

**SOCIAL SECURITY'S PROCESSING OF  
ATTORNEY FEES**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON SOCIAL SECURITY  
OF THE  
COMMITTEE ON WAYS AND MEANS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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**THURSDAY, MAY 17, 2001**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON SOCIAL SECURITY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:35 a.m., in room B-318 Rayburn House Office Building, Hon. E. Clay Shaw, Jr., (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE  
May 10, 2001  
No. SS-3

CONTACT: (202) 225-9263

### **Shaw Announces Hearing on Social Security's Processing of Attorney Fees**

Congressman E. Clay Shaw, Jr., (R-FL), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the Social Security Administration's (SSA's) processing of attorney fees. **The hearing will take place on Thursday, May 17, 2001, in room B-318 Rayburn House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include representatives from SSA, the U.S. General Accounting Office (GAO), and the National Organization of Social Security Claimant Representatives. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

The application process for Social Security disability benefits can be complex, confusing, and time-consuming. Many applicants seek help from an attorney, or non-attorney representative. In recent years, about 70 percent of all cases decided at the Administrative Law Judge hearing level involved representatives. The Commissioner of Social Security, through regulation, establishes a limit on the amount of the representation fee that may be charged and approves fees charged by representatives. In favorable decisions, the Commissioner withholds the attorney's fees from the claimant's past-due benefits and payment is made directly to the attorney. The attorney fee disbursement does not apply to Supplemental Security Income (SSI) claims, so representing attorneys must look to the claimant for payment.

Prior to 2000, the costs associated with processing, withholding, and approving direct payment of attorney fees were paid from the Social Security Trust Funds. Effective February 1, 2000, the "Ticket to Work and Work Incentives Improvement Act of 1999" (P.L. 106-170) required the Commissioner to charge an assessment, not to exceed 6.3 percent of the fee, to recover the costs for determining and certifying fees to attorneys.

The law also required the GAO to study the attorney fee process, including an examination of the costs of administering the attorney fee provisions, the feasibility of a fixed fee as opposed to an assessment based on a percentage of the attorney's fee, the potential for the assessment to impair access to representation for applicants, the feasibility of linking the collection of the assessment to the timeliness of the payment to attorneys, the advisability of extending attorney fee disbursement to the SSI program, and ways the agency can reduce the costs of attorney fee processing.

Increasingly, many attorneys have expressed concerns regarding the length of time it takes to receive payment from SSA and their inability to obtain payment from many SSI claimants. These factors are imposing financial hardships on many

firms, especially smaller firms which have fewer resources to cover expenses until payment is received. As a result, many firms and private practice attorneys are reducing the number of Social Security and SSI applicants they serve. In June of last year, the Subcommittee began an examination of the attorney fee process which focused on the timeliness and accuracy of SSA's processing of attorney fee payments and ways to improve SSA's fee payment process.

In announcing the hearing, Chairman Shaw stated: "One of the SSA's strategic goals is to provide world-class customer service. All of SSA's customers, including claimant representatives, deserve such service. However, as the Subcommittee learned in last year's hearing, service delivery to claimant representatives is far from world-class. As we continue our oversight of the attorney fee process, our witnesses will share their views on the state of SSA's service delivery to claimant representatives today and how best to improve the attorney fee process to ensure claimants are ably represented."

#### **FOCUS OF THE HEARING:**

The Subcommittee will examine the state of service delivery to claimant representatives today, the GAO's study findings, and recommendations for change to the attorney fee process.

#### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Any person or organization wishing to submit a written statement for the printed record of the hearing should *submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, with their name, address, and hearing date noted on a label*, by the close of business, Thursday, May 31, 2001, to Allison Giles, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Social Security office, room B-316 Rayburn House Office Building, by close of business the day before the hearing.

#### **FORMATTING REQUIREMENTS:**

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, typed in single space and may not exceed a total of 10 pages including attachments. **Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.**

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at "<http://waysandmeans.house.gov>".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

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Chairman SHAW. Good morning. This hearing will come to order. We have as our first witness Mr. Taylor, Deputy Associate Commissioner of the Office of Hearings and Appeals.

Mr. Taylor, would you have any objection to appearing with Barbara, Barbara Bovbjerg? I know Barbara, and I always have trouble with that name. Would you have trouble having her accompany you at the table?

Mr. TAYLOR. Not at all.

Chairman SHAW. Ms. Bovbjerg, please.

And again, welcome to today's hearings. This hearing is on the processing of attorneys' fees by the Social Security Administration (SSA). As many of you know, filing for Social Security benefits, especially disability benefits, is extraordinarily complicated, and many claimants must hire attorneys to guide them through this process.

Attorneys who represent Social Security claimants may choose to receive their fees directly from the Social Security Administration. Under this option, the agency deducts the fee from the claimant's past due benefits and forwards it to the attorney. Prior to last year, taxpayers picked up the tab for the agency's cost of processing, withholding, and forwarding this fee to the attorney.

The Ticket to Work and Incentive Improvement Act changed that. Many people on both sides of the aisle agree that having lawyers, not taxpayers, pay for the Social Security processing of their paychecks was the right thing to do. The law also required the U.S. General Accounting Office (GAO) to examine a number of issues relating to the agency's processing of the attorneys' fees.

One of the Social Security Administration's strategic goals is to provide world class customer service. All of the agency's customers, including claimant representatives, deserve such service. However, as the Subcommittee learned in last year's hearing, service delivery to claimant representatives is far from world class. Today the agency will report its progress on how service delivery has improved.

We will then hear from the General Accounting Office regarding the findings of their study. Our final panel will include testimony from those who represent the interests of consumers with disabilities and claimant representatives.

After considering the findings of this hearing and all other recommendations, the Subcommittee will then take the necessary steps, including legislation if necessary, to ensure the best possible service delivery to the claimants and to their attorneys.

Mr. Matsui.

[The opening statement of Chairman Shaw follows:]



**Opening Statement of the Hon. E. Clay Shaw, Jr., M.C., Florida, and  
Chairman, Subcommittee on Social Security**

Welcome to today's hearing on the processing of attorney fees by the Social Security Administration.

As many of you know, filing for Social Security benefits—especially disability benefits—is so complicated that many claimants must hire attorneys to guide them through the process.

Attorneys who represent Social Security claimants may choose to receive their fees directly from the Social Security Administration. Under this option, the agency deducts the fee from the claimant's past-due benefits and forwards it to the attorney. Prior to last year, taxpayers picked up the tab for the agency's costs of processing, withholding, and forwarding this fee to the attorney.

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One of the Social Security Administration's strategic goals is to provide world-class customer service. All of the agency's customers, including claimant representatives, deserve such service. However, as the Subcommittee learned in last year's hearing, service delivery to claimant representatives is far from world-class. Today, the agency will report its progress on how service delivery has improved.

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After considering the findings of this hearing and all other recommendations, the Subcommittee will then take the necessary steps, including legislation, to ensure the best possible service delivery to claimants and their attorneys.

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Mr. MATSUI. Thank you very much, Mr. Chairman. Due to the hour, I would like to submit my written testimony for the record.  
Chairman SHAW. Without objection.

Mr. MATSUI. And just indicate that I appreciate the fact we are holding this hearing, and certainly I look forward to hearing from the witnesses.

[The opening statement of Mr. Matsui follows:]

**Opening Statement of the Hon. Robert T. Matsui, M.C., California**

Good morning. I would like to welcome our witnesses to today's hearing and to thank Chairman Shaw for calling this hearing.

During today's hearing, we will hear from the Social Security Administration, the General Accounting Office, and others about the agency's procedures for determining, withholding, and certifying direct payments to disability claimants' legal representatives and the costs SSA incurs in performing these procedures. We will also hear about possible improvements to these procedures. Since the Social Security Administration now charges claimants' representatives a fee of 6.3 percent for performing these activities, I think it is vitally important for the Subcommittee to ensure that the agency is performing these activities as effectively and in as timely a fashion as possible.

In examining these issues, however, I think it is even more important that the Subcommittee not lose sight of the bigger picture. As we review SSA's procedures for making attorney fee payments and as we discuss ways to improve those procedures, the Subcommittee's first priority must be to ensure that benefit claimants—whether they are filing a claim for Old-Age Insurance, Survivors Insurance, or Disability Insurance—receive the benefits to which they are entitled.

People have worked long and hard to earn Social Security coverage for themselves and their families and deserve to know that they can count on that coverage in a time of need. Indeed, in terms of disability insurance coverage, Social Security is often a worker's only resort. According to the GAO, as of 1996, just 26 percent of private sector employees had long-term disability coverage under employer-sponsored private insurance plans.

To be sure, no other source of income is more essential to families with disabled workers than Social Security. Social Security constitutes 38 percent of family income for families with disabled workers—the same proportion of income that earnings from work provide. Almost half—48 percent—of disabled worker beneficiaries rely on Social Security for 50 percent or more of their family income. Some 18 percent of beneficiaries rely on Social Security disability insurance payments for 90 percent or more of their income.

Unfortunately though, the process of applying for disability benefits remains incredibly complex—so much so, in fact, that claimants frequently depend upon an attorney or another representative to help get them through it. As Ms. Shor of the National Organization of Social Security Claimants' Representatives will testify later this morning, in Fiscal Year 2000, 74.9 percent of Social Security disability claimants were represented by an attorney.

Skilled legal representation, in turn, clearly has an effect on whether someone receives disability benefits. Approximately 64 percent of disability claimants who had some type of representation at the hearing level received a favorable disability determination, while only 40 percent of claimants without representation received such a determination.

Changes to the disability program and to the way SSA administers it may help to reduce complexity and to expedite the claims process. In the meantime, though, if we are concerned about ensuring that people receive the benefits to which they are entitled, we should also be concerned about ensuring that they have access to a pool of qualified legal representatives.

Consequently, I hope that the Subcommittee will give due consideration to the options that will be discussed today for maintaining a ready supply of legal representatives and for enhancing claimants' access to them.

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Chairman SHAW. Very good. Well, all Members will have the privilege of entering testimony into the record, without objection. Mr. Taylor.

**STATEMENT OF WILLIAM C. TAYLOR, DEPUTY ASSOCIATE COMMISSIONER, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION**

Mr. TAYLOR. Mr. Chairman, Mr. Matsui, members of the Subcommittee, good morning. Thank you for giving me the opportunity today to discuss the improvements that the Social Security Administration (SSA) has made in the past year in improving and paying attorney fees. I will summarize my testimony and ask that the full written statement be placed in the record.

I am pleased to be able to report that SSA has made significant improvements in the timeliness with which payments to attorneys are made. Since April 2000, over 50 percent of payments to attorneys were made in less than 2 months from the date the decision was made on the claim, compared to a small fraction of payments issued to attorneys within that timeframe in 1999. We processed about 222,000 fee payments to attorneys in the year 2000, totaling over \$500 million.

While SSA has made significant improvements in the service it provides to attorneys, we believe that there is still much that can be done to improve the service that we provide to this important constituency. I will now discuss our plans for achieving this improvement.

During the past 11 months, a workgroup representing appropriate SSA components sponsored a multi-tiered effort to review as many aspects of the attorney fee process as possible. Part of the

workgroup's analysis is how to improve the payment process through systems enhancements.

The current attorney fee payment process is essentially a manual one that fails to achieve the efficiencies that SSA has introduced into many of its other processes. We think we can do better, and we have already begun the analysis needed to develop an automation plan for this process. This work will identify areas in which we can make improvements, including enhanced management information.

The first change I will describe has already been implemented. This change involves cases in which the claimant has filed for Social Security benefits and Supplemental Security Income and has an attorney. Simply put, this change will simplify the computation of the amount owed the beneficiary as well as the attorney, without the handoffs between employees that were previously required. This enables us to notify the attorney more quickly of the amount of the fee he or she will be authorized for the SSI portion of the claim.

A more significant systems improvement, the first phase of which we plan to implement in the summer or fall of 2002, will be a national system that automates certain features of the attorney fee payment process as well as other social security payments that are made on a one-time basis, and which we currently process outside of our automated systems. The first release of this system will begin the automation of attorney fee payments.

The new process, which I describe in my written statement, will reduce the number of handoffs and the number of people required to process attorney fee payments. When implemented, we believe that this process will increase the efficiency of the payment process. The change will mean quicker payments and notices to attorneys. It will also allow us to capture name, address and payment information for more than one attorney over the life of the beneficiary's record. This information will be captured on a new database.

SSA is also taking steps to improve the accessibility and range of information available on our Web site about representation. We will include information about the fee agreement and the fee petition process; display a model fee agreement; and provide links to forms that are commonly used for representation.

Another issue the workgroup has reviewed is the \$4,000 limit for fee agreements. The Social Security Act provides that the Commissioner may increase this limit from time to time, as long as the increase does not exceed the aggregate cost-of-living increases to beneficiaries. The fee cap has been \$4,000 since the agreement process became effective in July 1991.

The agency is now reviewing the analysis of the work group. Later this year we will announce our determination. Before we decide on the amount of the fee cap, we will consult with interested parties.

Finally, Mr. Chairman, you asked that I discuss replacing the current attorney fee payment process with one that would issue the first check jointly to both the beneficiary and the attorney. Such a process has been considered by Congress in the past, but was not adopted.

There were concerns that such a system might be vulnerable to misappropriation and require a new and ongoing supervisory role for SSA to ensure that funds were correctly disbursed. Congress did not change the process, but did change the law in 1990 to establish the fee agreement process. SSA is also concerned that two-party checks would result in the claimant not having access to any of his or her past-due benefits until the attorney released the funds to him or her.

In conclusion, Mr. Chairman, we look forward to working with you and the other Members of the Subcommittee as we move forward to automate the system and find other ways to improve service to claimants' representatives. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Taylor follows:]

**Statement of William C. Taylor, Deputy Associate Commissioner, Office of Hearings and Appeals, Social Security Administration**

Mr. Chairman, Mr. Matsui, and Members of the Subcommittee:

Thank you for giving me the opportunity today to discuss the improvements the Social Security Administration (SSA) has made in the past year in approving and paying attorney fees. As I testified before you last June, we recognize the importance of timely payment to attorneys who represent Social Security clients, and last year SSA issued about 222,000 fee payments to attorneys (an increase of about 10 percent over 1999) totaling over \$500 million.

Moreover, I am pleased to be able to report that SSA has made significant improvements in the timeliness with which payments to attorneys are made. To illustrate, since April 2000, over 50 percent of payments to attorneys were made in less than two months from the date a decision was made on the claim. In comparison, only a small fraction of payments to attorneys were issued in that timeframe in 1999.

Today, I will begin by briefly describing the process and its history and then, in more detail, our progress in improving that process. In addition, I will discuss the activities of a workgroup that has been meeting this past year to develop plans to improve the attorney payment process, and the question of issuing checks jointly to attorneys and beneficiaries.

*History of Attorney Representation and Fee Approval*

Since I described the complete history of the attorney fee process in my testimony last year, I would like to just briefly summarize that history for you today. The Social Security Act has recognized the important role for attorneys as claimants' representatives beginning with the enactment of the *Social Security Amendments of 1939*. Pursuant to statutory authority, the Social Security Board's Administrator promulgated rules and regulations governing representatives of claimants and set the maximum fee attorneys could charge which was \$10 unless a petition was filed and a higher amount was authorized.

Amendments to the Social Security Act enacted in 1965 provided that a court making a favorable judgment could award the claimant's attorney a reasonable fee not in excess of 25 percent of past-due benefits and that SSA could certify payment of the fee directly to the attorney in court cases. The purpose of the provision was to ensure that in court cases claimants would have access to effective legal representation at a fair rate of compensation.

*The Social Security Amendments of 1967* required the Secretary to approve a reasonable fee for a representative's services rendered in administrative proceedings, and extended to such administrative proceedings the Secretary's authority to certify payment, not to exceed 25 percent of past-due benefits, directly to an attorney from a claimant's past-due OASDI benefits.

*The Omnibus Budget Reconciliation Act of 1990* established the fee agreement process to streamline authorization of representatives' fees by permitting SSA to approve a fee if the representative and client both agreed in writing to the amount of the fee. The fee agreement is generally approved if, among other things, the fee specified in the agreement is limited to no more than the lesser of \$4,000 or 25 percent of past-due benefits.

*The Ticket to Work and Work Incentives Improvement Act of 1999* required SSA to charge an assessment, not to exceed 6.3 percent of the fee amount that SSA pays

to an attorney, to recover the full costs incurred by the Agency for determining and certifying fees to attorneys. SSA began charging the assessment on cases in which decisions were made on or after February 1, 2000. This same legislation eliminated a mandatory 15-day waiting period that was part of the original fee agreement process. The waiting period was intended to give all parties to the agreement an opportunity to review and protest the agreed-upon amount of the fee, before the fee had been paid, if they wished to do so. SSA's experience was that few protests were received. Under the new provision, the parties may request review of the fee within 15 days while the payment is being processed.

The legislation set the assessment for calendar year 2000 at 6.3 percent of the amount that SSA pays to the attorney. For subsequent years, the legislation requires the Commissioner of Social Security to determine the assessment required to recover all of the costs associated with determining and certifying fees to attorneys. However, the provision limited the assessment to no more than 6.3 percent. On January 19, 2001, SSA published a notice in the *Federal Register* that established an assessment rate of 6.3 percent for 2001. We based our decision to continue the 6.3 percent assessment rate on the same cost accounting system that SSA uses to justify to the Congress its annual appropriation requests for administrative expenses and to apportion those expenses among the various trust funds that have been established for the programs SSA administers.

A representative's fee must be authorized by SSA before the representative can seek payment from his or her client, or before SSA will make any direct payment to an attorney. The approved fee represents the maximum amount the representative can charge for services provided. Representatives can obtain SSA's authorization of a fee through either a fee petition or a fee agreement process. I will discuss the two processes next.

#### *Representative Fee Processes*

The first process I will describe is the fee petition process, which is used less frequently than the fee agreement process. Of all the fees authorized by SSA, about 12 percent are paid through the fee petition process.

Under this process, the representative (attorney or non-attorney) must request the Commissioner's approval of fees after completing his or her services for the client. In a fee petition, the representative must provide SSA with a detailed description of the services provided in representing the client as well as any expenses incurred by the representative in providing those services. The Agency official who authorizes the fee, usually an ALJ, then evaluates the information in the petition and sets a reasonable fee for the services that were provided. In making these determinations, the fee authorizer considers factors such as the extent and nature of the services performed, the complexity of the case, and the amount of time the representative spent on the case.

After SSA authorizes a fee, we notify the claimant and their representative of the authorized fee and their right to administrative review. Because of the complexity of the issues that must be evaluated in this process, fee petitions usually require a longer period of time for resolution than those approved through the fee agreement process.

Under the fee agreement process, if the representative and claimant sign and submit a written agreement, SSA will generally approve the agreement if the fee specified does not exceed a statutory cap, which is the lesser of 25 percent of the claimant's past due benefits or \$4,000. Upon approval of the agreement, the Commissioner notifies the respective parties of the maximum fee based on past-due benefits and of the right to request administrative review. In 2000, the fees of about 88 percent of all cases involving representation were approved using the fee agreement process.

One important difference in the attorney fee authorization process between the Social Security and SSI programs is that, while both fee petition and fee agreement processes can be used to approve fees in SSI cases, SSA does not currently have authority to withhold and certify payment to the attorney from past-due SSI benefits. The attorney must be paid directly by the beneficiary.

SSA does not routinely track data on the use of fee agreements and fee petitions. However, we know from special studies that the percentage of payments to attorneys that were paid using the fee petition process has declined from 30 percent in 1995 to just 12 percent in 2000. The number of fee agreement cases increased from 70 percent of fee payments processed in 1995 to almost 88 percent in 2000. Obviously, more and more attorneys prefer to use the more streamlined process. In 2000, the average payment under the fee agreement process was \$2,458.86; fee petitions averaged \$2,437.73.

*SSA Actions to Improve Process*

As I mentioned earlier, Mr. Chairman, SSA has made significant improvements in the service it provides to attorneys. However, we believe there is still much that can be done to improve the service we provide to this important constituency. I will now discuss our plans for achieving this improvement.

As I stated in previous testimony before this Committee, SSA has undertaken a comprehensive review of the attorney fee approval and payment process. To lead this review, the Agency convened a multi-component workgroup to study the attorney fee process and to recommend ways that the Agency can improve our service in this area. The team brings to bear a broad array of knowledge and experience in working with all facets of the attorney fee process. We expect that the work of the team will lead to improvements in service in both the near and the longer term.

During the past 11 months, the workgroup sponsored a multi-tiered effort to review as many aspects of the attorney fee process as possible. These reviews included the current level of automation, data collection and the management information available on attorney fees, processing times, availability of public information to representatives, the feasibility of raising the \$4,000 limit in fee agreement cases, and ways to simplify the process. As part of this effort, the workgroup undertook special studies, including a review of all cases involving attorney fees that were paid on a day in August 2000, to obtain new and current data about the attorney fee process. We also have in progress a special study being performed by SSA's Office of Quality Assessment, to be completed later this year, that will assess the accuracy of attorney fee payments. We will of course share the results of this study when it has been completed.

The workgroup was required to confront immediately a lack of comprehensive data and management information about what is largely a manual process. To obtain basic information about processing times for hearings cases, the workgroup performed special studies to collect this data. As I have already mentioned, the data from those reports showed marked improvement in processing times for attorney fee, payments. However, obtaining statistical information in this manner is not an efficient use of resources, and makes developing a full and reliable picture of the Agency's performance laborious and costly.

*Automating the Attorney Fee Payment Process*

Part of the workgroup's analysis is how to improve the payment process through systems enhancements. As I mentioned, the current attorney fee payment process is essentially a manual one. The result is a process that relies primarily on human resources and that fails to achieve the efficiencies that SSA has introduced into its other business processes.

We think we can do better and, under the leadership of the workgroup, we have already begun the analysis needed to develop an automation plan for the process. We believe that this work will identify areas in which we can make improvements. While this analysis will focus broadly on all aspects of the fee approval and payment process, there are some automation activities that SSA already has undertaken that will improve the existing attorney fee payment process, and I would now like to describe them briefly.

The first change I will describe has already been implemented. This change involves cases in which the claimant has filed for Social Security and SSI benefits and has an attorney. In these cases, we reduce the amount of any retroactive Social Security benefits by the amount owed to the attorney, as well as by the amount the individual has already received from SSI. In the past, the amount of the reduction for SSI was often initially calculated without consideration of the amount already paid to the attorney from retroactive Social Security benefits. In many of these cases, the program service center had to request the field office to recalculate the amount owed the beneficiary to take that information into account. The field office would then tell the program service center the new amount of retroactive benefits. With the new change in place, the SSI system will make the computation, including the attorney fee, in about 70 percent of concurrent SSI and Social Security cases involving fee agreements. This enables the field office to notify the attorney more quickly of the amount of the fee he or she will be authorized for the SSI portion of a concurrent claim.

A more significant systems improvement, the first phase of which we plan to implement in the summer or fall of 2002, will be a national system that automates payments to some non-beneficiaries, including attorneys. These payments are currently made outside of our automated systems. The first release of the system will begin automation of attorney fee payments. In addition, the release will automate certain other payments made outside the current automated system. These include underpayments made on the records of deceased beneficiaries to individuals who are

not otherwise entitled, such as the estate of the beneficiary. Later releases will increase the automation capabilities to include the release of excess benefits withheld and other recurring payments which are currently outside the range of SSA's automated capabilities.

Here is how this new improvement will work. Currently, for award actions processed in the field offices, a technician inputs the necessary information to award the claimant benefits and withhold 25 percent to pay the attorney. An electronic message is then sent to the program service center to advise them to prepare a form for the attorney payments and release the excess benefits withheld. The form is then sent to another technician to enter the information into the payment system.

For those award actions processed in the program service center, which are the majority of cases, a technician inputs the necessary information to award the claimant benefits and withhold 25 percent to pay the attorney. The case is then handed off to a second technician to prepare the form for the attorney payment and release the excess benefits withheld. The form is sent to a third technician to enter the information into a payment system.

In both instances, copies of the input forms as well as the corresponding systems output must then be filed.

The new process will significantly reduce the number of handoffs involved and the number of people needed to process a case. The new process will, for most fee agreement cases, receive the attorney information through the same action that authorizes the award to the beneficiary, release the payment to the attorney, and send an alert to the processing center to release any excess withholding. In fee petition cases, it will automatically generate the attorney information to another database where it will be held until fee authorization is received. Once that authorization is received, payment of the attorney fee will require only minimal manual actions.

For actions that cannot be processed through the system I have described, the technician will be able to enter payment information directly, without handoffs and forms.

The new process will also allow us to capture name, address, and payment information on more than one attorney over the life of the beneficiary's record. In addition, this information will be captured on a new database, assuming we have a means to collect unique identifiers for each attorney. Currently our payment history information is limited to just the name of the most recent representative of record, which overlays any payment record of prior representation.

We expect to begin the first phase of implementing the new process sometime next year. When implemented, we believe that process will increase the efficiency of the payment process. This change will mean quicker payments and notices to the attorneys.

#### *Fee Agreement Cap*

Another issue the workgroup has reviewed is the \$4,000 limit for fee agreements. The Social Security Act provides that the Commissioner may increase this limit from time to time as long as the rate of increase does not exceed aggregate cost-of-living adjustments to beneficiaries.

The fee cap has been \$4,000 since the fee agreement process became effective in July 1991. The Agency is now reviewing the analysis of the workgroup.

Later this year we will announce our determination. Before we decide on the amount of the fee cap, we will consult with interested parties.

#### *Public Information*

SSA is also taking steps to improve the accessibility and range of information available to the public on our website about representation by attorneys or nonattorneys, as well as information for representatives to help them get a better understanding of their rights and responsibilities.

The information that will be available from the perspective of the claimant will include general information about the right to obtain representation and advice on how to choose a representative. We will also provide information about the fee agreement process and the fee petition process.

We will also provide information about the two processes tailored specifically for representatives. In addition, the website will display a model fee agreement to be used if the representative and claimant so wish. We hope that by providing a sample agreement, we can reduce the number of fee agreements we receive that contain technical deficiencies that invalidate them. Currently, if we receive an agreement with such defects, the attorney's fee agreement must be disapproved and the attorney must file a petition, causing additional delay. We will also explain any situations for which the fee agreement cannot be honored, such as in certain court cases or cases involving multiple representatives who do not sign a single fee agreement.

We expect to post on the website information that will help a representative understand the type of claim development information that representatives can submit. We particularly hope that the availability of this information will speed the processing of these cases; for instance, workers' compensation information which can delay the processing of payments to the attorney.

Finally, the website will provide links to forms used to appoint representatives and to obtain approval of fees. These forms can be simply printed out by the website visitor without calling or visiting an SSA office.

#### *Two-Party Check Payments*

Finally, Mr. Chairman, you asked that I discuss replacing the current attorney fee payment process with one that would issue the first check jointly to both the beneficiary and the attorney.

Issuing a joint check, also known as a two-party check, is an idea that the Congress has considered in the past. However, there were concerns that such a system might be vulnerable to misappropriation and require a new and ongoing supervisory role for SSA to ensure that funds were correctly disbursed. Congress did not institute the two-party check system, and instead enacted the fee agreement process in the Omnibus Budget Reconciliation Act of 1990.

SSA is also concerned that two-party checks would result in the claimants not having access to any past-due benefits until the attorney released the funds. Under the current process, we can in some cases using guidelines that we have found to be reliable pay the beneficiary based on evidence in file while we develop payment factors completely. However, the attorney fee is delayed in the fee agreement process until all those factors are resolved. Under a two party check system, the beneficiary's payment would necessarily have to be delayed, and, indeed, the claimant would not receive payment until after the attorney had been paid.

Implementation of the changes needed for a two-party check system would require a large systems effort and delay a considerable number of already planned changes. Because several of SSA's master computer files, such as those used to pay claims and record the payment information, would be involved to change to a two-party process, implementation would be lengthy and difficult.

#### *Conclusion*

In conclusion, Mr. Chairman, we appreciate the concerns of Congress and the legal community regarding the service they receive from our Agency. The Social Security Administration has made significant improvements in processing attorney fees. Many attorney fee payments that used to take 60 to 90 days to process now take under 45 days.

We look forward to working with you and the other members of the Subcommittee as we move forward to automate the system and find other ways to improve our service to representatives. I will be happy to answer any questions you may have.

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Chairman SHAW. Thank you. Ms. Bovbjerg.

**STATEMENT OF BARBARA D. BOVBJERG, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY KELSEY BRIGHT, ASSISTANT DIRECTOR**

Ms. BOVBJERG. Thank you, Mr. Chairman, members of the Subcommittee. I am pleased to be before you once again to discuss issues regarding payment of attorney fees in Social Security's disability programs.

The Disability Insurance (DI) and Supplemental Security Income (SSI) programs provide benefits to millions of people with severe long-term disabilities. At any time during SSA's disability determination process, applicants may seek help from an attorney in pursuing their claim, and attorneys are entitled to be paid if the benefit claim is successful.

Under the DI program, SSA pays attorney fees directly from any past-due benefits awarded to the claimant. Complaints about the



timeliness of these payments, coupled with a 6.3 percent user charge for attorney payments, have raised questions about this payment process.

Although my written statement covers a variety of issues associated with attorney fee payments, I would like to focus my oral remarks on three aspects of this topic: one, the cost to SSA of processing these payments; two, the length of the process; and, finally, the possible efficiencies that could be applied. My testimony is based on our legally mandated review of the attorney fee payment process. As agreed with the statutorily defined Committees of jurisdiction, we will issue a report presenting our findings next month.

First, the cost of the process. Even though SSA's costs are the benchmark for the 6.3 percent fee, precise measurement of these costs is difficult. The attorney payment process is only a small part of SSA's operations, so SSA's information systems do not routinely track the data necessary for accurate cost measurement.

Despite this problem, SSA recently estimated that it spent \$54 million to process attorney fees last year. This is about 10 percent of the \$512 million in attorney payments processed. It is well above the 6.3 percent fee mandated in the law.

Our review indicates that the SSA estimate is likely high. It includes some costs not associated with DI cases or with fee payments, and appears to overstate some others.

Although the data problems prevented us from calculating an exact cost ourselves, we decided to adjust SSA's estimate conservatively to create a lower bound of costs. We subtracted the unrelated costs and made other downward adjustments to SSA's estimate.

This approach, which may understate SSA's costs, resulted in an estimate of about \$35 million or 6.9 percent of total attorney payments. Even this conservative estimate exceeds the current 6.3 percent fee.

Let me turn now to the time it takes SSA to process attorney payments. In the past year, SSA improved the timeliness of its fee payments considerably, but major delays continue for some cases.

Between June and December of last year, SSA paid half its attorney fees within 60 days of the final appeals decision and 12 percent within 30 days. This was much faster than for the same period in 1999, when SSA processed only 4 percent of the fee payments within 60 days and 1 percent within 30.

For the most part, processing time shrank because the Ticket to Work Act eliminated a 15-day waiting period set aside for claimant protest. Changes SSA made internally also had some effect. But despite progress, over 20 percent of the payments still take more than 6 months to process, just as they did in 1999.

Factors causing delay in both years include extra time needed to finish processing certain claims. For example, if a claimant received worker's compensation payments, or if there is a question about that, SSA must contact the State involved to verify the amount the claimant received, and offset that against past-due DI benefits. This has to happen before attorney payments can be made. Such delays are difficult for SSA to control.

Finally, let me speak briefly about ways to improve the efficiency of the process. We believe, and SSA officials agree, that automation

could both reduce staff costs and speed the payment process. SSA managers we interviewed told us it could cut end-stage processing staff time by one-third and overall processing time by 3 to 5 days.

SSA has a draft plan to automate the attorney payment process. Although, if implemented, it could represent a first step, the plan has not yet been fleshed out. Funds have not yet been committed, and there is no definite schedule for completion.

In the past, SSA has postponed plans to automate this process, citing higher priorities for the use of funds. Although a plan to automate is a positive development, until funds are committed and deadlines set, we remain concerned that needed improvements to this process may not take place.

In conclusion, inefficiencies in the current attorney payment system increase both the time it takes to pay attorneys and the staff costs of doing so. Although some things that lengthen the process resist improvement, like the worker's comp verification, automation could streamline much of the rest. Until these improvements are made, payments to attorneys will continue to take too long and cost too much.

Mr. Chairman, that concludes my statement, but I do want to alert you to an error in Figure I in our written statement. We do not rely on that figure for our conclusions, but I would like your permission to correct it for the record.

[The prepared statement of Ms. Bovbjerg follows:]

**Statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, U.S. General Accounting Office**

Mr. Chairman and Members of the Subcommittee: Thank you for inviting me here today to report on our study on attorney fees in the Social Security Administration's (SSA) Disability Insurance (DI) program. To ensure that people claiming DI benefits can obtain legal representation at a fair price, the Social Security Act requires that SSA regulate the fees that attorneys charge people to represent their disability claims before the agency.<sup>1</sup> Balancing the needs of claimants with those of their attorneys, the act limits the amount of fees that attorneys can charge claimants, but also guarantees that those fees will be paid from the claimants' past-due benefits. Over the years, however, relations between SSA and attorneys representing DI claimants have become increasingly strained. While SSA points to the growing administrative burden of processing these fees, attorneys are frustrated with delays in receiving their fees. The situation intensified recently after the Ticket to Work Act imposed an assessment (or "user fee") to be deducted from the attorney fees.<sup>2</sup> This act tied the amount of the user fee to SSA's administrative costs in providing fee services, requiring SSA to determine (for calendar years after 2000) the percentage rate necessary for "full recovery of the costs of determining and certifying fees," not to exceed 6.3 percent.

The Ticket to Work Act required us to study various aspects of attorney fee services in the DI program. My remarks today focus on (1) our evaluation of SSA's estimate of its administrative costs, (2) the time it takes SSA to process the fee payments, (3) whether efficiencies in SSA's operations might reduce costs and processing times of fee payments, and (4) other matters related to the services and the user fee. In June 2000, we reported our preliminary results to the Subcommittee on Social Security, House Committee on Ways and Means.<sup>3</sup>

In summary, although SSA's administrative costs serve as the benchmark for the user fee, precise measurement of these costs is difficult. The fee services are only a small part of SSA's operations, and SSA's information systems do not routinely track the type of data necessary for careful measurement of these costs. SSA recently estimated that it cost \$54 million to process attorney fees in 2000—about 10.5

<sup>1</sup> 42 U.S.C. 406(a)(2)(A).

<sup>2</sup> Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106-170.

<sup>3</sup> *Social Security Administration: Paying Attorneys Who Represent Disability Applicants* (GAO/T-HEHS/AIMD-00-166, June 2000).

percent of the total fees of \$512 million paid to attorneys in that year. Our review of this estimate indicated that it was likely too high. However, because data limitations and uncertainty as to what costs should be counted made exact correction impracticable, we attempted instead to calculate a rough “lower bound” for the amount of these costs. This analysis set the lower bound for SSA’s administrative costs at \$35.4 million, or about 6.9 percent of total attorney fees, exceeding the 6.3 percent threshold of the user fee.

In the past year, SSA improved the timeliness of its fee payments considerably, but major delays continue in some cases. Between June and December 2000, SSA paid fees in 50 percent of the cases within 60 days following issuance of the final administrative decision finding the claimant eligible for DI benefits. This was more timely than in the same period in 1999, when it processed only 4 percent of the fee payments within 60 days of the decision. For the most part, processing time shrank because the Ticket to Work Act eliminated a 15-day period set aside to allow claimants a specific time to protest the attorney fee.<sup>4</sup> However, over 20 percent of the payments made in both years still took longer than 6 months from the date of the final decision. Factors causing delay in both years include extra time needed to finish processing certain claims—for example, if a claimant received state workers’ compensation payments, SSA must contact the state to verify the amount the claimant received and offset the amount against past-due DI benefits.

According to SSA officials, both staff cost reduction and further improvements to payment timeliness could result from automating its process to pay attorneys. SSA’s cost estimate showed the bulk of its administrative costs as related to a manual system for paying attorneys their fees. Although we did not attempt to quantify the amount of cost savings from automating these manual procedures, we believe it would likely be significant—in 1999, for example, individual clerks manually calculated and entered data for 166,000 attorney payments. SSA has repeatedly postponed plans to automate the process, citing higher priorities for other projects. Currently, however, SSA is planning to automate the attorney payment process, but has yet to complete its plans or to commit budget funds for the project.

Finally, as required by the Ticket to Work Act, we considered a variety of potential changes to the attorney fee structure, some of which raised concerns. For instance, one issue related to a potential change that would link the user fee to the timeliness of the SSA payment, decreasing the fee if the SSA payment were not timely. However, some claims for DI routinely need additional processing time, such as those requiring verification of workers compensation payments. To fairly administer such a provision, SSA would need to differentiate between cases where delays involve additional processing and those cases with no need for additional processing.

### Background

The DI program, created in 1954, provides monthly cash benefits to workers who have become severely disabled and to their dependents and survivors. These benefits are financed through payroll taxes paid by workers and their employers and by the self-employed. Proof of disability can involve complex technical issues, and section 206(a) of the Social Security Act permits claimants to appoint an attorney to represent them at proceedings before SSA,<sup>5</sup> at any level of administrative review.

The disability claims process is complex, multilayered, and lengthy. The following scenario portrays the process for DI claimants who are typically represented by an attorney before SSA—i.e., those cases where the claim is ultimately appealed to SSA’s Office of Hearing and Appeals (OHA). Initially, the claimant would have filed a claim for DI benefits with a local SSA field office. This office would have then forwarded the claim to a state agency to examine the claimant’s evidence for medical disability. The state agency would then have denied the claim in an initial review and denied it again after reconsidering the claim. Once SSA notified the claimant of denial of benefits, the claimant would have then appealed to OHA. At OHA, the claimant would have had a hearing before an administrative law judge who would have reversed the decision of the state agency, finding the claimant eligible for DI benefits. Generally, the claimant appoints an attorney for the OHA level appeal.<sup>6</sup>

The fees that attorneys representing DI applicants can charge are limited by law and must be approved by SSA. Since 1967, SSA has administered fee payments to attorneys representing DI claimants. To be compensated, attorneys must file with

<sup>4</sup> Claimants, attorneys, and SSA officials are still allowed to protest the fees, however, there is no specified waiting period, as previously required.

<sup>5</sup> 42 U.S.C. 406 (a).

<sup>6</sup> SSA staff estimate that roughly 90 percent of the cases with attorney fees involve OHA decisions. However, there are instances of attorney fee processing for cases handled by SSA’s field offices at the stages of the initial determination and reconsideration of the case.

SSA either a fee agreement—a formal contract signed by the applicant and the attorney setting the fee as a percentage of the applicant’s past-due benefits—or a fee petition that lists the specific costs associated with the case. Of the two, the fee agreement is the much simpler arrangement; generally, it specifies fees limited to 25 percent of the claimant’s past-due benefits up to a maximum of \$4,000.<sup>7</sup> In contrast, the fee petitions require attorneys to itemize expenses and hourly charges, and SSA must determine a reasonable fee to compensate the attorneys. Assuming either a fee agreement or a fee petition is approved, SSA withholds the amount of the fee from the beneficiaries’ past-due benefits and pays the attorneys directly.

Historically, attorneys representing claimants before SSA submitted fee petitions for their services. As the percentage of claimants represented by attorneys in DI hearings increased from 19 percent in fiscal year 1967 to 66 percent in fiscal year 1987, fee petitions became a significant administrative burden for SSA. To alleviate some burden, the Congress streamlined the fee approval process in 1990 to allow attorneys to use the much simpler fee agreement in cases where SSA finds the claimant eligible for past-due benefits.<sup>8</sup> Since the introduction of fee agreements in 1991, their use has become nearly universal—in 1999, over 90 percent of the attorney fees were based on fee agreements. However, even with the prevalence of the simpler fee agreement, SSA continued to have significant delays in paying attorney fees, and attorneys increasingly turned to court action to obtain their fees.

In 1995, SSA proposed to stop processing attorney fees for DI claimants, and estimated that, if this were done, it would save \$20 million in administrative costs. This cost estimate was the basis for a 6.3 percent assessment on attorneys for use of SSA’s processing services enacted in the 1999 Ticket to Work Act, a charge deducted directly from the attorney’s fee. Under this law, SSA is to determine (for calendar years after 2000) a percentage rate that allows “full recovery of the costs of determining and certifying fees to attorneys for the past-due benefits of the claim,” but is not to exceed 6.3 percent of the total fee. The proceeds from the collection of the user fee are returned to the Federal Old-Age and Survivor Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

#### **Inadequate Data Make Precise Estimate of Administrative Costs Unreliable**

SSA’s estimate indicated that its administrative costs for attorney fee services in 2000 were \$54 million for the two major components of these services: \$13.8 million for approval of fee arrangements by OHA and \$40.2 million for payment of fees by SSA’s processing centers. Neither OHA nor the processing centers routinely collect information that specifically identifies the costs associated these services. To develop its estimate, SSA relied on various data it adapted from its regular operations, as well as surveying its regional offices to determine time spent on attorney fees in OHA. Our review indicated flaws in these data and suggested that the original estimate should be adjusted downward. However, without adequate data, we were unable to make exact corrections to the estimate. Instead, we made rough assumptions with the best available data and we limited our costs to those related to attorney fee processing but clearly unrelated to normal case processing. Using these assumptions—which may result in understating SSA’s actual costs—we approximated the lower bound of SSA’s administrative costs. From this analysis, we set the lower bound of costs for attorney fee services at \$35.4 million in 2000.

#### *SSA Adapted Various Operational Data and Surveyed Some of its Offices to Develop Cost Estimates*

SSA’s cost estimate indicated that it cost \$54 million to provide attorney fee services in 2000. This estimate includes the two major components of fee services: OHA fee approvals and fee payment in SSA payment processing centers. Within SSA, its field offices, OHA, and the processing centers all have important roles in managing a disability claim. However, for the most part, OHA and the processing centers have the central functions of fee processing.<sup>9</sup> OHA must review and approve fee arrangements, while the processing centers pay the attorney fee once the amount of past-due benefits is determined.

<sup>7</sup>In cases where the 25 percent of past-due benefits is higher than \$4,000, and if the attorney believes that his or her case warranted a fee higher than the \$4,000, he or she can request a higher fee—not to exceed the 25 percent of past-due benefits.

<sup>8</sup>P.L. 101–508, sec. 5106(a) (Nov. 5, 1990).

<sup>9</sup>SSA also discussed two other organizational components as contributing to the fee processing services: its Office of Systems and the field offices. These costs are not included in the estimates because SSA does not routinely track this workload. Currently, however, SSA is also collecting data on field office staff time spent inputting data when a DI claimant appoints a representative.

For OHA fee approval services, SSA estimated costs of \$12 million for 1999—which we restated in terms of 2000 costs as \$13.8 million.<sup>10</sup> Within OHA only a small portion of staff time is spent reviewing fee arrangements. For fee agreements, SSA estimated that its staff spent about 1½ hours handling each agreement during an OHA appeal that may take about 1 year to complete. However, the small amount of time spent reviewing each fee agreement becomes significant when all such review time is totaled. For example, OHA processed about 179,000 fee agreements in 1999—if each took 1½ hours to process, the total time to process would be the equivalent of 129 work years and result in millions of dollars of costs.

While OHA did not have any data system that routinely collected information about the time spent on each fee arrangement, it used operational data to determine the general types of work considered related to these costs—for example, approving fee agreements, reviewing administrative disputes, etc. For each category of work, OHA developed a series of tasks necessary to perform the work. Then, to obtain information on how long it took to complete each task, OHA surveyed its regional offices.

Most of SSA's administrative costs, however, were for paying the attorney fees—in 2000, SSA estimated that this service by its processing centers cost \$40.2 million, or three-quarters of the total estimate of \$54 million. For the most part, this cost relates to manually handling the attorney payments. Once a claimant's past-due benefits are determined, a clerk manually processes the payment—filling out a form that shows what payment is authorized, calculating the user fee, and giving the form to the data entry clerks. As with the OHA fee approvals, even though the time on each task may be small, it becomes significant when all such time is summed up.

To develop its estimates for payment processing, SSA relied on the cost allocation system it uses in its normal operations. SSA generally uses this system to account for the expenses of its various types of work so that the proper trust fund account can be charged; the system allocates SSA's administrative costs to one of the various trust funds SSA administers. Although the system was not developed to analyze the costs related to fee payments, SSA has adapted it to collect information on attorney fee work. Even so, when SSA used the data from this system to make its estimate, it had to first remove costs unrelated to processing attorney fees for DI claims.

#### *Flaws in SSA's Estimate Suggest That Downward Adjustment is Needed*

Our review of SSA's estimate indicated that it is likely too high. We identified six problems with the SSA estimate:

- The estimate for the costs of OHA fee approvals included the cost of handling cases from the Supplemental Security Income program (SSI), cases unrelated to DI claims;
- The OHA estimate also included excessive staff time for processing the simplified fee agreements;
- In calculating the estimate of the costs for payment processing, SSA used an erroneous cost allocation category that overstated the costs of the services;
- The estimate for the payment processing did not adjust for one-time use of premium overtime pay used to reduce processing backlogs in February and March 2000;
- The estimate for the payment processing included costs not clearly associated with fee payment; and
- The estimate for the payment processing used an average of both higher- and lower-salary costs to calculate staff costs; this did not accurately reflect that staff who routinely work on most payment processing are in the lower salary group.

However, we were unable to make precise corrections for these adjustments because of insufficient SSA data and unclear definitions of what should be counted as a relevant cost. For example, there was no data available to calculate exactly how much overtime had been used to process the payment backlogs. As another example, while SSA officials agreed that the majority of staff that routinely work on payment processing tasks had lower salaries than the average calculated, they were unable to provide us with more specific data on staff costs. Furthermore, it was not always clear as to what costs should be included in the estimate—for instance, we eliminated certain costs related to handling attorney inquiries because we believe that they included instances of normal case processing unrelated to the steps needed to process attorney payments. SSA officials, on the other hand, argued that these same

<sup>10</sup>To restate the estimate of OHA costs for 2000, we inflated the 1999 estimate by 6.6 percent—an amount provided by SSA that reflects the cost increase in OHA between 1999 and 2000.

costs should be included because they were handling matters dealing with attorneys.

Although we were unable to precisely correct for each of these adjustments, we approximated a “lower bound” of SSA’s administrative costs. To do so, we made assumptions with the best available data and we limited our costs to those related to attorney fee processing but clearly unrelated to normal case processing. Using these assumptions—which may somewhat understate SSA’s actual costs—our analysis indicates that administrative costs could be as low as \$35.4 million. We discussed each of these adjustments with SSA officials. (See the appendix for further details on our proposed cost adjustments.)

We compared our adjusted estimate of \$35.4 million with SSA’s original estimate of \$54 million. In 2000, SSA processed \$512 million in attorney fee payments. Comparing the original estimate to these payments, SSA’s administrative costs were 10.5 percent of the total payments. However, using the adjusted estimate, SSA’s administrative costs were 6.9 percent of the attorney payments. Table 1 presents both the original and adjusted estimates.

TABLE 1.—COMPARISON OF TOTAL ORIGINAL SSA ESTIMATES WITH TOTAL ADJUSTED ESTIMATES  
[Dollars in Millions]

	Fee approval process for 1999	Fee payment process for 2000	Total attorney fee process
Original SSA estimate .....	\$13	\$40.2	Not applicable
Original SSA estimate restated in 2000 costs .....	13.8	40.2	54
	(inflated by 6.6%) .....	.....	.....
Adjustments to estimate, stated in 2000 costs .....	(7)	(11.6)	(18.6)
	(inflated by 6.6%) .....	.....	.....
Total adjusted estimate, stated in 2000 costs .....	6.8	28.6	35.4

Note.—SSA data indicated that the OHA costs increased 6.6 percent between 1999 and 2000. Accordingly, we inflated the 1999 costs by this percentage in order to combine the estimates for the two segments.

Source: GAO analysis of SSA data.

**Attorney Fee Payments More Timely In 2000 But Major Reasons For Delay Remain**

Although most fees were processed in far less time in 2000 than in 1999, over 20 percent of the fees in both years still took longer than 6 months from the date of the OHA decision to the date when the attorneys were paid. While the major reason for the improved performance in 2000 was the elimination of the 15-day protest period by the Ticket to Work Act, the underlying reasons for the longest periods of delay remained largely unchanged. These included factors that are often outside of SSA’s control, such as the need for additional documentation to complete the calculation of the claimant’s benefits, for example, verification of state workers’ compensation payments. In a recent report, we documented some of the difficulties SSA encounters in obtaining workers’ compensation information.<sup>11</sup>

According to SSA data for the 7-month period from June through December, payments in 2000 were dramatically faster than for the same period in 1999. In 2000, 12 percent of the payments were processed in 30 days or less from the date of the OHA decision, and 50 percent of the payments were processed in 60 days or less. In contrast, only 1 percent of the 1999 payments were processed in 30 days or less, and only 4 percent of the 1999 payments were processed in 60 days or less. However, in 2000, 22 percent of the payments took over 180 days to process, about the same as 1999.

While SSA officials attributed most of the improved processing time in 2000 to elimination of the 15-day protest period<sup>12</sup> (with an added 15-day mailing period), SSA changed other procedures that improved processing time. For example, SSA stopped sending case files that needed additional documentation out of the processing centers to storage centers; instead, the case files stayed in bins near where staff processed the cases. Processing center staff also contacted OHA staff to better track information on attorney fee approvals.

<sup>11</sup> *Workers’ Compensation: Action Needed to Reduce Payment Errors in SSA Disability and Other Programs* (GAO-01-367, May 2001).

<sup>12</sup> Claimants, attorneys, and SSA officials are still allowed to protest the fees, however, there is no specified waiting period, as previously required.

However, many of the reasons that it takes an extra period of time to process an attorney's payment remained the same—for example, the centers still need to track down state workers' compensation information, they still need to have proof of age to process a claimant's benefits, and they still need to wait for all claims related to the principal beneficiary to be resolved to determine what to pay the attorney. Recently, SSA conducted a 1-day sample of cases with attorney fees that looked at factors, such as those listed above, that complicate the payment process. Of the 669 attorney fees processed on August 10, 2000, 48 percent had some factor that complicated the processing of the case.<sup>13</sup> Furthermore, of the cases with complicating factors, the most common characteristics were the need to verify information on workers' compensation (29 percent) and deferred related claims (18 percent).

*System Support Could Help Reduce Inefficiencies in Processing Attorney Fee Payments*

The bulk of SSA's administrative costs relate to a manual payment process that if improved could cut staff time and reduce processing time. Under the current process, information necessary to make a payment to an attorney is extracted from the main case information system and handled manually to prepare for payment. The manager of SSA's largest processing center indicated that systems support could save one-third of the staff time currently spent on this type of payment. Furthermore, Office of Systems officials told us that it would save from 3 to 5 days in processing time. Proposals to automate this process have been repeatedly postponed. SSA has, however, recently developed a draft plan to automate the attorney fee payment process, but according to SSA officials, the details related to this plan have not been fully developed.

*Current Payment Process Is Antiquated*

In general, DI cases are processed using an information system known as the Modernized Claims System (MCS). When a claimant first files for DI, a staff person in one of SSA's field offices enter the claimant's case history on MCS. After a favorable decision is issued by OHA, the hard copy of the case file—including information about the attorney and his or her fee—is mailed to the processing centers. When the case file is received at the processing centers, staff update the case history which was previously entered on MCS and complete information needed—such as determining workers' compensation offset—for processing the claim. Once the information is completed, MCS automatically calculates the claimant's past-due benefits, withholding 25 percent or \$4,000 (whichever is less). However, once the MCS determines the amount of the past-due benefits owed the claimant, the process reverts to a series of manual steps to handle the attorney's fee payment. The case file is sent to a GS 7 or 9 technician (a "benefit authorizer") who fills out a form that transfers the attorney information to a key punch clerk. The key punch clerk inputs the data into a separate stand-alone information system.

In addition to the problems cited above, there are other inefficiencies with the payment process. For instance, there are no controls to ensure that the amount withheld from the beneficiary is properly paid out to the attorney nor are there controls to ensure that duplicate payments to an attorney are avoided. Furthermore, there is no database (or "master file") of attorney names, addresses, and payments. Without this, any time an attorney reports a change of address, for example, the new address must be reported for every claimant the attorney represents. In addition, there is no electronic link between the OHA fee approval staff and the MCS processing system. As a result, OHA staff mails information on attorney representation and fee arrangements to a processing center where staff manually enter the attorney data into the MCS system.

*System Support Could Help Reduce Staff Costs and Time*

Developing an information system to automate the process may result in reduced staff time associated with processing these payments. According to officials in the Office of Systems, automation could eliminate the need for many staff who are now required to transfer information between the MCS and the payment systems to process the attorney fees. If, for example, there was no need to gather further documentation, the payment to the attorney could be issued automatically at the same time the payment is issued to the beneficiary. The officials also noted that automation might save from 3 to 5 days in processing time.

In a memorandum dated January 24, 2000, the Associate Commissioner for Central Operations—the head of the largest DI processing center—recommended that

<sup>13</sup>As the 1-day study is not considered statistically valid by SSA officials, the results of the study cannot be extrapolated to the entire DI caseload.

SSA automate this process, which he termed “archaic.” With systems support, he noted that his center would save 34 work years of staff time, one-third of the total staff time the center spent on attorney fee processing. He also pointed out that an attorney master file would “eliminate duplicate work with needless reviews and greatly improve the accuracy of payments.” In 1997, an SSA study group recommended that SSA improve its automation of the current attorney fee process.

#### *SSA Has Current Plans to Automate*

Despite internal recommendations for a new system, SSA has repeatedly postponed its plans, redirecting funds to other higher-priority projects. Officials from SSA’s Office of System reported that this systems development effort has officially been part of SSA’s systems plans since at least 1998.

SSA currently has a draft plan to develop a system that would automate the process so that payment processing would be linked to the MCS. While the plan calls for linking the payment records to the claimants’ records to verify whether the payment withheld was also sent to the attorney, it does not include any provision for an attorney master file or an electronic connection with the OHA fee approval staff. Moreover, according to the Office of Systems staff, there is not yet any definite schedule to complete their plans, nor are any budget funds committed to the project.

#### **Other Issues Related To Payments and the User Fee**

The Ticket to Work Act also directed that we examine a number of potential changes to the current fee structure including (1) linking the user fee to SSA’s timeliness of payment, (2) making the user fee a fixed charge rather than a percentage of the fee, (3) raising the caps on attorney fees, and (4) extending the fee payment services to the SSI program. The act also directed us to consider whether the recent imposition of the user fee affected attorney representation of DI claimants. Additionally, we looked at the possibility of having SSA issue checks made payable to both the beneficiary and the claimant for the total amount of the past-due benefits. While the information necessary to fully evaluate these issues is not available, our review raised concerns about some of the matters.

#### *Linking User Fees to Payment Timeliness*

Though it is not clear that all of the delay in the longest cases is due to legitimate case processing, any decision to link the payment of the user fees to SSA timeliness would need to account for unavoidable additional processing steps.

The SSA 1-day study conducted in August 2000—which cannot be extrapolated to the entire case population because it is not statistically valid for all cases—looked at length of payment processing time. The study compared the processing times to the presence of factors that complicate case handling. About one-quarter (172) of the cases in the sample took longer than 120 days from the date of the OHA decision to process. Of these cases, over one-half (52 percent) had at least one factor that required additional processing time. Forty-one percent (71 cases) had issues requiring verification of state workers’ compensation payments. However, 48 percent (84 cases) of the cases with the longest processing times had no complicating factors at all.

Currently, SSA does not routinely identify cases that require extra case processing because of complicating factors such as state workers’ compensation payments. However, fair implementation of a link between the user fee and SSA’s timeliness of payments—for example, reducing or eliminating user fee payments if SSA did not pay the attorney within 120 days of the OHA decision—should treat such cases differently from other cases with no complicating factors at all. From our review of the SSA processing system, it is not clear, as a practical matter, how SSA could separate and account for the different types of cases without considerable extra administrative burden.

#### *Fixed Charge Versus Percentage User Fee*

Technically, the vast majority of attorney fee payments each cost the same amount to process; however, equity concerns arise when considering a fixed fee instead of a percentage. The vast majority of fees are based on fee agreements (93 percent in 1999 according to OHA) and the steps to process an approval and payment of a fee agreement remain the same regardless of the ultimate amount of the payment—which is dependent upon the claimant’s past-due benefits, not the amount of work performed. Thus, because the costs are the same regardless of the amount of the payment, a fixed fee more accurately reflects the actual costs borne by SSA per payment.

However, the impact of a fixed charge per payment could vary significantly, depending solely on the final amount of the claimant’s past-due benefits. To illustrate, according to SSA data, 17 percent of the attorney fees paid out in 1999 were for



amounts of \$1,000 or less, and 39 percent were for \$2,000 or less, although it is not clear exactly what amount was finally paid an attorney (there can be multiple payments to one attorney). Since fee agreements were applicable in most instances, this would mean that these were cases where the claimant's past-due benefits were for amounts of \$8,000 or less.

Using 1999 costs and payments, if attorneys were charged a fixed amount for each payment rather than a 6.3 percent user fee, the fixed charge would have been \$176 per payment.<sup>14</sup> Under a fee agreement specifying that the attorney would be paid 25 percent of the past-due benefits, if the claimant's past-due benefits were \$8,000 a user fee of \$176 would be 8.8 percent of the attorney's payment of \$2,000. If, on the other hand, the claimant's past-due benefits totaled \$16,000, then the fee would be \$4,000 and the same fixed charge would be 4.4 percent of the attorney's payment. The impact on attorneys representing claimants with smaller benefit claims can be relatively greater than that on attorneys with claimants who are owed larger benefits.

#### *Raising the Cap on Attorney Fees*

The current fee cap—limiting fees under fee agreements to 25 percent of past-due benefits or \$4,000, whichever is less—was first set 10 years ago in 1991 and has not changed since that time. However, although the actual cap has not changed, the DI benefits on which the fees are based have been annually increased to account for inflation in the cost of living. Thus, unless attorney fees hit the \$4,000 cap, fees should have gradually increased as benefits have risen.

However, the data from SSA are not clear as to how frequently attorneys may reach the maximum fee of \$4,000 in their cases. According to SSA data, the breakdown of attorney fee payments in various dollar ranges has stayed fairly consistent between 1995 and 1999. Thus, about 40 percent of payments have been less than \$2,000, about 20 percent have been between \$2,000 and \$3,000, while the remaining 40 percent have been between \$3,000 and \$4,000. SSA does not keep records on how many payments are issued for the maximum \$4,000. In SSA's recent study of a one-day sample of payments processed on August 10, 2000, of 625 fee agreement cases processed that day, one-third (33 percent) had been paid at the \$4,000 limit. SSA officials, however, believe that this percentage of cases is unusually high and does not represent a normal rate at which attorneys are paid the maximum rate. Without reliable data, we were unable to ascertain the full impact of the current cap on attorney fees.

#### *Extension of SSA Fee Payment Services to Attorneys Representing SSI Claimants*

The SSI program was created in 1972 as an income assistance program for aged, blind, or disabled individuals whose income and resources are below a certain threshold. SSI payments are financed from general tax revenues, and SSI recipients are usually poorer than DI beneficiaries. While SSA currently approves the fee arrangements between SSI claimants and their attorneys, it does not withhold money from the past-due benefits to send to the attorneys.

SSA and some advocates for the poor have argued against the extension of the fee payment services to SSI claimants. According to their view, SSI recipients tend to be poorer than DI beneficiaries, and deducting an attorney fee from their past-due benefits would take money from those who need it the most. SSA also points to the added administrative burden that the additional fee services would entail.

On the other hand, others believe that the fee payment services should be extended to the SSI claimants because providing a certain source of compensation for attorneys would tend to increase the representation of SSI claimants and possibly result in more successful cases by the SSI claimants. According to 1999 data from OHA, applicants for DI benefits (or DI and SSI together) were more likely to be represented by an attorney than those applying only for SSI benefits. An official representing SSA hearing officers told us that he believed that applicants with a legal representative tended to fare better than those without one because the cases are better presented in the OHA proceedings.

#### *Legal Representation of DI Claimants Since Implementation of the User Fee*

In general, legal representation of DI claimants in OHA proceedings has steadily increased in the past 2 years. During the first quarter of calendar year 1999, attorneys represented DI claimants in 73.4 percent of cases presented to OHA. By the

<sup>14</sup>In 1999, SSA paid out \$464 million in 166,000 fee payments. Applying 6.3 percent to the total paid would have resulted in \$29.2 million in total user fees. If, however, these fees were paid in a fixed amount for each payment, the user fee per payment would have been \$176.

end of calendar year 2000, legal representation of DI claimants had risen to 76 percent.

However, there was a slight dip in attorney representation for DI cases in the second full calendar quarter—the months of July through September 2000—following the implementation of attorney fees in February 2000. The percentage of attorneys representing claimants for DI benefits only (not SSI benefits as well) declined to 74.3 percent from 75.3 percent in the months of April through June. In the next quarter (October through December 2000), though, the percentage of attorney representation rose again—to 76 percent. For the first quarter of the calendar year 2001, the rate dipped once more to 75.4 percent.

#### *Joint Check Issued to Attorney and Claimant*

Currently, once SSA determines the past-due benefits owed to DI claimants, it issues two checks—one to the claimant and another to the claimant's attorney. One proposal would change this process by issuing one single check for the total amount of the past-due benefits—made out jointly to the claimant and the attorney—sent directly to the attorney. The attorney would deposit the check into an escrow account and pay the past-due benefits, minus his or her fee, to the claimant.

Such a change could have serious policy implications, however. For instance, SSA currently attempts to pay the claimant as soon as possible after a favorable decision. Joint checks might delay payment to the claimant because the claimant would need to wait until the attorney deposited the check into an escrow account. Also, using a joint check would reduce SSA's ability to enforce the fee limits and could increase the risk that attorneys might short-change claimants. A number of administrative issues would need to be addressed, as well. Because SSA must report the claimant's benefits to the Internal Revenue Service, it must track the amount each claimant receives. With joint checks, the attorney would need to certify to the amount provided to the claimant. In addition, SSA's DI claims processing system would need to be adjusted to handle joint checks.

#### **Conclusions**

Inefficiencies in the current process increase both the time it takes to pay the attorney fees and the costs of administration. One segment of attorney fee processing—the fee approval process—was substantially simplified in 1991. Systems support could streamline the second segment of the processing—the fee payment—thus lowering the annual administrative costs and cutting processing time. If SSA automated this final segment of the fee processing, it could help improve customer service for both claimants and their attorneys.

Mr. Chairman, this concludes my prepared statement. At this time, I will be happy to answer any questions you or other Members of the Subcommittee may have.

#### **GAO CONTACTS AND STAFF ACKNOWLEDGEMENTS**

For information regarding this testimony, please contact Barbara Bovbjerg at (202) 512-7215. Individuals who made key contributions to this testimony include Shirley Abel, Yvette Banks, Kelsey Bright, Valerie Melvin, Nancy Peters, and Dan Schwimer.

#### **APPENDIX**

##### **Specific Adjustments to the SSA Cost Estimate**

This appendix describes our adjustments to the Social Security Administration's (SSA) estimate of the costs of its fee process services. SSA estimated the costs for the two major components of these services (1) the 1999 Office of Hearings and Appeals (OHA) fee approval process; and (2) the 2000 fee payment process. We describe our adjustments to the costs of each component in separate sections below. In general, we were unable to precisely correct the estimate because of inadequate data and unclear cost definition. However, with rough adjustments to the original estimate, we have attempted to approximate a "lower bound" of the SSA costs. We have discussed each of our adjustments, and our proposed corrections, with SSA officials.

##### *OHA Fee Approval Process*

According to SSA's estimate, OHA staff spent 236 work years on about 206,000 fee approval actions, at a cost of \$13 million in 1999. These actions included approval of both fee agreements and fee petitions, as well as reviews of disputes over fees. The vast majority of these actions involved approval of fee agreements—in 1999, OHA approved about 179,000 fee agreements.

The cost estimate, however, included work not related to disability insurance (DI) cases and used an unrealistically high estimate of staff time taken to review fee agreements. While we could identify these problems, we could only approximate the actual adjustment needed to correct the original estimate because of insufficient data.

First, the estimate included costs spent on cases that were not DI cases. In 1999, there were about 185,000 OHA cases with attorney representation that resulted in favorable decisions for the claimant.

However, of these cases, only about 79 percent (146,000) involved claims for DI benefits and the remaining 21 percent (39,000) involved claims for benefits under the SSI program only. SSA officials acknowledged that their estimate included work on fee approvals for other than DI cases, but they were unable to provide us with a more detailed breakout of workload (e.g., the number of fee agreements that were also DI cases).

In addition, the SSA estimate appears to overstate the time it takes to routinely handle a fee agreement. Over the past 10 years, SSA's role in regulating attorney fees have become much less burdensome. With the simplified fee agreement, SSA staff can, for the most part, verify that the claimant has agreed to pay his or her attorney 25 percent of past-due benefits, instead of reviewing itemized hourly charges commonly presented in fee petitions. Despite the steady trend towards uniform use of the simplified fee agreement, the most recent estimate of the time it takes to review a fee agreement is twice that used in SSA's 1995 cost estimate. In 1995, SSA estimated that it took about 45 minutes of staff time to review and process a fee agreement. In 1999, however, its estimate of the same review had risen to 94 minutes per agreement. The 1999 estimate included about 47 minutes to evaluate whether each agreement meets the regulatory criteria—32 minutes by a senior case technician, and once this is done, 15 minutes by the administrative law judge (who also takes 6 minutes to sign each agreement). After the judge signs the order, the estimate included 16 minutes for a clerk to mail the fee approval agreement (with the rest of the case file) to the payment processing center.

While we were unable to quantify the actual staff time, the 1995 estimate of 45 minutes appears to be the better approximation of staff time spent handling routine fee agreement approvals, particularly in view of the increasingly uniform use of this simplified fee contract. To develop the 1999 estimate of staff time, SSA officials told us that they polled the OHA regional offices in a 4-day period. They received responses from only 6 of the 10 regional offices, and those responses included wide variations for staff time—for instance, the estimate for the review by the administrative law judge went from 1 minute to 5 days. Additionally, the time for the mailing the fee agreement included the time spent to mail the entire OHA decision.

Our review suggests that the OHA costs in 1999 may be as low as \$6.4 million, or 51 percent of the original estimate. Our adjustments to the OHA estimate are as follows:

(1) Because SSA could not provide us with a detailed breakout of the OHA work on DI cases, we reduced the total estimate by 21 percent—the proportion of non-DI cases in the OHA 1999 workload. This adjustment reduced the estimate by \$2.7 million, to \$10.3 million.

(2) Once we removed the non-DI cases from the estimate, we then reduced the estimate of staff time spent on fee agreement approval by one-half, roughly the difference between the 1995 and the 1999 staff estimate. This change lowered the OHA estimate by \$3.9 million (30 percent), to \$6.4 million.

(3) We restated the estimated costs in terms of costs in 2000, to be comparable to SSA estimates of processing costs. To do this, we inflated the estimated costs (and our proposed adjustments) by 6.6 percent, the amount by which the cost of the average OHA staff year increased in 2000 over 1999.

The original OHA estimate, our adjustments to the estimate, and the limitations to these adjustments are shown in table 2.

TABLE 2.—GAO ADJUSTMENTS OF SSA'S ESTIMATE OF 1999 FEE APPROVAL COSTS

[Dollars in millions]

	OHA estimate in 1999 dol- lars	OHA estimate restated in 2000 dollars	Percentage reduction	Limitation on adjusted estimate
SSA original estimate of fee approval costs.	13	13.8	Not applicable	Not applicable.
Adjustment for inclusion of Non-DI cases.	(2.7)	(2.9)	(21)	Unable to precisely allocate workload to DI cases.

TABLE 2.—GAO ADJUSTMENTS OF SSA'S ESTIMATE OF 1999 FEE APPROVAL COSTS—Continued  
[Dollars in millions]

	OHA estimate in 1999 dol- lars	OHA estimate restated in 2000 dollars	Percentage reduction	Limitation on adjusted estimate
Adjustment for excessive staff time ...	(3.9)	(4.1)	(30)	Actual staff time for fee approval tasks unknown.
Total adjustments .....	(6.6)	(7)	(51)	Not applicable.
Total adjusted estimate .....	6.4	6.8	Not applicable	Not applicable.

Source: GAO analysis of SSA data.

#### *Fee Payment Processing Costs*

According to SSA, its payment processing centers took 673 work years to process \$512 million in attorney fee payments in 2000, at a cost of \$40.2 million. SSA developed this estimate from the standard system of cost allocation it uses at the payment centers. Under this cost allocation system, each payment center's workload is quantified by a random check, conducted daily, of the work done by all employees at the center. Each type of work at the payment centers is categorized, and one major category of work includes that done on attorney fee processing. This work category (called "atfee" in the centers) includes all work done at the payment centers related to handling and paying fee agreements and fee petitions. The work includes all cases that involve attorney fees—field office cases (initial determinations and reconsiderations) as well as OHA cases.

Our review indicated that the payment processing estimate appears high. It included an incorrect cost amount; failed to adjust for one-time use of premium overtime pay to reduce processing backlogs; included costs not clearly associated with fee payments; and it used average salary costs when the staff who routinely work on most payment processing receive below-average pay. However, we were, for the most part, unable to make precise adjustments for these problems because of limited data and unclear definitions as to what counts as a fee processing cost.

First, the original estimate erred in a calculation of the total estimate by using the wrong amount of total costs for the largest processing center. In creating the estimate, SSA used an incorrect category from its cost accounting system to calculate the center's costs. This cost category included costs unrelated to the work necessary to process attorney fees.

Second, the estimate did not adjust for premium overtime pay. Because the user fee required by the Ticket to Work Act was effective February 1, 2000, SSA staff worked overtime in February and March to clear out the backlog of fee payment cases pending as of February 1. According to testimony by SSA's Assistant Commissioner before the Subcommittee on Social Security, House Committee on Ways and Means, in June 2000, SSA provided an extra 111 staff work years to handle the backlog of fee cases, diverting resources from other workloads to process the claims on a priority basis.

Third, the general "atfee" work category used to designate attorney fee processing in the centers appears to include subcategories of work too broad to be included in the estimate—in our view, the subcategories include work that would be necessary for normal case processing even if SSA did not pay attorney fees. According to staff in the centers, the subcategory "atfee misc" includes correspondence from attorneys that cannot be clearly categorized as dealing with either fee agreements or fee petitions. For example, a letter would be classified as "atfee misc" if it included issues related to the claimant as well as a question about fees. One supervisor told us that the designation of work category was made by a GS 4 or 5 file clerk who would classify any correspondence with an attorney's letterhead as "atfee misc" if the letter could not be clearly identified to another specific work category.

Finally, the staff salary costs included in the estimate should be adjusted to reflect more accurately the lower staff salaries of the technicians who routinely work on payment processing. SSA's estimate is based on the average salary of all its employees who work on DI cases involving OHA decisions. However, the staff working on these cases includes both claims authorizers (generally paid a GS-11 salary) and benefit authorizers (generally paid between GS-7 and GS-9 salaries). For the most part, the lower-paid benefit authorizers process the attorney fees, while the higher-paid claims authorizers perform the main case processing. From SSA data, it appears that over 50 percent of the work on DI cases with OHA decisions is case processing work routinely performed by the higher-paid claims authorizers.

Taking into account the points noted above, we believe that the “lower bound” costs for the processing centers could be as low as \$28.6 million. Our calculation of the adjusted estimate is as follows:

(1) We corrected the SSA estimate for an error in its calculations of the processing center costs. This correction reduced the estimate by \$1.9 million (5 percent) to \$38.3 million.

(2) We adjusted for the premium overtime pay. We reviewed data provided by SSA on the increase in overtime pay in 2000 over the prior year. Using this information, we allocated a part of the increase in overtime pay to the center’s attorney fee work, reducing the estimate by \$0.5 million (1 percent) to \$37.8 million.

(3) We eliminated the costs associated with the subcategory “atfee misc” from the costs. When these costs were subtracted from the estimate, the original estimate was reduced by \$5.5 million (13.7 percent) to \$32.3 million. Because some of the work included in this subcategory was likely to be directly related to the fee processing, eliminating this subcategory most likely understated some of SSA’s actual costs.

(4) We adjusted the estimate to better reflect the below-average pay of the staff who routinely handle attorney fee processing. SSA was unable to provide us with data to precisely allocate the salary costs of those working on fee processing; hence, we assumed that all staff who worked on attorney fee processing were paid at a GS–8 step 5 level (\$33,202) in 2000, while all the rest of the staff who worked on the same cases were paid at GS–11 step 5 level (\$44,369). This adjustment reduced the original estimate by \$3.7 million (9.2 percent) to \$28.6 million.

The adjustments to the payment processing estimate are summarized in table 3.

TABLE 3.—GAO ADJUSTMENTS OF SSA ESTIMATE OF 2000 PAYMENT PROCESSING COSTS

	Amount	Percentage reduction	Limitation on adjusted estimate
SSA original estimate of payment processing costs in 2000.	\$40.2	Not applicable	Not applicable.
Correction of SSA estimate .....	(1.9)	(5)	Not applicable.
Adjustment for premium pay .....	(0.5)	(1)	Unable to quantify with SSA data.
Adjustment for overly broad work category “atfee misc”.	(5.5)	(13.7)	Eliminated entire work category, even though it most likely includes some work directly related to attorney fees.
Adjustment for lower staff salaries .....	(3.7)	(9.2)	Data on salaries are from an SSA estimate; no specific data on salary allocation available.
Total adjustments .....	(11.6)	(28.9)	Not applicable.
Total adjusted estimate .....	28.6	Not applicable	Not applicable.

Source: GAO analysis of SSA data.

#### *OHA Fee Approval and Payment Processing Center Costs Combined*

When we combined the total adjusted estimate for the OHA fee approval process (\$6.8 million) and that of the payment processing centers (\$28.6 million), our total adjusted estimate was \$35.4 million. This adjusted estimate is 34 percent of the original SSA estimate of \$54 million. When compared to the \$512 million of total attorney fees paid out in 2000, the original SSA estimate is 10.5 percent of the fees, while the adjusted estimate is 6.9 percent.

Chairman SHAW. Without objection, we will see that that is corrected.

Ms. BOVBJERG. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman.

Was that, the error you were talking about, the—well, no. This is SSA, I guess. What is the actual—if you eliminated the 6.3 percent assessment on attorney fees payment, what is the actual revenue loss? Does anybody know that?

Mr. TAYLOR. If you eliminated it?

Mr. MATSUI. Yes. That was something that was discussed last year, if I recall. But initially I think SSA suggested that it would be \$200 million per year.

Mr. TAYLOR. I believe that is correct, if you—pardon me?

Mr. MATSUI. But the actuary, there was an actuary memo that stated the actual cost to be \$205 million over 5 years, which is a big discrepancy. So does anybody know that number?

Mr. TAYLOR. The \$205 million sounds correct—

Mr. MATSUI. Over 5 years?

Mr. TAYLOR. Over 5 years, and we had projected last year a loss to the trust fund of about half that, if we were to give up the cases that were done in more than 30 days, which was a suggestion last year.

Mr. MATSUI. So it is your believe that the \$205 over 5 years—

Mr. TAYLOR. Yes

Mr. MATSUI. Okay. I just wanted that, because I know that there was no intent to mislead. It was just, I think, a correction, and there was an actuarial memo. I just wanted that for the record because I wasn't sure myself.

Let me ask you a couple of questions. Fifty percent are paid in less than 2 months, and that is remarkable progress over where you were, and the GAO has actually said that as well, but what about the other 50 percent. Now, I know that there is a problem for those, again as GAO says, on the offset on the workmen's comp ones.

Mr. TAYLOR. That is right.

Mr. MATSUI. But that is not the balance of the 50 percent. Why is the other 50 percent that does not have the offset on workmen's comp not brought up to the same 2-month period?

Mr. TAYLOR. Well, let me approach it this way. One of the things that we have encountered in this process is that it is not only a manual process, but we are hampered quite a bit by the lack of good management information. One of the areas where we don't have good management information is the reason for the delay of cases that go beyond 60 days.

Information that we have suggests that roughly 20 to 25 percent involve a worker's compensation payment, which is a development process that we do not have full control over. There are other situations where there is a payment based upon an auxiliary beneficiary, and there is a development process that occurs that involves some delay there.

Mr. MATSUI. What is an auxiliary beneficiary?

Mr. TAYLOR. It could be a child, a sibling, something like that, under the—

Mr. MATSUI. But wouldn't that just be something which would—I assume that would be in the file, so when you cut the check, you could cut the check right there.

Mr. TAYLOR. Not necessarily. We may need to secure additional information about the circumstances. You may need to secure additional information about the auxiliary beneficiary before—

Mr. MATSUI. Like what? I mean, I assume that that is well known, because when the applicant files a claim—but maybe I am wrong about that.

Mr. TAYLOR. Well, the information about the auxiliary is not necessarily fully developed at the time the claim is filed, because it is not known at that time whether the claim will be approved. So in order to——

Mr. MATSUI. But that is true of the claimant. So it would seem to me if you don't know whether the claimant is going to receive the money, the auxiliary beneficiary wouldn't know either, so I don't know how that makes a difference, as to why that would delay the process.

Mr. TAYLOR. Well, there are pieces of information that are not in the file at the time that the——

Mr. MATSUI. That seems like a pretty lame excuse. I don't want to question you. It just seems like it doesn't make a lot of sense.

I mean, if somebody files an application, you ask questions and then you say, well, there is an auxiliary beneficiary. And then when the claim is approved, you have two people or three people, whatever the case may be, and then you write those checks out. I don't know how that can result in a delay of 2 months, 3 months, or even 20 days.

Mr. TAYLOR. Let me just say that we can't identify auxiliary beneficiaries as a major cause of delay. The worker's compensation seems to be the major one.

Mr. MATSUI. Right.

Mr. TAYLOR. But the point I was trying to make was——

Mr. MATSUI. But the point I am trying to make is, why can't you get those additional 25 percent, that is, half of those that don't get it within 2 months, the same kind of 2-months period that the other 50 percent receive? I mean, it doesn't seem to make sense to me.

I mean, you are making remarkable progress, and I am not being critical, but the fact of the matter is, it seems to me that if you can get 50 percent, why can't you get the rest? Unless you are saying you don't have enough money or enough manpower. Then, obviously, you have got to go through the appropriations process. But you are not saying that.

Mr. TAYLOR. No, we are not saying that.

Mr. MATSUI. That is why I don't understand why it is not happening.

Mr. TAYLOR. What I am saying is, we don't have the management information to tell us why those cases are not being done within the same timeframe as the other cases.

Mr. MATSUI. If I can, Mr. Chairman, I don't understand that, because you have management information, Okay, that is bureaucratic. Why can't you talk to the managers that can get it out, the 50 percent that receive it within 2 months, and say, "Okay, what do you do?" And why can't that be applied to the managers on the other side that don't get it out within 2 months? I am not talking about the 25 percent. I am not talking about workmen's comp issues.

Mr. TAYLOR. I understand. It is a matter of being able to gather that information through an organized system.

Mr. MATSUI. Okay. Well, you know, before this hearing you were notified that we were going to have this hearing. Now, why couldn't that have been done? It doesn't seem like it would take much. I

mean, it would seem like it would take a few days, maybe, to come up with that strategy or management approach. It just seems to me that this has been frustrating because we have been working on this, I have been involved in this now for about 2 or 3 years, and we are making progress but we are not making progress.

Mr. TAYLOR. I apologize for that. The one thing that we can certainly do, and we have talked about doing, is to take a sample of those cases that were beyond the 60 days that do not fall in the worker's compensation category, and try to glean from those cases what the reasons were.

Mr. MATSUI. If I can just make a suggestion, how long would it take you to do that analysis and then come up with a policy, an implementation program?

Mr. TAYLOR. I am sure that we could do the analysis within a month.

Mr. MATSUI. Okay, so that—

Mr. TAYLOR. But an implementation program may take a little longer.

Mr. MATSUI. If Mr. Shaw and others and I ask you to visit our offices, because we probably wouldn't want to have another hearing on this—it is up to Mr. Shaw—but in another month, and you would be able then to tell us that you will be able then to bring this—you would have 75 percent in which they would then receive it within 2 months?

Mr. TAYLOR. I would think that we could—

Mr. MATSUI. You think you could?

Mr. TAYLOR. Identify the reasons that are delaying those cases beyond 60 days.

Mr. MATSUI. And an implementation program?

Mr. TAYLOR. I will do my best within 30 days to do that.

Mr. MATSUI. Okay. I have other questions, but I know time is running short. I appreciate this, and maybe I can follow up on it at some future moment. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Hulshof.

Mr. HULSHOF. Thanks, Mr. Chairman.

Ms. Bovbjerg, Mr. Taylor, welcome. Mr. Taylor, congratulations on behalf of your Social Security Administration for the progress that you have made, and we encourage you, I think from the questions already, to continue to try to implement those changes, to continue to make progress. And certainly, looking back at the track record with Social Security Administration being probably the best government agency to prepare itself for Y2K, we hope that you would follow along and address some of the things that Mr. Matsui has talked about.

From this Member's perspective, I think, looking back, the most controversial part of this was the change of assessing the 6.3 percent assessment or user fee or whatever terminology you choose to give it. And I don't mean to put you at a disadvantage, Mr. Taylor, but in the next panel Ms. Shor, who I have had a chance to read through her testimony, she represents the National Organization of Social Security Claimants Representatives, says that or suggests that—and I think not to misstate, first of all, that group favors the outright elimination of this user fee, but in the alternative maybe



implementing just a lump sum or a reasonable charge, not a percentage but just a per-case charge of say \$25.

What comments might you have about implementing that type of assessment rather than a percentage?

Mr. TAYLOR. Well, I guess it depends—there are two aspects to that. One is whether it is a flat charge of some dollar amount, and two is what the dollar amount would be.

In terms of a flat fee, in which we would simply divide the amount of cost of the Social Security Administration by the number of fee payments, the concern that we have is that for fees that are on the low side, the dollar amount would eat up a good bit of the fee. It could be done that way, but I think our feeling was that it was not equitable to many of the attorneys who have the lower fees.

Regarding the dollar amount of \$25, our understanding of the statute and the legislative purpose is that the 6.3 percent rate is to recover the cost of authorizing, determining and paying the attorney's fees. And, as our statements in our Federal Register publication suggest, and I think as Ms. Bovbjerg's testimony confirms, those costs are in excess of the 6.3 percent charge.

Mr. HULSHOF. The allegation is—and I am trying to paraphrase what some of these local attorneys in my congressional district back in Missouri say, and I would just like your comment on it—they say essentially, as I think Ms. Shor gets into, in at least her written testimony, that the assessment fee reduces attorney revenues. That, combined with the amount of time the attorneys have to wait, even with the progress that SSA has made, the time of waiting for their payments has led some attorneys either to reduce their staff, take fewer cases, or get out of the business altogether. Have you sensed this trend or not? Or what response would you have to that allegation?

Mr. TAYLOR. I certainly am not aware of that trend. The information that is available to us, for example, in terms of the rate of representation of claimants before the Social Security Administration, has not declined. In fact, for title II disability cases it sits at about 75 percent. We have not seen any change since the imposition of the 6.3 percent.

Ms. Bovbjerg, any quick comments? I know I have got one more question I want to try to get to before my red light comes on, but any, either on the flat fee or this trend that attorneys are mentioning?

Ms. BOVBJERG. As we say in our statement, it is true that for fee agreement cases, the cost of processing the attorney payment is the same regardless of the size of the payment. It would cost more with fee petitions. But there is the other side of the equity argument, that if you instituted a flat fee, for attorneys who would be getting a small payment, the fee would represent a high percentage.

Mr. HULSHOF. Let me quickly, Mr. Taylor, if I can, because you touched on it briefly, the \$4,000 fee agreement limit, you said, I mean you pointed out it has been in place since 1991, and there is now this effort to undertake to look at the fee limit, to see whether it should be changed. And yet I think Ms. Bovbjerg has said that there is not any data on how many payments for the maximum of \$4,000 are going out. Is that true? And if so, isn't that

an important part of the data that you would need to make this decision about raising the limit from \$4,000?

Mr. TAYLOR. We don't have the best data on that question. We have a 1 one-day study, and we have some more recent information that came out of another study that was not designed to ferret that out. It is important information. We have a general sense of where it is, but we can't pin it down exactly.

Mr. HULSHOF. Well, I appreciate that. Thank you, Mr. Chairman. Chairman SHAW. Thank you. Mr. Doggett?

Mr. DOGGETT. Thank you, Mr. Chairman. Ms. Bovbjerg, there is really no reason to have attorneys involved in this process at all unless the people with disabilities benefit from their participation. Does the work that the GAO has done demonstrate that those who have an attorney involved representing them come out ahead of those that don't?

Ms. BOVBJERG. That was not something that we reviewed this time. I believe that SSA has data that suggest there is a higher success rate.

Mr. DOGGETT. Isn't it about 20 percent higher?

Ms. BOVBJERG. I am not sure.

Mr. TAYLOR. It is about 20 percent.

Mr. DOGGETT. About 20 percent better, and—

Ms. BOVBJERG. About 70 percent of DI claimants have attorneys.

Mr. DOGGETT. And the GAO did reach the conclusion that delaying the automation of the process as it relates to attorney's fees was a conscious decision that the Social Security Administration made; that they had other things they thought were just more important. Your comment was, "SSA has repeatedly postponed plans to automate the process, citing higher priorities."

Ms. BOVBJERG. That is true.

Mr. DOGGETT. Mr. Taylor, for 11 years, as you know, the current cap has been in place on attorney's fees, and actually after the imposition of the new Tax on Justice that was passed last year, the cap on attorney's fees has actually been reduced, the net cap. I understand you have been studying what to do about that for the last year?

Mr. TAYLOR. Yes, we have looked at it.

Mr. DOGGETT. How much longer is it going to take you to decide how much that cap should be increased?

Mr. TAYLOR. I don't think I can give you an exact date on that. Certainly before the end of the year we will be able to announce that.

Mr. DOGGETT. So you think that there will be a decision and a change in the cap by the end of this year?

Mr. TAYLOR. I think there will be a decision on whether the cap should be changed by the end of the year. As I indicated in my statement, we do plan to consult with interested parties before a decision is reached on that.

Mr. DOGGETT. But we will have a decision one way or the other by the end of this calendar year?

Mr. TAYLOR. Yes.

Mr. DOGGETT. And you agree, I gather then, by the statistics you cite, that there is evidence that those who have legal representa-

tion and who have disability claims come out ahead in the administrative process from those who do not?

Mr. TAYLOR. That is what the data shows.

Mr. DOGGETT. Right. Now, I was interested in the fact that in 1999 the data shows that 90 percent of the cases that involved legal representation involved fee agreements, and yet you indicate that almost half the time of the decisions in the appeals office is due to processing attorney fee payments, if I have the numbers right. Is that correct?

Mr. TAYLOR. I am not sure which number you are referring to.

Mr. DOGGETT. Well, there is data that says 90 percent of the cases involving attorneys had fee agreements in 1999. Is that accurate?

Mr. TAYLOR. Yes, that sounds accurate.

Mr. DOGGETT. And then there was an estimate that 47 percent of the time spent on decisions in the Appeals Office is due to processing attorney fee payments. Is that correct?

Mr. TAYLOR. Yes.

Mr. DOGGETT. All right. What I don't understand is, if 90 percent of the fee agreements are in place, how you could be spending half the time in the Appeals Office deciding how to calculate 25 percent or \$4,000, whichever is less.

Mr. TAYLOR. Well, let me—may I answer?

Chairman SHAW. Oh, yes. I didn't do that. We have got plenty of time. We have plenty of time.

Mr. TAYLOR. I have an answer for this one.

Chairman SHAW. Okay. Good.

Mr. TAYLOR. Let me set the stage a little bit here. The 47 percent cost figure is referring to the process of actually paying the attorney.

Mr. DOGGETT. Not cost, but 47 percent of the time, as I understand it?

Mr. TAYLOR. Forty-seven percent of the cost or the time, I think it is more accurately cost, of the process that is in charge of making benefit payments to the claimants and making payments to attorneys when attorney fees are involved, 47 percent of that, according to our figures, is due to the cost of making payment to the attorney.

And the reason is, and I suggested this in my statement, that the attorney fee payment process is essentially a manual one, whereas the process of making the payment to the beneficiary is in most instances done through an automated system. There is more to it than simply deciding what 25 percent is.

From the time that the current and past-due benefits are paid and the attorney fee payment amount is sent to the Department of the Treasury for payment, there are at least three individuals involved in performing manual tasks. These tasks include filling out forms, making entries, and doing calculations.

Mr. DOGGETT. I believe that the figures were about \$200 million over 5 years that you are getting out of the new Tax on Justice that was imposed last year. How much of that is dedicated to the automation that you placed the low priority on here?

Mr. TAYLOR. Well, those funds go directly into the trust funds.

Mr. DOGGETT. Right. So how much of that \$200 million over 5 years, I realize we haven't had the 5 yet, but how much of that is being allocated to automation to resolve this problem?

Mr. TAYLOR. I don't know that I can give you a figure for the automation efforts that are already in place. I don't have—

Mr. DOGGETT. It is a pretty small percentage, isn't it?

Mr. TAYLOR. It probably is a small percentage.

Mr. DOGGETT. You basically have imposed a tax and only a small percentage of it is going to reduce this problem.

Mr. TAYLOR. Actually, none of it is going to reduce this problem.

Mr. DOGGETT. None of it.

Mr. TAYLOR. I would add that part of our challenge here, and part of our plan, is to figure out exactly what are the opportunities for automation of this process. At that point we will then be able to identify more accurately what the cost would be to automate.

Mr. DOGGETT. Last year Mr. Shaw and Mr. Matsui, wisely, I think, suggested a waiver of this tax where the delay was more than 30 days. If they had been successful in that initiative, you would be today waiving the new tax in 88 percent of the cases. Is that correct?

Mr. TAYLOR. Eighty-eight percent of the cases?

Mr. DOGGETT. Yes, sir.

Mr. TAYLOR. I will have to check that.

Mr. DOGGETT. In other words, you can't meet the very reasonable deadline that they set in 88 percent of the cases. Even though 90 percent have fee agreements, in 88 percent of the cases, you can't process them in a month?

Mr. TAYLOR. I can't verify that figure. That could well be true. But the fact that it is a fee agreement does not make the payment to the attorney easier.

Mr. DOGGETT. Yes. I am referring to page 10 of the GAO report that I know you are familiar with. And Ms. Bovbjerg, isn't that correct? In 88 percent of the cases, they can't meet the deadline that Mr. Shaw and Mr. Matsui suggested last year would be appropriate for waiving this justice tax?

Ms. BOVBJERG. It is true. They process 12 percent within 30 days.

Mr. DOGGETT. I will just say that I think my colleagues on both sides of the aisle have been very generous in their comments, and I am not nearly as generous. I think it is appalling that you have imposed this tax, and I don't know whether it is a feeling at the Social Security Administration that they just don't want attorneys involved because it is a lot of trouble, and it is easier to deny some of these claims if attorneys aren't involved, or just conscious indifference, but you place a low priority on this.

It is not the attorneys that I am really concerned about, it is the people that they represent, because they are being shortchanged when the Social Security Administration places such a low priority on improvements, and despite Social Security Administration efficiency in so many areas, acts so inefficiently in this area. And I find it extremely troubling. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Taylor, very briefly, to follow up on some of Mr. Doggett's questions, I am a little concerned about the fact that these things have to be manually done. Is there a subjective

nature to this, that decisions have to be made that computers cannot make?

Mr. TAYLOR. In some instances they are subjective. In some instances it is partly because we have no system that keys to identifying information relative to the attorney as opposed to the claimant.

Chairman SHAW. Well, let me follow up, then. Is it a question of your computer systems being inadequate, or is it that they are old? And how are the retirements going to impact upon you? I was very impressed with Ms. Bovbjerg's discussion as to the amount of staff that could be replaced by updating the computer systems.

Mr. TAYLOR. Our assessment thus far of automation doesn't accurately quantify or specifically quantify the staff savings that might accrue. We think the major benefit would be in saving time, collapsing the number of people and handoffs that have to take place, and in the accuracy of the process itself. Each one of these manual processes and handoffs from one individual to another introduces the possibility of error which an automated system would, in most instances, remove.

Chairman SHAW. Well, I think we need to follow up on perhaps an entire hearing with regard to the automation system and how the cost of updating that can offset some of the problems that we are going to have with regard to a great deal of retirements over the next 10 years. It is something that I am very concerned about and something that I think this Committee has to really take a close look at, particularly with the aging of the baby boomers.

Mr. TAYLOR. I don't want to leave the impression that our systems are a problem because they are antiquated. It is a matter of doing the work to analyze the process to be able to specify how the system could be automated, which is basic groundwork that has to be done before any automation initiative can be put into place.

Chairman SHAW. Thank you. I have Mr. Becerra and Mr. Pomeroy. I don't know how much questioning you have, if you want to wait and hold the witnesses over or go ahead and let them go. We have a few minutes to go.

Mr. BECERRA. Mr. Chairman, I would be very brief, so that that way we don't have to hold the witnesses.

Chairman SHAW. Okay. Fine.

Mr. BECERRA. Mr. Taylor, let me ask just one or two questions. The delays that are occurring, would one of the factors that cause this delay include getting reports back from the States in question here, regarding worker's compensation reports, any information that you are required to receive from States?

Mr. TAYLOR. Yes, that is one of the major factors.

Mr. BECERRA. So it is a major factor?

Mr. TAYLOR. Yes.

Mr. BECERRA. Is there anything that you can recommend to us, that could help us expedite receipt of information from the various States, so that that could help you accelerate your process of submitting payments?

Mr. TAYLOR. I wish that I had a specific recommendation for you, and I would be happy to try and submit one. One of the things that we are doing is work with computer matches with some of the States where worker's compensation systems are administered

through the State, in an effort to facilitate this transmission of worker's compensation information from their system into ours. That is in its very early stages and we really don't know how productive that is going to be nationwide.

Mr. BECERRA. Can your systems right now speak to the different States' computer systems?

Mr. TAYLOR. No, not today.

Mr. BECERRA. Will this automation that you are planning to undertake allow you to do so?

Mr. TAYLOR. That is the goal, and, again, it depends on whether the State itself has a system that will—

Mr. BECERRA. So you are going to be working with all the various States to make sure that whatever system we spend good money to employ will allow you to communicate with all these various States?

Mr. TAYLOR. If it seems to be a productive avenue to pursue, I don't think we know enough yet about the situations in all the different States to know whether that will work or not.

Mr. BECERRA. Ms. Bovbjerg, any comments on any of this?

Ms. BOVBJERG. Thank you for asking. We just issued a report this month on the question of getting worker's comp information, including the issue of inaccurate benefit payments. That is why we were looking at it. And what we found is that it isn't just a problem at SSA, it is a problem in the Federal Government in any program where you need worker's comp information to know what income the beneficiary might have.

We made several recommendations in that report. One was that, as a starting point, SSA and the Health Care Financing Administration share data on who has got worker's comp, because they each have information that is not known by the other agency. The other recommendation was to work with insurers to try to create a voluntary reporting system. The system SSA is negotiating with the States has developed very slowly.

Mr. BECERRA. If you could share that with us, Mr. Chairman, I think that might be helpful to us as we go forward. And I will withhold any further questions, but I thank the two of you for your testimony.

Thank you, Mr. Chairman.

Chairman SHAW. Mr. Pomeroy.

Mr. POMEROY. I would like to inquire after the vote, Mr. Chairman.

Chairman SHAW. OK, so if the panel would remain, if you would we will return just as quickly as we can.

[Recess.]

Chairman SHAW. Mr. Brady will inquire.

Mr. BRADY. Thank you, Mr. Chairman.

Ms. Shor presents statistics that show involvement of attorneys in Title II disability cases improves a claimant's chances of obtaining approval of their claims for disability benefits. Ms. Shor says that claimant representatives explain the disability determination process, develop the record, and etcetera.

Social Security Administration field offices also help claimants with these activities, and so as well disability determination examiners from State agencies. The judge also serves this role, as well.

Why do you think there is such a difference in allowance rates between those who are represented and those who aren't?

Mr. TAYLOR. I think there are a couple of factors. First of all, there is no denying the benefit that a trained claimant's representative attorney can have on the development of a case and its presentation.

The other factor could also be that attorneys in practice are naturally going to do some kind of a process of sorting out clients who are more likely to prevail from those who are less likely to prevail. That may contribute somewhat, as well, to the differential in the success rates for claimants who are represented from those who are not represented.

Mr. BRADY. So training in the ability to pull the information together in a way that best presents their claims?

Mr. TAYLOR. The attorneys' training, that is right.

Mr. BRADY. And someone of the testimony said that if fee payment services were extended to attorneys representing Social Security income payments, SSA would experience added administrative burdens. Given what each of you know about how SSA is handling the Social Security attorney fee workloads, would they be able to handle the additional workload?

Mr. TAYLOR. I could only answer for the Social Security Administration. To actually implement a payment system for the SSI attorney fee payments would involve putting the field offices into a payment procedure that they are not presently in, and that would involve initially using a manual process which would expend extra work years beyond what they are doing right now.

We believe that it is possible and actually feasible to automate that process, but it could not be done immediately. It is something that would take a year to a year and a half to put into place. We have not pinned down all of the details of doing that, but those are kind of the operational considerations that would be involved.

Mr. BRADY. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Pomeroy.

Mr. POMEROY. Thank you, Mr. Chairman.

I am new on this Subcommittee, Mr. Taylor, and so I am just basically getting oriented on the many issues of administering the Social Security program in its various aspects, so bear with me if some of these questions are pretty darn basic.

Basically, it is the position of SSA that considerable administrative expense or administrative time is undertaken in making attorney's fee payments out of disability benefits when a disability benefit determination has been made?

Mr. TAYLOR. That is right.

Mr. POMEROY. Tell me a little bit about what administrative burden there is on the agency. What tasks represent that administrative burden?

Mr. TAYLOR. Well, I think as I had indicated earlier, the process of making the benefit payments to the beneficiary in large part is done through an automated system that requires inputs at the beginning of the process, and then the actual benefit payment is done through the system.

Our system right now, however, does not enable us to do one-time payments through an automated system. We have to utilize

a manual payment process which involves taking the past-due benefit information that has been calculated for the beneficiary, and then, in the fee agreement cases, calculating the percentage of that, the 25 percent that is payable under the fee agreement.

Specific information about the attorney's name and address, has to be input into a system. That information then needs to be combined with the calculation information. That is done by an individual in a manual process to figure out the amount of the fee payment. And then that information is actually taken to another individual who is responsible for transmitting the information to the Department of the Treasury.

Mr. POMEROY. Mr. Taylor, if I might observe, that to me seems like a systems issue within SSA, and I don't see that there is anything about lawyers' conduct or lawyers' participation that would appropriately leave them responsible for making that—for basically compensating the agency for dealing with their payment.

I mean, if the systems—clearly this is a pretty ministerial determination: What is the benefit? The basic standard attorney's fee is, from what I understand, contained in this fee agreement, which is a pretty standardized fee agreement, 25 percent of benefits, not to exceed \$4,000. And so to me that would be a very quick ministerial act, very little discretion involved in the agency in reviewing it. And if it is done manually as opposed to automatically, that is a systems issue in SSA, period. To suggest to me, I am just thinking, that there are potentially several hundred dollars or in excess of a hundred dollars involved in assigning costs based on that rather rote determination, seems to me a bit of a stretch.

Mr. TAYLOR. My answer to that would be that the Social Security Administration is trying to carry out the statutory mandate, which allows us to recover the cost for determining, authorizing, and making payment of the fee.

Mr. POMEROY. I am wondering about the basis for establishing costs. Now, do you require time sheets from your employees?

Mr. TAYLOR. The cost information that we have used to underlie the 6.3 percent is based on our standard cost accounting system.

Mr. POMEROY. Does that involve walking about, looking at what people are doing, and kind of extrapolating from that a work burden that might be assumed over the agency?

Mr. TAYLOR. That is essentially how it is done, right.

Mr. POMEROY. So a supervisor—if I got this right, Mr. Taylor, it seemed very curious to me—a supervisor will stroll around, look, "What are you doing?" There will be an anecdotal report, "Well, I'm figuring an attorney fee." And walk to the next guy, "What are you doing?" "Well, I'm reading the sports page." Walk to the next guy, "I'm figuring attorney's fees." And you've got, you know, two-thirds of the burden of that division doing attorney's fees.

To me, that seems extraordinarily imprecise, and I would suggest that if that is the basis for your cost determination of 6 percent or more than 6 percent on running a calculation of 25 percent or \$4,000 based on the award paid, you really don't pass kind of a public credibility test in terms of arriving at that determination.

Mr. TAYLOR. This is a system that we use and have used, and it wasn't designed for purposes of proving the 6.3 percent. It is a system that is used in the Social Security Administration to assign



costs to the different trust funds for different activities. The individuals who are asked these questions really have no reason to say anything other than what they are working on. In fact, there is an organized process by which the categories of work, and there are many categories of work that are done in these processing centers, is assigned to different types of work activity.

Mr. POMEROY. Interesting, your point seems—and I will close, Mr. Chairman—but the point is that the methodology used to determine cost was not developed for this purpose, is somewhat anecdotal and imprecise and haphazard, and I think therefore raises a significant question in terms of whether or not the cost indeed has been established. And I think that that would be true of the agency's testimony and probably GAO's, as well.

Ms. BOVBJERG. If I could just make a comment, Congressman, the cost allocation system is something that SSA has been using for budgetary purposes, and we have not taken issue with its use for that purpose. In looking at costs, for attorney fee processing, there is nothing else to use.

Mr. POMEROY. Thank you.

Chairman SHAW. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman, for giving me another opportunity. I just want to follow up on a question to Mr. Taylor that Mr. Doggett asked. He asked the question of the fact that you are examining the possibility of lifting the cap, the \$4,000 cap on attorney's fees.

And your response to him in terms of the timing of that was at the end of the year, and I calculate that is about 6 and a half months, and this matter has been going on for, as I mentioned in my opportunity to ask you questions, at least to my knowledge, about 3 years. I mean, this has been kind of a laborious, ongoing process, and it seems like it will never end. You know, it is one of these things like we are going to be doing this and talking to you and your people forever about this issue.

Six and a half months seems like an awful long time to make a determination as to whether you are going to lift the cap. I mean, can you explain to me why? What process are you going to use? Do you need to gather more information, more facts, and why will it take 6 and a half to 7 months?

Mr. TAYLOR. I was suggesting that as the outside. I can't say that it is going to take that long.

Mr. MATSUI. I am sorry?

Mr. TAYLOR. I was suggesting the end of the year as the outside. We would do it by the end of the year. I wasn't suggesting it would be at the end of the year.

As I suggested, we may want to develop a little more information about the number of cases that are actually capped, but it is a process of considering the various factors within the agency and coming to a conclusion for the agency as a whole, as to what the cap should be.

Mr. MATSUI. In view of the fact that I know we have had three hearings on it, this is the third hearing to my knowledge, and maybe I am wrong about that, but I think we have had three hearings on this, and we have introduced, Mr. Shaw has introduced legislation that I have cosponsored, and it seems like we are inter-

ested, at least I would like you to know we are interested in this subject, don't you think this maybe should be a priority, and maybe we could kind of start focusing on this and kind of get it off the table so we can get onto other stuff maybe that is more important?

It seemed like kind of a small matter. I mean, when I first heard about it, I thought this is kind of silly, you know. And all of a sudden I can understand why now, because it does potentially jeopardize claimants' representation rights. You know, again, no one—I don't want to question motives but it just seems to me that, you know, I mean, it is like pulling teeth out of a tiger, and eventually you have got to shoot the tiger if in fact you want to get those teeth.

And I don't know what else to tell you, but if we have to have another hearing and more GAO reports, this is going to go on forever. You have got a staff back there. I mean, I think your staff could probably figure out whether they should lift the cap in three or 4 days and get back to us, but somebody is slowing this process down, and I just can't understand what the problem is. I think it is kind of funny. It should be on Saturday Night Live. You know, it is a classic case. I just make that observation.

Mr. TAYLOR. Your focus and interest comes through very clearly to me.

Chairman SHAW. Mr. Taylor, when the final orders come down for which you program all of that into the computer, is the amount of attorney's fees included in that judge's order?

Mr. TAYLOR. I am sorry, Mr. Chairman, I do not understand the question.

Chairman SHAW. The order that comes down which puts in place the payment schedule and the attorney's fees, is that in the order or is that calculated totally outside of the order?

Mr. TAYLOR. You mean in the order allowing benefits?

Chairman SHAW. Yes.

Mr. TAYLOR. No. That is done subsequently.

Chairman SHAW. So the judges have nothing to do with it?

Mr. TAYLOR. The judges have nothing to do with it.

Chairman SHAW. Well, now, then the order is taken and the amount of payments and the claimant's name and everything else is then typed into the system. Is that correct? Is that the—

Mr. TAYLOR. That is done subsequently. That is right. That is done after the judge is finished with the case.

Chairman SHAW. Why can't the person who is doing that go ahead and put in the amount of the attorney's fees, and then have the whole thing programmed so that when the first check goes out to the claimant, that it goes out to the lawyer?

Mr. TAYLOR. Well, we would like to be able to do that, and that I think would be a goal for us to accomplish, but to do that realistically—

Chairman SHAW. Well, keep that thought, and let this Committee know how you are coming.

Mr. TAYLOR. Okay.

Chairman SHAW. Because that is what we have got to do, and it seems simple. In fact, to me it is less labor-intensive than picking up the file again, having someone else pick it up again and go

back into it and do all the calculations. Just do that calculation all at once.

Mr. TAYLOR. There is no question about that.

Chairman SHAW. It makes a lot of sense to me. Good luck.

Mr. TAYLOR. Thank you.

Chairman SHAW. We appreciate all your work.

Ms. Bovbjerg, just one final question. Does the General Accounting Office have the expertise to do a complete accounting of the hardware and the software that is being used by the Social Security Administration in this and the other tasks that they perform, or is this something that you need to farm out to a consultant to come back and—

Ms. BOVBJERG. It would be something that I would definitely have to farm out to someone else within GAO, because those of us sitting before you do not have that expertise. I would have to consult with our information technology people.

Chairman SHAW. Well, I know that—

Ms. BOVBJERG. They are doing some work on—

Chairman SHAW. I know they are doing some work for us right now.

Ms. BOVBJERG. Yes.

Chairman SHAW. And perhaps we could get a system-wide review. Thank you very much. We appreciate your testimony.

[Questions submitted from Chairman Shaw to the panel, and their responses follow:]

SOCIAL SECURITY ADMINISTRATION  
OFFICE OF HEARINGS AND APPEALS  
FALLS CHURCH, VIRGINIA 22041-3255  
*July 31, 2001*

**Prior to February of last year, on average about 5 percent of attorney fees were processed within 60 days. Since February of last year, that percentage has grown to about 50 percent each month. What changes did you implement in February of last year to enable you to maintain this reduced processing time? Has processing time been lowered primarily due to the elimination of the formerly required 15-day period to protest the attorney fee?**

Yes, the primary reason for the reduced processing time was the elimination of the delay in payment of fees to the attorney during the 15-day protest period. However, we have also focused increased management attention on this workload to ensure that attorney fee payments are processed timely.

**Since you made these changes in February of 2000, the percent of attorney fees processed in less than 60 days has stayed at about 50 percent. GAO reports that more than 20 percent of payments still took longer than 6 months. Why do 20 percent of these cases continue to take so long to process? When will you be able to reduce the processing time for these fees? How will you do this?**

The time SSA requires to completely implement a favorable determination or decision varies from case to case. If all the information SSA needs to effectuate payment is in the file when the favorable action is issued, we authorize full payment to the claimant and to the attorney from past-due benefits when appropriate, without delay. In other situations, SSA must obtain additional information from the claimant after the favorable determination or decision is made but before we can fully pay the case, including the attorney fee. Ongoing benefits, and even some of the past-due benefits, may be paid to the claimant while their development is pending. The two main reasons for the delay are to verify workers' compensation payments and to obtain evidence needed to entitle auxiliaries (such as spouse and children).

Another processing time variable is the method the attorney uses to request payment. Although most attorneys request payment through the fee agreement process, some choose to file a fee petition. In the fee petition process, after a final determination or decision is issued and after the representative's services have ended in the case, the representative files a petition. The representative states in detail the serv-

ices he or she provided in the case, and the amount he or she wants to charge for services. These cases inherently take longer because the attorney has 60 days after the final determination or decision to file the petition.

Although SSA does not control all the factors that affect attorney fee processing time, SSA is committed to improving the processing time wherever possible. To this end, in May 2001, the Acting Commissioner established an Executive Task Force to oversee the Agency's activities on attorney fee processing and to build on the work of the Representative Fee Workgroup. The Task Force is overseeing initiatives, such as the automation of the attorney fee payment process, that will improve the Agency's overall processing of attorney fees. In addition, the Acting Commissioner has authorized the dedication of an additional 10,000 hours of overtime to be made available exclusively for the purpose of expediting the payment of fees to attorneys.

**You say the current attorney fee payment process is essentially a manual one. Why is that?**

Automation of the attorney fee payment process has been in past Agency plans; however, other development projects affecting beneficiary payments and processes have been identified as being of higher Agency priority. Accordingly, automation of the attorney fee payment process was delayed.

**You also say you are working on automating more of the process and that you will implement a national system to automate payments to non-beneficiaries by the summer or fall of 2002. Why will such automation take so long? GAO tells us that plans to automate this process have been on your Systems staff's list of things to do since 1998. Will you adhere to this latest self-imposed automation time frame this time?**

As noted in the answer to question 3, before the Acting Commissioner established the attorney fee Executive Task Force, other automation/systems initiatives took precedence over plans to automate the attorney fee process. One of the Task Force's first recommendations was to ask that the Deputy Commissioner for Systems review the automation plan and accelerate development as much as possible. As a result of that request, the Agency is investigating the possibility of accelerating the implementation of the automated process to pay attorneys and other one-time payments to the spring of 2002. This process will:

- include a record of all attorney fee payments nationwide,
- provide for input screens to automate the payment (eliminating some manual steps and hand-offs in paying attorney fees),
- check various SSA master data bases to ensure that the attorney fee payment is not a duplicate,
- release attorney fee payments only when fee withholding has been established in our master records, and
- establish an audit trail record of who issued the payment, and/or a record of by whom and why an override was input.

Spring of 2002 is the earliest we can possibly implement the new system because of the technical requirements inherent in building, validating and implementing any new software system.

**Once this automation is implemented, what percent of attorney fees do you expect will be processed within 60 days, 60 percent, 80 percent? How will such automation reduce the costs of processing attorney fees? Do you expect the cost will be reduced from the current 6.3 percent to 5 percent or 4 percent?**

The initial release of the automated fee payment system will be limited in scope. At this time, we do not know how many more fees will be paid within 60 days; however, the system certainly will provide other benefits. Specifically, it will improve accuracy of payment by eliminating manual data entry and it will contain a control system to produce alerts for unpaid cases.

Although converting actions from a manual to an automated process should reduce the administrative attorney fee processing costs, we can not yet project what that savings might be. The response to question 6 expands on this issue.

**In your testimony, you say your decision to continue the 6.3 percent assessment for 2001 was based on the same cost accounting system you use to justify your annual appropriation requests for administrative expenses. Ms. Shor says the assessment is unfair because it bears no relationship to the cost of providing the service. The General Account Office (GAO) in their testimony says, based on limited data, their rough "lower bound" estimate of your costs of processing attorney fees is about 6.9 percent of total fees. How do you respond to Ms. Shor's allegation? What are your views on GAO's findings? Would you describe the cost accounting system that SSA uses so we understand how these costs are determined?**

The 6.3 percent assessment is not likely an accurate reflection of the fullis actually lower than the true costs that SSA incurs to determine and certify fees to attorneys. The GAO substantiated that conclusion by arriving at the 6.9 percent rate and admitting it may result in understating SSA's actual costs in processing attorney fees. SSA agrees that more accurate cost management information may be helpful and to that end is currently lacking. SSA is currently soliciting proposals on a contract from independent auditing firms to perform a cost analysis review of the attorney fee process at SSA. This review will include identification of appropriate cost finding techniques and approaches that SSA can use to accurately measure attorney fee process costs under both the current business process and in the enhanced proposed business processes of the future.

Relative to GAO's 6.9 percent estimate of our attorney fee processing costs, SSA does not totally agree with all the assumptions GAO used to arrive at that percent. The GAO admitted that this rate, which it indicated represents the lower bound for SSA's administrative costs, may result in understating SSA's actual costs in processing attorney fees. Identification of appropriate cost finding techniques and approaches that SSA can use to accurately measure attorney fee process costs will be addressed in the cost study the outside contractor will perform.

SSA administers income maintenance programs which are financed by Social Security trust funds or by appropriations out of general funds of the Treasury. In addition, SSA performs reimbursable work for various private and public organizations. Cost allocation is used to ensure that appropriate charges are made to the various sources that finance SSA programs; to account to SSA management, Congress, and the public for the costs of administering each program; and to determine appropriate rates to charge for reimbursable work.

1. The Cost Analysis System (CAS) carries out essential cost accounting functions for SSA. These include:

2. Determining actual administrative costs chargeable to trust fund activities, general fund programs, and certain reimbursable programs.

3. Developing a budget base of actual data on workloads, workyears, and costs (both direct and total workyears and costs) for use in projecting future resource requirements.

4. Providing various budget execution reports, which compare actual workloads, workyears, costs, and production rates with operating budget estimates.

5. Determining unit costs for SSA and component workloads.

6. Providing data for other general management information and analysis needs (such as workload trend reports and annual financial statements).

If you need more detail on SSA's Cost Analysis System, we will be glad to provide it upon request. (Provide this information in the q.)

**Ms. Shor opposes the 6.3 percent assessment. What is the average assessment you are collecting now per claim? Would \$25.00 cover your costs?**

The average assessment from January 2001 through May 2001 was \$159. SSA studies and GAO studies confirm that SSA's costs are at least equal to or are greater than the current fee of 6.3 percent. Thus, a flat fee of \$25 would not recover only % of significant portions of SSA's total estimated costs for this service do not cover SSA costs. Moreover, SSA's Office of the Chief Actuary estimates that limiting the assessment to a flat \$25 per case would result in a loss to the Social Security Trust Fund of about \$169 million over 5 years.

**You state that there have been concerns that a system that uses a two-party check between an attorney and beneficiary might be vulnerable to misappropriation. Could you explain how, what type and by whom misappropriation might take place?**

The award notice informs the beneficiary and attorney of several issues, in particular the amount of ongoing benefits, the past due benefit amount, the amount of the authorized fee, and the amount of the user fee. Because the check generally arrives before the award notice, the beneficiary has no knowledge of how much money the attorney is authorized to receive when the initial benefit payment arrives. If a two-party check was negotiated before the award notice was received and the attorney were to disagree with the amount SSA authorized, the attorney might take an unauthorized amount. Also, SSA would have no way of determining if the attorney actually paid the beneficiary.

**You also say, under a two-party system, the beneficiary's payment would have to be delayed. Why is this?**

In the response to question 2, I explained why some attorney fee payments require longer periods to process than others do. If we were to change the initial beneficiary payment to a two-party payment, the payment of beneficiary's money would be tied to SSA's ability to determine the amount the claimant owed to the attorney the attorney's. Thus, the beneficiary's money would be subject to the same delays.

In addition, beneficiaries who use direct deposit today benefit from the speed, convenience and security associated with direct deposit. Those beneficiaries would lose that benefit if they were tied to a two-party check with the attorney.

**In your testimony, you state that to implement a two-party system would require a large systems effort that could take away from already planned projects. Could you elaborate as to the efforts needed by SSA to implement this system? What planned projects would have to be delayed?**

There are a number of concerns the Agency has with regard to implementing a two-party check system.

- At this time, there is no systems support for issuing a one-time-only, two-party check for one address and immediately changing to a single payee designation and address for the next check. SSA would have to create such a system.
- When a decision is partially favorable, the favorable decision is processed and attorney fees withheld and paid from the retroactive benefits. If that partially favorable decision is appealed and a more favorable decision is rendered, the possibility of additional retroactive benefits would exist, with the possibility of an additional attorney fee. Under such circumstances, the aforementioned payment methods would have to be switched back and forth again.
- A two-party check initiative would require changes to the SSA master payment records to capture the two-party payments.
- Queries would have to be modified to display the two-party payments.

In addition to systems considerations, a two-party check would yield some practical payment issues:

- It may not be possible to issue a two-party check or payment through electronic transfer. If not, the more cumbersome, costly and less reliable paper check process would have to be invoked. This would be in conflict with legislation that encourages Federal agencies to make payments via direct deposit.
- Processing of returned checks would be more difficult if two parties are involved.
- Negotiation of the check would be problem laden if either party is hospitalized, on vacation, deceased, or has recently moved.
- Title II payments affect Title XVI eligibility; therefore, if the beneficiary is denied immediate receipt and use of benefits, there could be Title XVI and Critical Payment System implications. For example, if the payment to the beneficiary is delayed because of double negotiation of the check, i.e. the attorney delays executing the check, it could change any SSI benefits the beneficiary is due or paid, and/or in a dire needs case, the Field Office may need to issue a critical payment.
- Recovery of any overpayment that may have been included in the initial check would be made more cumbersome and costly because of the two-party payment.
- Notices would have to be changed to describe the payment process.
- Issuing a two-party check could affect issuing an accurate IRS Form 1099 to the claimant.

Implementation of a two-party check initiative would be a major effort and probably possibly delay the agency's effort to redesign the Title II payment system. In addition, it would impact other agency initiatives regarding the attorney fee process and have a direct impact on how and when claimants receive their benefits.

**What is the actuarial estimate of the annual revenue loss if the Social Security Administration (SSA) eliminated the 6.3 percent assessment on attorney fee payments?**

The actuaries estimate that the annual revenue from the 6.3 percent assessment on attorney's fee payments will be as shown in the table below for the next 5 fiscal years (based on the intermediate assumptions of the 2001 Old Age, Survivors, and Disability Insurance Trustees Report). If the assessment on attorney fee payments were eliminated, all of this revenue would be lost.

<i>Fiscal year</i>	<i>Estimated Total Assessment on Attorney Fees (in millions)</i>
2002 .....	\$36
2003 .....	38
2004 .....	41
2005 .....	43
2006 .....	46
<b>Total .....</b>	<b>\$205</b>

**What are some recommendations that could help expedite the receipt of worker's compensation information from various states in order to help SSA accelerate the process of submitting payments to attorneys?**

SSA clearly recognizes the need to get more complete and timely worker's compensation (WC) data in order to protect the integrity of our programs. We are continuing to pursue a number of avenues to get such improved WC data, including online access to State WC agencies' databases and cooperative pilots with States for increased reporting.

We currently have limited online access to WC information in 9 States. We are in the final stages of going live with an Internet-based WC match with the State of Texas. We also are ready to begin to process alerts from a new match with the Department of Labor. Lastly there is a contract with a company in New York (NY), which is converting NY WC files to digital information. As part of the contract, the company is scanning the WC information and providing it to us.

As we gain more experience with the matches and processes that have recently become available to us, we may need to come to the Subcommittee for assistance. However, we do not have recommendations for the Subcommittee at this time.

Sincerely,

WILLIAM C. TAYLOR  
Deputy Associate Commissioner

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U.S. GENERAL ACCOUNTING OFFICE  
WASHINGTON, DC 20548  
June 15, 2001

In your letter dated May 21, 2001, you asked us to respond to various questions as a follow-up to the testimony we gave before the Subcommittee on May 17, 2001 regarding processing attorney fees at the Social Security Administration (SSA).<sup>1</sup>

The following are our responses to your questions.

**1. Given the limitations of the data you describe in your testimony, would you say SSA's determination that an assessment rate of 6.3% of the amount paid to the attorney is reasonable?**

The 6.3 percent assessment was based on 1994 data. SSA's most recent analysis of the process found that program costs were around 10.5 percent of the total fees of \$512 million paid to attorneys in 2000. Our more conservative review of SSA's data indicated that the percentage could be as low as 6.9 percent of the fees paid—exceeding the 6.3 percent fee found in the Ticket to Work and Work Incentives Improvement Act 1999.<sup>2</sup> However, as we noted in our statement, the process of paying attorneys is inefficient. Data for the recent cost estimates—both the 10.5 percent and the 6.9 percent—are based on systems that are largely manual, which adds to the total costs. As we also noted in our statement, SSA should be taking measures to improve efficiencies and reduce processing costs.

**2. You say that over 20% of the fees still take longer than 6 months for SSA to process. You point to the fact that the reasons for these delays are often outside SSA's control (i.e., waiting for workers' comp information, waiting for certain proofs of age, and etc.). In your view, what can SSA do to help reduce the processing time for claims involving these issues?**

SSA has already implemented some actions to speed payment timeliness and has additional actions planned. For example, SSA has stopped sending case files that needed additional documentation out of the processing centers to storage; instead, the case files stayed in bins near where staff processed the cases. Also, in order to expedite attorney payments, processing center staff have begun contacting SSA's Office of Hearings and Appeals staff to better track information on attorney fee approvals in order to keep the process moving.

As outlined in SSA's statement for the record, the agency has planned improvements aimed at increasing payment timeliness.<sup>3</sup> Specifically, SSA plans to implement a national system to automate attorney payments. As detailed in our statement, these payments are currently made outside of SSA's main processing system in a largely manual fashion. According to SSA, the new process will significantly

<sup>1</sup> *Social Security Administration: System Support Could Improve Processing Attorney Fee Payments in the Disability Program* (GAO-01-710T, May 17, 2001).

<sup>2</sup> P.L. 106-170, section 406.

<sup>3</sup> *Oversight of the Attorney Fee Process, Statement by William C. Taylor, Deputy Associate Commissioner Office of Hearings and Appeals* (May 17, 2001).

reduce the number of handoffs involved and the number of people needed to process a fee.

Additionally, in a recent report, we recommended measures that could improve both SSA's ability to determine workers' compensation status correctly and the time it takes to make that determination.<sup>4</sup> Specifically, our report recommends that SSA and the Health Care Finance Administration test the extent to which the sharing of workers' compensation beneficiary information would improve the accuracy of federal benefit payments. We also recommended that SSA begin testing the viability of a voluntary reporting process with workers' compensation insurers. With these actions, determining a beneficiaries workers' compensation status should be simpler and quicker. However, implementation of our recommendations and planned SSA system improvements will take time.

**3. In your testimony, you highlighted the many antiquated manual entries and hand offs SSA employees go through for an attorney fee to be paid. If these processes were automated, how much would processing time be reduced? What would be the staff resource savings? Do you know how much the 6.3% fee assessment could be reduced?**

According to an SSA Office of Systems official, automation would allow attorneys to be paid around 3 to 5 days sooner. Additionally, in a memorandum dated January 24, 2000, the Associate Commissioner for Central Operations—the head of the largest disability insurance processing center—noted that if SSA were to automate the payment process, it could save 34 work years of staff time annually, or about one-third of staff time currently spent on end-stage processing.

The savings in staff time noted above would reduce the processing costs associated with attorney fees, but will not result in overall budget savings if the staff time is shifted to other tasks needed for agency operations. Additionally, it is important to note that the automation itself would represent an additional short-term cost to SSA, though it would reduce operating costs in the future. While we did not attempt to quantify the amount of cost savings from automating these processes, the projected staff time savings suggest that the costs of attorney fee processing would likely be less than the 6.3 percent fee currently assessed.

**4. Because the process is the same regardless of the amount of the attorney fee withheld, you state the majority of fee payments each cost the same amount to process, but that equity concerns arise when considering a fixed fee instead of a percentage (17% of fees were less than \$1,000, 39% were less than \$2,000). Because of the equity concerns of using a fixed fee and as a matter of simplification, could SSA use a fixed fee range based on the amount of the claimants past-due benefits? For example, if the claimant was due \$2,000.00 the fixed fee assessment would be \$100.00, but if the past-due benefits were \$4,000.00 the fixed fee assessment would be \$200.00**

Using a range of user fees corresponding to the amount of the claimants' past-due benefits is one approach to improving the equity of the attorney fee assessment. This arrangement, however, would not fully eliminate the inequity. Using the scenario above, for example, for a \$4,000 fee the attorney would be charged \$200—or 5 percent of his/her fee—but for a \$3,999 fee the attorney might fall into the next lower category and be charged less—say \$150—or only 3.8 percent of his/her fee. Also, any decision to change the structure of how the user fee is implemented—including moving to a stratified assessment as suggested—needs to be weighed against the additional administrative complexity that could result.

**5. You say that in general, legal representation of disability claimants has steadily increased in the past 2 years—though there are some slight dips in certain quarters. Based on your review of this data, can we conclude the 6.3% assessment has not impaired access to legal representation for claimants?**

According to SSA officials, at any given time access to legal representation for claimants is affected by various factors including the number of persons applying for disability insurance, the supply of legal representation, and the general state of the economy. It is possible that the attorney fee assessment could affect the supply of legal representation—i.e., that an attorney is less likely to take disability insurance cases because his or her fee is reduced by 6.3 percent. However, this would be only one factor that could potentially affect access; therefore, we could not con-

<sup>4</sup> *Workers' Compensation: Action Needed to Reduce Payment Errors in SSA Disability and Other Programs* (GAO-01-367, May 4, 2001).



clude—either positively or negatively—that the assessment has had an impact on access to legal representation for claimants.

Sincerely yours,

BARBARA D. BOVBJERG

*Director, Education, Workforce, and Income Security Issues*

Chairman SHAW. The next panel will be the final panel. We have Marty Ford, who is Co-Chair of the Social Security Task Force, Consortium for Citizens with Disabilities, and Nancy Shor, who is the Executive Director of the National Organization of Social Security Claimants' Representatives, from Midland Park, New Jersey.

As usual, we have your full testimony, and both of you have testified before this Committee. Your entire testimony would be made a part of the record, and we invite you to summarize as you see fit Ms. Ford.

**STATEMENT OF MARTY FORD, CO-CHAIR, SOCIAL SECURITY TASK FORCE, CONSORTIUM FOR CITIZENS WITH DISABILITIES**

Ms. FORD. Thank you. Chairman Shaw, Members of the Subcommittee, thank you for this opportunity to testify about the collection of attorneys' fees in the Social Security disability programs. I am here testifying today in my role as Co-Chair of the Social Security Task Force of the Consortium for Citizens with Disabilities (CCD).

The task force urges this Subcommittee to support a statutory change that would allow SSI claimants to voluntarily enter into an agreement with attorneys for SSA to withhold and provide direct payment of attorneys' fees from their past-due SSI benefits. We support such a provision because it will help ensure that claimants have adequate representation to appeal their cases.

The reasons behind the withholding and direct payment of attorneys' fees in Title II cases apply with equal force to SSI cases. The disability determination process and adjudication system is a very complex one, involving numerous regulations, the collection and evaluation of evidence from multiple sources, and the evaluation of medical and vocational factors for each individual. The process simply is too complicated for many claimants to navigate on their own, yet the outcome for them and their families is critically important.

Often claimants seek representation only after their own efforts to pursue applications have resulted in denial of their claims. However, without direct payment of attorneys' fees in SSI cases, many attorneys are unable to provide representation in these cases. Since SSI benefits cannot be attached if the client does not pay, claimants with significant physical and mental impairments who are in difficult financial circumstances must often fend for themselves with SSA.

We recognize that there may be reluctance to consider the withholding of attorneys' fees from SSI claimants, who by definition have extremely low income and assets, if any. In fact, many Members of our task force have concerns about an SSI beneficiary's loss of up to 25 percent of a back award. Further, some might argue that SSI claimants would be better off using pro bono Legal Serv-

ices or relying on legal services attorneys or protection and advocacy system attorneys to pursue their claims.

The CCD Task Force has seriously considered these concerns. However, we believe that the potential loss of eligibility and benefits due to a lack of experienced legal representation will cause far greater harm to the claimant than the payment of reasonable attorneys' fees out of the back benefit. Further, since Legal Services, P&A system resources, and pro bono legal services are significantly limited, we believe that SSI claimants would benefit from voluntary access to the attorneys' fee payment system as an additional resource, especially where they have been unsuccessful in finding legal assistance elsewhere.

Given the low income and resources and the limited ability of many SSI claimants to successfully pursue their own claims, we can see no compelling reason not to create parity in the payment system. The withholding and direct payment mechanism in the Title II program has helped to ensure that there is a pool of private attorneys who are willing and who have the expertise to pursue claimants' cases.

We urge you to establish a similar mechanism in SSI cases to provide these claimants with the same opportunity to obtain representation and the benefits to which they are entitled. We would be happy to work with you to ensure that issues that may be specific to the SSI population are taken into account in crafting a provision, and I would be happy to answer any questions you may have.

[The prepared statement of Ms. Ford follows:]

**Statement of Marty Ford, Co-Chair of Social Security Task Force,  
Consortium for Citizens With Disabilities**

Chairman Shaw, Congressman Matsui, and Members of the Subcommittee, thank you for this opportunity to testify about the collection of attorneys' fees in the Social Security disability programs.

I am Director of Legal Advocacy for The Arc of the United States. I am testifying here today in my role as co-chair of the Social Security Task Force of the Consortium for Citizens with Disabilities. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force focuses on disability policy issues and concerns in the Supplemental Security Income program and the Title II disability programs.

The CCD Social Security Task Force urges the Subcommittee to support a statutory change that would allow SSI claimants to voluntarily enter into an agreement with attorneys for SSA to withhold and provide direct payment of attorney's fees from their past due SSI benefits. The CCD Social Security Task Force supports such a provision because it will help ensure that claimants have adequate representation to appeal their cases. The reasons behind the withholding and direct payment of attorneys' fees in Title II cases apply with equal force to SSI cases.

The disability determination and adjudication system is a complex, multi-level process, involving the evaluation of medical and vocational factors. The process simply is too complicated for many claimants to navigate on their own. Often claimants seek representation only after their own efforts to pursue applications have resulted in denial of their claims.

However, because there is no direct payment of attorneys' fees in SSI cases, many attorneys are unable to provide representation in these cases. Since SSI benefits cannot be attached, an attorney cannot collect a fee from a successful client if the client has only SSI income and does not pay. Due to the resulting limited number of attorneys willing to take SSI cases, claimants with significant physical and mental impairments who are in difficult financial circumstances are often left to fend for themselves with SSA.

We recognize that there may be reluctance to consider the withholding of attorneys' fees from SSI claimants, who, by definition, have extremely low income and assets, if any. In fact, many members of the CCD Task Force have concerns about an SSI beneficiary's loss of a significant portion (up to 25 percent) of a back-benefits payment. Further, it could be argued that SSI claimants would be better off using pro bono legal services or relying on legal services attorneys or protection and advocacy system attorneys to pursue their claims.

The CCD Social Security Task Force has seriously considered these concerns. However, we believe that the individual's potential loss of eligibility and future benefits due to a lack of experienced legal representation is a far greater harm or burden than the payment of reasonable attorneys' fees out of the back benefit. Further, we strongly support the valuable service that legal services and protection and advocacy programs can provide SSI claimants in offering representation and do not see this proposal as affecting their efforts in any way. Since legal services and P&A system resources, as well as the availability of pro bono legal services, are significantly limited, we concluded that SSI claimants would benefit from voluntary access to the attorneys' fee payment system, as an additional resource, especially where they have been unsuccessful in finding legal assistance elsewhere. Given low income and resources and the limited ability of many SSI claimants to successfully pursue their own claims, we can see no compelling reason not to create parity in the payment system, especially since many individuals could be eligible for SSI, Title II, or both, depending upon when they apply.

The withholding and direct payment mechanism in the Title II program has helped to ensure that there is a pool of private attorneys who are willing and have the expertise to pursue claimants' cases. We urge you to establish a similar mechanism in SSI cases to provide these claimants with the same opportunity to obtain representation and the benefits to which they are entitled.

Thank you for this opportunity to testify. I would be happy to answer any questions you may have.

ON BEHALF OF:

American Association on Mental Retardation  
 American Association of University Affiliated Programs  
 American Council of the Blind  
 American Network of Community Options and Resources  
 Association for Persons in Supported Employment  
 International Association of Psychosocial Rehabilitation Services  
 National Alliance for the Mentally Ill  
 National Association of Developmental Disabilities Councils  
 National Association of Protection and Advocacy Systems  
 NISH  
 National Mental Health Association  
 National Organization of Social Security Claimants' Representatives  
 Paralyzed Veterans of America  
 The Arc of the United States  
 United Cerebral Palsy Associations, Inc.

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Chairman SHAW. Thank you, Ms. Shor.

**STATEMENT OF NANCY G. SHOR, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES**

Ms. SHOR. Thank you. Good morning. I want to thank the Chair, Mr. Matsui, and all the Members of the Subcommittee for holding this hearing today.

Chairman SHAW. Pull your microphone back a little closer to you, would you please? Thank you.

Ms. SHOR. We appreciate very much the invitation to testify. I would like to summarize my testimony and ask that the written testimony be included in the record. Thank you.

The statutory provisions for the attorney fee system set out an important balance. On the one hand, the amount of the attorney

fee is closely regulated. On the other hand, Social Security has the responsibility to withhold a portion of the successful claimant's past-due benefit and to pay that authorized fee directly to the attorney.

Historically, this has been a good balance between limiting the amount of fees that successful claimants pay for legal representation and ensuring claimants' access to representation by establishing a viable and workable fee process for attorneys. But we have seen this balance disrupted by the imposition of the user fee in the Ticket to Work and Work Incentives Improvement Act. Further disrupting the balance is the now clearly outdated statutory fee cap that is applicable in fee agreement cases.

We advocate the elimination of the user fee tax. We support a cost-of-living adjustment for the maximum fee in fee agreement cases. We also advocate extending the balanced approach in Title II for fee regulation and fee payment to Title XVI cases.

Important, I think, is the foundation. We maintain that representation is a valuable asset, both for claimants and for SSA. Most claimants who choose representation have applied for disability benefits. Most are appealing the denial of that initial application. The rationale for that denial is often a complete mystery to them. It is not surprising that they want to have representation, in light of the importance of the outcome of this case for themselves and for their families.

Social Security statistics, the most recent we have are for fiscal year 2000, show that almost 75 percent of Title II disability claimants have chosen to be represented. For that same period, fiscal year 2000, the allowance rate at the hearing level for those Title II claimants with representation is 63.6 percent. In contrast, the allowance rate for unrepresented Title II claimants is 40.1 percent. We would suggest that the difference, in large measure, is attributable to the good development and presentation of the case by knowledgeable counsel.

We also maintain that claimants' representatives provide a valuable service to the Social Security Administration in terms of saving its valuable resources. Attorneys and other representatives are able to communicate at length to clients in an understandable and meaningful way about their case and about the processing of the case, and they also contribute greatly to full development of the record, tasks that would fall on Social Security if counsel weren't doing those.

The importance of representation I think is evident. The real question before you today is access to representation, what changes need to be made in the system in order to make access to representation a viable alternative for claimants who choose it.

First we ask you to rationalize the amount of the user fee. We believe that the 6.3 percent assessment is unfair because the amount of the charge bears no relationship to the cost of providing the service. We believe the user fee should be repealed or, in the alternative, replaced with a reasonable fee amount of the actual cost of determining 25 percent and writing a check, which we believe is in the neighborhood of \$25 per case.

This figure is three times what is charged in the private sector for processing an individual payroll check for a business, which in-

cludes all the withholding necessary and all the government wage reports. This seems a roughly comparable task, and frankly as useful a figure as most of the data that was presented by SSA and GAO.

The impact of the user fee I think is clear, based on reports from our members who are turning to bank loans and their lines of credit for the first time in 20 years of representing Social Security claimants. We also believe that, should the user fee be maintained, it should certainly be subject to the timeliness provision of the excellent bill which you, Mr. Chairman, and Mr. Matsui introduced last June.

We ask for an adjustment to the fee cap. The current fee cap was set at \$4,000 in 1989. In that legislation, Congress gave the Commissioner the discretion to adjust the fee cap to take into account the annual cost-of-living adjustments for beneficiaries. The Commissioner has never exercised this discretion. As a result, in today's dollars the fee cap is \$3,050. If the fee cap were indexed to COLAs, it would now be just over \$5,200.

Other indices, for example, for substantial gainful activity and trial work period determinations, are automatically adjusted for the cost of living. We believe that fee cap for fee agreement cases should be promptly adjusted to \$5,200 and made subject to an automatic annual COLA adjustment.

And, finally, we urge that you consider extending a fee payment process to claimants in the SSI Program who, as Ms. Ford has indicated, have the same if not greater need for legal representation than do Title II claimants.

Thank you very much.

[The prepared statement of Ms. Shor follows:]

**Statement of Nancy G. Shor, Executive Director, National Organization of Social Security Claimants' Representatives**

My name is Nancy Shor. I want to thank the Subcommittee for inviting me to testify at today's hearing on the Social Security Administration's processing of attorney fees. I am submitting this testimony on behalf of the National Organization of Social Security Claimants' Representatives. The issues you are discussing today are of great importance to claimants, to beneficiaries, and to those whom they choose to represent them.

The National Organization of Social Security Claimants' Representatives, founded in 1979, is an association of attorneys and non-attorneys who represent Social Security and SSI claimants in proceedings before the Social Security Administration and in federal court. Our current membership of 3,300 is committed to the highest quality legal representation for claimants.

I am the Executive Director of NOSSCR. Before undertaking this position in 1979, I represented Social Security and SSI claimants for three years as part of my private law practice. I am the co-author of the chapters entitled, "Representation" and "Attorney Fees," contained in the Matthew Bender & Co. publication, "Social Security Practice Guide."

The statutory provisions for the attorney fee system in Social Security cases are codified at 42 U.S.C. § 406. The provisions set out an important balance. On the one hand, the amount of an attorney fee is closely regulated. On the other hand, the Social Security Administration withholds a portion of the successful claimant's past-due benefits and pays the authorized fee directly to the attorney. On the whole, this has been a good balance between limiting the amount of the fees that successful claimants pay for representation, and ensuring claimants' access to representation by establishing a viable fee process for attorneys.

But we have seen this balance disrupted by the imposition of the user fee tax in the Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170). Further disrupting the balance is the now out-dated statutory fee cap that is applicable in fee agreement cases.

We advocate the elimination of the user fee tax, and support a cost-of-living adjustment for the maximum fee in fee agreement cases. We also advocate extending the balanced approach in Title II for fee-regulation and fee-payment to Title XVI (Supplemental Security Income) cases.

*Representation is a Valuable Asset for Claimants and for the Adjudication Process*

An applicant for any type of Social Security benefit may choose to be represented at all stages of the process. Most claimants who choose representation have applied for disability benefits, and most are appealing the denial of their initial application. It is not surprising that they want to have representation, in light of the complexity of the disability determination process and the individual challenges each case contains. Exactly why a claim has been denied is frequently left a mystery to the claimant who receives an initial denial notice. It is also not surprising that claimants often seek counsel in light of the importance of the outcome. Claimants for disability benefits must show that they are very seriously impaired in their ability to perform work-related functions. They are seeking the disability benefits for which they and their employers have paid FICA taxes. Many have no income other than family support. Most have no health insurance. They are well aware that a monthly disability check and Medicare coverage will make a tremendous difference in their lives, and in the welfare of their families.

Claimants' representatives are certainly valuable for claimants. SSA's statistics for FY 2000 indicate that 74.9% of Title II disability claimants are represented by an attorney. Statistics for the same period indicate that the allowance rate at the hearing level for Title II disability claimants with representation is 63.6%; in contrast, the allowance rate for unrepresented Title II claimants is 40.1%. We would suggest that this difference is attributable to a number of reasons. The knowledgeable representative knows the sequential evaluation system set forth in the regulations and Social Security Rulings and knows the applicable standards. The representative can marshal evidence from treating medical sources, school systems, vocational testing, previous employers, etc. The knowledgeable representative can thoroughly cross-examine vocational and medical witnesses whom the ALJ has called. These are daunting tasks for *pro se* claimants, especially when we consider that they are in poor health and often have only limited education. Indeed, the statute requires SSA, whenever an adverse determination is sent to a claimant, to provide information on options for obtaining a private attorney as well as from legal services organizations providing free legal assistance. 42 U.S.C. § 406(c); 42 U.S.C. § 1383(d)(2)(B).

Claimants' representatives are also a valuable resource for the Social Security Administration. They routinely explain the disability determination process and procedures to their clients with more specificity than the "800" number teleservice operators do. They routinely develop the record. They present the supporting documentation and statements that the adjudicators require for a full and fair evaluation of the claim. When appropriate, the claimants' representatives bring to the attention of the Administrative Law Judges those cases which contain the evidence to support a finding of disability without the necessity of a hearing, thereby saving time and expense for both the Administration and the claimant.

*Rationalize the Amount of the User Fee*

The Ticket to Work and Work Incentives Act of 1999 established, for the first time, a user fee to be charged to attorneys whenever the Social Security Administration pays an attorney fee. For 2000, the statute set the user fee as 6.3% of the amount of the attorney fee. This assessment is unfair because the amount of the charge bears no relationship to the cost of providing the service. We believe that the user fee should be repealed, or in the alternative, replaced with a reasonable fee amount of no more than \$25.00 per case.

The fee payment, obviously, comes at the very conclusion of a case. Once a claimant has been found eligible for benefits, the agency computes the amount that is owed to that claimant. A calculation of 25% of that past-due amount is made and that amount is set aside for payment of the attorney's fee. If the attorney submitted a fee agreement and it was approved by SSA, then the fee is ready to be paid (up to a maximum of \$4,000.00). If the attorney submitted a fee petition and the agency has authorized a fee, then that fee is ready to be paid. Although the agency has not indicated the actual cost of writing a check for an attorney fee, we note that the SSA website, in encouraging beneficiaries to use direct deposit for their checks, states, "It costs 42 cents to process and mail each check, compared to 2 cents for direct deposit." <http://www.ssa.gov/deposit/DDFAQ898.htm>.

Attorneys who receive fee payments from the agency now have their gross revenue reduced by 6.3%. For most, this is a reduction of approximately 20% of their

net revenue. The user fee is assessed, regardless of how long it takes for SSA to issue the fee check. NOSSCR members report that the pace of fee payments has slowed. At least once a week for the past year, a member has advised me that he or she is taking a bank loan or using a line of credit for the first time just in order to meet payroll. This has led many attorneys to reduce their staffs. Some attorneys have decided to leave this area of practice altogether, and many more are considering substantially reducing this line of casework in their offices. The consequence will be that fewer attorneys are available to claimants seeking representation. In many areas, this will mean no local attorneys available to represent the most needy claimants before SSA.

As I indicated, we favor the outright elimination of the user fee. In the alternative, we suggest a reasonable charge of no more than \$25.00. We believe that a charge of \$252.00 to cover the costs of issuing a check when the attorney is authorized a fee of \$4,000.00 is not reasonable.

Any charge, however, should be subject to the timeliness requirements as set forth in H.R. 4633, introduced by Chairman Shaw in June 2000. The bill would allow the Agency to charge the user fee only when timely service is provided.

*Fee Agreement's Unadjusted Cap Erodes Viability of Fee Agreement System*

In 1989, Congress amended the statute to create an alternative to the fee petition system, the fee agreement process. It requires the attorney to limit any fee to no more than 25% or \$4,000, whichever is lower. The fee agreement legislation was enacted to provide a streamlined alternative to the fee petition. It does not require the attorney to submit a fee petition and it does not require any SSA adjudicator to review a fee petition.

In 1989, Congress determined that \$4,000.00 was the maximum fee permissible in the fee agreement process. But Congress gave the Commissioner, then Secretary, the discretion to adjust the fee cap to take into account the annual cost-of-living adjustments (COLAs) for beneficiaries. The Commissioner has never exercised this discretion. As a result, in today's dollars, the fee cap is only \$3,050.00. If the fee cap were indexed to COLAs, it would now be just over \$5,200.00. Other indices, e.g., substantial gainful activity and trial work period determinations, are automatically adjusted for the cost-of-living. The fee cap in fee agreement cases should also be adjusted now to \$5,200.00 and made subject to an automatic annual COLA adjustment.

*Improve Access to Representation for Supplemental Security Income Claimants*

Those who apply for disability benefits from the Supplemental Security Income (SSI) program must meet very low income and resource limits, in addition to meeting the standard for establishing disability. SSI claimants are often in dire financial and health straits; an award of benefits will provide a monthly subsistence check and access to health care through the Medicaid system in most states.

Many SSI claimants want representation for the same reasons that Title II claimants do. Legal services programs across the country provide excellent representation for many SSI claimants. Unfortunately many legal services programs are underfunded and unable to accept all the SSI claimants who come to them. SSI claimants often cannot retain a lawyer from the private sector, not because their cases lack merit, but only because the attorneys cannot take the risk of not being paid even if the claims are awarded. Some of the attorneys who used to take these cases on a *pro bono* basis or with a recognition of the uncertainty of payment can no longer afford to do so, in light of the impact of the user fee in reducing their fees from Title II cases.

We believe that this lack of availability of representation explains the statistics that show only 45.9% of SSI claimants were represented at the hearing level in FY 2000, compared to 74.9% of Title II claimants. We also believe that a fee payment mechanism for attorneys who have successfully represented SSI claimants would bring the availability of counsel for SSI claimants to the same level as for Title II claimants. There are two readily available choices. One is to replicate the current withholding and direct payment process used in Title II cases. The other is a perhaps more economical alternative, to issue a single two-party check, payable to the claimant and the attorney. Many state workers' compensation programs and private insurers routinely issue two-party checks at the successful conclusion of claims. They are satisfied that the disciplinary rules set out and enforced by state bar licensing authorities provide adequate assurance that the attorney who receives the check will act in accordance with state law and ethics rules in disbursing the funds.

It is our position that establishing a fee payment process for SSI claims would address directly the underlying reason that many attorneys will no longer accept SSI cases: lack of assurance of receipt of a fee if the outcome is successful. If as-

sured of the payment of their fee, many attorneys are ready, willing and able to undertake representation for many SSI claimants on a contingency basis. The result is that SSI claimants who want to have representation would find it generally available. If they are found eligible for benefits, they would begin receiving monthly SSI checks, Medicaid coverage, and past-due benefits. Only if the claimants were awarded benefits would their attorneys receive attorney fees. And the amount of those fees would be regulated by the existing fee agreement and fee petition processes.

In conclusion, we thank the Chair and all members of this Subcommittee for your interest in these issues. I would be pleased to respond to any questions you may have.

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Chairman SHAW. Mr. Doggett.

Mr. DOGGETT. Ms. Ford, why is it when you have someone with a disability, be it mental or physical or both, which is so significant they perhaps qualify for social security disability, that we can't just count on the bureaucracy to take care of them without an attorney?

Ms. FORD. Well, I think the system is just simply too complex, and reality is that those who are represented by attorneys seem to fare better in the system. The data from the Office of Hearings and Appeals that has been quoted a couple of times reinforces that.

A lot of it has to do with how you collect the evidence. An experienced representative will know the kinds of questions to ask the claimant, how to help in gathering the information that has to go into the case file, and how to help in presenting it to the Social Security Administration.

It was also noted in testimony that the Social Security Administration workers and the Administrative Law Judges (ALJs) are also dealing with hundreds of cases, and when an individual is represented individually, he or she can fare better because the case can be better developed. I think that is significant.

Mr. DOGGETT. And your coalition, which I don't see any trial lawyers that are members of it, or any lawyers at all in this group, feels that the situation on SSI and entrusting SSI claimants to the bureaucracy is so bad that even though those are people who are greatly economically disadvantaged, you feel that it is essential to get more attorneys involved in that process?

Ms. FORD. Correct. There is one organization that has signed onto our testimony, the National Association of Protection and Advocacy Systems (P&A), which is organized to represent the P&A systems around the country, and they in fact do have attorneys who represent clients. But they recognize themselves that they don't have the numbers of people necessary to provide for services to all of the people who come to them for help, and they do in fact have to turn away people who request representation in SSI or Social Security Disability Insurance (SSDI) cases.

Mr. DOGGETT. Thank you.

Ms. SHOR, I don't know if you saw the article, it was a big story in Forbes here a few weeks ago, about the hundred richest lawyers in America. But in your experience, are there a lot of millionaire lawyers involved in this process representing Social Security claimants?

Ms. SHOR. No, and I think—



Mr. DOGGETT. You don't have a lot of ambulance chasers or people that are just standing in line begging to take these cases, do you?

Ms. SHOR. That is correct.

Mr. DOGGETT. In fact, they are considered some of the least lucrative and least desirable cases in the entire legal system for people to take.

Ms. SHOR. I regret that I think that statement is true.

Mr. DOGGETT. And as far as this excuse that we heard from Mr. Taylor about worker's compensation, I wonder if you could respond on that, that if they just didn't have to do all this thinking about worker's compensation, they could speed these claims along as quickly as Mr. Shaw and Mr. Matsui thought they should do with their proposal last year.

Ms. SHOR. I think that the issue about worker's compensation and worker's compensation offset is an important one, but I think it has gotten a little confused this morning. First off, I think worker's compensation offsets occur in only about 20 percent of the cases.

Worker's compensation offsets in 37 States, not all 50 but in 37 States, allow the Social Security Administration to reduce the amount of benefit, social security benefit, that the individual is going to receive. So in those 37 States, whenever a past-due benefit is calculated for one of these claimants, the worker's compensation information has to be there before they can derive the 100 percent from which the 25 percent is later derived for payment of the attorney fee.

So I am afraid there was some confusion with reference to the legislation introduced last June. In that legislative formula, the agency would have 30 days in order to pay the past-due benefit to the claimant and then pay the fee from the past-due benefit to the attorney, or the agency wouldn't be permitted to charge the user fee. But the whole worker's comp offset would already have been taken care of, and if there were snags in it and if there were problems in processing it, that would all happen before the clock starts running on the 30 days.

Mr. DOGGETT. So it could and should be resolved before the 30 days even comes into play?

Ms. SHOR. Absolutely.

Mr. DOGGETT. If they know they owe a certain amount of money to the disabled individual, then they ought to know at that point how much they owe the attorney.

Ms. SHOR. Right, and I can certainly report many attorneys have told me that they are requested by Social Security to submit the worker's compensation settlement documents, and they do it, and they do it, and they do it, and Social Security keeps asking and asking and asking because the documentation is never getting to the file.

Mr. DOGGETT. I just received—and I didn't have this when Mr. Taylor was up here, but I will tell his assistants who are here I am going to send it to him today for comment—an order from a United States district judge in November of 1999 on fees that were owed, some of them dating back as far as June 1997, and as of May 11th of this year, last Friday, none of those, even after an order

from a Federal district judge, had been paid. Is that kind of indifference and nonresponsiveness and perhaps incompetence by the Social Security Administration something that is limited to Texas?

Ms. SHOR. Not at all.

Mr. DOGGETT. Have you had that kind of situation before, where we are not only talking about 30 days or 60 days, but in the 88 percent of the cases that for some reason Social Security can't, with millions of dollars of new taxes that they are getting, take care of in 30 days? And even after a Federal court orders them to pay the fee, they don't pay it?

Ms. SHOR. The attorneys are alarmed for two reasons. One, because of the outrageous delays in receiving their attorney fee payments, but even more in those instances, if the Federal judge entered a fee order in 1997, it probably means that client first applied for benefits back in 1991 or '92, that the attorney's work was done perhaps even 10 years ago.

Mr. DOGGETT. Just to be clear, the order was entered on November 5, 1999, and it covers fees that had been approved that go back as far as June of '97. And what you are saying is, the attorney started the work perhaps as much a decade ago.

Ms. SHOR. Because many parts of the hearing process are very slow at this point.

Mr. DOGGETT. Thank you.

And, Mr. Chairman, if I may make these documents also a part of our record for the hearing, as an example of why we need to be focusing on this issue.

Mr. BRADY. [Presiding.] Without objection.

Mr. DOGGETT. Thank you.

[The following was subsequently received:]

MORGAN & WEISBROD, L.L.P.  
DALLAS, TEXAS 75231  
*May 11, 2001*

The Honorable E. Clay Shaw, Jr.  
U.S. House of Representatives  
2408 Rayburn House Office Building  
Washington, DC 20515-0922

**Re: Slow payments of attorney fees by the Social Security Administration**

Dear Congressman Shaw:

I understand that you have a Social Security Subcommittee meeting scheduled in the very near future and I just wanted to give you at least one practitioner's viewpoint on the continued slowness of payment of attorney fees by the Social Security Administration. I think that a private attorney's perspective is absolutely imperative for you and the members of your Committee to have in order to gain a balanced view of what is actually happening at the Social Security Administration in reference to the actual payment of attorney fees.

The following is a chart of all attorney fees in our office which have been approved more than 120 days ago, which have yet to be paid. As you can see, from the following chart, we have attorney fees owed to us from as far back as June 3, 1997 which have never been paid! Some of the fees owed to us on this chart have been paid in part and the amounts listed here reflect only the remaining amount of fee due.

Name	Date of fee approval	Amount still owed
R.G. ....	6/3/1997	\$3,500.00
S.S. ....	9/8/1998	4,000.00
D.P. ....	11/5/1999	3,650.00
D.S. ....	1/12/1900	2,784.37

Name	Date of fee approval	Amount still owed
J.J. ....	2/3/1900	2,000.00
L.W. ....	2/17/1900	750.00
D.B. ....	5/24/1900	1,990.00
J.G. ....	6/6/1900	11,356.25
R.C. ....	7/12/1900	5,805.45
M.'s ....	8/26/1900	3,356.00
S.M.M. ....	8/27/1900	1,401.25
S.D. ....	10/18/1900	5,000.00
M.A. ....	10/20/1900	2,307.70
D.D. ....	10/20/1900	4,259.90
L.S. ....	11/1/1900	6,602.75
B.S. ....	11/3/1900	2,850.00
E.G. ....	11/9/1900	2,515.50
D.H. ....	11/21/1900	3,757.13
J.P. ....	11/21/1900	5,532.25
J.G. ....	12/27/1900	10,586.70
Total .....		84,005.25

I am also writing to let you know that two of the fees listed in the above chart pertain to court-ordered attorney fees and those are the cases of D.P. and B.S. The respective Federal district courts ordered the Social Security Administration to make payment of the above referenced attorney fees and to date, we have received neither payment of the fee owed in D.P.'s case from November 5, 1999 nor the fee owed in B.S.' case dated November 3, 2000. Enclosed herewith are the Federal district court orders ordering Social Security to pay these fees to us.

Innumerable phone calls have been made to the payment centers and the various modules within those payment centers and we have still not received any indication as to when any of the above referenced fees will be paid. I just want you and your Committee to have information from a private attorney again, showing the lateness by which attorney fee payments are continuing to be made despite the assessment of the 6.3 percent user fee.

Again, the Social Security Administration arrogantly does not pay attorney fees even when a Federal district court orders it to with absolutely no explanation from the Social Security Administration as to why the fees are not being paid nor when payment of such fees can be expected. Your Committee must do something to remedy this unjust situation especially in light of the fact that we now pay money to get this level of service.

Any assistance that you or your committee can provide in this continuing dilemma will greatly assist not only Social Security Disability claimants themselves, but their attorneys who represent them. It is an extremely enjoyable practice which we have representing the disabled in our country, but the Social Security Administration has done everything within its capability to make it difficult to get paid for our services.

I appreciate your attention to this letter and your careful attention to the above problem. If you need any additional information, please do not hesitate to contact me as I can provide more than adequate documentation of the above attorney fees being not only approved by the Social Security Administration long ago but still not having been paid.

Sincerely,

*Jennifer Fry*

[Attachments are being retained in the Committee files.]

Mr. BRADY. Thanks, Mr. Doggett, and by the way, I had assumed all the ambulance chasers and the ne'er-do-well lawyers were in Congress. I didn't realize any were left over. [Laughter.]

I am teasing.

Mr. DOGGETT. I wouldn't know.

Mr. BRADY. Let me ask a couple of questions. It seems to me representation is very important in the process, and providing the

right information, putting it in the package that someone can determine disability, is real important.

It seems like over the past 17 or 18 years that the number of cases where medical disability is clear has steadily declined, where a doctor or a medical expert can say, "This person is truly disabled," and the number of cases where it is more a function of determining job occupational disability, where the answer may more be, "This person can work, if." So it seems to me the clear cases will continue to decline, the grayer cases will continue to increase, and the need for information and representation will likely increase as well.

Tell me, I think Ms. Shor talked a bit about the assessment fee, and made the point that the 6.3 percent is three times the cost of private, processing private payroll checks. Is that the case? What do you base that on?

Ms. SHOR. We are citing that to figures we got from ADP and Paychex, large payroll processing services that many small businesses, medium size businesses in the private sector use.

Mr. BRADY. So they are about 2 percent?

Ms. SHOR. Their charge is about \$8 per check.

Mr. BRADY. And could you get me that information, if you wouldn't mind, if you would?

Ms. SHOR. Certainly.

[The following was subsequently received:]

SSA is now charging attorneys a user fee for the direct payment of their attorney fees. The user fee is computed as 6.3% of the amount of the attorney fee. Thus, the amount of the user fee depends on the amount of the attorney fee, even though the agency's cost of processing that attorney fee payment bears no relationship to the amount of the attorney fee. Processing an attorney fee payment of \$40.00 and an attorney fee payment of \$4,000.00 require the same amount of agency work. Under the current 6.3% formula, the user fee for the \$40.00 attorney fee check is \$2.52 while the user fee for the \$4,000.00 attorney fee check is \$252.00.

In our view, if a user fee is to be charged at all, it should be an amount that reflects the cost of providing the service. It should be a flat fee of no more than \$25.00. In the private sector, payroll processing companies provide an analogous function in computing wages; calculating deductions for exemptions, medical insurance, pension contributions, etc; multiple tax withholdings; and check writing or direct depositing. The "per check" charge depends on the volume of checks: the greater the number of checks, the lower the single check processing charge. As one example, I have attached the Pricing Schedule of a local payroll processing company. The total cost for 100 employees is \$110.70 per pay period; the "per check" cost is \$1.10. For additional comparison, note that SSA's web site on which the Agency estimates its cost for processing and mailing checks to be \$0.43 per check. Copies of the relevant web pages are attached.

We arrived at a cost of \$25.00 per check in an effort to take into account certain differences between the public and private sectors. A lower rate might very well be appropriate.

[Attachments are being retained in the Committee files:]

Mr. BRADY. Because I don't see this. The assessment fee ought to cover the cost, as long as that is being done efficiently and not inefficiently, so any information along that line would be real helpful.

Ms. SHOR. Fine.

Mr. BRADY. My second question is, indexing the agreement limit of \$4,000, indexing it, bringing it to current dollars, \$5,200, and indexing it, what cost increase—you want to get good attorneys rep-

resenting you, so it is important to keep up with the cost of living and doing business, but to a Congress looking at dollars, where every one seems to be important to someone, what would be the cost? What is the impact there?

Ms. SHOR. The cost is actually set out in the statute and has been there since it was enacted in 1989.

Mr. BRADY. No, what is the budget cost for raising it to \$5,200, indexing it?

Ms. SHOR. The actual fee is, those dollars come from the claimant's past-due benefit, so the claimant is the only one who would be paying it.

Mr. BRADY. Okay.

Ms. SHOR. And the reason adjusting the fee cap is so important is because it offers an opportunity for the system to streamline and for attorneys to streamline. Right now, in the small number of cases, which is all that this applies to, attorneys are filing fee petitions if they want to charge more than \$4,000. It is labor-intensive on their side, but much more importantly, it is labor-intensive for the ALJ. The file has to be located, it has to be brought in, and the judge has to review everything that is in there.

Mr. BRADY. What percentage, would you guess, cases do they file that type of petition to go above the—

Ms. SHOR. I would guess about 10 percent.

Mr. BRADY. How many are granted, would you guess?

Ms. SHOR. Well, they are all going to be granted in terms that a fee will be set.

Mr. BRADY. Right.

Ms. SHOR. These are all cases in which the underlying claimant's case has been won. I think a very large proportion are authorized in the amount requested, but I don't have that data.

Mr. BRADY. Right. Thank you. I didn't understand, and I appreciate that.

Two-party checks, obviously the goal there is to get prompt and timely payment. The obvious concern is that at that point an attorney, perhaps not acting scrupulously or unorganized themselves, might delay the payment to the claimant. And even though there are ethical rules and State bar rules and all, there is a real opportunity for a problem.

What, in the other cases where a two-party check is used, what is the length of time it takes for the claimant to get, first let's say to get their payment?

Ms. SHOR. You mean programs other than Social Security?

Mr. BRADY. Right.

Ms. SHOR. We would have to research that, but I would offer one suggestion. I mean, the reality is, the attorney cannot receive his or her fee until the check has been negotiated, so it is in the attorney's best interest to try to get together with that client and get both signatures on the check as quickly as possible, or the attorney is not going to get paid either.

Mr. BRADY. Okay.

Ms. SHOR. But I think it is also a possibility to say that by regulation or by statute, a time limit could be established, a certain number of days, and where a claimant calls Social Security and says, you know, "You told me that my lawyer has my check, and

I called his office, and he has put me off X number of days before he has got time for me to come in," then that person could be removed, that attorney could be removed from participating in this program, simply excluded from participation in the receipt of the joint check.

Mr. BRADY. But do you mind kind of researching that and giving me the information?

Ms. SHOR. I will be happy to.

[The following was subsequently received:]

Our research of state workers' compensation programs indicates that the following states require two-party checks, mailed to the attorney, by insurance carriers in workers' compensation matters: Idaho, Illinois, Iowa, Mississippi, and Nebraska. In Arkansas, there are two separate checks, but both are mailed to the attorney. The opinion of the lawyers we surveyed in these states is that the lawyers have an affirmative obligation under state disciplinary rules to disburse funds promptly to their clients. In addition, because attorneys must pay their own expenses as well, they have a powerful inducement to process these funds as promptly as possible.

Many other states use two separate checks, one mailed to the claimant and one mailed to the attorney. These include California, Minnesota, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, and Wisconsin. This is similar to the system that the Social Security Administration employs under the current statute. As to the important matter of ensuring that claimants receive their past due or settlement payments promptly, there are relevant provisions in the workers' compensation statutes of at least two states. In California, if the insurance carrier does not make payment to either the claimant or the attorney within 25 days of the date of the award, the insurance carrier may be liable for a 10% penalty. In Rhode Island, state law requires that payments to claimants and their attorneys be made within 14 days of entry of a decree of order, subject to a possible penalty of \$100 per day for any payment delayed after the 14-day period.

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Mr. BRADY. Because it is obviously key, you know, is how quick on average does the claimant get their check, and how does it compare to what they get and how quickly they get it right now. Mr. Pomeroy?

Mr. POMEROY. A couple quick questions, Mr. Chairman. Thank you.

I share your sentiments that restriction of access to counsel will mean people that deserve benefits in some instances won't be able to access them, get them. I remember during my own period of practicing law, a short and rather undistinguished period in the history of the profession, a dramatic administrative change made in the early eighties relative to disability, to the involvement and payment of attorneys in accessing disability status or retaining disability status.

The result was a catastrophe, and people were denied benefits, it appeared as though they were routinely denied benefits just out of hand, and then you had to appeal in order to try and get it, a total abuse of the process. Secondly, people who had disability status were thrown off without valid reasons, and in some instances went on to commit suicide. It was, in fact, one of the single meanest political and policy responses on a group of significantly disadvantaged and challenged people that I have ever seen, then and since.

It would certainly be awful if, by degree, we extracted the same result by never adjusting schedules, by taxing what are already inadequate returns for professional involvement, and in the end es-

tablishing reimbursement structures that drove professional assistants away unless they agree to handle it on a pro bono basis, which would drastically cut the number. We will have deserving potential beneficiaries vastly outnumbering available counsel to help them get their benefits when they need it. And so I think the points each of you have made are very, very important for us to consider.

I would like to express my surprise that the basis for this administrative expense component asserted by Social Security, they acknowledge is from a cost allocation system not at all designed to capture this data for that purpose, which one might think is therefore way more general than appropriate to be used for this specific purpose. And I would note that on page 6 of the GAO testimony, they basically say this wasn't used, this wasn't created for this purpose at all.

You indicated, Ms. Shor, that this might be much more analogous to fairly routing accounting issues an employer deals with cutting a check to the employee. Would you restate that point again?

Ms. SHOR. We made an effort to try to find something analogous because we don't have access to Social Security's systems, and it has been only recently that even this limited data has been disseminated from Social Security as to how the user fee was computed. We tried to locate within the private sector roughly analogous systems with gigantic numbers of individual checks being written, not all for the same amount at the same time.

These are payroll services that the employer calls and says, "I've got new hires. I've let some people go. This is how many hours this person worked this week. This one got married. Their deductions changed." It is fluid, constantly changing. It is not even like Social Security's routine monthly checks to beneficiaries, which are almost always the same amount. But these payroll services make adjustments in these checks all the time.

Mr. POMEROY. I am thinking of my own office. Whoever handles the House payroll will account for a varying range of reimbursement, various selections in the cafeteria plan for health benefits, varying degrees of participation in the Thrift Savings Plan, and other issues I believe that even go beyond what I am aware of. And I can't believe that the overburden in the Federal Government is about 6 percent of payroll to do that ministerial function.

Now, if they can do that, SSA ought to be able to look at this, this form, see 25 percent or \$4,000, whichever is greater, and fairly—

Ms. SHOR. Whichever is lesser.

Mr. POMEROY. Whichever is lesser. Excuse me. An important distinction. And do it in the quickest ministerial fashion possible.

I think we admire the staff of SSA. I think it is an absolutely critical program. 116,000 people I represent in North Dakota are social security beneficiaries today, and I think that by and large they are very well served, so I don't mean this in disrespect to the people administering the Social Security program.

But what they have told us today is absolutely ridiculous. They have not substantiated it. Their systems are pathetic. And then their efforts to try and assign costs where they are not even using the appropriate measurement instrument, is on its face ridiculous,

and I believe that their very sorry presentation in this regard today lends dramatic support to what you each are seeking in your testimony. That would conclude my comments.

Mr. BRADY. Thank you, Mr. Pomeroy, and I think it is a bipartisan effort to try to seek those improvements.

To wrap up, 30 seconds, any other point you would like to make to the panel?

Ms. SHOR. We just want to thank you very much for your continuing interest in this issue, and we would be delighted to work with you as you deliberate.

Mr. BRADY. Right, and if you don't mind giving me some of that information.

Ms. SHOR. Absolutely.

Mr. BRADY. Ms. Ford.

Ms. FORD. We also thank you. Our interest is in whatever improvements can be made to ensure that there will be more representation for people, both on the Title II program and in the SSI program. Thank you.

Mr. BRADY. Thank you for being here. Without objection, the Subcommittee is adjourned.

[Whereupon, at 12:18 p.m., the hearing was adjourned.]

[Questions submitted from Chairman Shaw to the panel, and their responses follow:]

CONSORTIUM FOR CITIZENS WITH DISABILITIES  
WASHINGTON, DC 20006  
June 8, 2001

**1. Ms. Shor stated in her testimony that she supports withholding and direct payment of attorney fees in SSI cases. She also states that an alternative to withholding would be to issue a two-party check in the names of the attorney and the client. Do you support this alternative?**

It is certainly worth considering having SSA issue a two-party check as an alternative if extending the attorney fee payment system to the SSI program is deemed not viable. A two-party check might encourage more attorneys to be willing to take SSI cases.

However, we do have some concerns that a two-party check does not offer the beneficiary the same protections that the attorney payment system offers. Some serious potential problems could arise. These might include where the attorney is slow to finalize payments to the beneficiary or where an unscrupulous representative might take advantage of the beneficiary in not paying the full amount due. In the latter case, the burden would be on the beneficiary to pursue the matter with the state bar. Since SSI beneficiaries have very low incomes, any delay in their SSI check could be burdensome. Therefore, I would suggest adding a requirement that the attorney must pay the claimant within a specified number of days unless "good cause" exists. Further, a two-party check system should be limited to attorneys only, since there is at least the protection of complaints to the state bar.

Overall, however, a two-party check system would be preferable to taking no action and leaving SSI claimants with no assistance. Also, I would urge that the rest of the features/protections of the current fee payment system apply to the two-party check system (i.e., fee must be approved and claimant can protest).

**2. Has the Consortium of Citizens with Disabilities (CCD) discussed any alternative ideas, either a modified version of the current withholding for Social Security claims, or any other approaches to address the concerns some of your members have that withholding and direct payment would cause hardship for SSI claimants?**

CCD Members have discussed some areas where the attorney fee payment system may need slight adjustment to accommodate the unique aspects of the SSI program. For instance, CCD members would not want to discourage states from providing interim benefits to SSI applicants while the SSI application is pending. Where it is required that the SSI beneficiary repay, from the back benefit, any interim benefits that the state extended to the beneficiary, it seems that a formula could be worked out to address payment of both interim benefits and attorneys fees from the back



benefit. Similarly, where an SSI benefit is required by law to be paid in installments, the law allows certain medical and housing expenses to be added to the first installment. Attorney fees could be added to the first installment payment, as well. Finally, we would not want to affect programs already in place in states that pay attorneys to take the SSI cases. We are looking for ways to expand the availability of experienced legal representatives.

We would be happy to work with you and Members of the Subcommittee on Human Resources to address these and any other issues to accommodate the unique structure of the SSI program. It is important to note again, however, that we believe many people will not be found eligible for an SSI back benefit or any future SSI benefits unless they have the assistance of experienced legal representation in pursuing their SSI claims.

Thank you for this opportunity to provide additional information. Please let me know if I can help you in any further way.

Sincerely,

MARTY FORD  
Co-Chair  
Social Security Task Force

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NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS'  
REPRESENTATIVES  
MIDLAND PARK, NEW JERSEY 07432  
June 8, 2001

1. As an alternative, you suggest the 6.3% assessment be replaced with a flat fee of \$25 per case. How did you arrive at \$25? Does your membership support everyone paying the same price, regardless of how small their fee payment may be?

*In the private sector, payroll processing companies provide an analogous function in computing wages; calculating deductions for exemptions, medical insurance, pension contributions, etc.; multiple tax withholdings; and check writing or direct depositing. The per check charge depends the volume of checks; the larger the number of checks, the lower the single check processing charge is. For a reference, I have attached the Pricing Schedule of a local payroll processing company. The total cost for 100 employees is \$110.70 per pay period. In this example, the "per check" cost is \$1.10.*

*We arrived at a rate of \$25/check in an effort to take into account certain differences that exist between the public and private sectors. Of course a lower rate might well be appropriate.*

*It is our position that the user fee should be eliminated out right. But if it is retained, then we advocate a formula of \$25 or 6.3%, whichever is less.*

2. SSA reported in their testimony that the percent of claims paid within 60 days has grown from 5% to 50%, yet you say the pace of fee payments has slowed. Do you believe SSA is wrong? What data do you have supporting your assertion that processing time has slowed?

We have anecdotal data from our Members complaining about the on-going slow pace of fee payments during the past year. These anecdotal data certainly raise questions about the reliability of SSA's data. One avenue of inquiry is why one check in four is delayed past 180 days, the same rate for 2000 as for 1999.

3. Do you have any suggestions for improvement that would increase timeliness of payment of attorney fees?

It seems reasonable to conclude that more personnel and better automation could process attorney fees in a timelier manner. We suggest that a single two-party check could be processed more quickly than two separate checks.

4. How does waiting to receive payment from SSA for representing clients differ from a general law practice where the attorney bills his client and waits to be paid?

In most non-contingent fee areas of the private practice of law, attorneys collect a retainer up front for fees and expenses before commencing representation. As the case progresses, they issue interim bills and receive interim payments. Using this process, these attorneys do not wait at all for fee payment. Examples include estate planning, business contracts, general litigation, and matrimonial matters. In other non-contingent fee areas of law, fees are paid at the time of settlement. Examples include real estate matters and business purchases where funds have been held in escrow pending the closing.

In those areas of law most directly analogous to Social Security cases, attorneys who represent personal injury and workers' compensation clients do so on a contingency basis. These clients very rarely have the ability to pay an up-front retainer fee; the contingency fee arrangement is the only viable fee process for them. Attor-

neys accept the risk not getting paid at all if they are not successful in winning for their clients. If the case is successfully concluded, generally the insurers pay the attorney fees directly to the attorney.

In several states, there is a penalty imposed by statute if the claimant and the attorney are not paid within a certain number of days of the settlement of a workers' compensation case. In California, if either of these payments is not made within 25 days of the date of the award, the insurance carrier or employer may be liable for a 10% penalty. In Rhode Island, the statute requires payments to be made within 14 days of entry of a decree or order, with a penalty of \$100.00 per day for any delayed payment after the 14-day period.

5. You state in your testimony that attorneys are reducing or eliminating the SSI claimants they serve because they cannot be guaranteed payment. Do you have any documentation that substantiates a decrease in the number of SSI cases taken by attorneys because payment cannot be guaranteed?

*We have voluminous anecdotal data from our Members advising that they will no longer accept referrals of claimants seeking SSI benefits only. The exception is attorneys in those states that have interim assistance agreements and that have enacted state legislation to pay the attorney fees out of the successful claimant's past-due SSI benefits.*

*Fortunately, for those claimants with concurrent claims (seeking disability benefits from both the Social Security and SSI Programs), many attorneys are able to accept their cases because of the fee payment mechanism for the Social Security portion of the case.*

6. You present statistics by SSA that show involvement of attorneys in Title II disability cases improves a claimant's chance of obtaining an approval of their claim for disability benefits (at the hearing level, the allowance rate for claims with representatives is 63% as opposed to 40% for those who aren't represented). Why is this? Do you believe more SSI claimants would receive better results if more were represented by attorneys?

*As I indicated in my written statement, we believe that the Title II statistics reflect the value of representation. The representative who understands the law and procedure for Social Security claims can assist each client by developing the record and presenting the case in a manner that enables the adjudicator to fully and fairly decide the outcome. The knowledgeable representative will pursue appeals through the Office of Hearings and Appeals, and into Federal court if necessary. Representatives are familiar with the multitude of legal authority, ranging from the regulations to the Rulings to the Circuit caselaw, and with a range of medical literature and other treatises. They understand how to cross-examine witnesses at hearings.*

*It is our position that, if more SSI claimants were represented, they and the adjudication system would be better served. Representation makes the same difference in the adjudication of SSI claims that it does in the adjudication of Title II claims. SSI claimants should have the same options for obtaining representation that are available to Title II claimants.*

Very truly yours,

NANCY G. SHOR  
*Executive Director*

[Attachments are being retained in the Committee files.]

[Submissions for the record follows:]

**Statement of Dale Cowan, National Association of Disability  
Representatives, San Antonio, Texas**

Chairman Shaw, Congressman Matusi and members of the subcommittee. My name is Dale Cowan. I am the president of the National Association of Disability Representatives (NADR). NADR is a new non-profit organization in its first operational year. I am delighted that you have sought our views on this subject. As our organization has a deep interest in the activity of your committee, I hope that we will be given the opportunity to speak on a variety of issues facing Social Security

Presently, only attorneys are eligible to have their fees withheld by the Social Security Administration. Non-attorneys are not presently nor have they ever been allowed to utilize this service. On behalf of the National Association of Disability Representatives, I strongly encourage you to pass legislation that allows for the provision of two-party SSD or SSI checks made out to both the claimant as well as the attorney or non-attorney representative. Since the introduction of the 6.3% user fee,

withholding became a considerably less desirable service to us. None of the members of NADR desire to have SSA withhold our fees for us if withholding means that we both have to wait to get paid, and then have a 6.3% user fee charged. Most of our clients are honest and will gladly pay for courteous professional service.

I successfully collect my fees 95% of the time. Therefore, if I was given the same opportunity to have withholding; the user fee would have to be less than 5% to make it worthwhile. I don't have any knowledge about how SSA computed that they needed 6.3% for the work they do. But from a practical point of view, it is more economical not to have SSA withhold fees when the fees exceed the losses one would get without the services.

After having said that I wouldn't use withholding with the user fees being what they are, I do believe that non-attorney representatives have the right to be included and utilize these government services should they desire. We take pride in the work we do in helping the disabled get the help they need. We do the same type of work as attorneys and look to our government to allow us the same treatment as attorneys.

We believe that a two-party check to the representative for all Social Security disability benefits and SSI would insure the prompt payment of services and would allow for everyone to be assured of representation. Social Security argues against a two party check basically because they don't trust the lawyers to promptly settle with claimants or would in some way cheat the claimants. This argument doesn't reflect the reality that all representatives need to be paid as promptly as the claimant's do. Social Security recently came out with standards of conduct for representatives. We are all very mindful of the power SSA has to discipline anyone who violates his or her responsibilities as representatives. The power that SSA has to regulate the representatives is far greater than what any private insurance company has when one of its policyholders hires counsel in a claim against them. I can imagine the uproar if an insurance company were to try to oppose two-party checks in order to protect their policy—holders from their counsel. SSA's position in opposing two party checks fails to recognize the fundamental fact that representatives were hired by the claimant because it is SSA that is not trusted to be fair.

I am sure that whatever decisions you make as to user fees for attorneys will be fair. However, fairness demands that consideration also be given to treating the many non-attorneys equitably. We don't want to blow our own horn but SSA will undoubtedly tell you that we do as well, if not better, than many attorneys do. Yet we are not given the option of having withholding done for us. If withholding for attorneys makes sense, then why not withhold for non-attorneys as well. The government could greatly increase its revenues by giving non-attorneys exactly the same deal that the attorneys are complaining about before your committee. Withholding for non-attorneys and charging a modest user fee might be a method SSA could use to make up for the loss of revenues that will come if the 6.3% is reduced.

Just as some attorneys choose not to use fee withholding and get paid directly by the claimants, some non-attorneys likewise would opt not to use fee withholding and users fees if given the choice. Fairness dictates that we be given the choice. We are only asking for a level playing field. Fairness for all representatives constitutes the right thing to do and would increase government revenues.

On behalf of the National Association of Disability Representatives, I thank you for inviting us to comment on the implementation of this important legislation.

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NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS  
REPRESENTATIVES  
CLEVELAND, OHIO 44113-1901  
*May 30, 2001*

TO: The Social Security Subcommittee  
RE: Deliberations regarding the Social Security User Fee

The Social Security Administration is asking Congress to reward its incompetence by extending the user fee. William Taylor, deputy Commissioner stated that half of the fees are paid within six (6) months. What he neglected to state in his testimony is that the other half of the fees often take as long as sixteen (16) months. It seems that the larger the fee the longer the wait.

This office pays \$96.00 per pay to have thirty-three (33) checks issued. For that \$96.00 the payroll company calculates withholding tax, FICA, Medicare, State and City Income Tax. It also makes direct deposits into each account as well as paying

the taxes to the Federal, State and Local governments. In addition, the payroll service does quarterly and year-ending reporting as required by law.

The Social Security Administration, on the other hand, wants this Committee to believe that it costs over \$200 per check to calculate a 6.3% user fee and process the payment. This is absurd! How many times does a person have to figure out by hand that 6.3% of \$4,000 is \$252. The manual calculations that Social Security requires on each claim are ridiculous. A computer program could easily calculate this amount and issue two checks for a one-time start up cost. This office has been waiting eight (8) months for payment on an approval of \$18,000. How can the Social Security Administration possibly claim that it cost them \$1,184 to issue this check. If it does cost them that much, their entire systems department should be replaced.

Although Mr. Taylor indicates that there has been no decrease in the amount of attorneys taking direct payment and limiting their fee to the lesser of \$4,000 or 25%, he does not have current figures. Many attorneys, since the onset of the user fee, have gone back to a contract that guarantees them 25% and requires the use of a fee petition. These fees have not yet hit the attorney fee department. It should be noted that the evaluation of the fee petition is not considered in the 6.3%. The user fee is only suppose to be the actual cost of sending the check. The calculation of the 6.3% should not even be considered. We can not included preparation of a fee petition in our time spent, why should Social Security be allowed to use 45 minutes per claim to determine the 6.3% in it's cost. When this user fee was established, the cost to be considered was that of writing and making a check, not of calculating the cost of the check, which takes social security an exorbitant amount of time.

This Committee should demand timely payment of attorneys' fees by the Social Security Administration. The statement of the GAO and the Social Security Administration regarding time delays are incorrect. We are asking for payment within thirty (30) days of the date that the award certificate is issued. All of the information necessary has been accumulated by the time that the award certificate is issued. There is no reason whatsoever for Social Security to take more than thirty (30) days to issue a check for fees after the award certificate has been prepared.

The Administration has made subtle innuendo about attorneys "overcharging" if two party checks were to be issued. The fact of the matter is that attorneys are bound by the Canons of Ethics of their state. Should they charge more than the agreed amount, they would lose their license to practice law. The Ohio Bureau of Workers' Compensation issues two party checks and has a procedure for complaints on fees. They have less than 1/50 of 1% complaints. They found that the complaints that are made are rarely valid.

In 1989, it was a burden to prepare to fee petition on a social security claim. At this time, with the improvement in computers, it is no burden at all. The amount of time necessary to evaluate fee petitions could be devastating to a system. The change which was made in 1989 was designed to expedite the payment of attorneys' fees while decreasing the cost of the fee process to the Social Security Administration.

At this time, Social Security has decreased its cost but has failed to both keep up with a fair fee as well as payment in a timely fashion.

My office is the only one in Northern Ohio that routinely takes Supplemental Security Income claims. Many competent attorneys would do so if they knew they would receive their fee. At the present time we are risking both our fee and payment of expenses. Withholding on two party check should also be done on SSI claims.

Mr. Chairman and members of the Committee, the attorneys representing individuals on Social Security Claims are doing God's work. We are the ones standing up for the disabled and downtrodden in America. If not for us, thousands and thousands of additional calls would be made to the Social Security system and to Congressional offices with questions or complaints about social security. We are the ones that take care of these individuals and provide a great service to the Social Security Administration at no charge. These services require timely and prompt attention. I propose the following:

1. Give each attorney (or permit law firms to be listed rather than individual attorneys) an ID number. This ID should be in the Social Security computer that would allow all data pertaining to that ID number to be processed efficiently. Should the law firm move, they would only need to change their address and phone number one time.

2. Eliminate the user fee or reduce it to the lesser of 6.3% or \$25.00 per case.

3. Require the Social Security Administration to issue the checks within thirty (30) days of the date of the award certificate or no user fee can be charged.

4. If an attorney is not paid within forty-five (45) days of the date of the award certificate, interest should be paid at the same rate that other government vendors are compensated for late payment.

5. Provide for a two party check for past due benefits.

6. Raise the cap on attorneys' fees to \$5,200 (the amount it would be if Social Security COLA would have been used annually) and mandate an automatic increase as a COLA adjustment.

7. Provide for two party checks or withholding on SSI claims.

I am pleased that your Committee is considering the issue of attorneys' fees at this time. The Social Security Administration has been abusing claimants as well as attorneys for far too long. It is time that Congress intercedes to help protect the rights of the disabled in America.

Respectfully submitted,

JAMES MITCHELL BROWN  
*Past President*

