Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Diana Fortune [sic] from Keil Green re: SSA Disability/Work Issues meeting (partial, DOB) (1 page)	00/00/0000	b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Diana Fortuna
OA/Box Number: 12025

FOLDER TITLE:
PASS [Plan for Achieving Self Support] [1]

2018-0525-S
ry2256

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Brian Coyne
Chief of Staff, SSA

Judy Chesser
Deputy Commissioner, SSA
Legislation and Congressional Affairs

Marty Ford
The Arc
Consortium for Citizens
with Disabilities (CCD)

Kids SSI - trust → MA vs. SSI
- private ins/hoops
hardship extension

Celane McWhorter
United Cerebral Palsy

Rhoda Schulzinger
Bazelon Center

Tony Young
American Rehabilitation Association

Ethel Zelinsky
National Senior Citizens Law Center

*Find out re Jeffords
- Marty, Richard

Diana Fortuna
Domestic Policy
(Disability Issues)

*Call Tony Y
- Rhoda pt re RTW not cookie-cutter

Molly Brostrom
Domestic Policy
(SSA Issues)

Richard Green
OMB

Bill White
WH Public Liaison

PASS
CDR
DA&A
Re-eng.
→ 2 WR items
RTW

NCD + PCE will pick up

Tony Young:
Add private providers
Severe limits

Extend MA, tax credits

Celane knows alot - rehab

Withdrawal/Redaction Marker
Clinton Library

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To: Diana Fortune

From: Keil Green (intern)

Subject: SSA Disability/Work Issues meeting

I spoke to Becky Ogle regarding the meeting for tomorrow. She informed me that she will be unable to make it because of another appointment. However, she wanted me to ask if you might have a copy of the HCFA letter, and if so, would it be possible for you to fax her a copy. The final list of invitees scheduled to be at the meeting is as follows:

* Judy Chesser - DOB: (b)(6)

* Martha (Marty) Ford -DOB: (b)(6) [001]

* Rhoda Schulzinger - DOB (b)(6)

* Tony Young - DOB: (b)(6)

* David Fields (Mr. Young's assistant) DOB: (b)(6)

* Ethel Zelinsky - DOB: (b)(6)

* Brian Coyne - DOB: Said it was unnessasary

* Molly Brostrom

I have also left messages with Marie Strahan and Bill White, however neither have called back.

misimpress—

SOCIAL SECURITY ADMINISTRATION
OFFICE OF ASSOCIATE COMMISSIONER
OFFICE OF DISABILITY
BALTIMORE, MARYLAND
FAX NUMBER: 410-965-6503

ADDRESSEE	FROM
NAME: Diana Fortuna	NAME: Anna Pliti
LOCATION/ORGANIZATION: WH Domestic Policy	LOCATION/ORGANIZATION: SSA, OD, OAC
TELEPHONE NUMBER: 202-456-5570	TELEPHONE NUMBER: 410-965-3612
FAX NUMBER: 202-456-7028	TOTAL NUMBER OF PAGES: (COVER + 1)

IF RETRANSMISSION IS NECESSARY, PLEASE CALL IMMEDIATELY:

DATE: 5/24/96

MESSAGE/COMMENTS

Diana —

Susan Daniels wants you to see the attached before your 10 a.m. meeting today.

Anna

Diana, below appeared on my email this am and is fyi.

Date: Tue, 21 May 1996 22:02:23 -0700 (PDT) > From:
AMARIS <a_mconel@efn.org>
> To: Justice-For-All Moderator <jfa@TNET.com> > cc: justice@TNET.com
> Subject: SSA/PASS Shenanigans
>
> PLEASE, is there any way y'all can give us information about the process > and progress of legislation the SSA has drafted that would prohibit
> establishing SSI eligibility via a PASS? The GAO report estimated that
> over 40% of existing PASS plans would be eliminated by the change, should
> it become law. The draft language has been forwarded to the SSA to the
> Office of Management and Budget for required review. > > I am only one of the stated 40% who will be effected should SSA be > successful.
>
> We need to be kept informed and advised about what we might be able to > do to have an effect on the outcome. >
> AMARIS....(((((*)
> Anet Mconel
>
** ******************
> "Find out just what any people will submit to and you have the exact measure > of the injustice and wrong which will be imposed upon them."
> - Frederick Douglass
>
** ******************
> AMARIS....(((((*) Laser Impressions ----- a_mconel@efn.org -----
>
** ******************
>

CHILDREN'S SSI PROGRAM -- Additional Concerns

ISSUE/SECTION NUMBER -- Section 12213. Additional Accountability Requirements.

This section contains new requirements and limitations on eligibility for children who have funds placed in trust for their special needs. The language appears to be even more restrictive than the provisions originally included in the House bill.

CURRENT LAW -- Under current law, the Social Security Administration treats as resources only those assets actually available to and under the control of the individual. Irrevocable trusts, regardless of the original ownership of the funds, are not treated as available resources to the individual so long as the individual is not a trustee or has no control of the disbursements from the trusts and so long as the trust funds were not available to pay for food, clothing, or shelter for the individual. Often the trusts are funded with the proceeds of small medical malpractice or product liability judgments or settlements and do not involve enough funds to cover the long term care needs of an individual with severe disabilities for even a couple of years, much less a lifetime. On the other hand, the funds, if properly managed by the trustees, could provide for training, college education, or other services, oversight, and advocacy which are unavailable to the individual through the public SSI and Medicaid programs.

As a result of the trust aspects of SSA's resource policy, and with the explicit knowledge and sometimes the advice of SSA (and more recently with the explicit authorization in the Medicaid law), for many years parents seeking to prepare for the long-term future of their child with disabilities (including adult children), have established special needs trusts to meet their child's needs which go beyond those met by SSI and Medicaid. These are parents who recognize the day-to-day reality that, for the most part, their child will never be able to be self-sufficient and will always have to rely to some extent on the public programs for on-going support. SSA's interpretations of resources and trusts have been in effect for years.

CONCERNS -- In the original House-passed bill, the current Medicaid restrictions/limitations on transfer of assets and the use of trusts (passed as part of OBRA '93), as well as the exclusions from those restrictions for people with disabilities (provisions allowing continued eligibility even where trust funds exist), were incorporated by reference. While the House language raised some questions regarding the interaction of SSI and Medicaid, particularly upon the death of the individual (since in many cases, the state Medicaid agency would be eligible for reimbursement from any remaining funds), the House language generally seemed to incorporate current Medicaid policy and law into the new children's SSI provisions.

In the conference agreement, the current Medicaid policy regarding trusts and SSA's policy regarding treatment of trusts were abandoned in favor of provisions which make it difficult, if not impossible, for families to financially plan beyond SSI and Medicaid for the future of their child with a disability. These provisions:

- create disjunctions with current Medicaid law for children and adults;

- ignore/disregard long-standing SSA policy regarding the treatment of funds in trust which are based on numerous, important public policy considerations; and

- set a dangerous precedent for wholesale change regarding similar trust arrangements for adults.

These provisions are included in the conference report even though they received little-to-no discussion or debate. (The House had a provision which would have restricted far fewer trust arrangements; the Senate had nothing.) Actually, the conference agreement to the Senate provision to make it easier for parents to preserve retroactive SSI payment awards in a special account indicates understanding of the sound public policy rationale for such future-planning action. There are numerous similarities in purpose and function between the current-law trust arrangements and the Senate-designed special accounts; in revising the trust policy, these consistent public policy goals should be further explored. It is poor public policy to close off the ability of families to establish a trust to provide care and services beyond those covered by SSI and Medicaid, including advocacy and oversight, over the lifetime of a child with severe disabilities. We propose that the SSA policy regarding trusts be left intact. The alternative approach which already exists in Medicaid law (at Section 1917(c) through Sec. 1917(e)) -- to require repayment with any funds remaining upon the death of the individual -- could have been adopted instead of disqualification.

revised 3/5/96

ISSUE/SECTION NUMBER -- **Section 12214. Reduction in Cash Benefits Payable to Institutionalized Individuals whose Medical Costs are Covered by Private Insurance.**

This provision would limit the SSI payments to hospitalized or institutionalized children who receive any private health insurance coverage to the same level of SSI payments which is currently applicable to children and adults who reside in Medicaid funded hospital or long term care facilities (i.e. limitation to the personal needs allowance).

CURRENT LAW -- Under current law, where an individual resides in a hospital or nursing home or ICF/MR for which Medicaid is paying for the care, the individual is only eligible for the personal needs allowance ($30. per month plus any additional amount determined by the state). In these cases, it is assumed that Medicaid is covering all of the person's medical and other needs throughout a 24-hour day.

CONCERN -- Our concerns are that children who are in these settings may not fit the assumptions underlying the attempt to make the treatment equal for children covered by Medicaid or by private health insurance. For instance, parents of children with private health coverage may have very significant health care costs, such as premiums, deductibles, and co-payments, particularly COBRA extended coverage insurance premiums for those parents who have lost or had to give up their jobs due to the child's significant needs. In addition, there may be significant costs associated with health care services not covered by the private plan or for which the child has exceeded his/her lifetime maximum, even though the private plan continues to cover other care. Also, there may be other costs, such as the expenses of traveling long distances and hotel costs, etc. to maintain essential contact with a child who is located in a specialized medical center or hospital at great distance from the family home. These are expenses which the SSI benefit helps to cover to keep the child and the family together.

Further discussion would be necessary to address Members' concerns without harming children and families who must depend upon the continued assistance. If necessary, a "hardship" exception could be considered or an approach which recognizes the need to assist in meeting the individual's other related financial responsibilities in a way similar to QMB coverage of Medicare premiums.

revised 3/5/96

Disability Roundtable Report

Convener:	Susan Daniels, SSA
Date:	4/20/96
City/State:	San Francisco
Host:	SSA Regional Office, Phyllis Scaduto
Address:	75 Hawthorne, 3rd Floor
	San Francisco, CA 94105
Phone:	415-744-4513
FAX	
E-Mail	

Topics Discussed:

1. Implementation of Drug Addicts and Alcoholics provisions:
   What help will SSA be in the reevaluation of DA &A cases? When will notices be going out to claimants? Time frame for reapplying is much too short. Can the form be given out NOW? More structure would eliminate the subjectivity that exists in the DA&A judgements. How do work incentive participants get hit by the need to be "not working"?

2. Plans to Achieve Self Support:
   PASS participants need some understanding when working and schooling conflict with rules. What about some understanding for business plans and operating capital needs? Adaptable vans cannot be purchased; only a down payment can be in the PASS, but you must have a driver's license to

get that approved.

3. Service Complaints:
SSA needs to get input from the consumers, is insensitive. Red Book not available in FOs, SSA not understand work incentives. Title XVI administered is very different than Title II.

Important Conclusions:

1. SSA needs an **immediate** proactive, continuous, aggressive **information strategy** focused on community 3rd parties serving DA&A especially regarding reapplication and assurances of due process.

2. **PASS** consumers and preparers believe that SSA does not understand their needs and that, generally, the FOs and TSC are poorly administering the work incentives (read SSA is anti-work).

3. Access to **health care** and personal assistance services is a (the) major work disincentive.

????

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

08-Mar-1996 01:00pm

TO: Diana M. Fortuna

FROM: Judy Heumann

SUBJECT: Re: PASS

Carol is meeting with SSA on Tuesday on a few issues, and PASS may come up. If you have anything you would want her to keep in mind on this issue for that meeting, send it to me via email or fax, and I'll send it to her. We may talk about SSA's legislative proposals to toughen up on PASS.

I think we need to convene a small group of experts from the community in person or on a conference call to discuss this in greater detail. We should act but not without the involvement of the community.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

27-Feb-1996 05:48pm

TO: Diana M. Fortuna

FROM: Carol H. Rasco
Domestic Policy Council

CC: Molly Brostrom
CC: Elizabeth E. Drye
CC: Patricia E. Romani

SUBJECT: PASS

I have always found the little knowledge I have of this program to make it a program I should learn more about as I think - maybe - it has real potential for being an incentive to go to work....I would like to like to set up a meeting week of March 11 (probably have to be the end of that week) to have a session in my office on it...not for decision making but to learn more about the program itself as well as the legislation under consideration. Will it be signed off on by that week? If so, I may try to figure out how to squeeze in a meeting sooner.....?????

Also Susan D?
CDR's
Marty Ford?

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

27-Feb-1996 05:57pm

TO: Diana M. Fortuna

FROM: Carol H. Rasco
Domestic Policy Council

CC: Molly Brostrom
CC: Elizabeth E. Drye
CC: Patricia E. Romani

SUBJECT: RE: PASS

Since I can't do it in the a.m. please check in with me on Monday of next week to determine the status of the legislative package (which may be decided by then) and what we might do about a meeting...thanks.

Wednesday, February 28, 1996
For Immediate Release

Phil Gambino / Tom Margenau
410-965-8904 Fax 410-966-9973

News Release
SOCIAL SECURITY

cc Carol
FYI on PASS.
—Diana

Statement by Shirley S. Chater
Commissioner of Social Security

Concerning Efforts To Improve The "PASS" Program

People with disabilities who want to work should be given every opportunity to pursue their dreams without fear of jeopardizing their eligibility for Supplemental Security Income benefits. And many of them look forward to the day when they become more self-sufficient and no longer dependent on SSI for all or part of their livelihood.

Those sentiments are at the heart of the Social Security Administration's work incentive policies in general and particularly the provision called a "plan for achieving self support," or PASS. A PASS permits disabled or blind SSI recipients to set aside wages, self-employment and other income, as well as savings and other assets, in order to cover expenses related to preparing people to work and eventually reduce or eliminate their need for SSI or Social Security disability benefits.

About 5 million people with disabilities receive a monthly SSI check. Since 1989, the number of PASS plans has grown from 800 to over 10,000. There are many success stories to report. A nineteen year old woman from Detroit, who was partially paralyzed in a gunshot accident, used a PASS plan to set aside money from a job to complete her college education. A middle-aged woman from Peoria, Illinois with a rare muscle disease used a PASS plan to start a cleaning business that now grosses more than $100,000 per year. These people, and others like them, have used PASS plans to reenter the workforce and reduce their dependence on SSI.

But concurrent with these successes, a variety of issues has arisen concerning abuses of the system and inconsistent management of the PASS program. Such concerns led me to call on some of SSA's most knowledgeable disability specialists to examine the program and recommend legislative, regulatory, and procedural changes to improve the PASS process and to ensure that it is serving its intended purpose.

Subsequent to these initiatives, the General Accounting Office and SSA's own Office of the Inspector General conducted their own studies of PASS policies and practices. I welcome their involvement, and to the extent that their recommendations reflect new or better approaches, we will incorporate them into our own action plan.

Here are some of the major concerns and our proposed improvements.

Concern: The majority of PASS plans currently do not achieve intended results. Only a small percentage of plans lead to self-sufficiency and less reliance on SSI.
Improvement: SSA is recommitting itself to the original goals of the PASS program. Those goals -- self sufficiency, individual responsibility, and less reliance on the SSI program -- will be the driving force behind our efforts to make sure all individuals with disabilities can reach their goals and live their dreams.

Concern: PASS plans are currently approved in each of SSA's 1,300 field offices. The staff in those offices have many other duties to perform and lack the expertise to properly evaluate PASS plans.
Improvement: Effective immediately, a cadre of specialists with special vocational assessment training will review and make final decisions on all PASS plans. To give them a better understanding of their overall responsibilities, we are rewriting our operational instructions, including clarification that the ultimate outcome of a PASS must be to make people more self-sufficient and less dependent on SSI.

Concern: SSA does not consistently collect sufficient information to properly manage the PASS program.
Improvement: SSA is developing new management information software for the PASS program that will be incorporated into the same computer system that processes and tracks all SSI claims.

Concern: Once approved, PASS plans are not monitored for compliance to determine if the stated goals are being met.
Improvement: SSA shortened the maximum period between compliance reviews from 18 to 12 months and linked the compliance review to the annual overall SSI eligibility redetermination process. As part of the next compliance review for each case, PASS plans will be reevaluated to be sure they meet the improved standards.

Concern: Although the intent of PASS is for an SSI recipient to become self-supporting and eventually to be in a financial position to no longer need SSI, the law permits individuals to use PASS plans to exclude sufficient income and assets to become eligible for SSI in the first place.
Improvement: Because the current statute permits this situation, SSA is now developing a legislative proposal that will clarify the intent of, and conditions of, participating in the PASS program. We will transmit a proposal to Congress soon.

EXECUTIVE OFFICE OF THE PRESIDENT

28-Feb-1996 09:23am

TO: Diana M. Fortuna

FROM: Jack A. Smalligan
Office of Mgmt and Budget, HRD

CC: Melinda D. Haskins

SUBJECT: RE: Another change of mind!

I repeated to Jack Camalleri this morning that the best we can let them do today is a general press release that promises legislation but doesn't commit on these sensitive points. Camalleri says that Judy C. talked to Ellen S. last night and resolved her concerns. I told him that this doesn't change the matter on our side. (I didn't mention your info from Daniels, of course.)

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

27-Feb-1996 06:13pm

TO: Melinda D. Haskins
TO: Jack A. Smalligan

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: Another change of mind!

Just talked to Susan Daniels, and now I am again thinking that the proposal to prevent people from getting SSI via PASS is not good to shoot out of a cannon (in case we were thinking of doing so). She says the disability community will view this (and the whole proposal, for that matter) as screwing down on beneficiaries when in fact the problem is how SSA administers PASS. And that all these should be run by the disability community before we endorse them. I think she may have a point.

Sorry to change my mind so many times.

So I now think that the most we should do tomorrow is say we'll have a legislation package on this later.

Carol Rasco is interested in this and wants to have a meeting on it at some point - but not clear she would hold up the package for this.

Plus, Susan D. just told me that PASS had time limits until a few years ago, and the advocates lobbied Congress to have them removed. Is that right?

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

27-Feb-1996 04:59pm

TO: Jack A. Smalligan
TO: Melinda D. Haskins

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Kenneth S. Apfel
CC: Ellen S. Seidman

SUBJECT: RE: More on PASS

I am talking with Judy Chesser about their proposed legislative package on PASS. Since the negative GAO report will be released tomorrow, if there are any parts of their proposal that everyone agrees with, it would be smart for us to clear those elements today if possible, so that they have something to point to tomorrow if asked by the press. Is there anything that everyone agrees with?

Regarding whether we should recommend legislation that prevents people from getting on SSI via a PASS, I think SSA is right. People can go on a PASS the day after they become eligible for SSI, but letting them use PASS to become eligible is just like raising the income eligibility levels.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

27-Feb-1996 04:45pm

TO: Melinda D. Haskins

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Jack A. Smalligan

SUBJECT: comments on pass SSA legislative proposal

I have discussed my main comment with Jack Smalligan, which is that I don't think it should be limited to two times over a person's lifetime. I would advocate either no limit, or perhaps five times. I think it is far important to limit how long someone can be on PASS.

However, I have just heard from Judy Chesser that Chater feels VERY strongly that the limit of 2 per lifetime. She MIGHT agree to two times, with an option for 3 more.

EXECUTIVE OFFICE OF THE PRESIDENT

27-Feb-1996 04:33pm

TO: Diana M. Fortuna

FROM: Jack A. Smalligan
Office of Mgmt and Budget, HRD

SUBJECT: More on PASS

I checked with Melinda and am faxing you a comment Wendell P sent her. He would like to delete the section that prevents those apply for benefits from being able to do a PASS. Also I will fax you Ellen Seidman's comments but I doubt they will be readable. The first pt. is similar to Wendell's -- why delay letting people be eligible for plans? The second pt. questions whether the 48 month time limit is realistic.

I will sound out SSA on these areas.

February 22, 1996

NOTE TO: Diana Fortuna

SUBJECT: PASS Proposal

I am attaching a copy of a legislative proposal we sent to OMB this morning on the subject of Plans for Achieving Self-Support (PASS). PASS deals with a provision of law which allows an SSI blind or disabled person to exclude a portion of his/her income and resources while striving to reduce dependence on SSI benefits.

You may be aware that the GAO performed a review of SSA's implementation of current law. The report will identify some deficiencies which our legislative proposal will fix. The GAO report is expected to be released next Monday or Tuesday, February 26 or 27.

If you have any questions about the proposal, call me. We are hopeful that the proposal can be cleared quickly.

for Judy Chesser

Attachment

Mon/Tue
Pass
held

Plans for Achieving Self-Support

Current law provides that income and resources of a blind or disabled individual necessary for the fulfillment of a plan for achieving self-support (PASS) approved by the Commissioner of Social Security may be excluded for purposes of determining the individual's eligibility and benefit amount under the supplemental security income (SSI) program, and requires the Commissioner to establish time limits and other criteria respecting PASSs in regulations. It otherwise contains no elaboration of what is meant by reference to "PASS," nor any standards respecting use of such plans.

The amendment made by section ___ would add to title XVI of the Social Security Act a new section devoted to PASSs. The new section, consistent with past practice, describes a PASS as a work incentive aimed at reducing or ending an individual's dependence on SSI benefits, under which income or resources necessary for the attainment of a work-related goal may be excluded from income or resources. It additionally prescribes, as conditions for approval, that a PASS specify a work-related goal that is both reasonably attainable and likely to reduce or end the individual's dependence on SSI benefits, specify the time period reasonably necessary for the plan's fulfillment, describe the steps necessary for carrying out the plan, provide a means for accounting for funds excluded under the plan, and meet any other criteria that the Commissioner specifies in regulations.

leg rec?

The new section also sets 3 new restrictions on PASSs. First, approval would not be available to a plan proposed by an individual who needed the income or resource exclusions afforded by the plan in order to establish or resume eligibility for SSI benefits in the first month of the plan's operation. In other words, a person ineligible for SSI benefits could not use a PASS to shelter income or resources for the purpose of achieving program eligibility. (A related provision would also preclude an eligible individual from resorting to a PASS to prevent loss of program eligibility.) Second, no individual may have more than two approved PASSs per lifetime. Third, no PASS may extend for more than 36 months or, in the case of a plan involving a course of study that normally requires more than 36 months, 48 months.

Why?

Finally, the new section confers explicit authority on the Commissioner to terminate the plan of any individual who fails to comply with all of the plan's terms and conditions effective with the month following the first month of noncompliance, and to regulate the fees of non-public PASS-preparers.

Draft/2-22-96

SEC. . PLANS FOR ACHIEVING SELF-SUPPORT.

(a) In General.--Title XVI of the Social Security Act (respecting the supplemental security income program) is amended by adding at the end of Part A the following new section:

"SEC. 1622. PLANS FOR ACHIEVING SELF-SUPPORT.

"(a) In General.--In order to promote work activities by a disabled or blind individual and to thereby reduce or end the dependence of such individual on benefits under this title, the Commissioner may approve a plan for achieving self-support proposed by the individual under which income or resources necessary for the attainment of a work-related goal may be excluded from income pursuant to subparagraph (A)(iii) or subparagraph (B)(iv) of section 1612(b)(4) or from resources pursuant to 1613(a)(4).

"(b) Plan Requirements.--In order to be approved by the Commissioner under subsection (a), a plan proposed by an individual shall--

"(1) set out a work-related goal that is--

"(i) reasonably attainable by such individual, and

"(ii) likely to reduce or end such individual's dependence on benefits under this title;

"(2) specify the period of time reasonably necessary for the plan's fulfillment;

"(3) describe the steps necessary for carrying out the plan (including a schedule of anticipated savings or expenditures);

"(4) provide a means for accounting for funds set aside under the plan; and

"(5) meet such other criteria as the Commissioner may specify pursuant to subsection (f).

"(c) Restrictions on Approval of Plans and Modifications Thereto.--

"(1) Plan of otherwise ineligible individual.--

"(A) New plan.--In no case shall the Commissioner approve under subsection (a) a plan for achieving self-support proposed by an individual applying for benefits or seeking to re-establish eligibility for benefits after a period of ineligibility, if the individual would be ineligible, in the absence of an approved plan, for benefits under this title for the first month of the proposed plan's operation.

"(B) Modification to previously approved plan.--In the case of a plan for achieving self-support approved under this title, the Commissioner shall not approve any modification providing for the exclusion of additional income or resources proposed by an individual who would otherwise become (or would likely become) ineligible for benefits under this title because of such additional income or resources unless such modification may reasonably be expected to significantly increase the probability of the plan's success (rather than to preserve the individual's eligibility for benefits under this title).

"(2) Lifetime limit on plans.--In no case shall the Commissioner approve under subsection (a) a plan for achieving self-support proposed by an individual who has had two other such plans approved under this title.

"(3) Plan Duration.--In no case may the period of time in which a plan approved under this title is effective exceed 36 months or, in the case of a plan that involves a course of study that normally requires more than 36 months, 48 months.

"(d) Termination of Plan.--The Commissioner shall terminate the plan of any individual who fails to comply with all of the terms and conditions of the plan effective with the month following the first month in which such noncompliance occurs.

"(e) Plan Preparation Fees.--With respect to any person or private organization that, for consideration, prepares or assists in the preparation of an individual's plan for achieving self-support under this title, the Commissioner may establish by regulation limits on the amount of any such consideration that may be excluded from income pursuant to subparagraph (A)(iii) or subparagraph (B)(iv) of section 1612(b)(4) or from resources pursuant to 1613(a)(4).".

"(f) Other Regulations.--The Commissioner may establish by regulations such other criteria respecting plans for achieving self-support as the Commissioner determines will promote the purposes of this section.

"(g) Meaning of Term.--When used in this section, the term 'benefits under this title' includes State supplementary payments which are paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or section 212(b) of Public Law 93-66.".

(b) Conforming Provisions.--

(1) Amendment.--Subparagraphs (A)(iii) and (B)(iv) of section 1612(b)(4) and section 1613(a)(4) of such Act are each amended by striking "necessary for the fulfillment of" and inserting "specified in".

(2) Repeal.--Section 1633(d) is repealed.

SOCIAL SECURITY
Office of the Commissioner

December 20, 1995

Ms. Jane L. Ross
Director, Income Security
Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Ross:

Enclosed are two copies of the Social Security Administration's comments on the U.S. General Accounting Office's Report, "PASS Program: SSA Work Incentive for Disabled Beneficiaries Poorly Managed" (GAO/HEHS-96-51), dated November 29, 1995.

As always, we appreciate the opportunity to comment. As our comments indicate, by mid-1994 I had recognized that there were problems with the PASS provision and I initiated an Agency review of PASS policy and operations. As a result, actions are already underway to strengthen the administration of PASS provisions.

In my personal review of the GAO draft report, I noted that some of the issues GAO found most troubling are the same ones we have struggled to resolve. If the final GAO report reflects changes suggested in our comments, I believe it will have significant value by helping to create understanding about what can and cannot be done under existing legislation.

Please let us know if we may be of further assistance.

Sincerely,

Shirley

Shirley S. Chater
Commissioner
of Social Security

Enclosure

COMMENTS OF THE SOCIAL SECURITY ADMINISTRATION (SSA) ON THE GENERAL ACCOUNTING OFFICE (GAO) DRAFT REPORT, "PASS PROGRAM: SSA WORK INCENTIVE FOR DISABLED BENEFICIARIES POORLY MANAGED" (GAO/HEHS-96-51)

We welcome the opportunity to comment on this GAO draft report. PASS is an important work incentive for highly motivated disabled Supplemental Security Income (SSI) recipients and we want to make sure that it continues to be a viable avenue for moving them from dependency to independence. Former PASS participants are more likely to work than other SSI recipients. We believe that SSA is now on the way to ensuring this will continue to be true while reducing opportunities for misuse of the provisions and providing greater assurance that public funds are used appropriately.

In mid-1994, the Commissioner of Social Security recognized problems in SSA policies and practices relating to PASS and immediately directed a full review of the program be undertaken. A special workgroup, which included policy and field operations staff, was commissioned to conduct the review. Based on the workgroup's interim findings and recommendations, improved PASS instructions were issued to all SSA field offices in December 1994.[1] The workgroup's final report, issued in 1995, concluded that many of the PASS policies and practices of past years were no longer adequate for the recent rapid growth in PASS usage. It recommended major changes to strengthen the integrity of PASS, minimize abuse, improve cost-effectiveness, and strengthen administrative control of the program. Since GAO's field work was contemporary with that of the SSA workgroup, it is not surprising that GAO's findings are similar to the workgroup's findings or that the workgroup's recommendations address all of the issues identified by GAO in its draft report.

Many discussions among SSA Deputy Commissioners and Associate Commissioners produced important refinements in the final recommendations and recently the Commissioner approved both policy and administrative changes. SSA is now implementing many of these changes. We believe that PASS administration improved following issuance of the December 1994 instructions and will show even more dramatic improvement with full implementation of the Commissioner's new policies.

We do not dispute the GAO findings. However, we believe GAO's presentation of the findings can and should be more balanced and contextually complete. GAO faults SSA numerous times for allowing certain activities to take place, but fails to acknowledge that SSA may have no statutory authority to do otherwise. A specific example is SSA's "allowing" individuals to gain SSI eligibility by means of PASS. Other examples are

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[1]Unfortunately, we believe that the timing of its field interviews did not permit GAO to observe the impact of these revised instructions.

provided in our comments below. We believe the GAO report should be revised to reflect accurately SSA's authority. We hope that GAO will address its concerns on issues such as these by expanding its recommendations for Congressional action.

GAO Recommendation

Clarify the intended goals of the PASS program.

SSA Comment

We think there is sufficient Congressional history to arrive at a commonsense definition of "self-support" that includes both a reduction or elimination of cash benefits and we have adopted that definition. In part, the legislative history reads that Congress expected SSA "to provide every opportunity and encouragement to the blind and disabled to return to gainful employment...these provisions be liberally construed if necessary to accomplish these objectives."

The fact that Congress provided for the exclusion of resources "necessary for self-support" implies that someone can be self-supporting but still on the SSI rolls. It would add needed balance to the report if the pertinent language from congressional reports were included.

There is one issue, however, where original Congressional intent was ambiguous. Because Congress directed SSA to "liberally construe" PASS provisions, SSA has permitted individuals to become eligible for SSI by using a PASS. We do not believe that we can change this interpretation unilaterally but we think it is worth questioning if Congress really intended this result. This report affords GAO the opportunity to bring this to the attention of the Congress and invite clarification.

Separately, SSA had already begun addressing many of the problems that were discussed in the report, including issuing revised Program Operations Manual System (POMS) procedures in December 1994 on the PASS provision. These procedures were intended as an interim measure until the workgroup's final report was completed and the Commissioner approved new policies. We are now drafting POMS procedures which will clarify the expected outcome of a PASS and incorporate various policy and procedural changes which are designed to minimize abuse and improve the cost-effectiveness and administrative control of the PASS program. The new policies and procedures will be issued in the first calendar quarter of 1996.

GAO Recommendation

Decide whether fees paid to third parties should continue to be disregarded when calculating benefit payment amounts and if the amount of disregarded fees should be capped.

SSA Comment

Existing statutory language limits SSA's discretion in this area. However, we do exercise our authority to determine the appropriateness of a PASS preparation fee as an excludable expense under a PASS. We agree that these issues need to be explored, and are currently evaluating possible legislative proposals with regard to these and other PASS issues.

GAO Recommendation

Standardize the PASS program, including the application, reporting guidelines on expenditures for compliance reviews, and informational and educational materials for PASS preparers.

SSA Comment

We agree that standardizing the application form would be beneficial in administering the PASS provision, as well as help in achieving greater consistency. We have developed a standard application form and are working on standardizing other areas. The new application will capture medical, educational and vocational background information, details about the individual's plan and more information about the necessity of proposed expenditures. The proposed form is currently in the formal review process, and will require approval from the Office of Management and Budget.

GAO Recommendation

Improve support to FO staff, including enhancing their ability to evaluate the feasibility of proposed work goals, requiring PASSes to incorporate additional data relevant to determining their feasibility, including the applicant's disability, previous work experience, if any, and education, and more closely aligning work credits for the PASS program with the amount of time actually spent on PASS-related tasks.

SSA Comment

We agree that improved support should be provided to FO staff on the PASS provision, particularly in terms of additional training. Given the small number of PASSes an individual claims representative sees, we have determined that the most cost-effective and efficient method of providing needed training is to develop a small cadre of specialists who will be responsible for the review and approval or denial of PASSes. While we recognize that vocational evaluation normally entails more extensive formal training, and that this type of work is typically performed by rehabilitation professionals with years of experience, we believe this is the best option available to us at this time.

We are addressing the inclusion of additional data in PASSes through our revised application form. With respect to time spent on PASS-related tasks, however, we do not support a change to the work measurement system. We are aware of the perception that workload credit for PASS cases does not reflect the amount of time involved in developing a PASS plan. However, the volume of PASS cases is too low to warrant the systems development and implementation of a separate workload category. As an alternative, we are instructing our regional office and local management to take into account the volume of PASS cases in individual FOs when allocating staff and distributing resources on the basis of work units.

GAO Recommendation

Gather additional management data on PASS program participation and impact, and use these data to evaluate the impact of PASS program participation on employment.

SSA Comment

We agree that more data are needed on PASS program participation and impact. We are currently working to develop better methods for obtaining management information for these cases. We expect to implement improved data collection as part of the PASS specialist initiative.

GAO Recommendation

Strengthen internal controls by establishing more specific guidelines on acceptable PASS expenditures, developing penalties for willful noncompliance with the PASS program, including a determination if subsequent plans are permissible, examining the role of third-party preparers, including their potential financial conflicts of interest, and considering the strength of existing safeguards against abuse when determining the appropriate limits on the length and number of PASSes participants may have.

SSA Comment

We agree that internal controls should be strengthened in some of these areas. As stated above, we are currently drafting POMS procedures which will incorporate, among other things, various policy and procedural changes that are designed to deter abuse and improve the cost-effectiveness and administrative control of PASSes.

However, as was stated by SSA at the exit conference, the law provides SSA no authority or basis to limit participation as suggested by GAO. Section 203 of the Social Security Independence and Program Improvement Act of 1994 prohibits SSA from applying across-the-board time limits on PASSes. Regarding the role of third party preparers, again SSA has limited legal authority to impose standards on private businesses. Further, we have no authority to specify what qualifications a preparer must possess or how much they may charge their client. In the context of these legal restrictions, SSA is evaluating possible legislative proposals consistent with the report recommendations. We encourage GAO to invite Congressional attention on these topics also.

Regarding willful noncompliance, the report states that there are no penalties in place where such noncompliance is determined. An individual who is found to have abandoned or failed to follow the conditions of his/her PASS loses the exclusions the plan provided. The result can be a lower SSI benefit or loss of eligibility. Statutory penalties for non-reporting may also be applied. Failure to cooperate in determining whether an individual is or is not pursuing the plan may lead to ineligibility. Any SSI payments made in error as a result of a finding of abandonment of a PASS would be subject to recovery.

Other Matters

We are providing the following information to clarify and/or correct some of the data in the report.

PASS "Program"

The report and covering letter refer to the PASS "program." Since PASS is not a separate program, we suggest that GAO substitute either "provision" or "exclusion."

Covering Letter

The letter states that the PASS provision was established to help benefit recipients gain independence through employment. We believe this is a somewhat stronger statement than those in the legislative history of the Social Security Amendments of 1972, and suggest the statement be revised to say "help disability benefit recipients to return to gainful employment."

Page 2, Executive Summary, second paragraph, second bullet

Our review of the congressional request for GAO review in House Conference Report 103-670 shows that Congress did not make an explicit request that GAO determine whether the PASS provision is vulnerable to abuse and did not mention or allude to abuse. In fact, GAO cites the specifics of the Conference Report request on page 15 of its report and there is no mention of abuse.

Page 14, first paragraph, and Page 37, first full paragraph

The report implies that SSA arbitrarily eliminated the 48-month time limit for a PASS contained in the regulations. However, as SSA explained at the exit conference, that change was mandated by Section 203 of the Social Security Independence and Program Improvements Act of 1994 which amended section 1633 of the Act to direct SSA to develop regulations to implement individualized criteria for determining PASS time limits and other criteria.

This change prohibits SSA from applying absolute limits. Further, SSA data indicate that approximately 75 percent of all PASSes stop within 18 months of initiation; approximately 94 percent stop within 36 months.

Page 19, first full paragraph

The figures cited regarding the amount of the PASS exclusions found in GAO's case sample imply that individual PASSes may be costing the government up to $1,000 per month. In actuality, regardless of the amount of income excluded, an individual will not receive more than the Federal benefit amount and any appropriate State supplement in a given month.

Page 29, first full paragraph

The report's assertion that SSA has never evaluated PASS is incorrect. GAO is well aware that both OIG and an SSA workgroup have recently evaluated PASS.

Page 39, last paragraph

The report correctly notes that the minimum frequency for compliance reviews was changed from 18 to 12 months, but fails to note that the December 1994 POMS instructions require reviews every 6 months in certain circumstances.

Page 46, "Conclusions..."

The report states that eligibility for the PASS program has evolved by default, not design. However, this statement is based on GAO's interpretation of the goals of the PASS provision, and is not supported. SSA's policies for implementing the provisions in law and the congressional statement of intent were carefully crafted to "liberally construe" the application of this work incentive to encourage severely disabled and blind recipient to attempt work that could lead to self support. From the beginning, regulations and instructions have stated the eligibility requirements for PASS. The fact that the law does not permit SSA to restrict eligibility for PASS in certain situations when GAO believes eligibility should be limited, or that SSA has not implemented its own policies in a consistent manner, in large part due to the uncertain nature of what Congress viewed as "self-support," should not be cited as arguments supporting this view.

Technical Matters

Page 10, second paragraph

The report uses the term "safeguarding" cash. The fact is that cash is not "safeguarded" under a PASS. Instead, a recipient is allowed to use cash for expenses related to a work goal instead of counting it against cash benefits.

Page 11, first full paragraph

Medicaid eligibility is not automatic for SSI beneficiaries in every State.

Page 12, second paragraph

The Office of Retirement and Survivor's Insurance and Supplemental Security Income Policy is now the Office of Program Benefits Policy. The Office of Disability does not have responsibility for PASS policy.

Page 14, last paragraph

The IRWE provision does not result in a benefit increase for DI beneficiaries.

Page 19, first paragraph

The statement that SSA does not limit costs of items as long as they are necessary is inaccurate. The POMS clearly state (as the GAO report later acknowledges) that the items must also be reasonably priced.

Page 33, first sentence

There appears to be a word missing. Based on the context, we presume GAO meant to say that earnings were "frequently higher" in the year the plans ended.

December 20, 1995

TO: Diana Fortuna

FR: Judy Chesser

RE: PASS Plans

Legislative options that I have sent to OMB. GAO report expected in early January. Let's talk.

Hamp on Pass plan?

OPTIONS

1. Provide that the exclusion from income and resources under an approved PASS could not be applied in order to establish initial eligibility for SSI benefits or federally administered State supplementary payments.

(GAO Report identified this aspect of current law as a problem.)

DECISION

Approve: Disapprove:

Other:

2. Provide that if an eligible individual with an approved PASS becomes (or would become) ineligible because of increased income or resources, the Commissioner shall not approve a modification of the PASS solely to incorporate the excess income or resources for the purpose of permitting the individual to re-establish (or maintain) eligibility for SSI.

(GAO cited only the problem of initial eligibility: this proposal addresses the corollary to that problem.)

DECISION

Approve: Disapprove:

Other:

3. Provide that a PASS may last for only 36 months, with the possibility that a 48-month PASS may be approved by the Commissioner if the goal involves a course of study that routinely exceeds 36 months.

(GAO Report reported that SSA has no rules for limits on the length of a PASS. Current rules do provide for the limits specified in the proposal, however P.L. 103-296 requires SSA to set limits on a case-by-case basis.)

DECISION

Approve: Disapprove:

Other:

4. As above but set maximum limit for a PASS at 24 months with a possible additional 6 month extension.

DECISION

Approve: Disapprove:

Other:

5. Provide that an individual may have three PASSs in his/her lifetime, but the approval of a third PASS by the Commissioner, would be conditioned on good cause being found for not realizing any significant earnings as a result of the first two PASSs and, based on an assessment by a vocational expert, a high probability that the third plan will result in the individual's eliminating his/her need for SSI benefits.

(GAO cites lack of limits on the number of PASSs as an integrity problem.)

DECISION

Approve: Disapprove:

Other:

6. As above but set the maximum lifetime number of PASSs at 2.

DECISION

Approve: Disapprove:

Other:

7. Permit SSA to set limits on the amount that may be excluded from an individual's income and resources in order to pay the fee of a PASS preparer.

(GAO cites lack of limitation on fees charged by PASS preparers as a weakness that compromises program integrity.)

DECISION

Approve: Disapprove:

Other:

8. Permit SSA to promulgate rules to establish the qualifications of any person or organization that, for consideration, prepares, or assists in the preparation of, plans to achieve self-support (PASS).

(GAO does not cite this as a weakness.)

DECISION

Approve: Disapprove:

Other:

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 3571

FILE NO: 1904

URGENT

2/22/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 7

TO: Legislative Liaison Officer - See Distribution below:

FROM: Janet FORSGREN Janet L. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melinda HASKINS 395-3923 MH
Legislative Assistant's line (for simple responses): 395-3923
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=HASKINS, G=MELINDA, I=D
haskins_m@a1.eop.gov

SUBJECT: Social Security Administration Proposed Draft Bill: Plans for Achieving Self-Support (PASS)

URGENT

DEADLINE: noon Monday, February 26,1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please review this draft legislation from SSA on the PASS proposal. This language could be included in the President's balanced budget proposal. The above-mentioned deadline is firm. If you do not comment by the deadline, we will assume that you have no objection to the proposed language.

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RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

LRM NO: 3571

FILE NO: 1904

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.
You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Melinda HASKINS 395-3923
Office of Management and Budget
Fax Number: 395-6148
Branch-Wide Line (to reach legislative assistant): 395-3923

FROM: ______________________ (Date)
______________________ (Name)
______________________ (Agency)
______________________ (Telephone)

SUBJECT: Social Security Administration Proposed Draft Bill: Plans for Achieving Self-Support (PASS)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ____________________

_____ FAX RETURN of ____ pages, attached to this response sheet

Plans for Achieving Self-Support

Current law provides that income and resources of a blind or disabled individual necessary for the fulfillment of a plan for achieving self-support (PASS) approved by the Commissioner of Social Security may be excluded for purposes of determining the individual's eligibility and benefit amount under the supplemental security income (SSI) program, and requires the Commissioner to establish time limits and other criteria respecting PASSs in regulations. It otherwise contains no elaboration of what is meant by reference to "PASS," nor any standards respecting use of such plans.

The amendment made by section ___ would add to title XVI of the Social Security Act a new section devoted to PASSs. The new section, consistent with past practice, describes a PASS as a work incentive aimed at reducing or ending an individual's dependence on SSI benefits, under which income or resources necessary for the attainment of a work-related goal may be excluded from income or resources. It additionally prescribes, as conditions for approval, that a PASS specify a work-related goal that is both reasonably attainable and likely to reduce or end the individual's dependence on SSI benefits, specify the time period reasonably necessary for the plan's fulfillment, describe the steps necessary for carrying out the plan, provide a means for accounting for funds excluded under the plan, and meet any other criteria that the Commissioner specifies in regulations.

The new section also sets 3 new restrictions on PASSs. First, approval would not be available to a plan proposed by an individual who needed the income or resource exclusions afforded by the plan in order to establish or resume eligibility for SSI benefits in the first month of the plan's operation. In other words, a person ineligible for SSI benefits could not use a PASS to shelter income or resources for the purpose of achieving program eligibility. (A related provision would also preclude an eligible individual from resorting to a PASS to prevent loss of program eligibility.) Second, no individual may have more than two approved PASSs per lifetime. Third, no PASS may extend for more than 36 months or, in the case of a plan involving a course of study that normally requires more than 36 months, 48 months.

Finally, the new section confers explicit authority on the Commissioner to terminate the plan of any individual who fails to comply with all of the plan's terms and conditions effective with the month following the first month of noncompliance, and to regulate the fees of non-public PASS-preparers.

Draft/2-22-96

SEC. . PLANS FOR ACHIEVING SELF-SUPPORT.

(a) In General.--Title XVI of the Social Security Act (respecting the supplemental security income program) is amended by adding at the end of Part A the following new section:

"SEC. 1622. PLANS FOR ACHIEVING SELF-SUPPORT.

"(a) In General.--In order to promote work activities by a disabled or blind individual and to thereby reduce or end the dependence of such individual on benefits under this title, the Commissioner may approve a plan for achieving self-support proposed by the individual under which income or resources necessary for the attainment of a work-related goal may be excluded from income pursuant to subparagraph (A)(iii) or subparagraph (B)(iv) of section 1612(b)(4) or from resources pursuant to 1613(a)(4).

"(b) Plan Requirements.--In order to be approved by the Commissioner under subsection (a), a plan proposed by an individual shall--

"(1) set out a work-related goal that is--

"(i) reasonably attainable by such individual, and

"(ii) likely to reduce or end such individual's dependence on benefits under this title;

"(2) specify the period of time reasonably necessary for the plan's fulfillment;

"(3) describe the steps necessary for carrying out the plan (including a schedule of anticipated savings or expenditures);

"(4) provide a means for accounting for funds set aside under the plan; and

"(5) meet such other criteria as the Commissioner may specify pursuant to subsection (f).

"(c) Restrictions on Approval of Plans and Modifications Thereto.--

"(1) Plan of otherwise ineligible individual.--

"(A) New plan.--In no case shall the Commissioner approve under subsection (a) a plan for achieving self-support proposed by an individual applying for benefits or seeking to re-establish eligibility for benefits after a period of ineligibility, if the individual would be ineligible, in the absence of an approved plan, for benefits under this title for the first month of the proposed plan's operation.

"(B) Modification to previously approved plan.--In the case of a plan for achieving self-support approved under this title, the Commissioner shall not approve any modification providing for the exclusion of additional income or resources proposed by an individual who would otherwise become (or would likely become) ineligible for benefits under this title because of such additional income or resources unless such modification may reasonably be expected to significantly increase the probability of the plan's success (rather than to preserve the individual's eligibility for benefits under this title).

"(2) Lifetime limit on plans.--In no case shall the Commissioner approve under subsection (a) a plan for achieving self-support proposed by an individual who has had two other such plans approved under this title.

"(3) Plan Duration.--In no case may the period of time in which a plan approved under this title is effective exceed 36 months or, in the case of a plan that involves a course of study that normally requires more than 36 months, 48 months.

"(d) Termination of Plan.--The Commissioner shall terminate the plan of any individual who fails to comply with all of the terms and conditions of the plan effective with the month following the first month in which such noncompliance occurs.

"(e) Plan Preparation Fees.--With respect to any person or private organization that, for consideration, prepares or assists in the preparation of an individual's plan for achieving self-support under this title, the Commissioner may establish by regulation limits on the amount of any such consideration that may be excluded from income pursuant to subparagraph (A)(iii) or subparagraph (B)(iv) of section 1612(b)(4) or from resources pursuant to 1613(a)(4).".

"(f) Other Regulations.--The Commissioner may establish by regulations such other criteria respecting plans for achieving self-support as the Commissioner determines will promote the purposes of this section.

"(g) Meaning of Term.--When used in this section, the term 'benefits under this title' includes State supplementary payments which are paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or section 212(b) of Public Law 93-66.".

(b) Conforming Provisions.--

(1) Amendment.--Subparagraphs (A)(iii) and (B)(iv) of section 1612(b)(4) and section 1613(a)(4) of such Act are each amended by striking "necessary for the fulfillment of" and inserting "specified in".

(2) Repeal.--Section 1633(d) is repealed.

PASS Plans IG

SPECIAL DCLCA D.C. TRANSMITTAL

DATE: 2/07/96 TIME:1:54 pm

DELIVERED BY: FAX ☐ Shuttle ☐ Other ______________

RESPONSE FROM JUDY NEEDED BY: DATE: 2/13/96 TIME: C.O.B.

ATTN: Paulette/Regina

Please take the following action: Deliver ~~to Judy~~. Jack Jack NB

TO: JUDY L. CHESSER

THRU: Diane B. Garro ____
Jack Camilleri ____

FROM: David Mattson drm
Analyst: Sarah Rocklin

SUBJECT: Final OIG Report on SSA's PASSs for the Supplemental Security Income Program

REMARKS: Attached is a copy of OIG's final report on PASSs as well as a copy of our comments on the draft report (as printed in this final version). The final report reflects our comments on the draft report's recommendations. If you agree, we will give DCFAM/Audit Support Staff our "no comment."

Judy - We offer no comments about legislation, however the recommendations unlike GAO's report - don't touch on that issue. J

DECISION NEEDED:

Approve: ______________ Disapprove: ______________ Date: ______________

COMMENTS FROM JUDY:

SOCIAL SECURITY ADMINISTRATION — Office of the Inspector General

Memorandum

Date JAN 25 1996

From Inspector General

Subject Social Security Administration's Plan for Achieving Self-Support for Supplemental Security Income Recipients (A-13-93-00426)

To Shirley S. Chater
Commissioner of Social Security

We recently completed a review of the Supplemental Security Income (SSI) program "Plan for Achieving Self-Support" (PASS) administered by the Social Security Administration (SSA). The PASS program permits disabled or blind SSI recipients to set aside wages, Social Security Disability Insurance (DI) benefit payments, savings, self-employment income, and/or any other unearned income as well as resources, in order to cover expenses related to preparing the person to work and eventually reduce or eliminate SSI and DI benefits.

Our objective was to evaluate SSA's efforts to manage the PASS program. To accomplish our objective, we identified 6,068 SSI disabled recipients with a PASS plan as of February 1992. From these, we selected 465 plans located in 12 SSA field offices (FO) for review. Nine of the 12 FOs had the highest number of plans in their respective region (see Appendix A). Of the 465 plans, 360 were reviewed. The remaining 105 PASS plans could not be located by SSA. ?

In November 1994, we reviewed the SSI/DI master files for those 465 disabled recipients to determine the status of their PASS plan and their eligibility for SSI/DI benefits. We found that 66 recipients still had active PASS plans. Of the remaining 399 recipients, 11 were deceased and 52 were no longer receiving benefits. The PASS plans for the remaining 336 recipients had been either closed out or completed. All 336 recipients were still dependent on SSI and/or DI benefits and were unable to achieve self-sufficiency; 92 were receiving SSI benefits, 131 were receiving DI benefits, and 113 were receiving concurrent SSI/DI benefits.

Successes?

no success

Through the PASS program, DI beneficiaries are given an opportunity to achieve self-sufficiency. The PASS program allows DI payments to be set aside for designated plan expenses and not be counted as income in determining SSI eligibility ("set-asides" are described in more detail on page 3). Once the PASS plans were terminated, DI payments are no longer set aside and are considered in determining SSI eligibility.

Our audit and investigative work raised concerns about SSA's: (1) PASS plan development; and (2) overall case management activities.

PLAN DEVELOPMENT

Plan Approvals

The PASS plans are prepared by both SSA FO staff and organizations representing disabled individuals receiving either SSI or DI. These organizations are generally nonprofit disability advocacy groups, but more recently "for profit" organizations have begun to prepare PASS plans.

According to SSA's Program Operations Manual System (POMS), there is no standard form that needs to be completed for a PASS plan. The only requirement is that the plan be in writing and include all the necessary documentation.

For 230 of 360 PASS plans we reviewed, the plans were prepared by third parties. The FO staff we interviewed said they generally rely on third parties to prepare PASS plans correctly. We were told that plans prepared by these third parties are usually approved without question because they prepare more plans than SSA employees and know the PASS requirements better. The SSA Claims Representatives (CR) we interviewed indicated that if a standardized PASS application was required, they could do a better job of reviewing plans prepared by third parties and in making more timely approval decisions. Our investigators also found that SSA was rubber-stamping all PASS plans submitted, particularly those by advocacy groups.

We found problems in two critical areas of PASS plan development; the establishment of the occupational objective and the spending plan.

Occupational Objective

The POMS guidelines require that the plan contain an occupational objective which: (1) is a recognizable job title; (2) is feasible given the participant's impairment; and (3) produces additional earned income sufficient to reduce or eliminate the SSI payment within a reasonable amount of time. The occupational objectives are reviewed and approved by CRs at the SSA FO. The CR evaluates and determines whether there is a reasonable chance that the individual will attain the objective after considering the claimant's age and disability.

We found that SSA approved 79 of 360 PASS plans which did not meet required occupational objectives. We noted that 44 of the 79 plans had an occupational objective to maintain current employment and the remaining 35 plans contained an occupational objective to complete school. These two occupational objectives are not allowed according to SSA's program guidelines.

In the Denver regional office, we found the following examples of approved PASS plans that appear questionable:

- a claimant with a mental disability whose occupational objective was to become an Olympic cyclist;
- a 70-year old woman whose occupational objective was to become a trainer of boxers; and
- a blind claimant whose objective was to become a mechanic.

The CRs told us they have not had the appropriate training and experience to make decisions on occupational objectives. The CRs are not trained to evaluate the disability of a PASS applicant or their vocational aptitudes. The CRs need help in assessing an individual's ability to achieve the occupational objective described in the plan and how he/she intends to achieve their occupational objective. The CRs told us they believed that State vocational rehabilitation service agencies or other appropriate independent vocational experts should be used to identify an appropriate occupational objective for the claimant. They said that SSA currently uses these agencies as part of the DI program. The DI program requires beneficiaries who are rehabilitative to engage in vocational counseling and potential active employment.

Spending Plans

The PASS spending plan must show what income or other resources the individual has that will be used to obtain the occupational objective and how these funds will be kept separate from other funds. The PASS program permits disabled or blind SSI recipients to exclude or set aside income such as; wages, savings, and/or Social Security disability benefits to achieve an occupational objective. This set-aside income is to be used for education, vocational training, business start costs, or other situations needed to achieve the occupational objective. The plan's occupational objective is the controlling factor when determining expenses that can be covered under PASS.

We noted that many of the SSA-approved spending plans were not directly related to achieving the approved occupational objective. Approved spending plans seldom included monies set aside for tuition or training or for establishing a trade or business. We noted that almost one-half or 165 of the 360 plans reviewed had an automobile listed as the primary expense needed to achieve their objective. Although money can be set aside for transportation to attend school or other training, we found that the plan did not disclose how the purchase of cars related to achieving the occupational objective in the 165 plans.

We believe that frequent approval of the use of monies for expenses not directly related to the occupational objectives was primarily due to SSA not following guidelines on how the monies should be spent. The POMS does have specific requirements that monies be used for educational or training fees, material necessary to establish a trade or business, or room and board at the school or training facility. The SSA was liberal in approving plans that allowed the PASS participant to decide what was an appropriate expense.

SSA Action

We discussed with SSA our concerns regarding development of the PASS plans. The SSA indicated the following corrective actions have been taken, are in place, or are in process. In January 1995, FOs were provided a new POMS transmittal giving concise instructions better defining an occupational objective. It states that completion of an educational/training program is not an occupational objective. The new POMS instructions gives guidelines concerning likely and unlikely PASS participants. It also requires justification as to whether purchase of a car is necessary and reasonable. The SSA is considering the development of a standardized application for PASS.

Suggested Changes for Plan Development

We believe the PASS program needs to be better focused in accepting PASS participants. Accepting anyone for a PASS regardless of their potential for success undermines the purpose of the program which is for participants to become self-sufficient. However, for SSA to target those individuals with the potential to succeed, SSA needs to form partnerships with State vocational rehabilitation agencies or other organizations with similar expertise that can provide independent vocational assessments as a prerequisite for a PASS application. This would remove the responsibility from the CR who does not have the training or expertise.

RECOMMENDATIONS

We recommend that SSA should:

1. Require an independent vocational assessment as a prerequisite for approving a PASS.

   ### SSA RESPONSE

   The SSA did not fully agree with this recommendation as SSA believes it is too restrictive in its approach. The SSA agrees with the rationale on which this recommendation is based, however, it does not believe a vocational assessment is necessarily the best approach in every case. The SSA agreed to explore the feasibility of contracting with State vocational rehabilitation agencies or other qualified organizations to review PASS goals, proposed expenditures, and conduct vocational assessments.

OIG COMMENTS

The SSA acknowledged that improvements can be made and has not ruled out vocational assessments. We reaffirm our initial recommendation to require an independent vocational assessment as a prerequisite for approving a PASS.

2. Develop a standard PASS application to be used nationally.

SSA RESPONSE

The SSA is considering developing a standard PASS application. The SSA is currently gathering information to evaluate options before making a determination.

CASE MANAGEMENT

Once the PASS plan has been approved, SSA needs to periodically review the participants' performance and ensure that they are progressing towards achieving the occupational objective agreed to in their plan.

Field Office Case Management

The POMS requires that FOs maintain a file of all PASS awards and denials. Once the plan has been approved, the FO inputs a diary date on the SSI computerized record to review the case after 12 months. The SSA generates a computer alert to the FO when a PASS plan should be reviewed.

A progress review is an integral part of the case management process. These reviews provide the opportunity to ensure that the individual is making progress towards the occupational objective. However, we noted that for 22 of the 143 PASS plans included in our sample, which were in current pay status at the time of our review, diary dates were not entered by FOs. In addition, we were unable to locate the plans for 105 PASS participants in our review. The PASS file is needed to conduct the 12-month review to determine whether the claimant is using the set-aside income to achieve the occupational goal. The file is also important when the claimant needs to amend his plan.

The FO staff told us that case management is adversely affected because the time and effort spent on PASS plans is not recognized. The SSA does not give workload credits to FO employees for PASS work. Consequently, employees are reluctant to spend much time working PASS cases. In addition, because it is not a countable item for work credit, FO management generally does not know the number of PASS plans approved by their office or the time spent in establishing and maintaining these plans.

Headquarter's Role in Case Management

Effective case management requires reliable management information to support the FOs approving and monitoring PASS participants and to evaluate the FOs performance in carrying out these responsibilities. When we started our PASS review, we requested information concerning the number of PASS cases, the number of terminated cases, the number of matured diaries, and the number of cases in each FO. The SSA could not provide this information. There was no reliable data available on the number of PASS plans; number of approvals and denials; success or failure rate for PASS participants; and the participants' age, education, type of disability, etc.

Also, SSA could not provide any information on the administrative and program costs for PASS. Consequently, SSA cannot assess the cost-effectiveness of the PASS program. Administrative costs cannot be determined because SSA does not give workload credit for PASS work in the FOs. The SSA does not know the amount of time CRs worked on PASS plans. Program costs cannot be determined because there is no information produced on: (1) the increased amount of SSI payments resulting from income and resources that are set aside for achieving occupational objectives; and (2) the number of DI beneficiaries who become eligible for SSI as a result of setting aside DI benefit payments to achieve occupational objectives. Also, cost-benefit analysis cannot be done because information on successes and failures are not captured.

SSA Action

The SSA officials recognized the need to provide more support to FOs for developing and maintaining PASS plans. The SSA has implemented credit for a PASS compliance interview. However, work credit for other PASS work is still under consideration. The SSA attempted to give credit for the initial application process, but found that it could only capture an approved PASS. There is no record for denials on the SSI master file called the Supplemental Security Record. Therefore, time spent on denial cases cannot be captured at this time. The SSA has also reminded the FOs that retention of the awarded and denied PASS plans is required by SSA guidelines.

The SSA is also preparing a quarterly report on SSI disabled worker incentive provisions which includes PASS. However, this does not provide the in-depth management information needed to evaluate the cost-effectiveness of PASS.

Suggested Changes for Case Management

When we initially looked at PASS in February 1992 there were approximately 6,000 participants in the program. As of March 1994, there were over 8,700 participants; an increase of over 45 percent in 2 years.

The SSA needs to ensure that PASS applicants are attempting to achieve success and not to maximize benefits. To target those individuals with the potential and desire to succeed and to continually improve the effectiveness of PASS, SSA has to significantly improve its case management for the program. The SSA needs to consider establishing a PASS data base that would maintain an electronic record of the PASS plan and provide the Agency with management information to determine the number of cases, case flow data, profiles for success and failure, workload analysis and other management data.

RECOMMENDATIONS

3. Expand the work credit for all aspects of PASS work performed by SSA FO employees.

SSA RESPONSE

The SSA is deferring a decision on this recommendation pending the results of SSA's intercomponent PASS work group.

4. Develop a PASS data base to:

   (i) maintain an electronic record of the PASS plan and all related activity to ensure that both historic and current PASS status is retained and available;

   (ii) provide ongoing management information on the number of PASS plans nationwide, success and failure rate, cost of the program, and other analytical data; and

   (iii) generate and control diary alerts to ensure compliance review alerts are timely.

SSA RESPONSE

The SSA concurs with the recommendation with modification. The SSA agrees that additional management information and controls are necessary. However, SSA believes that enhancing the current system is a better approach than establishing a separate PASS data base.

OIG COMMENT

The OIG acknowledges SSA's position and agrees with the planned modifications.

OTHER STUDIES

The SSA convened a work group in September 1994, to examine concerns on the way in which PASS provisions are administered. The group's task is to make recommendations to improve the PASS provisions while maintaining the integrity of the SSI program.

The objective of the SSA work group was to: (1) address various issues relevant to PASS, including third party organization's role in preparation and monitoring of PASS plans; and (2) better define the FO's role in evaluating the PASS plan. The group discussed revisions to the existing regulations which are intended to clarify the criteria for evaluating proposed expenditures under a PASS and develop models as to what the FO's role should be in the evaluation and approval of a PASS. In another initiative, SSA is attempting to determine whether the PASS has produced additional income to reduce or eliminate the SSI payment. The SSA is looking at PASS participants who no longer have a PASS, to determine whether they: are on or off the SSI rolls; are pursuing the occupational objective designated; and have achieved their occupational goal. These topics were under consideration by SSA at the completion of our review.

The General Accounting Office (GAO) has started a review of the PASS program which was mandated by the Social Security Independence and Program Improvements Act of 1994, Public Law 103-296. The GAO is to provide trend data for the last 5 years on: (1) the number and characteristics of individuals who have applied or been approved for PASS; (2) the kinds of plans approved and their duration; (3) the success of individuals in fulfilling their plans; and (4) the extent to which PASS participants have become economically self-sufficient.

David C. Williams

David C. Williams

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to

Memorandum

Date: August 16, 1995 Lawrence H. Thompson for

From: Shirley S. Chater
Commissioner of Social Security

Subject: Office of Inspector General Draft Report, "Social Security Administration's Plans for Achieving Self Support for Supplemental Security Income Recipients" (A-13-93-00426)--INFORMATION

To: June Gibbs Brown
Inspector General

Attached are our comments to the draft report. Staff questions may be referred to Sandy Miller on extension 50372.

Attachment:
SSA Comments

COMMENTS ON THE OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT, "SOCIAL SECURITY ADMINISTRATION'S PLAN FOR ACHIEVING SELF-SUPPORT FOR SUPPLEMENTAL SECURITY INCOME RECIPIENTS" (A-13-93-00426)

We appreciate the efforts of the OIG in reviewing the Supplemental Security Income (SSI) Plan for Achieving Self-Support (PASS) program. We find that the information in the report is very timely since the Agency has been working on various initiatives regarding PASS.

In September 1994, an intercomponent workgroup was convened to review the PASS process and make recommendations for improvement. OIG, as well as the General Accounting Office, has been participating in the workgroup. In addition, our Office of Program and Integrity Reviews is conducting a study which will provide the Agency with needed management information on PASS. While these efforts have not yet reached the recommendation stage, we believe that the findings in the OIG report are consistent with our preliminary findings.

Recommendation

That the Social Security Administration (SSA) require an independent vocational assessment as a prerequisite for approving a PASS.

Comment

We are unable to concur with the recommendation because we believe it is too restrictive in its approach. While we agree with the rationale on which the recommendation is based--that the field office (FO) staff do not have sufficient training to properly evaluate many PASS goals--we do not believe that requiring a vocational assessment in every case is necessarily the best approach.

A vocational assessment can be an even more complicated and labor-intensive undertaking than a disability determination, and it should not be assumed that it can be done inexpensively or quickly. In addition, we may need to consider important factors in a disabled person's rehabilitation aside from a vocational assessment, such as motivation and family support.

Having said that, we do believe that some improvement can be realized in the overall quality of approved PASSs by revising our review/approval process. Along these lines, we are exploring the following options for revising the process:

- Contracting with State Vocational Rehabilitation (VR) agencies or other qualified organizations to review PASS goals and proposed expenditures, conduct VR assessments as necessary, and make a recommendation to SSA; or, Once we have more information available, including the intercomponent workgroup's findings and recommendations, we can determine how best to proceed.

Recommendation

That SSA develop a standard PASS application to be used nationally.

Comment

We are deferring a decision on this recommendation because, as stated above, we are currently gathering information to evaluate options for improving the PASS review/approval process and awaiting the results of the workgroup's study. We are considering developing a standard PASS application and are weighing various options on how best to include an assessment of vocational factors in the PASS approval process, but we need to assess all necessary information before making a determination.

Recommendation

That SSA expand the work credit for all aspects of PASS work performed by SSA FO employees.

Comment

We are deferring a decision on this recommendation also, pending the study results and subsequent recommendations of SSA's intercomponent PASS workgroup. As noted in the report, workload credit is now given for PASS compliance reviews as part of the redetermination workload. FO employees also receive credit through the work sampling process for the time they spend developing a PASS during an initial SSI application or a postentitlement change to exclude income or resources. Irrespective of this, however, expanding work credit for the PASS workload has been raised by some FOs and the issue was included in the intercomponent workgroup's review.

Recommendation

That SSA develop a PASS data base to: (1) Maintain an electronic record of the PASS plan and all related activity to ensure that both historic and current PASS status is retained and available; (2) provide ongoing management information on the number of PASS plans nationwide, success and failure rate, cost of the program and other analytical data, and (3) generate and control diary alerts to ensure compliance review alerts are timely.

Comment

We concur with the recommendation with modification. We agree that additional management information and controls are needed. However, we believe that making enhancements to an existing system, rather than establishing a separate PASS data base, is a better approach.

Our Modernized Supplemental Security Income Claims System (MSSICS) already contains a free format PASS screen for use in initial claims, and we are currently developing a new PASS screen as part of MSSICS, Release 4.4, which is scheduled for implementation in September 1996. The new screen will provide an electronic record of each PASS application and capture more management information. Also, a recent systems change that links the compliance review diary to the redetermination process will help ensure that compliance reviews are conducted timely.

Other Comments

The following comments do not relate specifically to the report recommendations. We believe, however, that they have merit and should be considered in the context of the final report.

As was discussed at the exit conference, one of the more problematic issues relative to tightening PASS criteria is the text of the House report that accompanied H.R. 1, which established the SSI program. That report states that Congress intended that the PASS provision be "liberally construed" to accomplish its objective of providing "every opportunity and encouragement" to individuals to return to work.

Also, when considering the efficiency with which the PASS provision is administered, it is important to remember that most FOs have very little involvement with the development of a PASS. Nationally, the number of plans under which income is presently excluded average less than 10 per FO.

An issue that we believe requires clarification is that of income excluded for the purpose of buying a car. OIG found that, in 165 of 360 plans, income was excluded for the purpose of buying a car without relating the car to an occupational objective. It is true that a PASS plan that includes buying a car must be based on an explicit occupational objective, and this requirement should be enforced. However, while enforcing the requirement can be expected to improve the documentation, it may not reduce the number of cars purchased under a PASS. Transportation is integral to holding a job. For people with disabilities the difference between private and public transportation is often more significant than for nondisabled people. However, as stated in the report, we have revised the Program Operation Manual

Systems instructions to require justification for the need to purchase a vehicle rather than using some other form of transportation.

Also, while the report states that 230 of the 360 reviewed plans were prepared by third parties, there is no indication how many of those PASSs were problematic. We suggest that any information that is available on the quality of the 230 PASSs be included in the report.

In addition, based on anecdotal information we have received from FOs, we are very concerned about the activities of some third party organizations that develop PASSs. In August 1994 SSA requested that OIG investigate these groups. We understand that OIG is planning to do so.

NOTE: Technical comments have been deleted because they pertain to material in the draft report that has been changed.

SOCIAL SECURITY ADMINISTRATION

- **GAO Report Critical of SSA:** A GAO report, expected to be released on February 28, finds that Social Security's PASS program is poorly designed and is being poorly managed; and that inadequate internal controls compromise PASS program integrity. The Plan for Achieving Self Support (PASS) program is a statutory program that permits disabled or blind SSI recipients to set aside wages, Social Security Disability Insurance (DI) benefit payments, savings and/or any other unearned income, in order to cover expenses related to preparing to work. In mid-1994, Commissioner Chater initiated her own review of PASS policy. As a result, SSA developed a plan and is taking action to strengthen the administration of the PASS program.

- **Proposal to Privatize Michigan Disability Determination Service:** Maximus, Inc. has submitted a proposal to the Michigan Department of Social Services to assume the disability determination function now performed by the State's Disability Determination Service (DDS) for the SSA. In his State of the State Address, Governor Engler pledged to explore contracting out State functions. The DDS director is scheduled to present a rebuttal to the Maximus proposal on February 26.

- **Social Security Number Application Fraud Case:** The U.S. Attorney for the Eastern District of PA announced a negotiated plea agreement in a case involving Social Security fraud. The investigation was conducted by SSA's Office of the Inspector General, the Secret Service, and INS.

DEPARTMENT OF INTERIOR

- **Parks Initiative:** Secretary Babbitt forwarded to the Vice President an initiative for our National Parks entitled **Parks for Tomorrow**. This initiative brings together several proposals to renew and protect National Parks and other open spaces. The proposals include: reforming fee and concessions policies, broadening the authority of the National Park Foundation, improving park housing and transportation systems, park wilderness designations, enhancing natural heritage initiatives, and creating tax incentive programs.

- **Congressional Hearing:** On Monday, the Secretary will testify before a Democratic Environmental Task Force group (Reps. Miller, Waxman, Markey, Skaggs and Pallone) with EPA Administrator Browner and Assistant Attorney General Lois Schiffer. The group will be discussing the effects of the Republican budget cut proposals and the government shutdown on the environment, the public, and the agencies themselves. The focuses will be on forests, public land access, endangered species, and the national parks.

be housed across the street from the Techwood Homes, HUD has been working closely with the City to ensure the timely completion of the transformation of this development.

- **Public Housing Youth Summit in San Francisco:** Secretary Cisneros is planning a public housing youth and anti-crime event on March 2 to promote the White House Conference on Youth, Drug Use and Violence. JS-A, Dennis, Molly

- **"One Strike and You're Out" Update:** HUD is working with the White House and DOJ to finalize draft policy guidance for public housing authorities on how to toughen up on crime in public housing.

- **Travel to Pittsburgh:** On February 28, Secretary Cisneros will travel to Pittsburgh to attend the Executive Committee meeting of the Pittsburgh Housing Authority. He will also meet with Mayor Murphy (tentative) and tour public housing developments.

- **Travel to Florida:** On February 29, Secretary Cisneros will travel to St. Petersburg to address the Florida Leadership Conference. He will also travel to Miami to give the dinner address at the Cuban American National Council's Eighth Annual Conference. Weller fyi

SMALL BUSINESS ADMINISTRATION

- **Administrator's Travel:** The Administrator will lead a town meeting with Congressman Zeliff in Manchester, NH on February 26. On the same day he will meet with the Economic Development Committee of the Business and Industry Association and the Concord SBA. On February 27, he will open a Business Information Center in Vermont.

VETERANS AFFAIRS

- **Veterans Charged Excessive Mortgage Points:** The February 26 edition of *Forbes* features an article on certain mortgage lenders who are charging excessive points to veterans who are refinancing their VA-guaranteed loans. The article accurately reports that VA is publishing developing regulations that will limit the number of points lenders may charge veterans. VA has already issued interim guidelines directing VA regional offices to scrutinize refinancing loans, and lenders have been requested to voluntarily comply with a two-point ceiling on the number of points that may be financed. *U.S. News & World Report* and *American Banker* also reported on this issue.

- **Address to VFW Annual Winter Conference:** On March 4, Secretary Brown will address the Annual Winter Conference in Washington, D.C.

- **Delegation to Vietnam, Laos, and Cambodia:** On March 9, Deputy Secretary Hershel Gober will lead a Presidential delegation to Vietnam, Laos, and Cambodia.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

22-Feb-1996 07:44pm

TO: Diana M. Fortuna

FROM: Carol H. Rasco
Domestic Policy Council

SUBJECT: RE: PASS program

I am indeed very interested, thanks for alerting me.....if we need some real world feedback on some of this we might call some of the folks from SWITP in California whom I believe I remember encourage students to use PASS and talked to me about it for Hamp.

TO : Commissioner Chater
Thru : PDC ____________
COS ____________
OEO ____________

SUBJECT: General Accounting Office Draft Report, "PASS Program: SSA Work Incentive For Disabled Beneficiaries Poorly Managed" (Audit No. 195009)--ACTION

Attached are our proposed comments to the General Accounting Office (GAO) draft report and a transmittal letter. Concurrence was obtained from the Chief Policy Officer; the Director, Office of Strategic Management; the Chief Counsel; and the Deputy Commissioners for the Office of Finance, Assessment and Management, the Office of Legislation and Congressional Affairs, the Office of Operations, and the Office of Systems.

This review of the Plan for Achieving Self-Support (PASS) provision was congressionally mandated under the Social Security Independence and Program Improvements Act of 1994. The PASS provision permits disabled or blind supplemental security income (SSI) recipients to set aside wages, Social Security disability insurance (DI) benefit payments, savings and/or any other unearned income, in order to cover expenses related to preparing the person to work and eventually reduce or eliminate dependence on SSI. Congress requested that GAO gather data on characteristics of PASS participants as well as the extent to which individuals who completed a PASS have become economically self-sufficient. In addition, GAO was asked to study whether improvements can or should be made to the PASS provision.

GAO's principal findings are that SSA has not used the PASS program as Congress intended to help move benefit recipients off the disability rolls and into the workforce; that the PASS provision was poorly designed and is being poorly managed; and that inadequate internal controls compromise PASS provision integrity.

The draft report states that SSA is aware of and is trying to address some of the internal control weaknesses present in the PASS program. GAO acknowledges that SSA established a PASS workgroup to address various PASS issues, is considering a number of regulatory and policy options, and plans to disseminate materials to educate PASS participants and third parties about

PASS rules. However, the report says SSA "...cannot presently provide reasonable assurance that taxpayer dollars are being used appropriately."

The draft report recommends that SSA implement, or seek legislation to implement, major improvements in the management of the PASS provision to achieve more consistent administration, to better support field staff, to collect data sufficient to control and evaluate the program, and to provide internal controls against waste and abuse. The draft report also makes the recommendation to Congress that it may wish to consider whether individuals financially ineligible for SSI because their DI benefits exceeds the eligibility threshold should continue to gain SSI eligibility through the PASS provision.

The proposed comments agree that improvements need to be made and detail numerous actions that are planned, or that were already underway, as the result of SSA's internal review and the study recently completed by the Office of Inspector General. The proposed comments also cite SSA's Employment Strategy, which is designed to improve return-to-work and rehabilitation services for SSI and Social Security DI recipients as a future alternative designed to remedy some of the inherent flaws in PASS.

While not disputing the overall findings, SSA does find that GAO's presentation of the issues involved in SSA management and oversight of PASS is misleading and incomplete. Prime examples of this are the report's criticism of SSA in many areas in which the Agency has no statutory authority to make changes, and its assertion that SSA has not used the PASS provision as Congress intended--to move recipients off the rolls and into the workforce--when legislative history does not support that this was the intent. The proposed comments address these misrepresentations and inaccuracies in responding to the specific recommendations, and respond further to these issues in the "Other Matters" section.

I recommend that you approve the proposed comments and release them to Jane Ross.

Carolyn W. Colvin

Attachment

cc:
John Dyer

Ms. Jane L. Ross
Director, Income Security
Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Ross:

Enclosed are two copies of the Social Security Administration's comments on the U.S. General Accounting Office's Report, "PASS Program: SSA Work Incentive for Disabled Beneficiaries Poorly Managed" (GAO/HEHS-96-51), dated November 29, 1995.

We appreciate the opportunity to comment. Please let us know if we may be of further assistance.

Sincerely,

Shirley S. Chater
Commissioner
of Social Security

Enclosure

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COMMENTS OF THE SOCIAL SECURITY ADMINISTRATION ON THE GENERAL ACCOUNTING OFFICE DRAFT REPORT, "PASS PROGRAM: SSA WORK INCENTIVE FOR DISABLED BENEFICIARIES POORLY MANAGED" (GAO/HEHS-96-51)

We appreciate the opportunity to comment on the General Accounting Office (GAO) draft report on the Plan for Achieving Self-Support (PASS) provision. We too are concerned about the issues raised by GAO and want to make clear that SSA has already initiated corrective actions to address these problems. We also want to emphasize that PASS is an important provision of the SSI program that helps people move from dependence to independence. The improvements we are making to PASS will eliminate abuses while continuing to assist individuals in their efforts to achieve self-support. Consistent with this objective, we are developing a comprehensive employment strategy that will improve return-to-work and rehabilitation services for SSI and Social Security disability insurance (DI) recipients.

new

While we do not dispute the GAO findings, we do find that the report's presentation of the findings is misleading and incomplete. For example, while faulting SSA numerous times for allowing certain activities to take place, GAO fails to note that SSA has no statutory authority to do otherwise. A specific activity cited is SSA's "allowing" individuals to gain supplemental security income (SSI) eligibility through PASS, when the fact is SSA has no statutory authority to restrict use of the PASS provision. Moreover, the pertinent congressional reports stated that PASS "should be liberally construed." Other examples are provided in our comments below. We believe the GAO report should be revised to accurately reflect SSA's authority, and that GAO should address its concerns on issues such as the above by expanding its recommendations for Congressional action.

GAO Recommendation

Clarify the intended goals of the PASS program.

SSA Comment

We think there is sufficient Congressional history to arrive at a commonsense definition of "self support" that includes both a reduction or elimination of cash benefits. In part, the legislative history reads that Congress expected SSA "to provide every opportunity and encouragement to the blind and disabled to return to gainful employment...these provisions be liberally construed if necessary to accomplish these objectives." The fact that Congress provided for the exclusion of resources "necessary for self-support" implies that someone can be self-supporting but still on the SSI rolls. It would add needed balance to the report if the pertinent language from congressional reports were included.

new

There is one issue, however, on which we would welcome additional Congressional guidance. Because the Congressional guidance directs SSA to "liberally construe" PASS, SSA has permitted individuals to become eligible for SSI by using a PASS. Upon further reflection, we believe it is worth questioning if Congress intended this result. This report affords GAO the opportunity to seek clarification on this point.

Separately, SSA had already begun addressing many of the problems that were discussed in the report, including issuing revised Program Operations Manual System (POMS) procedures in December 1994 on the PASS provision. These procedures were intended as an interim measure until data were available from the OPIR and OIG studies. As a result of those studies, we are currently drafting POMS procedures which will clarify the expected outcome of a PASS and incorporate various policy and procedural changes which are designed to [minimize abuse and] improve the cost-effectiveness and administrative control of the PASS program. The new procedures will be issued after we solicit and consider input from our FOs. We anticipate the procedures will be issued in early 1996.

GAO Recommendation

Decide whether fees paid to third parties should continue to be disregarded when calculating benefit payment amounts and if the amount of disregarded fees should be capped.

SSA Comment

Existing statutory language limits SSA's discretion in this area, Although we do exercise our authority to determine the appropriateness of a PASS preparation fee as an excludable expense under a PASS. However, we agree that these issues need to be explored, and are currently evaluating possible legislative proposals with regard to these, and other, PASS issues.

GAO Recommendation

Standardize the PASS program, including the application, reporting guidelines on expenditures for compliance reviews, and informational and educational materials for PASS preparers.

SSA Comment

We agree that standardizing the application form would be beneficial in administering the PASS provision, as well as help in achieving greater consistency. We have developed a standard application form and are working on standardizing other areas. The new application will capture medical, educational and vocational background information, details about the individual's plan and more information about the necessity of proposed expenditures. The proposed form is currently in the formal

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review process, and will require approval from the Office of Management and Budget (OMB). We expect to receive clearance from OMB by November 1996.

We do not agree, however, that the compliance review process lacks standardization. The compliance review process is

described in POMS and, by being tied to the redetermination process, uses standard SSA forms.

GAO Recommendation

Improve support to FO staff, including enhancing their ability to evaluate the feasibility of proposed work goals, requiring PASSes to incorporate additional data relevant to determining their feasibility, including the applicant's disability, previous work experience, if any, and education, and more closely aligning work credits for the PASS program with the amount of time actually spent on PASS-related tasks.

SSA Comment

We agree that improved support should be provided to FO staff on the PASS provision, particularly in terms of additional training. Given the small number of PASSes an individual claims representative sees, we have determined that the most cost-effective and efficient method of providing needed training is to concentrate training efforts on a small cadre of employees who will be responsible for the review and approval or denial of PASSes. While we recognize that vocational evaluation normally entails more extensive formal training, and that this type of work is typically performed by rehabilitation professionals with years of experience, we believe this is the best option available to us at this time.

These individuals will receive training in assessing vocational goals and will have access to various employment and rehabilitation-related reference material. Formal vocational assessments may be obtained as warranted. We anticipate that the specialist cadre will have completed training by September 1996.

We are addressing the inclusion of additional data in PASSes through our revised application form. With respect to time spent on PASS-related tasks, however, we do not support a change to the work measurement system. We are aware of the perception that workload credit for PASS cases does not reflect the amount of time involved in developing a PASS plan. However, the volume of PASS cases is too low to warrant a separate workload category. We believe a better alternative would be for regional and local management to take into account the volume of PASS cases in individual FOs when allocating staff and distributing resources on the basis of work units.

GAO Recommendation

Gather additional management data on PASS program participation and impact, and use these data to evaluate the impact of PASS program participation on employment.

SSA Comment

We agree that more data are needed on PASS program participation and impact. We are currently working to develop better methods for obtaining management information for these cases. We expect to implement improved data collection as part of the PASS specialist initiative.

GAO Recommendation

Strengthen internal controls by establishing more specific guidelines on acceptable PASS expenditures, developing penalties for willful noncompliance with the PASS program, including a determination if subsequent plans are permissible, examining the role of third-party preparers, including their potential financial conflicts of interest, and considering the strength of existing safeguards against abuse when determining the appropriate limits on the length and number of PASSes participants may have.

SSA Comment

We agree that internal controls should be strengthened in some of these areas. As stated above, we are currently drafting POMS procedures which will incorporate, among other things, various policy and procedural changes that are designed to deter abuse and improve the cost-effectiveness and administrative control of PASSes.

However, as was stated by SSA at the exit conference, the law provides SSA no authority or basis to limit participation as suggested by GAO. Section 203 of the Social Security Independence and Program Improvement Act of 1994 prohibits SSA from applying across-the-board time limits on PASSes. Regarding the role of third party preparers, SSA again has limited legal authority to impose standards on private businesses. Further, we have no authority to specify what qualifications a preparer must possess or how much they may charge their client. In the context of these legal restrictions, SSA is evaluating possible legislative proposals consistent with the report recommendations.

Regarding willful noncompliance, the report states that there are no penalties in place where such noncompliance is determined. An individual who is found to have abandoned or failed to follow the conditions of his/her PASS loses the exclusions the plan provided. The result can be a lower SSI benefit or loss of eligibility. Statutory penalties for non-reporting may also be applied. Failure to cooperate in determining whether an individual is or is not pursuing the plan may lead to ineligibility. Any SSI payments made in error as a result of a finding of abandonment of a PASS would be subject to recovery.

Other Matters

We are providing the following information to clarify and/or correct some of the data in the report.

PASS "Program"

The report and covering letter refer to the PASS "program." Since PASS is not a separate program, we suggest that GAO substitute either "provision" or "exclusion."

Covering Letter

The letter states that the PASS provision was established to help benefit recipients gain independence through employment. We believe this is a somewhat stronger statement than those in the legislative history of the Social Security Amendments of 1972, and suggest the statement be revised to say "help disability benefit recipients to return to gainful employment."

Page 2, Executive Summary, second paragraph, second bullet

Our review of the congressional request for GAO review in House Conference Report 103-670 shows that Congress did not make an explicit request that GAO determine whether the PASS provision is vulnerable to abuse and did not mention or allude to abuse. In fact, GAO cites the specifics of the Conference Report request on page 15 of its report and there is no mention of abuse.

Page 14, first paragraph, and Page 37, first full paragraph

The report implies that SSA arbitrarily eliminated the 48-month time limit for a PASS contained in the regulations. However, as SSA explained at the exit conference, that change was mandated by Section 203 of the Social Security Independence and Program Improvements Act of 1994 which amended section 1633 of the Act to direct SSA to develop regulations to implement individualized criteria for determining PASS time limits and other criteria.

This change prohibits SSA from applying absolute limits. Further, SSA data indicate that approximately 75 percent of all PASSes stop within 18 months of initiation; approximately 94 percent stop within 36 months.

Page 19, first full paragraph

The figures cited regarding the amount of the PASS exclusions found in GAO's case sample imply that individual PASSes may be costing the government up to $1,000 per month. In actuality, regardless of the amount of income excluded, an individual will not receive more than the Federal benefit amount and any appropriate State supplement in a given month.

Page 29, first full paragraph

The report's assertion that SSA has never evaluated PASS is incorrect. GAO is well aware that both OIG and OPIR have recently evaluated PASS.

delete reference

Page 39, last paragraph

The report correctly notes that the minimum frequency for compliance reviews was changed from 18 to 12 months, but fails to note that the December 1994 POMS instructions require reviews every 6 months in certain circumstances.

Page 46, "Conclusions..."

The report states that eligibility for the PASS program has evolved by default, not design. However, this statement is based on GAO's interpretation of the goals of the PASS provision, and is not supported. SSA's policies for implementing the provisions in law and the congressional statement of intent were carefully crafted to "liberally construe" the application of this work incentive to encourage severely disabled and blind recipient to attempt work that could lead to self support. From the beginning, regulations and instructions have stated the eligibility requirements for PASS. The fact that the law does not permit SSA to restrict eligibility for PASS in certain situations when GAO believes eligibility should be limited, or that SSA has not implemented its own policies in a consistent manner, in large part due to the uncertain nature of what Congress viewed as "self-support," should not be cited as arguments supporting this view.

Technical Matters

Page 10, second paragraph

The report uses the term "safeguarding" cash. The fact is that cash is not "safeguarded" under a PASS. Instead, a recipient is allowed to use cash for expenses related to a work goal instead of counting it against cash benefits.

Page 11, first full paragraph

Medicaid eligibility is not automatic for SSI beneficiaries in every State.

Page 12, second paragraph

The Office of Retirement and Survivor's Insurance and Supplemental Security Income Policy is now the Office of Program Benefits Policy. The Office of Disability does not have responsibility for PASS policy.

Page 14, last paragraph

The IRWE provision does not result in a benefit increase for DI beneficiaries.

Page 19, first paragraph

The statement that SSA does not limit costs of items as long as they are necessary is inaccurate. The POMS clearly state (as the GAO report later acknowledges) that the items must also be reasonably priced.

Page 33, first sentence

There appears to be a word missing. Based on the context, we presume GAO meant to say that earnings were "frequently higher" in the year the plans ended.

PASS

Carol - FYI on PASS moratorium.

—Diana

UCPA

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March 6, 1996

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Shirley Chater, Commissioner
Social Security Administration
Baltimore, Maryland 21235

Dear Commissioner Chater:

The recently imposed moratorium on approval in the SSA field offices of Plans for Achieving Self-Sufficiency program (PASS) holds the potential for dramatically and negatively impacting the lives of thousands of individuals who rely on the PASS program for supports at work and independence in the community.

Many people have become employed as a direct result of this program. Many people have become independent and have been removed from the SSA rolls. Unfortunately, the lack of access to medical and essential long term supports outside of Medicaid makes SSI/SSDI essential to the continued employment for others. Without continued eligibility for SSI and Medicaid provided through the PASS program, these individuals would not be able to work.

Attached is a letter from Tom Tyree from Austin, Texas which was faxed to your office yesterday. His story clearly represents the potential impact of the unintended results of the moratorium. Tom Tyree receives personal assistance services such as bathing, grooming, dressing, and driving that offer him basic support needed to remain on the job. These personal assistance services are primarily funded through the Medicaid Waiver. In order to get and keep Medicaid, he must maintain eligibility for SSI, which his PASS makes possible. Without PASS his earnings would automatically remove him from SSI and the Medicaid long term services that allow him to remain employed.

If Mr. Tyree remains on the job this week and subsequently draws a salary on April 1, and at the same time loses his PASS on April 1, he immediately loses eligibility for SSI. He would therefore also lose eligibility for Medicaid acute care and, more importantly, long term care. With a long waiting list for the Medicaid Waiver in Texas (700+ names) this loss means that the next opportunity Mr. Tyree would have to regain long term care would be approximately seven years from now. The bottom line for Tom Tyree is that if he loses the supports he currently receives through his PASS on April 1, due to the moratorium he will be forced to quit work.

As you can see, even though the moratorium is intended to be limited while SSA develops an improved management plan, it creates a crisis situation for Tom Tyree, as well as others who find themselves in similar circumstances. A clear and expedited interpretation from SSA regarding the impact of this moratorium on Tom Tyree when his PASS expires at the end of this month is needed for Tom and others like him to make immediate plans. He needs to know whether to resign immediately from his job or whether there will be protections in place for him. I feel certain that this clarification will be important to many more individuals than Tom Tyree.

To solve this problem, UCPA strongly recommends that the moratorium be lifted immediately. However, if the moratorium is indeed to remain in place for a short time while SSA makes new plans for the PASS Program, we recommend a simple and short term extension for all current PASSes that expire before the moratorium ends. This extension should remain in place until the moratorium is lifted and beneficiaries have time to submit new plans for approval.

Thank you for your prompt attention to this matter.

Sincerely,

Celane McWhorter

Celane McWhorter
Senior Policy Associate

Dr. Shirley Chater, Commissioner
Social Security Administration
Altmeyer Building
6401 Security Blvd.
Baltimore, Maryland 21235

March 6, 1996

Dear Dr. Chater,

I am writing to express my concern regarding the personal impact of the memorandum sent out to the Social Security Administration (SSA) field offices on February 29th regarding the moratorium on Plans For Achieving Self Support (PASS). As a result of this moratorium, I am in the position of having to choose whether or not to leave my job because of your actions. After having spoken to my local field office they were unable to extend my existing PASS, which expires at the end of March, due to the moratorium. My plans for the future have become uncertain as a result of this action.

I am a thirty-four-year-old college educated man with Cerebral Palsy who uses a power wheelchair. Because my PASS expires at the end of March, this matter has immediately become of critical importance.

I receive Personal Assistance Services such as bathing, grooming, dressing, and driving that offer me basic support needed to remain on the job. Personal Assistance Services are primarily funded by Medicaid in Texas as in most other states. In order to get and keep Medicaid I must maintain my eligibility for Supplemental Security Income (SSI). My PASS plan allows me to maintain this eligibility and ultimately Medicaid. The importance of the link between Medicaid and Personal Assistance Services cannot be overestimated for me. I realize that SSA would never intentionally force me to choose between the supports I need in order to work and the job itself, which will be the result of this moratorium.

I was raised by my parents with the expectation that I would have a job and that I have an obligation to keep working. Please rescind the moratorium issued previously to enable me to work, pay taxes, and contribute to my community.

Thanks for your prompt attention to this urgent matter.

Sincerely,

Tom Tyree

Tom Tyree