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SOCIAL SECURITY ADMINISTRATION

Information Systems Could Improve Processing Attorney Fee Payments in Disability Program

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Contents

Abbreviations

DI	Disability Insurance
MCS	Modernized Claims System
NOSSCR	National Organization of Social Security Claimant's Representatives
OCO	Office of Central Operations
OHA	Office of Hearings and Appeals
SSA	Social Security Administration
SSI	Supplemental Security Income program

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United States General Accounting Office
Washington, DC 20548

June 29, 2001

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Bill Thomas
Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

The Honorable E. Clay Shaw
Chairman
Subcommittee on Social Security
Committee on Ways and Means
House of Representatives

To ensure that people claiming Disability Insurance (DI) benefits can obtain legal representation at a fair price, the Social Security Act requires that the Social Security Administration (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 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

[1]42 U.S.C. 406(a). A claimant may appoint an attorney to represent him or her in a claim for any benefits under the Social Security Act. For this review, we looked primarily at attorney representation in only the DI program.

[2]Ticket to Work and Work Incentives Improvement Act of 1999, P.L. 106-170, Dec. 17, 1999.

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 of the attorney's fee.

This report responds to the requirements of the Ticket to Work Act that we study various aspects of attorney fee services in the DI program. The objectives of our review were to evaluate (1) SSA's administrative cost estimates, (2) the time SSA takes to process the fee payments, (3) whether SSA's operations could be improved to 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] We provided additional information to the Subcommittee in May 2001.[4] To carry out our work, we reviewed SSA's administration of the fee services, interviewing officials from the Office Central Operations, the Office of Hearings and Appeals (OHA), Office of Budget, Office of Financial Policy and Operations, the Office of Systems, and other offices. We observed the attorney fee payment practices at two of SSA's process service centers and examined SSA data on these services, focusing particularly on activities and information related to costs and payment timeliness. We also talked to attorneys, claimant advocacy groups, and representatives of the legal services community about aspects of attorney representation and attorney fees. We performed our work between March 2000 and May 2001 in accordance with generally accepted government auditing standards. See appendix I for a more detailed discussion of our scope and methodology.

Results in Brief

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 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

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

[4] *Social Security Administration: Systems Support Could Improve Processing Attorney Fee Payments in the Disability Program* (GAO-01-710T, May 17, 2001).

to what costs should be counted made exact correction impractical, 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 the 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 mandatory 15-day delay in processing attorney fees.[5] 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 delays 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. This report recommends that SSA develop a plan to proceed with improvements to the fee payment process. Additionally, it recommends that SSA establish performance

[5]Previously, SSA was required to wait 15 days until it could process attorney fees. The 15-day hold was to allow time for all parties—the claimant, attorney, and/or SSA officials—to protest the fee. Claimants, attorneys, and SSA officials are still allowed to protest the fees within 15 days; but, there is no specified delay for processing the fees as previously required.

goals for timeliness and cost reduction in the administration of attorney fees.

Finally, as required by the Ticket to Work Act, we considered a variety of potential changes to the attorney fee structure. We found that implementing some of these changes would raise administrative and/or policy trade-offs. For instance, one potential change would link the user fee to the timeliness of the SSA payment, decreasing the fee if the SSA payment were not timely. At issue here, however, is the fact that 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.

In commenting on a draft of this report, SSA discussed some of the activities underway concerning the attorney fee payment process as they related to our recommendations. For example, SSA said that the Acting Commissioner recently established an Executive Task Force to oversee the development of a plan to proceed with improvements to the fee payment process. While the scope of the task force's planning effort includes some of the elements from our recommendation that SSA proceed with improvements to the process, there are some features that were not specifically addressed in SSA's description of task force activities. We believe that the recommendation should, in its entirety, be considered by the task force. Additionally, in response to our recommendation that SSA establish performance goals for cost reduction and payment timeliness, SSA said that it wants to wait until the task force's plan is complete before developing performance measures. In the interim, SSA said that it would continue to use other measures—e.g., disability claims processing times—to measure performance. While we appreciate the need to consider the final plan in developing performance measures, we believe that SSA could collect better data with which to monitor performance in the interim. SSA also provided technical comments, which we incorporated where appropriate. SSA's comments are shown in appendix II.

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 the Social Security Act permits

claimants to appoint an attorney to represent them at proceedings before SSA,[6] 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 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.[7]

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 services provided by the representative for 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.[8] 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.

[6]42 U.S.C. 406(a).

[7]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.

[8]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 as long as the amount is "reasonable" as determined by SSA.

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 by requiring that SSA approve the fee agreements subject to the limits cited above, in cases where SSA finds the claimant eligible for past-due benefits.[9] Since the introduction of the much simpler fee agreements in 1991, their use has become nearly universal—in 2000, about 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 regulating the attorney fees process 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.[10] 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.

[9]P.L. 101-508, sec. 5106(a), Nov. 5, 1990.

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

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.[11] Neither OHA nor the processing centers routinely collect information that specifically identifies the costs associated with 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.[12] 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.[13] Within

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

[12]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.

[13]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.

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.[14] For example, OHA processed about 179,000 fee agreements in 1999—if each took 1½ hours to process, the total time to process fee agreements 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 to be related to these costs—for example, approving fee agreements, reviewing fee 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 or to the general fund. 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

[14] According to SSA, staff time spent reviewing fee petitions is greater than time spent reviewing fee agreements.

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 SSA's 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.
- 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. 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 staff were handling matters dealing with attorneys.

Although we were unable to accurately determine what the adjustments should be, 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 app. I 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 estimated cost to process attorney fees
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's analysis of SSA's data.

Attorney Fee Payments More Timely in 2000, but Major Reasons for Delay Remain

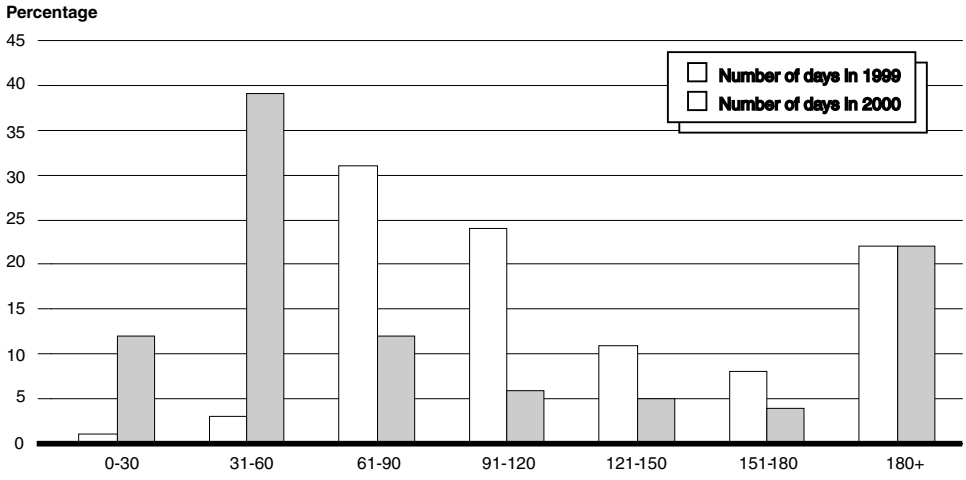
Although most fees were processed in far less time in 2000 than in 1999, over 20 percent of the fees in both years still took longer than 6 months from the date of the OHA decision to the date when the attorneys were paid. While the major reason for the improved performance in 2000 was the elimination of a mandatory 15-day delay in fee processing,[15] 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

[15] See footnote 5.

difficulties SSA encounters in obtaining workers' compensation information.[16]

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. See figure 1 for information on processing times for 1999 and 2000.

Figure 1: Percent of payments made within different time intervals from favorable OHA decision through attorney fee payment, 1999 and 2000



While SSA officials attributed most of the improved processing time in 2000 to the elimination of a mandatory 15-day processing delay (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

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

processed the cases. 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. For many of these information needs, it is the responsibility of the claimant and/or attorney to furnish documentation of the claim to SSA. 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.[17] 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).

Information 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 work years 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 information systems support could save one-third of the staff time currently spent on this type of payment on this workload. Furthermore, Office of Systems officials told us that automating the payment process could reduce processing times by 3 to 5 days. Nonetheless, proposals to automate this process have been repeatedly postponed. SSA has, however, recently developed a draft plan to automate the current attorney fee payment process. The plan calls for improvements to begin in the summer or fall of 2002, 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

[17]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.

staff person in one of SSA's field offices enter the claimant's case history in 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 a processing center. When the case file is received at a processing center, staff update the case history that 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), for the attorney's fee.

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 inputs the data into a separate stand-alone information system.

In addition to the inefficiencies just cited, there are other concerns 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, 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 attorney fee payment 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 manually transfer information between the MCS and other stand-alone systems to process the attorney fees. If, for example, there was no need to gather further documentation to process the case, 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 SSA automate this process, which he termed "archaic." The Associate Commissioner noted that with systems support, the center would save 34 work years of staff time, one-third of the total staff time the center spent on attorney fee processing. The Associate Commissioner 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 Systems 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. SSA said that it plans to implement the first phase of the improvements in the summer or fall of 2002. However, agency officials told us that there is no definite schedule for completing the entire project, that details related to the plan still need to be developed, and that there are no budget funds committed to the project. 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. Furthermore, the draft plan does not include performance goals for reducing the cost of attorney fee payments or for payment timeliness.

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 under the fee agreement process, 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.

SSA's 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, in 48 percent (84 cases) of the cases with the longest processing times, no complicating factors—as identified by the survey instrument—were noted.

Currently, SSA does not routinely identify cases that require extra case processing because of complicating factors such as state workers' compensation payments. However, the 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. Additionally, fee petition cases would need to be treated differently because SSA cannot begin processing these cases until after the attorney files a fee petition. 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 SSA officials) 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.[18] 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 past-due benefit amounts 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

[18]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.

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 1-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, said that the 1-day sample was not statistically valid; they also believe that the percentage of cases cited was unusually high. 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.

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. Although not currently taking a position on this issue, SSA has in the past pointed to the added administrative burden that the additional fee services would entail and observed that there are currently no systems with which to withhold fees from SSI payments.

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 legal 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.[19] During the first quarter of calendar year 1999, attorneys represented DI claimants in 73.4 percent of cases presented to OHA. By the first quarter of calendar year 2001, legal representation of DI claimants had risen to 75.4 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 user 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 though 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 made by attorneys 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,

[19] This does not include DI cases that had both SSI and DI claims. Representation in these cases also increased over the same time.

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.

We found that despite internal recommendations for a new system, SSA has repeatedly postponed its plans to improve the attorney fee payment process. Indeed, even though these improvements have been part of SSA's system's plans since at least 1998, SSA has yet to establish a firm schedule for carrying out its plans. Additionally, while SSA has a draft plan for improving the process, agency officials told us that details related to the plan have not been completed and SSA has yet to complete a cost estimate for the project. There are also other gaps in the plan—such as not creating an attorney master file or establishing an electronic connection between the payment processing staff and the OHA fee approval staff—where taking additional actions could improve the process.

Furthermore, SSA's performance plan did not have goals related to attorney fees—neither for cost reduction of the program nor payment timeliness. SSA would need such goals as part of its current planning effort for improving the attorney fee payment process as well as for its future operations. Without such quantifiable goals, future efforts to track and oversee SSA's progress in these areas will be difficult.

Recommendations for Executive Action

We recommend that SSA proceed with improvements to the attorney fee payment process by developing a plan for such improvements based on a feasibility study and a cost/benefit analysis. In doing so, SSA should establish a schedule for developing and implementing these improvements, as well as an estimate of the systems development costs. When designing this system, SSA should consider whether it is feasible to capture management information required to track its administrative costs and payment timeliness. In addition, SSA should also consider other initiatives to improve the efficiency of the payment process, such as developing an attorney master file database, establishing an electronic link

between the fee approval services and the payment processing services, and augmenting its Internet site to provide better information on its fee processing services.

Furthermore, to monitor these improvements to the attorney fee payment process, we recommend that SSA establish performance goals for cost reduction and payment timeliness in the administration of attorney fees.

Agency Comments and Our Evaluation

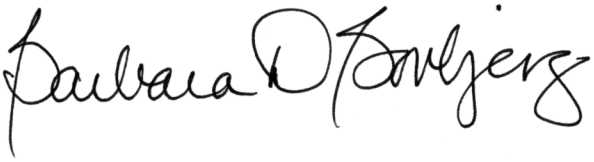
We provided a draft of this report to SSA. In commenting on our first recommendation that it proceed with improvements to the fee payment process, SSA said that on May 29, 2001, the Acting Commissioner established an Executive Task Force to oversee the development of such a plan. The specific elements of SSA's plan include some features from our recommendation; but not all elements of the recommendation were addressed. For example, we state that SSA should consider whether it is feasible to capture management information required to track its administrative costs and payment timeliness. While SSA's task force is planning to identify—via an independent audit—the costs of attorney fee processing, there is no mention of an ongoing system to monitor the costs or timeliness of the payments. We continue to believe that this is an important feature for the program.

Regarding our recommendation that SSA establish performance goals for cost reduction and payment timeliness, SSA plans to postpone a decision about establishing performance goals until after the task force has completed its work and the plan for improvement is in place. SSA says that in the interim it will use other measures, such as disability claims processing times, to measure attorney fee processing. While we can appreciate the need to fully consider the plan for improvement in establishing final processing goals, we believe that measures such as disability claims processing times are not going to provide enough information to track attorney fee processing in the interim. Other, more specific information could be used to measure performance in the interim. For example, SSA could continue to capture the specific information on timeliness—for example, payment processing times from date of OHA approval to date of attorney fee payment—which was presented to us as part of this review.

SSA also provided technical comments, which we incorporated where appropriate. SSA's comments are printed in appendix II.

We are sending copies of this report to the Acting Commissioner of Social Security and interested congressional committees. We will also make copies available to others on request.

If you have any questions about this report, please call me on (202) 512-7215. Individuals who made key contributions to this report include Shirley Abel, Kelsey Bright, Nancy Peters, and Bob Sampson.



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

Appendix I: Scope and Methodology

To perform our work, we reviewed the Social Security Administration's (SSA) administration of the fee services, including interviewing officials in the Office of Central Operations (OCO), the Office of Hearings and Appeals (OHA), Office of Budget, the Office of Financial Policy and Operations, the Office of Systems, and other offices. We observed the attorney fee payment practices at two of SSA's process service centers and examined SSA data on these services, focusing particularly on information concerning costs (detailed below) and payment timeliness. We also talked to attorneys, claimant advocacy groups, an official from the National Organization of Social Security Claimant's Representatives (NOSSCR), and representatives of the legal services community about aspects of attorney representation and attorney fees. Additionally, we interviewed officials from the Department of Veterans Affairs and the Ohio Workers Compensation Board to discuss attorney payment processing at those offices.

To review the timeliness of SSA's attorney fee payments, we interviewed officials in OCO and the Office of Systems. We requested and received special data runs on the timeliness of payments for fiscal years 1999 and 2000.

In determining what, if any, improvements could be made to the attorney fee process to reduce costs and increase the timeliness of payments; we interviewed SSA officials at OCO, two process service centers, and the Office of Systems. Additionally, we toured two of the process service centers to observe attorney fee payment operations and to get a better understanding of the process.

We performed the following work for additional matters related to attorney fees:

1. For the possibility of linking the user fee to payment timeliness, we interviewed SSA officials at OCO and the Office of System to determine SSA's capabilities for linking attorney fee payments to the timeliness of the payments. Additionally, we interviewed an official at NOSSCR and private attorneys to discuss the issue of payment timeliness.

2. In determining whether to express the user fee as a fixed amount or a percentage, we analyzed SSA data on attorney fee payments and the user fee.

3. In determining whether to raise the cap on attorney fees, we primarily analyzed payments made to attorneys to see if the current cap was

being reached frequently. Additionally, we interviewed OCO and OHA officials regarding this issue.

4. In analyzing the possibility of extending attorney fee withholding to SSI claims, we interviewed OHA and Office of System staff to determine what policy and practical considerations might arise from such a move. Additionally, we interviewed an official at NOSSCR, various claimant advocacy groups, representatives from the legal services community, private attorneys, and an official from the Association of Administrative Law Judges to help flesh out pros and cons to extending attorney fee withholding to the SSI program.

5. In determining if attorney representation rates have been affected by the imposition of the user fee, we analyzed SSA data related to attorney fee representation to see if there had been a change in the representation rates following the user fee.

6. In analyzing whether SSA should issue joint checks to attorneys and beneficiaries, we interviewed SSA officials at the Office of Systems. Additionally, we interviewed officials at the Department of Veterans Affairs and the Ohio Workers Compensation Board—two agencies that issue joint checks—to determine what processes are used in check issuance.

Reviewing the Cost Estimate

In reviewing SSA's administrative costs for processing attorney fees, we requested information from various SSA's offices and worked with SSA to determine how to categorize costs and how to assign relative costs to independent variables, such as staffing cost adjustments from one fiscal year to the next. Additionally, we had SSA review our estimates for accuracy. We did not independently verify the information provided to us by SSA.

We looked at costs from the two major components that provide attorney fee processing services—OHA and the payment processing centers. Specifically, SSA provided us cost information from 1999 for the OHA fee approval process and from 2000 for the fee payment process. We describe our adjustments to the costs of each component in the following sections. 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 235 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, SSA's 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 has 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 adjusted estimate for OHA costs in 1999 may be as low as $6.4 million, which represents a reduction of 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 compared with 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: 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's analysis of SSA's data.

Fee Payment Processing Costs

According to SSA, its payment processing centers processed $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. The estimate 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 Deputy Associate Commissioner for Hearings and Appeals 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 data just mentioned, we believe that the lower bound costs for the processing centers could be as low as $28.6 million for 2000. Our calculation of the adjusted estimate is as follows:

4. 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.

5. 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.

6. 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.

7. 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: Our 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's analysis of SSA's 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 less than 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.

Appendix II: Comments from the Social Security Administration

SOCIAL SECURITY
Office of the Commissioner
June 21, 2001

Ms. Barbara D. Bovbjerg
Director, Education, Workforce, and
Income Security Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to review the draft report, "Information Systems Could Improve Processing Attorney Fee Payments in Disability Program" (GAO-01-796). Our comments on your report are enclosed. If you have any questions, please have your staff contact Robert Berzanski at (410) 965-2675.

Sincerely,

Larry G. Massanari
Acting Commissioner
of Social Security

Enclosure

SOCIAL SECURITY ADMINISTRATION WASHINGTON D.C. 20254

COMMENTS ON THE GENERAL ACCOUNTING OFFICE (GAO) DRAFT REPORT, "INFORMATION SYSTEMS COULD IMPROVE PROCESSING ATTORNEY FEE PAYMENTS IN DISABILITY PROGRAM" (GAO-01-796)

We appreciate the opportunity to respond to your recommendations in this draft report. Before addressing the specific recommendations, we would like to note that in the past year, we have made significant improvements in the service that we provide to attorneys. The elimination of the 15-day protest period, coupled with processing changes instituted in the processing centers, resulted in a dramatic increase in the percentage of fees that were paid in less than 2 months from the date a decision was made on the claim.

Additionally, in May 2000, we undertook a comprehensive review of the attorney fee approval and payment process. The Representative's Fee Process Review Workgroup reviewed the current level of automation, data collection, available management information, processing times, availability of public information to the 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 that provided much of the information for this report.

We believe that we have made considerable progress in identifying areas where changes and improvements are needed. However, we agree that there are still additional steps that we can take to further improve our service.

We offer the following comments on the report's recommendations.

Recommendation 1

SSA should proceed with improvements to the attorney fee payment process by developing a plan for such improvements based on a feasibility study and a cost/benefit analysis. SSA should establish a schedule for developing and implementing these improvements, as well as an estimate of the systems development costs. SSA should consider whether it is feasible to capture management information required to track its administrative costs and payment timeliness. SSA should also consider other initiatives to improve the efficiency of the payment process, such as developing an attorney master file database, establishing an electronic link between the fee approval services and the payment processing services and augmenting its Internet site to provide better information on its fee processing services.

SSA Comment

On May 29, 2001, the Acting Commissioner established an Executive Task Force to oversee the development of such a plan and to build on the work done by the Representative's Fee Process Workgroup. The task force held its initial meeting on June 18 and developed an approach for improving the attorney fee process that includes the following elements:

- Near term process improvements and management information enhancements;
- Automation of the attorney fee process;
- Commitment of additional resources to reduce pending cases and to expedite the development of cases where additional evidence is needed to determine and pay the fee;
- An independent audit to determine the costs incurred by SSA for the attorney fee approval and payment process and to make a recommendation for the appropriate assessment fee for 2002; and
- Creation of a site on SSA's web page devoted solely for communicating with the attorney/representative community.

The near term process improvements and management information enhancements, commitment of additional resources and creation of a site on SSA's web page will occur by the end of this fiscal year. Automation and audit activities will begin this summer and are expected to be completed in 2002.

Recommendation 2

SSA should establish performance goals for cost reduction and payment timeliness in the administration of attorney fees.

SSA Comment

We understand the importance of establishing performance goals in this area of service delivery. However, we will make our decisions about performance goals after the Executive Task Force completes its work and the plan has been approved. By deferring these decisions, we will be able to establish more meaningful goals.

We note that while there is currently no specific goal on attorney fees in SSA's published performance plan, attorney fee payment processing is associated with some of the other goals, such as disability claims processing times. We will continue to use these measures in the interim.

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