



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

*Audit Report*

The Cost of Administering Claimant  
Representative Fees

*A-04-17-50238 | September 2018*

**MEMORANDUM**

**Date:** September 19, 2018

**Refer To:**

**To:** The Commissioner

**From:** Acting Inspector General

**Subject:** The Cost of Administering Claimant Representative Fees (A-04-17-50238)

The attached final report presents the results of the Office of Audit's review. The objectives were to determine whether the Social Security Administration (1) assessed correct user fees in accordance with law and (2) recovered its administrative costs when processing these fees.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.



Gale Stallworth Stone

Attachment

# The Cost of Administering Claimant Representative Fees

## A-04-17-50238



September 2018

Office of Audit Report Summary

### Objectives

To determine whether the Social Security Administration (SSA) (1) assessed correct user fees in accordance with law and (2) recovered its administrative costs when processing these fees.

### Background

Individuals filing a disability claim for Old-Age, Survivors and Disability Insurance benefits and Supplemental Security Income may appoint a qualified individual to act on their behalf before SSA. When a claimant's appointed representative is eligible for direct payment and requests SSA to pay his/her authorized fee directly from a beneficiary's past-due benefits, SSA is responsible for authorizing and processing the direct payment to the appointed representative. To recover its administrative costs in processing these direct fee payments, SSA charges an assessment fee (user fee) in accordance with law.

In Fiscal Years (FY) 2015 and 2016, SSA issued approximately 1.1 million claimant representatives' direct-fee payments totaling approximately \$2.6 billion. We identified 39,024 beneficiary claims where SSA may have collected an incorrect user fee. From this, we selected a random sample of 50 beneficiary claims for review.

### Findings

SSA technicians applied an incorrect user fee for 26 (52 percent) of our 50 sampled beneficiary claims. Generally, this occurred because technicians' authorization of claimant representative fee payments involved manual, complex, and error-prone postings to the electronic records. We estimated SSA incorrectly applied user fees for 20,292 beneficiary claims, which resulted in SSA over-assessing \$338,916 and under-assessing \$603,133 to claimant representatives. However, because of its policy, SSA will only attempt to reimburse the over-assessed fees.

The method SSA used to process claimant representative fees did not fully recover its administrative costs. For FYs 2011 through 2016, SSA recovered, on average, 22 percent of its processing costs. According to SSA, processing claimant representative fee payments did not contribute to its mission-critical responsibilities.

### Recommendations

We recommend that SSA:

1. Take action, if appropriate, on the nine records with over-assessed user fees.
2. Determine whether action is necessary for the remaining records with incorrect user fees in our population.
3. Evaluate the feasibility of automating the claimant representative fee process to eliminate manual transactions, where cost effective to do so.
4. Work with Congress to develop a method that recovers its cost of administering the claimant representative fees process or relieve the Agency of its responsibility for approving, withholding, and paying claimant representative fees.

SSA agreed with our recommendations.

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## ABBREVIATIONS

|             |   |
|-------------|---|
| FY          | Fiscal Year                                 |
| GAO         | Government Accountability Office            |
| OASDI       | Old-Age, Survivors and Disability Insurance |
| OIG         | Office of the Inspector General             |
| POMS        | Program Operations Manual System            |
| Pub. L. No. | Public Law Number                           |
| SPS         | Single Payment System                       |
| SSA         | Social Security Administration              |
| SSI         | Supplemental Security Income                |
| Stat.       | Statutes at Large                           |
| U.S.C.      | United States Code                          |

## OBJECTIVES

Our objectives were to determine whether the Social Security Administration (SSA) (1) assessed correct user fees in accordance with law and (2) recovered its administrative costs when processing these fees.

## BACKGROUND

SSA administers the Old-Age, Survivors and Disability Insurance (OASDI)<sup>1</sup> and Supplemental Security Income (SSI)<sup>2</sup> programs under Titles II and XVI of the *Social Security Act*. Individuals filing a disability claim under these programs may appoint a qualified individual to act on their behalf before SSA. When a claimant's appointed representative is eligible for direct payment and requests that SSA pay his/her authorized fee directly from a beneficiary's past-due benefits, SSA is responsible for authorizing and processing the direct payment to the appointed representative.<sup>3</sup>

A single beneficiary claim may involve several representatives, either sharing in an agreement or submitting individual petitions. SSA technicians apportion the user fee among the representatives when it issues multiple fee payments.<sup>4</sup> To recover its administrative costs in processing these direct fee payments, SSA charges the claimant representative an assessment fee (user fee) in accordance with law.<sup>5</sup> Effective December 1, 2017, SSA may assess a flat-rate fee of \$93 or 6.3 percent of the fee payment, whichever is lower (assessment cap).<sup>6</sup>

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<sup>1</sup> OASDI provides monthly benefits to retired and disabled workers, including their dependents and survivors. *Social Security Act*, 42 U.S.C. § 401 (govinfo.gov 2012).

<sup>2</sup> SSI provides payments to financially needy individuals who are aged, blind, and/or disabled. *Social Security Act*, 42 U.S.C. § 1381 (govinfo.gov 2012).

<sup>3</sup> SSA, *POMS*, GN 03910.001 (January 12, 2006).

<sup>4</sup> SSA, *POMS*, GN 03920.019, A (November 9, 2017).

<sup>5</sup> The *Ticket to Work and Work Incentives Improvement Act of 1999* and *Social Security Protection Act of 2004* require that SSA charge an assessment fee (user fee) to cover administrative costs it incurs for making direct-fee payments to beneficiaries' appointed representatives. In the 2004 law, Congress capped the assessment at a flat amount or 6.3 percent of the fee payment, whichever is lower. It also allows the flat-rate cap to be adjusted based on the annual cost-of-living adjustments, rounded down to the next lower \$1. *Ticket to Work and Work Incentives Improvement Act of 1999*, Pub. L. No. 106-170, § 406, 113 Stat. 1860, p. 1911. *Social Security Protection Act of 2004*, Pub. L. No. 108-203, §§ 301, 302, 118 Stat. 493, p. 519.

<sup>6</sup> SSA, *POMS*, GN 03920.019, A (November 9, 2017). As of December 1, 2017, the flat-rate assessment amount was \$93. For our audit period, the flat-rate assessment amount was \$91 between December 1, 2014 and November 30, 2017, and \$89 between December 1, 2013 and November 30, 2014.

In Fiscal Years (FY) 2015 and 2016, SSA issued approximately 1.1 million claimant representatives direct fee payments, totaling \$2.6 billion, for 761,039 beneficiary claims. SSA charged a user fee to administer the process and recovered \$60 million (23 percent) of its \$264 million in administrative costs.

We obtained all fee payments from SSA's Single Payment System (SPS)<sup>7</sup> for FYs 2015 and 2016. For these payments, we re-calculated the fees and identified 39,024 beneficiary claims where SSA may have collected an incorrect user fee. From this population, we selected a random sample of 50 beneficiary claims for review. We also reviewed SSA's process for administering claimant representative fees. While we reviewed SSA's cost-allocation process, we did not verify the accuracy or completeness of SSA's reported administrative costs. In addition, we did not determine whether SSA's lack of automation contributed to a higher administrative cost. See Appendix A for our scope and methodology and Appendix B for our sampling methodology.

## RESULTS OF REVIEW

SSA technicians applied an incorrect user fee in 26 (52 percent) of our 50 sampled beneficiary claims. Generally, this occurred because technicians' authorization of claimant representative fee payments involved manual, complex, and error-prone postings to the electronic records. We estimated SSA incorrectly applied user fees for 20,292 beneficiary claims, which resulted in SSA over-assessing \$338,916 and under-assessing \$603,133 to claimant representatives. However, because of its policy, SSA will only attempt to reimburse the over-assessed fees.<sup>8</sup>

The method SSA used to process claimant representative fees did not fully recover its administrative costs. For FYs 2011 through 2016, SSA recovered, on average, 22 percent of its processing costs. According to SSA, processing claimant representative fee payments did not contribute to its mission-critical responsibilities.

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<sup>7</sup> SPS is an automated system for claimant representative fee payments.

<sup>8</sup> SSA, *POMS*, GN 03920.051, B, C (July 25, 2018).

## SSA’s Assessment of User Fees

SSA technicians incorrectly assessed the user fee for 26 (52 percent) of the 50 sampled claims. As shown in Table 1, SSA technicians over-assessed the user fee for 9 and under-assessed the user fee for 17 claims, resulting in \$1,207 in incorrectly assessed user fees. As such, we estimated SSA incorrectly assessed about \$1 million in user fees. Specifically, SSA over-assessed \$338,916<sup>9</sup> and under-assessed \$603,133<sup>10</sup> to claimant representatives in our population of 39,024 beneficiary claims.

**Table 1: User Fee Payment Errors**

| Claimant Representative User Fee | Number of Sample Errors | Dollar Amount of Sample Errors | Estimated Number of Errors in Population | Estimated Dollar Amount for Errors in Population |
|----------------------------------|-------------------------|--------------------------------|--|--|
| Over-assessed                    | 9                       | \$434                          | 7,024                                    | \$338,916  |
| Under-assessed                   | 17                      | 773                            | 13,268                                   | 603,133  |
| <b>Total</b>                     | <b>26</b>               | <b>\$1,207</b>                 | <b>20,292</b>                            | <b>\$942,049</b>                                 |

**Note:** See Table B–5 and Table B–6.

The following examples illustrate user fees SSA technicians assessed incorrectly.

- For one OASDI beneficiary, SSA made three fee payments, totaling \$5,905, to two claimant representatives. For each fee payment, SSA assessed a \$44 user fee, totaling \$133.<sup>11</sup> At that time, the maximum user fee SSA could assess was \$89 per claim.<sup>12</sup> This resulted in SSA over-assessing one claimant representative \$44.<sup>13</sup>

<sup>9</sup> See Table B–5.

<sup>10</sup> See Table B–6.

<sup>11</sup> The actual fee was \$44.50 per payment, which equaled \$133.50. However, for ease of reading we rounded to \$133.

<sup>12</sup> At that time, SSA could assess the lesser of the flat-rate (\$89) or 6.3 percent of the beneficiary’s total fee payment of \$5,905, which equals \$372. Thus, the allowable rate was \$89. SSA, *POMS*, GN 03920.019, A (November 9, 2017).

<sup>13</sup> As mentioned in Footnote 11, the actual fee payment would be \$44.50. However, for ease of reading we rounded to \$44.

- For one OASDI beneficiary, SSA made five fee payments, totaling \$5,910, to a claimant representative. SSA assessed an \$83 user fee for the first payment, \$33 for the next three payments, and \$0 for the fifth payment, with a total user fee assessment of \$182. At that time, the maximum user fee SSA could assess was \$83 per claim.<sup>14</sup> This resulted in SSA over-assessing the claimant representative by \$99.
- For one SSI recipient, SSA made two fee payments, totaling \$4,329, to a claimant representative. SSA assessed a \$71 user fee.<sup>15</sup> At that time, the flat rate was \$91. As a result, SSA under-assessed the claimant representative \$20. Because of its policy, SSA will not pursue collection of the under-assessed \$20 fee.<sup>16</sup>

SSA may only assess the lesser of the flat rate or 6.3 percent of the fee payment.<sup>17</sup> SSA technicians' authorization of fee payments<sup>18</sup> involves manual, complex postings to the electronic records, issuance of notices, and opportunities for protest by representatives and claimants. A single claim may involve several different representatives, either sharing an agreement or submitting individual petitions. As the examples illustrate, and our prior reviews have shown, these manual actions are error-prone.<sup>19</sup> Accordingly, SSA should evaluate the feasibility of automating the claimant representative fee process to eliminate manual transactions, where it is cost-effective to do so. Additionally, SSA should take corrective action for the nine over-assessed user fees identified in this review and determine whether corrective action is necessary for the remaining user fees in the population.<sup>20</sup>

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<sup>14</sup> At that time, SSA could assess the lesser of the flat-rate (\$83) or 6.3 percent of the beneficiary's total fee payment of \$5,910, which equals \$372. Thus, the allowable rate was \$83. SSA, *POMS*, GN 03920.019, A (November 9, 2017).

<sup>15</sup> At that time, SSA could assess the lesser of the flat-rate (\$91) or 6.3 percent of the recipient's total fee payment of \$4,329, which equals \$272. Thus, the allowable rate was \$91. SSA, *POMS*, GN 03920.019, A (November 9, 2017).

<sup>16</sup> SSA, *POMS*, GN 03920.051, B (July 25, 2018).

<sup>17</sup> SSA, *POMS*, GN 03920.019, A (November 9, 2017).

<sup>18</sup> A beneficiary may have multiple representatives that may result in multiple fee payments.

<sup>19</sup> SSA, *OIG, Claimant Representative Fees Paid Through the Social Security Administration's One-Time Payment System*, A-04-10-11026, pp. 3-4 (November 2010). SSA, *OIG, Claimant Representative Fees Paid but Not Withheld from Title II Past-due Benefits*, A-04-11-11102, p. 3 (October 2012). SSA, *OIG, Accuracy of Claimant Representative Fees Paid on Title XVI Claims*, A-04-13-13030, p. 6 (June 2015). SSA, *OIG, Approval of Claimant Representatives and Fees Paid to Attorneys*, A-12-00-10027, p. 14 (August 2001). SSA, *OIG, Controls over Multiple Payments to Attorneys*, A-12-06-20016, pp. 5-6 (September 2006).

<sup>20</sup> Per policy, SSA will reimburse the over-assessed fees but will not generally recover the under-assessed fees. See SSA, *POMS*, GN 03920.051, B, C (July 25, 2018).

## SSA’s Administrative Costs to Process Claimant Representative Fees

By collecting user fees, SSA has recovered, on average, \$35 million or about 22 percent of its administrative costs to process fee payments in FYs 2011 through 2016. Table 2 provides detail on SSA’s annual cost to process fee payments and recovery of its administrative costs for FYs 2011 through 2016.

**Table 2: SSA’s Administrative Cost Recovery to Process Fee Payments**

| FY             | Number of Fee Payments | Administrative Costs | User Fees Collected (Administrative Cost Recovered) | Percent of Administrative Costs Recovered |
|----------------|------------------------|----------------------|---|---|
| 2011           | 638,116                | \$210,692,423        | \$36,772,893  | 17.5                                      |
| 2012           | 652,819                | 206,114,789          | 36,196,133  | 17.6                                      |
| 2013           | 639,135                | 143,219,497          | 43,158,987  | 30.1                                      |
| 2014           | 576,258                | 138,310,652          | 31,277,917  | 22.6                                      |
| 2015           | 539,038                | 142,209,650          | 30,426,067  | 21.4                                      |
| 2016           | 519,459                | 121,701,133          | 29,651,075  | 24.4                                      |
| Totals         | 3,564,825              | 962,248,144          | 207,483,072   | 21.6                                      |
| <b>Average</b> | <b>594,138</b>         | <b>\$160,374,691</b> | <b>\$34,580,512</b>                                 |   |

**Note:** Some beneficiaries may have had more than one representative, which resulted in multiple fee payments. OIG and SSA numbers vary because SSA provided the number of fee payments while we reviewed the information by beneficiary claim.

SSA has told us that applying a fixed percentage would simplify the process and eliminate several error-prone manual processes. SSA also believed it would recover more of its related administrative costs with this method because low-dollar-fee payments would incur lower fees while large-dollar-fee payments would incur higher fees. As such, since 2012, SSA has considered several fixed-rate alternatives to the claimant representative user fee provision.<sup>21</sup> For example, in a FY 2016 internal document, SSA considered eliminating the assessment cap and assessing a 3-percent user fee for each fee payment. As an alternative, in FY 2016, SSA considered eliminating the assessment cap and assessing 6.3 percent for each fee payment.<sup>22</sup>

<sup>21</sup> See Appendix C for the history of, and OIG reports on, claimant representative fees.

<sup>22</sup> According to SSA, these internal proposals were not included in its FY 2016 Congressional Budget Request.

As shown in Table 3, we compared the method to SSA’s FY 2016 draft internal documents and determined that SSA’s alternative proposal of 6.3 percent would have allowed it to recover \$82 million (68 percent) in administrative costs, a 44-percent increase from the current method. Additionally, its proposed 3-percent method would have allowed SSA to recover \$39 million (32 percent) in administrative costs, an 8-percent increase from the method used at the time of our review.

**Table 3: Comparison of Different User Fee Rates**

| FY 2016                          | Current Method | Proposed 3 Percent | Proposed 6.3 Percent |
|----------------------------------|----------------|--------------------|----------------------|
| Return on Administrative Cost    | \$29,651,075   | \$39,283,698       | \$82,495,767         |
| SSA’s Actual Administrative Cost | 121,701,133    | 121,701,133        | 121,701,133          |
| Difference                       | (\$92,050,058) | (\$82,417,435)     | (\$39,205,366)       |
| Percent of Recovery              | 24%            | 32%                | 68%                  |

**Notes:**

1. Current method: Actual Costs for FY 2016 (lesser of 6.3 percent of fee payments or flat rate of \$91).
2. SSA internally proposed 3 Percent: Total FY 2016 fee payments of \$1,309,456,611 times 3 percent.<sup>23</sup>
3. SSA internally proposed 6.3 Percent: Total FY 2016 fee payments of \$1,309,456,611 times 6.3 percent.<sup>24</sup>

In its FY 2019 President’s Budget request, SSA proposed that Congress relieve the Agency of its responsibility for approving, withholding, and paying claimant representative fees.<sup>25</sup> According to SSA, this proposal would streamline and decrease SSA’s operations and hearings workloads, which would allow employees to focus on processing cases and completing higher priority workloads. SSA would continue prescribing who may/may not represent claimants.

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<sup>23</sup> See Footnote 20.

<sup>24</sup> See Footnote 20.

<sup>25</sup> SSA, *FY 2019 Congressional Justification*, p. 28 (February 12, 2018).

In 2001, Congress and the Government Accountability Office (GAO)<sup>26</sup> agreed that SSA's lack of automation contributed to the high costs of fee processing. While we did not test the true costs of fee processing for this review, the claimant representative fee payment process involves complex and error-prone postings by technicians. As recommended earlier, SSA should evaluate the feasibility of automating the claimant representative fee process to eliminate manual transactions, where cost-effective to do so. Also, we recommend SSA work with Congress to develop a method that recovers the true cost of administering the claimant representative fee process or relieve SSA of its responsibility for approving, withholding, and paying claimant representative fees. If Congress and SSA do not determine a reasonable rate to reimburse SSA for its costs to administer fee payments and all things remain the same, we estimate claimant fees will cost the General and Trust Funds<sup>27</sup> over \$460 million in the next 5 years, \$920.5 million in the next 10 years, and \$1.8 billion in the next 20 years.<sup>28</sup>

## CONCLUSIONS

SSA did not always assess the correct user fee from claimant representative payments. Computing claimant representative payments does not contribute to SSA's mission-critical responsibilities. We acknowledge that computing past-due benefits and the related claimant representative fees can be complex, as staff is required to analyze a multitude of factors and make various decisions of determining and withholding the past-due benefits and directly paying the authorized fee. However, the accuracy of past-due benefits and claimant representative fees depends on actions staff takes to process these types of claims. In FYs 2011 through 2016, SSA recovered an average of 22 percent of its administrative costs to process the fee payments. If all things remain the same, SSA processing these fee payments could result in costs to the General and Trust Funds of \$1.8 billion over the next 20 years.

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<sup>26</sup> GAO, *Social Security Administration Information Systems Could Improve Processing Attorney Fee Payments in Disability Program*, GAO-01-796, pp. 2-4 (June 2001).

<sup>27</sup> Administrative costs for the OASDI claims are funded by the combined OASDI Trust Funds, and administrative costs for the SSI claims are funded by the General Fund.

<sup>28</sup> Our estimate is based on all costs, fee payments, and user fees remaining the same as shown in Table 2. (\$121,701,133 - \$29,651,075 = \$92,050,058 × 5 years = \$460,250,290; \$92,050,058 × 10 years = \$920,500,580; and \$92,050,058 × 20 years = \$1,841,001,160.)

## RECOMMENDATIONS

We recommend that SSA:

1. Take action, if appropriate, on the nine records with over-assessed user fees.
2. Determine whether action is necessary for the remaining records with incorrect user fees in our population.
3. Evaluate the feasibility to automate the claimant representative fee process to eliminate manual transactions, where cost effective to do so.
4. Work with Congress to develop a method that recovers its cost of administering the claimant representative fees process or relieve the Agency of its responsibility for approving, withholding, and paying claimant representative fees.

## AGENCY COMMENTS

SSA agreed with our recommendations. See Appendix D for the Agency's full comments.



Rona Lawson  
Assistant Inspector General for Audit

# *APPENDICES*

## Appendix A – SCOPE AND METHODOLOGY

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To accomplish our objectives, we:

- Reviewed applicable sections of the *Social Security Act* and SSA’s Program Operations Manual System.
- Reviewed previous SSA proposals for changes to the claimant representative program.
- Reviewed prior Office of Inspector General (OIG)<sup>1</sup> and Government Accountability Office (GAO)<sup>2</sup> program reviews.
- Determined whether SSA processed the user fees correctly, as required by law (lesser of the flat or percentage rate).<sup>3</sup> We did not determine the appropriateness or verify the accuracy of the calculations of the past-due benefits.
  - Obtained from the Single Payment System 1,062,146 fee payments, totaling \$2.6 billion, for 761,039 beneficiary claims for Fiscal Years (FY) 2015 and 2016.
  - Re-calculated the fees and identified 39,024 (5 percent) beneficiaries’ claims where SSA may have collected an incorrect user fee. These are claims where SSA charged no user fee or collected less or more than the law allowed (flat-rate dollar amount or 6.3 percent of the fee payment, whichever is lower).<sup>4</sup>
  - Selected a random sample of 50 claims for review. For each sampled claim, we reviewed the Master Beneficiary and Supplemental Security Records and the Manual Adjustment, Credit, and Award Data Entry as well as the Single Payment; Payment History Update; Modernized Claims; Modernized Supplemental Security Income Claims; Treasury Check Information; and Claims File Records Management Systems.
  - We found that SSA incorrectly applied the user fee for 26 (52 percent) of the claims.

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<sup>1</sup> SSA, OIG, *Claimant Representative Fees Paid Through the Social Security Administration’s One-time Payment System*, A-04-10-11026, pp. 3-4 (November 2010). SSA, OIG, *Claimant Representative Fees Paid but Not Withheld from Title II Past-due Benefits*, A-04-11-11102, p. 3 (October 2012). SSA, OIG, *Accuracy of Claimant Representative Fees Paid on Title XVI Claims*, A-04-13-13030, p. 6 (June 2015). SSA, OIG, *Approval of Claimant Representatives and Fees Paid to Attorneys*, A-12-00-10027, p. 14 (August 2001). SSA, OIG, *Controls over Multiple Payments to Attorneys*, A-12-06-20016, pp. 5-6 (September 2006).

<sup>2</sup> GAO, *Social Security Administration Information Systems Could Improve Processing Attorney Fee Payments in Disability Program*, GAO-01-796, pp. 2-4 (June 2001).

<sup>3</sup> The *Ticket to Work and Work Incentives Improvement Act of 1999* and *Social Security Protection Act of 2004* require that SSA charge an assessment fee (user fee) to cover administrative costs incurred for making direct fee payments to beneficiaries’ appointed representatives. *Ticket to Work and Work Incentives Improvement Act of 1999*, Pub. L. No. 106-170, § 406, 113 Stat. 1860, p. 1911. *Social Security Protection Act of 2004*, Pub. L. No. 108-203, §§ 301, 302, 118 Stat. 493, p. 519.

<sup>4</sup> For our audit period, the flat-rate assessment amount was \$91 between December 1, 2014 and November 30, 2017, and \$89 between December 1, 2013 and November 30, 2014. SSA, *POMS*, GN 03920.019, A (November 9, 2017).

- Reviewed SSA’s cost accounting records to ensure they supported the costs in its cost-allocation spreadsheets. In addition, we did not test whether SSA’s lack of automation contributed to a higher administrative cost.
- Determined the SSA components that incurred the most costs in FY 2016. The five cost components were: Regional Commissioners/Field Offices, Program Center Operations, Information Technology Systems, Disability State Agencies, and Office of Disability Adjudication and Review.
  - For these cost components, we reviewed the detailed transactions for selected accounting codes.
- Interviewed SSA employees to obtain an understanding of the claimant representative fee process.
- Compared current user-fee method to other user-fee methods to determine the amount of FY 2016 administrative costs each method would allow SSA to recover.
  - Current method (lesser of 6.3 percent or \$91)
  - SSA FY 2016 internal document with draft proposals listing a
    - 3 percent assessment per fee payment
    - 6.3 percent assessment per fee payment

We conducted our review between November 2017 and May 2018 in Atlanta, Georgia, and Richmond, California. We determined whether the computer-processed data from the Single Payment System were sufficiently reliable for our intended purpose. We did not determine the reliability of the accounting data provided by SSA. The principal entities audited were the Offices of Financial Policy and Operations and Operations. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix B – SAMPLING METHODOLOGY

We obtained from the Social Security Administration’s (SSA) Single Payment System (SPS) 1,062,146 claimant representatives’ direct-fee payments, totaling \$2.6 billion, for 761,039 beneficiary claims for Fiscal Years (FY) 2015 and 2016, as shown in Table B–1.

**Table B–1: FY 2015 and 2016 Overview of Claimant Representatives’ Direct Fee Payments Processed by SSA**

| Claim Type   | Number of Claims with Direct Fee Payments | Total Fee Amount Paid Directly to Claimant Representatives | Total Amount of User Fees Charged | Total Processing Costs to Administer Direct Fee Payment Process | Percent of Agency Administrative Costs Recovered |
|--------------|---|--|-----------------------------------|---|--|
| OASDI        | 474,016                                   | \$1,971,850,269  | \$39,381,200                      | <b>\$263,910,783</b>  | <b>23</b>  |
| SSI          | 198,503                                   | 427,256,918  | 13,565,585                        |   |  |
| Concurrent   | 88,520                                    | 238,586,121  | 6,745,515                         |   |  |
| <b>Total</b> | <b>761,039</b>                            | <b>\$2,637,693,308</b>                                     | <b>\$59,692,300</b>               |   |  |

**Note:** Some beneficiaries had more than one representative, which resulted in multiple fee payments. Our and SSA numbers vary because SSA provided the number of fee payments while we reviewed the information by beneficiary claim.

**Note:** Data for FY 2015 in Table B–2 and FY 2016 in Table B–3.

**Table B–2: FY 2015 Overview of Claimant Representatives’ Direct-fee Payments Processed by SSA**

| Claim Type   | Number of Claims with Direct Fee Payments | Total Fees Amount Paid Directly to Claimant Representatives | Total Amount of User Fees Charged | Total Processing Costs to Administer Direct Fees Payment Process | Percent of Agency Administrative Costs Recovered |
|--------------|---|---|-----------------------------------|--|--|
| OASDI        | 238,725                                   | \$981,503,471   | \$19,705,904                      | <b>\$142,209,650</b>   | <b>21</b>  |
| SSI          | 101,809                                   | 212,508,504   | 6,921,932                         |  |  |
| Concurrent   | 50,298                                    | 134,224,722   | 3,848,370                         |  |  |
| <b>Total</b> | <b>390,832</b>                            | <b>\$1,328,236,697</b>                                      | <b>\$30,476,206</b>               |  |  |

**Note:** Some beneficiaries had more than one representative, which resulted in multiple fee payments. Our and SSA numbers vary because SSA provided the number of fee payments while we reviewed the information by beneficiary claim.

**Table B–3: FY 2016 Overview of Claimant Representatives’ Direct-fee Payments Processed by SSA**

| Claim Type   | Number of Claims with Direct Fee Payments | Total Fees Amount Paid Directly to Claimant Representatives | Total Amount of User Fees Charged | Total Processing Costs to Administer Direct Fee Payment Process | Percent of Agency Administrative Costs Recovered |
|--------------|---|---|-----------------------------------|---|--|
| OASDI        | 235,291                                   | \$990,346,798   | \$19,675,296                      | <b>\$121,701,133</b>  | <b>24</b>  |
| SSI          | 96,694                                    | 214,748,414   | 6,643,653                         |   |  |
| Concurrent   | 38,222                                    | 104,361,399   | 2,897,145                         |   |  |
| <b>Total</b> | <b>370,207</b>                            | <b>\$1,309,456,611</b>                                      | <b>\$29,216,094</b>               |   |  |

**Note:** Some beneficiaries had more than one representative, which resulted in multiple fee payments. Our and SSA numbers vary because SSA provided the number of fee payments while we reviewed the information by beneficiary claim.

Of the 761,039 claims in FYs 2015 and 2016 (see Table B–1), we identified 39,024 (5 percent) with fee payments where SSA may have applied the incorrect assessment. For these fee payment amounts, SSA charged no user fee or collected less or more than what the law<sup>1</sup> allowed (the flat rate or 6.3 percent of the fee payment, whichever is lower).<sup>2</sup> From the population of 39,024 claims, we selected a random sample of 50 for review, as shown in Table B–4.

**Table B–4: Population and Sample Size**

|   |        |
|---|--------|
| Sample Size   | 50     |
| Population: Possible Incorrectly Assessed User Fees | 39,024 |

<sup>1</sup> The *Ticket to Work and Work Incentives Improvement Act of 1999* and *Social Security Protection Act of 2004* require that SSA charge an assessment fee (user fee) to cover administrative costs incurred for making direct fee payments to beneficiaries’ appointed representatives. *Ticket to Work and Work Incentives Improvement Act of 1999*, Pub. L. No. 106-170, § 406, 113 Stat. 1860, p. 1911. *Social Security Protection Act of 2004*, Pub. L. No. 108-203, §§ 301, 302, 118 Stat. 493, p. 519.

<sup>2</sup> For our audit period, the flat-rate assessment amount was \$91 between December 1, 2014 and November 30, 2017, and \$89 between December 1, 2013 and November 30, 2014. SSA, *POMS*, GN 03920.019, A (November 9, 2017).

## User Fees Incorrectly Assessed

Of the 50 claims in our sample, we found that SSA technicians over-assessed the user fee for 9 and under-assessed the user fee for 17, resulting in \$1,207 in incorrectly assessed user fees. As such, we estimated SSA incorrectly assessed about \$1 million in user fees. Specifically, we estimate SSA over-assessed \$338,916 and under-assessed \$603,133 to claimant representatives for 20,292<sup>3</sup> claims in our population, see Table B–5 and Table B–6.

**Table B–5: User Fees Over-assessed**

| Description              | Number of Claims with Fee Payment Errors (Over-assessed) | Error Amount |
|--------------------------|--|--------------|
| Sample Results           | 9  | \$434        |
| Point Estimate           | 7,024  | \$338,916    |
| Projection - Upper Limit | 11,434   | \$550,929    |
| Projection - Lower Limit | 3,797  | \$126,902    |

**Note:** All projections are at the 90-percent confidence level.

**Table B–6: User Fees Under-assessed**

| Description              | Number of Claims with Fee Payment Errors (Under-assessed) | Error Amount |
|--------------------------|---|--------------|
| Sample Results           | 17  | \$773        |
| Point Estimate           | 13,268  | \$603,133    |
| Projection - Upper Limit | 18,154  | \$833,072    |
| Projection - Lower Limit | 8,961   | \$373,193    |

**Note:** All projections are at the 90-percent confidence level.

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<sup>3</sup> The 20,292 total is the point estimate of 7,024 in Table B–5 plus 13,268 in Table B–6.

## Appendix C – HISTORY OF, AND OUR REPORTS ON, CLAIMANT REPRESENTATIVE FEES

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In 1939, Congress first addressed what it called the “slim” likelihood of attorney intervention by establishing the Social Security Administration’s (SSA) authority to set maximum fees.<sup>1</sup> The Agency’s fee policy began to reflect representatives’ interests, with amendments in 1967,<sup>2</sup> that removed fee limits in favor of a “reasonable” fee and authorized direct payment to attorneys. To streamline the process, in 1990, Congress enacted legislation<sup>3</sup> that allows representatives to request their fees through a fee agreement. Fee agreements were simpler for representatives than petitions, and they allowed SSA to approve fees without considering the services a representative provided.

To help SSA recoup its administrative costs, in 2000, Congress passed legislation<sup>4</sup> that imposes a 6.3-percent assessment on direct fee payments. Interested groups were critical of the law and testified against it before Congress. In addition, in 2001, the Government Accountability Office (GAO) reported that SSA had likely overstated its cost estimates for administering direct fee payments at 10.5 percent of the total fees paid.<sup>5</sup> Congress reacted by diluting the effect of the assessment in 2004 and capped it at the lesser of \$75, subject to cost-of-living increases, or 6.3 percent of the direct-fee payments per case.<sup>6</sup>

In 2005, Congress began using demonstration projects to extend direct-fee payment to non-attorney representatives who met certain requirements and provide for direct fee payment from Supplemental Security Income past-due benefits. These temporary provisions became law in 2010.<sup>7</sup>

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<sup>1</sup> SSA, *Challenges of the Appointed Representative Workload 2014*, p. 2 (January 2014). *Social Security Act Amendments of 1939*, Pub. L. No. 76-379, § 206, 53 Stat. 1360, p. 1372 (August 10, 1939).

<sup>2</sup> *Social Security Act Amendments of 1967*, Pub. L. No. 90-248, § 173, 81 Stat. 821, p. 877 (January 2, 1968).

<sup>3</sup> *Omnibus Budget Reconciliation Act of 1990*, Pub. L. No. 101-508, § 5106, 104 Stat. 1388, pp. 266-67 (November 5, 1990).

<sup>4</sup> *Ticket to Work and Work Incentives Improvement Act of 1999*, Pub. L. No. 106-170, § 406, 113 Stat. 1860, p. 1911.

<sup>5</sup> GAO, *Social Security Administration Information Systems Could Improve Processing Attorney Fee Payments in Disability Program*, GAO-01-796, pp. 2-4 (June 2001).

<sup>6</sup> *Social Security Protection Act of 2004*, Pub. L. No. 108-203, §§ 301, 302, 118 Stat. 493, p. 519.

<sup>7</sup> *Social Security Disability Applicants’ Access to Professional Representation Act of 2010*, Pub. L. No. 111-142, § 2, 124 Stat. 38, p. 38 (February 27, 2010).

In 2012, the Commissioner of Social Security proposed that, for Fiscal Years (FY) 2014 through 2018, SSA would impose an additional charge of \$15 for each fee assessed under the current user assessment statute. The extra fees would have gone to a special fund to improve the processes and information technology relating to the timeliness and accuracy of payments to claimants and their representatives.<sup>8</sup>

In 2016, SSA internally considered a proposal to remove the limitation on the maximum assessment amount, reduce the assessment percentage to 3 percent, and apply the assessment to each payment. In 2016, as an alternative, SSA also considered eliminating the assessment cap, and instead, assessing 6.3 percent for each fee payment. In 2017, SSA internally considered an alternate proposal to amend the *Social Security Act* to raise the dollar cap and apply the assessment to each fee payment rather than to each represented case. However, according to SSA, these alternative proposals were not included in its Congressional Budget Requests.

In its FY 2019 President's Budget request, SSA proposed that Congress relieve the Agency of its responsibility for approving, withholding, and paying claimant representative fees.<sup>9</sup> According to SSA, the latest proposal would streamline and decrease SSA's operations and hearings workloads, allowing employees to focus on processing cases and completing higher priority workloads. SSA would continue prescribing who may and may not represent claimants.

Following are reviews we have conducted on claimant representative fee payments.

- In September 2006, we determined improper payments occurred because of manual overrides. We also determined that SSA systems recorded excessive user fees. SSA staff had erroneously recorded the user fee more than once about 95 percent of the time and overstated the user fee amount.<sup>10</sup>
- In November 2010, we reported on SSA's payment of claimant representative fees through the One-Time Payment System. We determined that SSA did not always make accurate fee payments to claimant representatives for whom SSA authorized fees greater than \$7,000.<sup>11</sup> SSA agreed with our recommendations.

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<sup>8</sup> SSA, *Challenges of the Appointed Representative Workload 2014*, pp. 2-5 (January 2014).

<sup>9</sup> SSA, *FY 2019 Congressional Justification*, p. 28 (February 12, 2018).

<sup>10</sup> SSA, OIG, *Controls over Multiple Payments to Attorneys*, A-12-06-20016, pp. 5-6 (September 2006).

<sup>11</sup> SSA, OIG, *Claimant Representative Fees Paid Through the Social Security Administration's One-time Payment System*, A-04-10-11026, pp. 3-4, 8 (November 2010).

- In October 2012, we reviewed claimant representative fees paid but not assessed from Old-Age, Survivors and Disability Insurance past-due benefits. We determined SSA did not always withhold representative fees from beneficiaries' past-due benefits. As such, SSA paid beneficiaries the authorized fee amount due to the representative.<sup>12</sup>
- In December 2012, we reviewed controls surrounding claimant representative payments at the hearing level. We determined controls in place generally resulted in the proper authorization and payment of fees to the claimant representatives.<sup>13</sup>
- In September 2014, our review determined that SSA incorrectly assessed the user fee in 6 of 50 cases it processed.<sup>14</sup>
- In June 2015, we determined that SSA incorrectly applied the user fee when processing some claimant representative fees.<sup>15</sup>

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<sup>12</sup> SSA, OIG, *Claimant Representative Fees Paid but Not Withheld from Title II Past-Due Benefits*, A-04-11-11102, p. 3 (October 2012).

<sup>13</sup> SSA, OIG, *Controls over Payments Made to Claimant Representatives at the Hearings Level*, A-05-12-11239, p. 9 (December 2012).

<sup>14</sup> SSA, OIG, *Controls over Claimant Representative Fee Petition Payments*, A-05-13-13061, p. 6 (September 2014).

<sup>15</sup> SSA, OIG, *Accuracy of Claimant Representative Fees Paid on Title XVI Claims*, A-04-13-13030, p. 6 (June 2015).

## Appendix D – AGENCY COMMENTS

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## SOCIAL SECURITY

### MEMORANDUM

Date: September 14, 2018

Refer To: SIJ-3

To: Gale S. Stone  
Acting Inspector General

*Stephanie Hall*

From: Stephanie Hall  
Acting Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "The Cost of Administering Claimant Representative Fees" (A-04-17-50238) -- INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.

**SSA COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL (OIG) DRAFT REPORT, “THE COST OF ADMINISTERING CLAIMANT REPRESENTATIVE FEES” (A-04-17-50238)**

**GENERAL COMMENTS**

To reduce reliance on manual processing and to decrease technician errors, we will evaluate the feasibility of improving automation as we modernize our business processes and systems. In addition, we will continue our efforts to work with Congress to address the complexities of administering the representative fee workload and its associated costs. Below are our responses to the recommendations.

**Recommendation 1**

Take action, if appropriate, on the nine records with over-assessed user fees.

Response

We agree.

**Recommendation 2**

Determine whether action is necessary for the remaining records with incorrect user fees in our population.

Response

We agree.

**Recommendation 3**

Evaluate the feasibility of automating the claimant representative fee process to eliminate manual transactions, where cost effective to do so.

Response

We agree.

#### **Recommendation 4**

Work with Congress to develop a method that recovers its cost of administering the claimant representative fees process or relieve the Agency of its responsibility for approving, withholding, and paying claimant representative fees.

#### **Response**

We agree.

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