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Systems Support Could Improve Processing Attorney Fee Payments in the Disability Program

Statement of Barbara D. Bovbjerg, Director
Education, Workforce, and Income Security Issues



G A O

Accountability * Integrity * Reliability

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.¹ 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.² 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.³

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

¹ 42 U.S.C. 406(a)(2)(A).

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

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

million to process attorney fees in 2000—about 10.5 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.⁴ 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 process 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.

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

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 SSA⁵, 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.⁶

⁵ 42 U.S.C. 406 (a).

⁶ 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.

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 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 \$4,000.⁷ 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.⁸ Since the introduction of fee agreements in 1991, their use has become nearly universal—in 2000, 88 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

⁷ 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.

⁸ P.L.101-508, sec. 5106(a) (Nov. 5, 1990).

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.⁹ 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.¹⁰ 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

⁹ In accordance with this requirement, on January 19, 2001, SSA published the findings from their cost study in the Federal Register.

¹⁰ For the cost study included in the Federal Register, SSA used only data from the processing centers and did not include OHA costs.

functions of fee processing.¹¹ OHA must review and approve fee arrangements, while the processing centers pay the attorney fee once the amount of past-due benefits is determined.

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.¹² Within OHA only a small portion of staff time is spent reviewing fee arrangements. For fee agreements, SSA estimated that its staff spent about 1 1/2 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 1 1/2 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 an information system that routinely collected data 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 for further processing. As with the OHA fee approvals,

¹¹ 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.

¹² 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.

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 data 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 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

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

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.¹³

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 period¹⁴ (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.

¹³ *Workers' Compensation: Action Needed to Reduce Payment Errors in SSA Disability and Other Programs* (GAO-01-367, May 2001).

¹⁴ Claimants, attorneys, and SSA officials are still allowed to protest the fees, however, there is no specified waiting period, as previously required.

Processing center staff also contacted OHA staff to better track information on attorney fee approvals.

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.¹⁵ 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. However, the manager of SSA's largest processing center indicated that systems support could save one-third of the staff time currently spent on processing this type of payment. Furthermore, Office of Systems officials told us that automating the payment process could save from 3 to 5 days in processing time. Nonetheless, 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 in to 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

¹⁵ 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.

fee—is mailed to a the processing center. When the case file is received at the processing center, staff update the case history which was previously entered in to 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 MCS determines the amount of the past-due benefits owed the claimant, a series of manual steps is performed 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 then 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 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 would 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 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 (88 percent in 2000 according to SSA) 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.¹⁶ 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 may have been unusually high. Without reliable data, we were unable to ascertain the full impact of the current cap on attorney fees.

¹⁶ 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.

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 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 Acknowledgments

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

Appendix I: 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 dollars	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
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

Dollars in millions

	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.