sup> 163 Cong. Rec. H4025 (daily ed. May 3, 2017).

## DISCUSSION

At issue here is whether SSA's establishment of OARO and attendant reorganization of administrative functions triggered section 514(a)'s notification and consultation requirements. Section 514(a) states that:

None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2017, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that . . . (5) reorganizes or renames offices; (6) reorganizes programs or activities . . . unless the Committees on Appropriations of the House of Representatives and the Senate are consulted 15 days in advance of such reprogramming or of an announcement of intent relating to such reprogramming, whichever occurs earlier, and are notified in writing 10 days in advance of such reprogramming.

Pub. L. No. 115-31, § 514(a), 131 Stat. at 563–64.<sup>4</sup> Therefore, section 514(a) required consultation and notification if (1) SSA reprogrammed funds and (2) SSA

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<sup>3</sup> According to the SSA General Counsel, as required by law, SSA ultimately allocates amounts obligated against LAE to an appropriate trust fund or to the General Fund of the Treasury. For example, SSA allocates LAE obligations for the OASDI program against its corresponding trust fund, while SSA allocates LAE obligations for SSI against the general fund of the Treasury, consistent with the laws governing that program. Supplemental Response, at 4–6; see 42 U.S.C. § 401(g)(1)(B), (C).

<sup>4</sup> SSA was funded under a continuing resolution from October 1, 2017, through March 23, 2018. Continuing Appropriations Act, 2018, Pub. L. No. 115-56, div. D, 131 Stat. 1129, 1139 (Sept. 8, 2017), *as amended by* Further Continuing Appropriations Act, 2018, Pub. L. No. 115-90, div. A, 131 Stat. 1280 (Dec. 8, 2017), *as further amended by* Further Additional Continuing Appropriations Act, 2018, Pub. L. No. 115-96, div. A, 131 Stat. 2044 (Dec. 22, 2017), *as further amended by* Extension of Continuing Appropriations Act, 2018, Pub. L. No. 115-120, div. B, 131 Stat. 29 (Jan. 22, 2018), *as further amended by* Further Extension of Continuing Appropriations Act, 2018, Pub. L. No. 115-123, div. B, subdiv. 3, 132 Stat. 120 (Feb. 9, 2018). Section 514(a) continued to apply to SSA's expenditures during the period of the continuing resolution. See 131 Stat. at 1139 (appropriating “[s]uch

used the reprogrammed funds for the movement of functions and offices to OARO. See B-323792, Jan. 23, 2013.

As we have noted previously, a reprogramming is a shifting of funds from one purpose to another *within* a single appropriation. B-323792, Jan. 23, 2013. Therefore, the appropriations act does not set forth the subdivisions that are relevant to determine whether an agency has reprogrammed funds. *Id.* The key question, then, when applying a reprogramming notification requirement such as the one in section 514(a), is how to determine the relevant subdivisions of the appropriation.

In many instances, Congress appropriates amounts to agencies in lump sums, as it did here. Agencies maintain executive flexibility to reprogram funds within a particular lump-sum appropriation so they may make necessary adjustments for changing circumstances and programmatic needs, provided of course that the resulting obligations remain consistent with the terms of the lump-sum appropriation and with any other applicable law. See 55 Comp. Gen. 307, 318 (1975); see also *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993); B-215002, Aug. 3, 1987. Where Congress does not intend to permit an agency flexibility, but intends to impose a legally binding restriction on an agency's use of funds, it does so by means of explicit statutory language. 55 Comp. Gen. at 318. For example, Congress enacted many such restrictions on SSA's use of its fiscal year 2017 LAE appropriation. See Pub. L. No. 115-31, 131 Stat. at 559 (requiring that not less than \$2.3 million was for the Social Security Advisory Board, while \$90 million was available specifically "for activities to address the hearing backlog" within a particular SSA office).

Reprogramming notification requirements embody a compromise between the agency flexibility that lump-sum appropriations afford and the congressional control of explicit statutory restrictions. Such notification requirements allow agencies to adapt their budget execution to respond to changed circumstances, as long as resulting obligations remain consistent with law, while also requiring agencies to notify Congress if the resulting obligations will differ from Congress's understanding of how the agency would obligate its lump-sum appropriation. Therefore, to determine whether a reprogramming occurred, we must first establish how Congress understood that an agency would obligate its lump-sum appropriation. We do so by looking to congressional documents, the agency's budget documents, and the President's budget submission. See B-323792, Jan. 23, 2013. In the reprogramming analysis, we look to these documents to ascertain the subdivisions of a lump-sum appropriation among which funds might have been reprogrammed. See B-319009, Apr. 27, 2010 (referring to an itemization in a joint explanatory statement); see also B-323792, Jan. 23, 2013 (referring to an agency's budget request and the President's budget). After complying with any notification requirements that are specified by law, the agency retains the authority to

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amounts as may be necessary . . . under the authority and conditions provided" in the fiscal year 2017 appropriations act).

reprogram—that is, to obligate its appropriations in a manner that departs from the amounts specified in the relevant non-statutory documents but in a manner that is otherwise consistent with law.<sup>5</sup>

In this case, a joint explanatory statement accompanies the final appropriations act.<sup>6</sup> 163 Cong. Rec. at H4025. The joint explanatory statement accompanying the appropriation provides the best evidence of Congress’s expectations for the division of funds within an appropriation, as it is a bicameral document that reflects the final, enacted funding level for the appropriation. Where a joint explanatory statement subdivides an appropriation, we need not look to other committee reports or to the budget documents prepared by the agency or the President to determine whether an agency reprogrammed amounts.

Here, the explanatory statement accompanying SSA’s 2017 appropriation contains a table that provides relevant subdivisions of the LAE appropriation. Specifically, the table identifies the amounts to be obligated on the administration of the Old-Age Survivors Insurance and Disability Insurance trust funds, the Hospital Insurance and Supplemental Medical Insurance trust fund, the Social Security Advisory Board, and the Supplemental Security Income (SSI) program. 163 Cong. Rec. at H4025. Changes to these amounts for one of the purposes enumerated in section 514(a) would constitute a reprogramming and trigger the consultation and notification requirements prescribed by section 514(a). *Cf.* B-323792, Jan. 23, 2013 (noting that changes to the amounts specified in an agency’s budget request or the President’s budget submission would constitute a reprogramming).

In creating OARO, SSA did not change its allocation of administrative costs between the subdivisions identified in the explanatory statement. As noted above, the explanatory statement divided the LAE by program, not by component office. SSA assigns administrative costs, including the costs associated with OARO’s activities, to each of the categories identified in the statement based on the administrative workloads performed by the agency. Supplemental Response, at 4, 7. The creation of OARO did not change the allocations of each workload’s costs among these categories. *Id.* Because the creation of OARO did not require SSA to shift administrative costs between these categories, SSA did not reprogram funds in order to establish this office and was not required to follow the consultation and notification procedures outlined in section 514(a).


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<sup>5</sup> Amounts specified in non-statutory documents do have the full force of law where Congress incorporates them by reference. See B-316010, Feb. 25, 2008. In such instances, an agency must obligate its appropriation in a manner consistent with the amounts specified in the incorporated document, except as permitted by law. See 31 U.S.C. § 1532 (agencies may transfer amounts only as authorized by law).

<sup>6</sup> The appropriations act provides that this explanatory statement “shall have the same effect with respect to the allocation of funds . . . as if it were a joint explanatory statement of a committee of conference.” Pub. L. No. 115-31, § 4, 131 Stat. at 137.

## CONCLUSION

SSA did not shift funds between the relevant subdivisions of the LAE found in the explanatory table accompanying SSA's 2017 appropriation. As a result, SSA did not reprogram funds when it consolidated six agency offices to create OARO and therefore was not required to consult with or notify Congress under section 514(a).

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is written in a cursive style with a prominent horizontal line above the "A" and a long, sweeping tail on the "g".

Thomas H. Armstrong  
General Counsel