

September 2012

Social Security Advisory Board

**FILING FOR SOCIAL SECURITY DISABILITY
BENEFITS:
WHAT IMPACT DOES PROFESSIONAL
REPRESENTATION HAVE ON THE PROCESS AT THE
INITIAL APPLICATION LEVEL?**

Message from the Board

Third parties have been assisting claimants in matters before the Social Security Administration (SSA) since the *Social Security Amendments of 1939* first established the rules and regulations regarding representation. With the advent of the more complex Social Security disability program in 1956 and the Supplemental Security Income program in 1972, both the numbers and types of representatives providing such assistance have grown. And while representation has for many years been fairly common at the hearing level and beyond, professional third parties are increasingly assisting claimants at the initial stage of the process in applying for disability benefits. With this back drop in mind, we set out to explore the characteristics of professional third party representation and its impact on the disability claims process at the initial level. This report presents the findings and recommendations we developed based on our investigation into current representation practices.

As we began this study, we had two very basic questions that we wanted to answer: 1) does representation increase the likelihood that an individual who is eligible will be awarded disability benefits, and 2) does representation increase the likelihood that the individual will receive a decision sooner. We were able to provide preliminary answers to these questions; for instance, we found evidence that processing times are longer for represented claims, particularly when represented by attorneys. Additionally, we found that represented cases have higher allowance rates, significantly so for SSI, but barely so for Social Security Disability Insurance (SSDI) cases. The available data, however, were insufficient to allow for the kind of in-depth, statistical analysis needed to fully assess the impact of representation. As a result, we strongly urge SSA to develop the comprehensive data needed to provide a more complete picture of who these representatives are and how they affect the disability process.

During the course of our study, we interviewed and consulted with many stakeholders including a broad spectrum of professional representatives, agency employees involved in the disability adjudication process and staff at the state Disability Determination Services. We also talked with claimants and beneficiaries who had first-hand experience with filing for disability benefits. This approach gave us many sources of information and identified many problems and issues. After synthesizing the information, we developed a set of recommendations including ideas such as improving the electronic filing process, holding representatives responsible for the completeness of the filed claim, and reassessing SSA's role in administering payments to representatives. We believe that the recommendations, if implemented, could lead to improvements in the process that would benefit claimants who choose to engage the services of a professional representative. It could also reduce some of the administrative burden on SSA while increasing the accuracy of the initial adjudication of claims.

It is our sincere hope that you will find this report useful and informative.

Marsha R. Katz, Acting Chair

Jagadeesh Gokhale

Dorcas R. Hardy

Barbara B. Kennelly

Mark J. Warshawsky

Table of Contents

Introduction	6
Representation at the Initial Claims Level	7
Assessing the Impact of Representation	10
Professional Representatives – Who Are They?	12
Payment to Representatives	14
Governance of the Representation Process	16
Appointment and Registration	16
Standards of Conduct	17
Proposed Changes – A Comprehensive Effort	19
How Representatives Assist Claimants	20
The Representative/SSA Relationship	22
The Use of Technology	22
Allegations of Disservice – Differing Views	24
What Available Data Reveal	28
Conclusion	31
Summary of Findings	31
Recommendations	33
Appendix A: Persons Consulted during the Preparation of this Report	38
Appendix B: SSA’s Policy on Prohibited Actions for Representatives	41

Appendix C: Related Legislation and Regulations	43
Appendix D: Sections of the Code of Federal Regulations regarding Representation	45
Appendix E: Sections of SSA's Program Operation Manual System (POMS) regarding Representation	47
Social Security Advisory Board	48

Introduction

Applying for Social Security disability benefits can be a confusing and stressful process. It necessarily requires the submission of a significant amount of information regarding medical treatment, education and work history, and specific details about a person's limitations and capabilities, potentially making it a daunting process for most applicants. In addition, stressors such as having been born with a disabling condition or having acquired a serious health condition later in life can make it all the more complicated to navigate the application process.

While some claimants complete both the federal application and any additional state medical forms without assistance, others seek help from third party representatives. Although a Social Security claims representative also provides this type of assistance, workload pressures may limit the amount of assistance a claims representative is able to offer. A third party representative could be either a professional, such as an attorney or a social worker, or a non-professional, such as a family member or friend.

Claimants choose to be represented for a variety of reasons: they may not have the mental ability to navigate the application process, they may feel intimidated by the process, or their disabilities, health conditions, or lack of stable living situation may impede their ability to obtain records and communicate easily with employees at the Social Security Administration (SSA) or the State Disability Determination Service (DDS). Professional representatives come from a variety of backgrounds: some are professional disability specialists, some provide the assistance as part of their suite of services, and others may work for a social service or health care agency that provides services to specific groups of people. Given the diverse nature of representation and the potential it has to assist claimants to navigate the disability application process, we decided to explore the dynamic of representation in the initial disability claims process, and, to the extent possible, offer a framework to assess the effectiveness of the "system" of third party representation for the disability applications process that has developed over the years.

Although representation has been part of the disability process since its inception, there are many unanswered questions regarding the effect representation has on a claim. Individuals filing for disability benefits administered by SSA, whether Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), are not required to – nor should they be required to – have representation to conduct business with the agency. However, a claimant may engage the assistance of a third party to help him or her with the application process from the beginning of the initial claim and continuing through any appeals that may follow. While that assistance may come from family members and friends, our study will focus exclusively on those individuals or organizations in the community that routinely provide professional assistance with the claims process. In addition, this report will focus on representatives at the initial claims stage because the issues and challenges are somewhat different than at the appeals level. Thirty years ago, most third party representation occurred beginning at the hearing stage of the appeals process, and most representatives were attorneys. Today, there are attorneys as well as non-attorneys representing claimants at all adjudicative levels. The intent of this report is to neither endorse nor discourage the use of professional representation; rather, our goal is to discuss the

impact of third party assistance on the disability process. Our focus will be on how to effectively manage the additional layer in the relationship between claimants and the agency for their mutual benefit and that of the process.

Over the past few years, the Social Security Advisory Board has met with a number of groups and individuals, as well as staff members from federal SSA field offices and the state DDSs in an ongoing review of SSA's disability programs. One issue that surfaced repeatedly during our visits was the role that third party assistance plays in the claims process. While people in the various organizations had their own points of view on the nature and extent of the benefits of representation, all expressed concern about some aspect of the current process. Throughout this report, we will refer to the insights and observations gleaned from our discussions with all parties.

Footnote 1: See Appendix A for a list of the people we consulted for this report.

The views and synthesis of information expressed here, however, are those of the Board alone.

Representation at the Initial Claims Level

The Board has chosen to focus on representation at the initial claims level for several reasons. Most importantly, the majority of all disability claims are finally determined at the initial level. In fiscal year 2011, 3.4 million medical decisions were made on initial disability claims, while the hearing offices made decisions on approximately 800,000 appealed disability claims. Although appellate hearings have received much of the media and Congressional attention, approximately 70 percent of all claims are decided at the initial level.

Footnote 2: In 2008 (the year that the most recent longitudinal data is available), 965,000 of the 2,570,000 determinations (38%) were allowed at the initial level. Of the 1,594,000 claims that were denied, only 756,000, or roughly half of these claims, were appealed to the next level. The remaining 838,000 claims never made it farther than the initial level. Therefore, a total of 1,803,000, or 70% of all initial claim determinations, were decided finally at the initial adjudicative level (SSA, Office of Retirement and Disability Policy, Longitudinal Disability Research File. Prepared July 15, 2011).

The sheer number of initial disability claims has increased in recent years, due in part to the impact of baby-boomers reaching their disability-prone years, changes and incentives within the programs themselves (such as the increase in Social Security's normal retirement age), significant fluctuations in the economy and increased unemployment, and other issues still being discussed. While the effect of the baby boomer cohort may have already peaked, other factors such as the state of the economy and the ongoing implementation of previous changes to the

disability programs by Congress and SSA itself could result in continuing increases in the number of disability applications.

Footnote 3: Legislative changes in the 1980s are often cited as contributing to the expansion of the disability rolls. These changes included a medical improvement standard for termination of benefits and new criteria for: 1) the evaluation of mental impairments, 2) the assessment of multiple impairments on the individual's ability to work, and 3) the use of pain and discomfort allegations in the decision-making process.

As mentioned earlier, SSA reported that it completed nearly 3.4 million initial disability claims in 2011, up from 2.5 million five years ago.

Footnote 4: This average growth rate for disability applications is 6.3% per year which is much faster than the growth rate of the working population or the overall measured incidence of morbidity and disabling health conditions in that population (U.S. Census Bureau, 2010).

Overall, the agency spent about \$700 million more on processing and adjudicating disability applications in fiscal year 2011 (\$3.6 billion) than in fiscal year 2007 (\$2.9 billion).

Footnote 5: These administrative expenditures are not adjusted for inflation. Also, while higher workloads have driven up the total cost for disability claims, cost-saving efficiencies have enabled the agency to lower the cost per case by about 10% over this period (SSA, Office of Budget).

Concurrent with the increase in the number of applications, SSA's budget and resources are decreasing,

Footnote 6: From fiscal year 2010 to fiscal year 2012, funding appropriated by Congress for SSA's operations decreased by \$938 million; when adjusted for inflation (based on the annual change in the CPI-U), the agency's purchasing power over this period decreased by about \$1.2 billion in 2012 dollars (SSA, Office of Budget).

and these trends will most likely continue in the future. Currently, SSA (including the state DDSs) has approximately 82,000 employees, down from almost 90,000 in 2010, due to a hiring freeze that has been in effect for the last two years. With the continuing hiring limitations and attrition (including the number of employees taking early retirement),

Footnote 7: Regarding SSA's recent announcement offering early retirement, "About 9,000 employees meet the eligibility criteria, representing 14 percent of SSA's 62,000-strong workforce. According to SSA spokeswoman Kia Green, typically 3 percent to 4 percent of

eligible employees take advantage of early retirement offers.” Accessed August 8, 2012, <http://www.govexec.com/management/2012/08/social-security-offers-thousands-employees-early-retirement/57295/>

SSA’s Office of Budget expected losses of more than 3,000 SSA and DDS employees in fiscal year 2012.

Footnote 8: As of October 2012, the first month of fiscal year 2013, SSA reported that actual net employee losses in fiscal year 2012 were 2,749, including both SSA and DDS employees (SSA, Office of Human Resources and Office of Disability Determinations).

During the current budget situation, any and all avenues to increase the efficiency of claims processing, while maintaining customer service and taxpayer protection, need to be explored; in particular, we are interested in exploring the potential efficiencies and impact of professional representation.

Beyond the growing number of initial applications filed and the consequences that may have on agency resources, there are other reasons we focused on the initial claims stage. During our visits to various SSA offices and supporting agencies, we learned that the number of claimants engaging representatives at the initial level has been increasing. These comments, along with aggressive marketing, especially by attorney representatives, as well as recent negative media coverage of scandals involving attorneys specializing in disability, focused our attention on issues of representation at this level.

Third party assistance at the initial claims level has unique characteristics that make it inherently different from representation at the hearing level. Ideally, its role is to ensure that the claimant’s application is fully developed at the earliest possible point. If third party assistance with the initial claim helps to prevent the case from proceeding to a hearing, there can be benefits for both the claimant and the agency. For the claimants, an earlier decision means that, if they are approved, their disability benefits start sooner, and if they are denied, they can either return to work without further loss of income and work force skills, or more quickly enter the next step of the appeals process. For the agency, a claim correctly allowed sooner in the process translates into administrative savings in terms of budget and resources because costly appeals are not necessary.

Footnote 9: In fiscal year 2011, the unit cost for an initial disability claim was \$1,058.44 while the cost of a disability hearing was \$2,752.00 (SSA, Office of Budget).

Footnote 10: Claims incorrectly decided, however, have associated costs: initial claims incorrectly allowed increase taxpayer costs and initial claims incorrectly rejected increase administrative costs.

Further, when representatives provide conscientious service to the claimant and submit fully developed claims on a timely basis, they should be, in effect, supplementing the work of the agency in preparing claims. Policies that work in conjunction with representation could create a synergy that ensures the best public service for the claimant while supplementing the agency's constrained resources.

Despite the positive potential aspects of third party assistance at the initial level, we heard a significant amount of criticism from both SSA officials and representatives during the course of our study, which causes us concern. We heard allegations from agency employees that for-profit representatives delay the processing of applications intentionally; the longer the claim takes to process, the more back pay the claimant may receive, resulting in a potentially larger payment to the representative. We also heard that professional representatives submit claims that are no more fully documented than an unrepresented claim, requiring field office or DDS employees to develop the case even though the claimant is paying for the presumed added value of representation. In addition, we heard allegations that representatives may coach claimants to hide some and exaggerate other information, or prevent the agency from speaking directly to their clients while also failing to respond to agency requests. On the other hand, we heard from representatives that agency employees "move under-developed cases too quickly" in order to meet agency goals of timeliness, and are not fully trained and/or competent in case processing. We also heard that SSA's online application process is not always a good fit with how representatives gather information.

To the degree possible, this report presents the competing assertions, assesses the impact of representation on both the claimant and the agency, and gauges the need for adjusting current protocols and policies governing representation. Third party assistance is now an integral and growing part of the disability process at the initial claims level. Therefore, there should be effective management and processing strategies in place at the agency in order to maximize the usefulness of representation, while at the same time minimizing the problems.

Assessing the Impact of Representation

Claimants engage the services of a representative because they believe a third party will help them achieve their goal of obtaining a disability allowance at the earliest possible date. Thus, we began our project with two basic questions:

- Does representation increase the likelihood that claimants will be awarded disability benefits?
- Does representation increase the likelihood that claimants will receive a decision earlier in the adjudicative process?

As a first step in answering these questions, we requested data from SSA that would show the allowance rate and processing time for cases with representation, and we asked for information that differentiated between categories that were of interest to us. For example, we requested data that distinguished between types of representation, i.e., non-professionals (family

members/friends), non-profit organizations, attorneys, non-attorney representatives, and other for-profit organizations. Additionally, information was requested that would address specific problems or allegations about represented cases such as their impact on processing time, as well as data for all claims, regardless of whether they were represented, to use for comparison purposes.

While SSA was able to provide data regarding processing times and allowance rates, overall the granularity of the data was not what we had hoped for and some of our questions about the representation process could not be answered sufficiently.

Footnote 11: Collecting these data is very complicated because SSA keeps records for each program in separate databases, and often has multiple databases for the same Social Security program. Furthermore, the technology used to input data is outdated, which can cause problems itself. Overall, SSA record keeping is geared more toward information needed for production rather than the analysis of the various aspects of the disability programs. The end result is that important programmatic questions cannot be answered as fully as desired using the data as it exists today.

For instance, the data we received for allowance rates was less helpful because the agency was only able to provide allowance information for represented claims, with no additional breakdown by type of representative.

Footnote 12: SSA does not track cases by representation.

In order to address the allegation that representatives extend the filing period, we requested the processing time by type of representation for the time period between the point a claimant expresses an intent to file a claim and the point when the claim is sent to the DDS.

Footnote 13: SSA uses the term 'FO1 time' for this period - meaning the time the claim is at the SSA field office at the beginning of the claim process. During this period, the representative or field office employee gathers the information needed by the DDS to develop evidence of the disabling condition.

This information could not be provided.

What processing time and allowance rate data we did receive shed light on some aspects of the effect of representation, but they do not address sufficiently the alleged pathway to quicker case approval. With the data received, we can see differences in both allowance rates and processing time when all cases are compared to cases involving representation; however, the exact reason for the difference is still conjecture, i.e. purposeful delays by representatives, more comprehensive case development by representatives, representatives screening cases before electing to represent a claimant, etc. Consequently, there remains a number of questions for

which the agency does not have objective measures, but which are vital to understanding the impact representation has on the initial claims process. For instance, are represented cases better documented? Do more fully documented cases result in more allowances at the initial claims level? Are representatives selecting cases that are more likely to be allowed? Do specific types of representation result in higher or lower average processing times? Even if representation leads to shorter processing time, does faster processing time translate to less work for field office and DDS employees? While we heard allegations that represented claims are less well documented and actually increase the workloads of agency employees, there is no data to support or refute the impact representation has on SSA's resources. Both the lack of data and the limitations of the data we received point to the need for a comprehensive examination of the impact of representation on the initial claims process.

Professional Representatives – Who Are They?

Professional representatives come from three major groups: non-profit organizations, for-profit enrollment/eligibility service companies, and attorney/non-attorney representatives. While all presumably share the common goal of assisting the claimant to apply for disability benefits, they differ in the following ways: how the assistance is funded, whether their services are directed toward a specific claimant group, and whether or not the cost of the assistance is recovered from the claimant. Just as claimants vary in the amount and type of assistance they require, representatives also vary in the degree of help they provide claimants to navigate through the disability application process and any subsequent appeals. In general, representatives should be expected to help claimants 1) gather necessary information, 2) complete the necessary forms (paper or online), and 3) meet required deadlines. A representative may also become the point of contact between the claimant and the agency. Some representatives reportedly control all information exchanges with the agency – to the extent of refusing any and all direct communication with the applicant.

The non-profit organizations that provide assistance to individuals filing for disability benefits administered by SSA are social service organizations, health care entities, or legal aid agencies. Of these, social service agencies typically help individuals with no income or low-to-moderate income access a wide variety of federal, state, and local benefits and services such as in-home support services, food stamps, housing and health care. They may also assist clients who have specific limitations, such as a mental illness or homelessness. The legal aid agencies provide a broad range of services related to civil actions or government regulations, and these services can include assistance with filing for government benefits. Non-profit health care entities, such as hospitals and clinics, may themselves assist patients to apply for benefits; these entities may also contract with for-profit third party providers to assist their patients with SSI and Medicaid applications, particularly if those patients are uninsured. With regard to the disability programs administered by SSA, non-profit organizations may provide assistance to individuals at

any point of the multi-stage disability application process, from filing the initial application through appealing an adverse decision.

For-profit companies, such as GENEX, MASH, and Chamberlin-Edmonds, first appeared about 25 years ago after having identified disability claims as a marketable service niche. Unlike non-profit organizations whose clients are disability claimants, these eligibility service companies serve clients such as hospitals, clinics, insurance companies, employers, and state and local governments. The payment of disability benefits and the receipt of Medicare and Medicaid help to increase their clients' revenues by reducing their share of the cost per patient. For instance, if a homeless patient becomes eligible for SSI benefits, the hospital can be reimbursed for his care by the Medicaid coverage that typically accompanies SSI. Eligibility service companies are paid through contracts with the client company; payment may be based on a percentage of the reimbursement amount the client (e.g., a hospital) receives from Medicare/Medicaid. In these situations, the claimant does not pay for the assistance provided.

While non-profit organizations and for-profit companies are relatively new players, SSA has recognized the role of attorneys in the SSA claims process since 1939, well before the existence of either SSDI or SSI.

Footnote 14: Congressional legislation created the SSDI program in 1956 and the SSI program in 1972.

Attorneys, both individuals and firms, offer claimants assistance with filing for Social Security disability benefits as part of their business model. These individuals or firms may specialize in assisting clients with a broad range of disability and related issues, such as personal injury, worker's compensation, and other disability claims, or they may focus solely on Social Security cases, either locally or as large national firms, such as Binder and Binder, The Shaw Group, and Disability Group, Inc. A trade organization, the National Organization of Social Security Claimant Representatives (NOSSCR), was established in 1979 in response to a perceived need among attorneys for information on how to represent claimants before SSA. NOSSCR began with fewer than 100 members and has grown steadily with membership rolls topping 4,000 members in 2012, of which approximately 85 percent are attorneys. While their members have long been known for representing claimants at the hearing level, NOSSCR leadership estimates that 25 percent of its members are now beginning to handle disability claims at the initial claims level.

Footnote 15: Correspondence from NOSSCR to the Social Security Advisory Board, September 28, 2011.

Another type of representative that has been assisting claimants for many years is the non-attorney representative. This type of representative is frequently an individual who has had some experience with the Social Security disability programs, such as a former SSA or DDS employee. The National Association of Disability Representatives (NADR), founded in 2000,

estimates that 75 percent of its approximately 600 member organization is made up of non-attorneys. In an informal survey conducted in 2011, NADR found that while the vast majority of its membership was individual representatives or worked at a small firm (defined as a firm employing 10 or fewer representatives), some worked with large, national, non-attorney firms such as Allsup, Disability Benefits Alliance, and Freedom Disability. In responses to a recent survey, only about 10 percent of its members reported working with claimants all across the nation.

Payment to Representatives

In order to collect payment for their services, representatives must first have the fee approved by SSA. When the individual files to be the claimant's representative, that individual must also declare a particular fee arrangement, of the following options:

- charge the claimant a fee and **request direct payment** from SSA from any past-due benefits the claimant might have, or
- charge the claimant a fee but **waive direct payment** of the fee from any past-due benefits the claimant might have, or
- waive fees and expenses from the claimant (and auxiliaries) but collect a fee from a third payer, e.g. a hospital.

A representative can also choose the option to waive fees for service from any source.

Once approved, representatives who are requesting direct payment can use one of SSA's two direct payment methods: a fee agreement or a fee petition. A fee agreement is a written statement signed by both the claimant and the representative that specifies the fee the representative expects to collect for services rendered in the claims process. In order for SSA to approve the fee agreement, the agreement must have been filed before the first favorable decision is made on the case, the disability decision must be either fully or partially favorable, and the claim must result in the claimant being awarded past-due benefits. As of June 22, 2009, the maximum payment for a fee agreement is the lesser of 25 percent of the claimant's back payments or \$6,000. If an approved fee agreement is on file at the time of case closure, representatives' fees are paid by direct deposit to the named attorney.

Fee petitions, on the other hand, do not require the claimant's signature and are filed after the representatives' services have been rendered. In order to be paid by fee petition directly from the claimant's past due benefits, the representative must file the petition within 60 days of the decision. SSA will issue up to 25 percent of the claimant's past due benefits by direct deposit to the representative; the representative is then responsible for collecting from the claimant any fees not covered, such as fees for unfavorable decisions, cases where there was no past due benefit, or approved fees that exceed 25 percent of the past due benefits. The fee petition must be for a reasonable amount that takes into consideration both the extent of time and resources spent on the case as well as the aim of the program.

Footnote 16: Per SSA's Program Operations Manual, the agency must consider the goal of the particular disability program when authorizing a fee. For SSDI: "to provide a measure of

economic security for program beneficiaries.” For SSI: “to assure a minimum level of income for supplemental security income recipients who otherwise do not have sufficient income and resources to maintain a standard of living at the established federal minimum income level,” [GN 03930.010](#).

However, the claimant can disagree with the requested fee amount.

The processing of fees under these two provisions translates into a significant workload for SSA. We frequently heard about the complexity of the processes and the amount of resources involved in handling this workload. With decreasing staff and resources and increasing numbers of represented cases, many agency employees questioned whether the agency should be involved in any type of contract between the representative and the claimant.

We had initially hoped to compile data on the total amount of fees collected by all representatives at the initial claims level. However, SSA informed us that it does not collect these data broken down by level of adjudication, nor does it keep data on representative fees other than the ones it administers.

Footnote 17: Fees that are approved by SSA but not paid from the claimant’s past due benefits are not included in SSA’s data.

Therefore, the representative fee information we received is the total SSA-administered representative fees summed from all levels of adjudication, initial claims through federal court. As shown in Figure 1, all fees paid by SSA to claimant representatives increased by 48 percent between 2007 and 2010 with SSA paying out \$1.74 billion in fees by 2010. Fees paid out for SSDI cases through the fee agreement process represented the largest portion of the total fees paid. Reaching \$1.39 billion in 2010, they increased by 45 percent from 2007 to 2010. Although total SSI fees paid through the fee agreement process have been low relative to SSDI fees in the same category, they saw a much more dramatic increase of 75 percent from 2007 to 2010, with a total of \$280 million paid in 2010.

The following paragraph describes the data in the graph entitled, “Total Fees Paid to Claimant Representatives, by Program and Fee Type, calendar year 2007-2010.” The total fees paid to representatives rose steadily from just less than \$1.2 billion in 2007 to almost \$1.8 billion in 2010. Fees paid for SSDI agreements rose from just under \$1 billion in 2007 to almost \$1.4 billion in 2010. Fees paid for SSI agreements increased from about \$160 million in 2007 to about \$280 million in 2010. Fees paid via petition were much smaller in magnitude as compared to fee paid via agreements: for SSDI, fees rose from about \$56 million in 2007 to just over \$66 million in 2010; for SSI, fees rose from about \$2 million in 2007 to just under \$3 million in 2010.

As Figure 1 shows, most attorney fees are paid via fee agreements; the amount paid by fee petition remained relatively low and stable for both disability programs throughout the period. It is important to note that SSA only collects data on *total* fees paid each year, which

includes all levels of adjudication and claims for all types of benefits administered by SSA (although we believe the majority of represented claims are disability cases). Further, these numbers are not broken down by type of representation (e.g. non-profit, for-profit, attorney, non-attorney, individual company).

Governance of the Representation Process

Appointment and Registration

Before a representative can provide assistance to a claimant on matters before SSA, the claimant must sign a statement appointing the individual as his or her representative. The representative must then accept that appointment in writing, indicate whether or not he or she will be charging for services rendered, or waiving the fee for such services, and agree to not charge or collect any fee other than that which has been approved by SSA.

As part of the acceptance process, representatives must also identify whether they are an attorney or non-attorney, and they must attest to certain general qualifications. To be recognized officially by SSA as a claimant's representative, the individual must not be disqualified or suspended from acting as a representative before SSA, a court or bar association, or another federal agency. Further the individual cannot be prohibited by any law from acting as representative. Attorneys seeking to represent a claimant before SSA must be admitted to practice law in a state, territory, or district, or before federal courts or the U.S. Supreme Court. A non-attorney seeking to represent claimants must be "generally known to have a good character and reputation," and be "capable of giving valuable help to the claimant in connection with the claim."

Footnote 18: SSA's Program Operations Manual System, "Who Is a Representative," [GN 03910.020](#).

If the representative indicates that he or she will be charging a fee for services, SSA must approve such fees through the fee agreement or fee petition process. A representative whose payment SSA has approved can either be paid by the claimant or collect his or her fee directly from SSA from benefits that are due to the claimant at the time of the decision. In order to be eligible for direct payment, both attorneys and non-attorney representatives must register with SSA, either online or by filling out a paper form. For attorneys, the onetime registration process involves giving SSA pertinent information regarding his or her authority to practice law, information regarding any suspensions or disqualification, attestation statements that the attorney will abide by SSA regulations, tax and direct deposit information, and his or her contact information. The number of registered attorneys nearly doubled between 2007 and 2010, starting at fewer than 10,000 in 2007 and increasing to almost 20,000 by 2010. The number of registered non-attorneys is much smaller – in 2007, 210 non-attorneys were registered for direct payment, rising to approximately 500 in 2011.

Footnote 19: Data provided by SSA's Office of Income Support Programs, July 2011.

Legislation passed in 2010 allowed non-attorneys to seek direct payment from SSA, but added further qualifications.

Footnote 20: *Social Security Disability Applicants' Access to Professional Representation Act of 2010*, Public Law No. 111-142.

These non-attorney representatives must possess a bachelor's degree from any accredited educational institution or have the equivalent qualifications from training and work experience, secure professional liability insurance, and undergo a criminal background check. In addition, they must pass a written examination administered on SSA's behalf which is designed to test the individual's knowledge of relevant agency provisions. Lastly, non-attorneys must enroll in and pass specific continuing education course(s) every year, including education regarding ethics and professional conduct. SSA does not have comparable requirements for its registered attorneys.

During our study, we heard many criticisms of the appointment process from both representatives and agency employees. While registration to receive fees from SSA can be done online, the actual appointment of a representative by a claimant and the acceptance of that appointment by a representative must be done on paper because of the current requirement for "wet" signatures. Representatives complained about the paper appointment forms being lost, and delays by SSA in entering the information from the paper forms into the electronic claims systems. Without the appointment information on file, the representatives cannot act on behalf of the claimant, and agency employees cannot notify the representative of any actions taken on the case.

Standards of Conduct

Attorneys and non-attorneys alike are subject to a particular set of rules and responsibilities as representatives. Primary among those is that the individual must provide competent representation to the claimant. This implies that representatives understand the significant issues in their cases and have a working knowledge of the applicable provisions, regulations and rulings of the *Social Security Act*. Representatives are also expected to act with reasonable diligence and promptness in obtaining and submitting information to SSA and the DDS as well as assisting claimants in complying with requests for information. They are also expected to conduct all dealings in an efficient, fair, and orderly fashion at all levels of the decision-making process.

In addition to the conduct expected of a representative, there are also prohibitions that apply to representation. Representatives are strictly prohibited from engaging in certain conduct, such as unreasonably delaying a claim without good cause, knowingly making or presenting false or misleading statements (oral or written), or collecting fees not approved by SSA.

Footnote 21: For a complete list of prohibited conduct, see Appendix B.

If a representative violates any of these rules, SSA's Office of General Counsel (OGC) has authority to impose administrative sanctions of either a suspension – ranging from one to five years – or a disqualification, which is permanent. If the prohibited conduct also violates laws that have potential criminal penalties, OGC is responsible for referring the report to SSA's Office of Inspector General (OIG).

Footnote 22: We requested information from OIG regarding how often and how many potentially criminal cases are passed from OGC to OIG and for an inventory of the outcomes of referred cases. At the time of this report, we have not received the information requested.

Reports of alleged misconduct by representatives can be initiated by anyone involved in the process including field office or DDS employees, administrative law judges, claimants, the general public, and even other representatives. These reports are referred to OGC in the region where the misconduct occurs. According to OGC, the most common referrals for misconduct involve the collection of fees not approved by SSA and cases where the representative has been disbarred from practicing law or disqualified by another federal agency.

Footnote 23: According to OGC, not all referrals meet the criteria for actual sanctions. In fiscal year 2011, only 20 representatives were sanctioned, all of which resulted in disqualifications. In 17 cases, the sanctions were due to disciplinary action by a state bar, three sanctions were for the collection of unauthorized fees, and one was for multiple conduct violations. Of the representatives sanctioned, 18 were attorneys and two were non-attorneys.

The most common allegation of misconduct we heard about during the course of our study was that some representatives deliberately draw out the adjudicative process in an effort to increase the amount of their fees paid based on their claimant's past due benefits. We discussed these allegations with representative organizations such as NOSSCR and NADR, SSA and DDS employees, and OGC attorneys in charge of the sanction process. While the representative organizations denied the allegations are a regular occurrence, agency employees insist that they frequently observe instances of non-compliance by representatives. Despite the allegations we heard, OGC reports that it rarely receives referrals of this type of misconduct; therefore, there is currently no way of measuring the prevalence of inappropriate conduct by representatives. Further compounding the problem, OGC informed us that no central database exists to capture information about the number of allegations, the nature of the alleged misconduct, or the outcome of the allegations reported to the ten OGC regional offices.

If allegations of misconduct are substantiated, there are two types of sanctions a representative can receive: suspension or disqualification. In deciding the type and length of

sanction, a determination is made regarding the significance of the misconduct. Such things as the severity of the misconduct, whether or not it is a repeated offense, and whether or not the representative had been warned in the past are all taken into account. Disqualification is required if the attorney has been disbarred, disqualified from another federal agency, or had collected and retained unauthorized fees. Suspensions can last between one and five years, and the representative is automatically reinstated at the end of that period; disqualifications are permanent. Sanctioned representatives can request to be reinstated after one year and at the end of every year thereafter. Despite this provision, OGC reports that the majority of sanctioned representatives do not make such a request.

While OGC may manage and prepare misconduct cases, the decision as to whether to sanction a representative is ultimately made at an administrative hearing. An administrative law judge oversees the actual process, holds the hearing, and renders the final decision. If the decision is unfavorable to the representative, he or she can appeal that decision to the Appeals Council; the Appeals Council decision is final. The agency typically processes nine or ten formal sanctions per year, and there are currently a total of 193 representatives under sanctions – most of whom have been permanently disqualified.

Footnote 24: SSA’s Office of General Counsel, as of October 15, 2012.

Proposed Changes – A Comprehensive Effort

In 2008, SSA published a Notice of Proposed Rulemaking (NPRM) that offered a number of proposed changes to the third party representation process.

Footnote 25: “Revisions to Rules on Representation of Parties.” Federal Register 73:174 (8 September, 2008), pp. 51963-51983.

These changes represented a comprehensive effort to acknowledge and respond to the growing number of representatives assisting SSA claimants. In particular, one major change included in the NPRM would introduce the concept of a “professional representative” into SSA regulations. A professional representative would include “...any attorney, any individual other than an attorney, or any entity that holds itself out to the public as providing representational services before us [SSA], regardless of whether the representative charges or collects a fee for providing the representational services.” All professional representatives would be required to register and provide personal, professional and business information for the purposes of authenticating and authorizing the individual to conduct business before the agency. They would also be required to conduct business with SSA electronically; this would include filing initial claims and appeals through the SSA website.

Another change proposed in the NPRM would allow SSA to recognize both entities and individuals as representatives. An entity would include, for example, a law firm, any non-attorney group practice, and other organizations that collectively offer third party representation services. To accommodate this change, the claimant would have to designate a primary or

“principal” representative. This person would have the responsibility of distributing important information to the claimant as well as other representatives in the entity.

During the comment period, SSA received both positive and negative feedback on the proposed rule changes. The rules that sought to clarify the role or identity of representatives received the most feedback. Larger organizations and firms typically supported the changes that would identify entities as representatives. Others, however, worried about how the agency could hold an “entity” responsible for standards of conduct, or even manage the complicated fee payment process for entities. Another controversial provision was the one that would make mandatory the use of SSA’s electronic services by representatives. Some embraced the use of electronic services, but doubted SSA’s ability to deliver dependable online services. Other comments argued that electronic services ought to remain optional – this would allow small firms and individuals to continue to use paper submissions.

Of the proposed rules, to date only one has been finalized: the rule requiring use of electronic services by claimant representatives. It should be noted, however, that this final rule only requires representatives to use electronic services for cases in which a representative requests a direct fee payment.

How Representatives Assist Claimants

As indicated earlier, representatives assisting claimants at the initial claims stage can have significant control in developing the case. During the filing process, representatives should help claimants complete the necessary forms, either through SSA’s online process or via a paper application. More importantly, they should help the claimant explain and describe the nature of the claimant’s impairment(s) and the resulting physical, mental, and vocational limitations in order to present a clear and accurate picture to DDS decision makers. Some representatives add a narrative explanation to the standard application in which they record observations about the claimant’s abilities or level of functioning, or they may add an overview of the supporting medical and other documentation submitted with the application. They may also obtain statements from family, former employers and others that describe the claimant’s ability to work or function independently, as well as describing any limitations, such as what activities the claimant cannot perform or which ones require assistance. These statements may also describe any assistance the representative provides, or has provided, to the claimant.

Often, representatives file the claim with SSA while they are still in the process of gathering information. The immediate filing acts to protect the claimant’s initial filing date so that payment to the claimant will be based on the date the application is filed, not when the application is completed.

Footnote 26: For SSDI, the protective filing period is 6 months; for SSI, the protective filing is 60 days. SSA has proposed a change to its regulations to reduce the SSDI protective filing period to match the SSI filing period for consistency between programs, to streamline

procedures, and encourage applicants to pursue claims promptly (“Use of Date of Written Statement as Filing Date.” *Federal Register* 70:24 [17 December, 2008] pp. 76573-76575).

If the claim is completed within the required filing period and the claim is ultimately allowed, the claimant may be due retroactive payments.

Footnote 27: For SSDI, payments can be paid for up to a year before the initial filing date if the person’s disability began in the past. For SSI, retroactive benefits are determined by the date of initial contact with SSA regarding the request to file disability benefits.

For representatives, having a protected filing period gives them time to gather employment history and related information, collect medical evidence, and even arrange for medical testing while at the same time protecting their client’s rights to the maximum possible benefit. From the point of view of the agency, an incomplete filing increases the work load of the field office employees who have to follow up on incomplete applications and assist claimants to complete them. Also, these incomplete applications only delay the decision for the claimant because until the application is complete, the field office cannot send it to the DDS to begin the process of making a medical determination. During visits with both SSA employees and third party representatives, the incomplete applications were repeatedly identified as a source of friction between the groups.

When indicated, third party representatives should take additional steps to provide as much medical information as possible. They can obtain signed statements and copies of records from medical and other sources, and include them with the initial application rather than wait for the DDS disability examiner to request the information. Further, representatives may arrange for the claimant to see a physician, or have other testing done to obtain evidence of the disabling impairment. Having adequate information for a medical determination can eliminate the need for (and the cost to the government of) records or examinations the disability examiner might have to request in order to obtain sufficient medical evidence.

Footnote 28: In order to substantiate this presumption we requested cost information regarding the cost of medical records and consultative exams in represented cases. SSA informed us that requested data were not available.

After the claim has been submitted, the representative should open a communication channel with the field office and DDS. The representative can verify that the claim has been received and obtain contact information for employees assigned to the claim. Assistance should continue throughout the disability determination process, with the representative gathering additional information and/or evidence needed to support the disability decision. This can include any additional medical or psychological evidence that might be lacking, any information about new medical sources, any details about the claimant’s work history, and information

regarding the limitations in activities of daily living. In other words, the representative should assist with any supporting information or evidence needed to make a determination. Representatives may insist all communication with the claimant be made through the representative's office in order to establish control over both incoming and outgoing information about the claim, and to remain aware of how the claim is or is not progressing.

Another role of the representative should be as an expeditor, following up with physicians, clinics and hospitals, employers, and others to obtain evidence or ensure that files are sent quickly to the examiner. This kind of assistance can be invaluable in making sure all existing relevant records get sent to the DDS in a timely fashion. It can also be helpful when there is a need to track down hard-to-reach claimants, such as those who are homeless or mentally ill or who, due to financial circumstances, move frequently – often without providing notice or any forwarding address. The representative should also contact the claimant to make sure appointments for any scheduled examinations are kept, and may arrange or provide transportation to those appointments.

Overall, representatives' services have the potential to greatly expedite the disability determination process, while ensuring that the claimant receives the most informed determination possible at the initial claims stage. During our study, we heard from both representatives and agency employees that ideally, representatives should have a thorough knowledge of SSA policy, take a comprehensive approach to documenting the claimant's disabling conditions, and establish good communication with both the claimant and agency employees. If the process were to encompass these features consistently, the additional assistance from representatives would help the agency achieve a more efficient and cost-effective process of determining eligibility for disability benefits, thus assisting the agency in meeting its stewardship goal of providing timely financial and medical support for beneficiaries.

The Representative/SSA Relationship

The Use of Technology

Representatives are an established presence in the disability claims process. As such, SSA has already made some accommodations in its processes and policies to manage how representatives interact with the agency electronically. As SSA has continued to develop improved technology-based processes, it has taken into account that both claimants and third parties are increasingly using the online filing process to complete applications for claimants. We found that the response of representatives to the online application is generally favorable, but there are several issues that diminish both the attractiveness and ease of filing online. These issues are cited not only by representatives, but by claimants and agency employees as well.

Although the professional representative should be familiar with the application process, the multiple steps are cumbersome. As with the paper file, filing online for disability involves several different forms:

- the application,

- the medical and work information, and
- the medical release forms.

Each form must be opened, completed, and signed separately. While there are online instructions that explain the multi-step process, there is no automatic connection and sequencing in the online application process that leads the applicant from one step to another and warns against or prevents the submission of incomplete filings. The large number of applications that arrive in SSA's electronic queue without one or more of the required forms is evidence that the process is unclear and fragmented.

Footnote 29: In our field office visits, we heard estimates that 80-90% of internet disability applications arrive at the field office incomplete, with only one or two of the three necessary forms completed.

Moreover, the online process allows the user to move to the next screen or section without completing all required fields. Consequently, even if all needed forms are received, there is often missing information. Also, the online application's usefulness is curtailed in that the claimant's response text boxes have space limitations, artificially limiting the claimant's ability to respond with the detail that may be necessary to answer the questions fully. This limitation disadvantages not only the claimant but also the agency personnel who review the information.

Although SSA indicates it is working on integrating these steps and improving the online filing process, these problems have remained unresolved for a decade since the ability to file for disability online was implemented in 2002. Without the capability to reject incomplete applications, the agency is currently required to take multiple steps involving several employees, a number of phone calls, letters, and emails to complete the application process. To address this situation, many SSA employees recommended that the agency consider putting into place the capability to return or reject incomplete applications received from professional representatives.

Further limiting the usefulness and efficiency of the online application process is that there is no online application for SSI. While it is possible to fill out both the medical and work history online, the SSI-specific forms must be filed with an SSA claims representative, either in person in an SSA office, or in a phone interview.

Many representatives' organizations have their own electronic filing systems which capture the data needed to apply for benefits and collect disability information. Currently, SSA does not provide the capability to receive the information electronically from these private systems. The result is that representatives must re-key the captured data into the SSA online application or submit paper forms. If paper applications are submitted, field office employees must re-key the data, expending significant time and resources. Filing software – similar to the ones used so successfully for filing income taxes – could benefit both the representatives and SSA. Representatives propose using software models similar to those used by tax preparers such as Turbo Tax, H&R Block, and Jackson Hewitt, which must meet official IRS standards.

Similar software for disability applications would allow data files that meet agency specifications to be transferred directly to SSA for processing.

Beyond the electronic filing process, representatives have only limited interaction with SSA online. In 2009, the agency initiated a project – the *Appointed Representative Suite of Services* – that would provide a comprehensive set of electronic services allowing appointed representatives to conduct most, if not all, of their SSA business online, as indicated in Figure 2.

Figure 2. PROPOSED APPOINTED REPRESENTATIVE SUITE OF SERVICES

Representatives would have the ability to:

- complete/submit forms required to be appointed as a representative,
- complete/submit forms required to withdraw as an appointed representative,
- view the electronic claims folder, which stores a claimant’s disability information,
- add medical evidence to the electronic folder,
- maintain information regarding the appointment of a representative for all adjudicative levels,
- submit information required for SSA to process direct fee payments, and
- obtain answers to questions regarding claims and fee payment status.

Despite ambitious plans, implementation of these services has fallen short. First of all, only representatives with appeals pending at the hearing level can obtain online access to the electronic folder to monitor their client’s cases. In addition, a real time status report is only available online to those representatives who have electronic folder access. Neither of these services is available at the initial claims level. Without the online avenues to access information, representatives must continue to contact SSA and DDS offices by mail or telephone to obtain information regarding their claims.

Because they do not have online access, representatives at the initial claims level report that they are not able to access information easily that would be helpful in providing assistance to their claimants. For instance, during the development of a claim, the representative could check to make sure that submitted evidence has been included in the file without having to call the field office or DDS. Also, if online services included access to data such as earnings records, representatives could have direct access to information that would assist in developing evidence of the disability and reconstructing past work history. After a case is awarded, online access could allow representatives to obtain information they need regarding entitlement dates, eligibility for Medicare/Medicaid, and payment status – without calling SSA.

Allegations of Disservice – Differing Views

We heard repeatedly from both sides – agency staff and representatives – that they believe that the other party is not doing its job properly. The field office and DDS employees allege that a number of representatives do not add value; i.e., they neither effectively document the case nor provide needed evidence. We heard repeatedly from agency employees their belief

that professional third party representatives, usually attorneys, deliberately delay the claim's progress by not providing evidence in a timely fashion in order to increase the retroactive payment due when the claim is allowed. A claim that is not fully developed is more likely to be denied at the initial level. If a claim is appealed, the potential retroactive benefit check to the claimant will increase as time passes from the original filing to the final decision and a larger retroactive payment for the claimant results in a larger fee for the representative. In the meantime, the claimant who is ultimately allowed has not been receiving monthly benefit checks.

Field office and DDS employees also report that they still have to gather the evidence not provided by the representative (or not provided timely), follow up on requested information, and counsel the claimant on the next steps – work that the professional representatives are being paid to perform. From their perspective, there is no need for representation because field office and DDS employees are required to develop the application.

In contrast, representatives charge that the claims process is set up to deny claims at the initial stage. They report that workloads are high and thus impede the agency's ability to assist claimants adequately. They also report that employees are so driven by processing time goals that they under-develop cases in order to clear claims off their caseload. Some examples given of case under-development are failure to fully develop:

- medical evidence of all alleged impairments,
- the claimant's work history, and
- the earliest possible onset date for benefit eligibility.

Representatives frequently claim that field office and DDS employees are not trained adequately and thus fail to apply the rules and regulations properly. In addition, they charge that the reviewing DDS physicians often do not have a background in the specialty of a particular claimant's disability. The representatives believe that they keep the best interest of the claimant foremost – but that the SSA and DDS employees are not always motivated by, or have the capability of, meeting that goal.

Interestingly, failure to apply policy consistently is cited by both representatives and agency employees as problematic. Both sides cite examples of poorly developed cases, including failure to contact all treating physicians, lack of useful medical source statements, missed identification of unsuccessful work attempts, and failure to develop the earliest onset of the disabling condition. We have also heard from representatives that different operating procedures seem to exist in different locations across the country; i.e., access to claimant information is easily available from some field offices, but not from others, and different or additional requirements to obtain information exists in different locales.

Throughout this report, we have cited areas of strong disagreement between representatives and agency employees. During our study, there were some allegations that delays, inefficiencies, and improprieties in claims submission and processing (particularly those shown in Figure 3) were pervasive. However, we want to make it clear that, in most instances, we could neither confirm nor refute these allegations because there is no data gathered to support

any of them. Nonetheless, the fact that these allegations are made so frequently is of major concern considering the potential implications for the agency, the representative community, and ultimately the claimants utilizing the services of a representative. The body of issues raised by both agency employees and the professional representative community needs to be investigated; the issues either need to be dispelled or, where appropriate, need to result in sanctions.

Footnote 30: We want to stress that we are only discussing **allegations** of questionable work practices in this section; we are not addressing any practices that necessarily rise to the level of a criminal offense.

An investigation of this type will mandate the collection of objective data against which any allegations can be measured. Alternative outcomes of such an investigation could result in administrative action that improves the process in one or more of the following ways:

- clarifications of current policy,
- education and training to emphasize correct application of policy,
- creation of new policies to guide and facilitate procedures on both sides, and
- removal of barriers that have created problems.

Figure 3. ALLEGATIONS - DIFFERING VIEWPOINTS

Representatives versus field office (FO) and DDS employees

ALLEGATION: Representatives intentionally delay the processing of the claim (and the appeals process) in order to increase their fee.

- *Representative Viewpoint:* Thoroughly completing the application, gathering conclusive evidence, and providing needed information to decision-makers all take time. The time needed may be even greater if the claimant is homeless or moving around, and is hard to locate. It is not delaying the case; it is doing their job....protecting their client's rights to file for benefits and ensuring the best possible outcome for their client at the earliest point in the process.
- *FO/DDS Viewpoint:* Submitting incomplete paperwork to protect a filing date does not allow the case to move to the DDS so they can begin the task of developing the case. Failure to provide complete information may even result in the case being denied at the initial or reconsideration stages, further delaying the case through the appeals process, and increasing past-due benefits.

ALLEGATION: Representatives coach claimants to shape the case by either omitting or inflating the importance of key information. They also submit evidence selectively that supports the client's case.

- *Representative Viewpoint:* The representative's job is to frame the case in a manner that highlights the evidence that shows the claimant meets the disability criteria, thus having a claim more likely to be allowed. Often claimants misstate information unintentionally in ways that are detrimental to their case (e.g. exaggerating their residual functional capacity); representatives ensure that an accurate picture is provided. Further, not all evidence is relevant to the disabling impairment; submitting only pertinent evidence expedites the decision-making process.
- *FO/DDS Viewpoint:* The disability examiner needs to play an important and unbiased role to develop the case objectively and determine the importance and relevance of information or claimant statements. Reviewing all evidence is important, particularly in assessing function and vocational capacity.

ALLEGATION: FO/DDS employees cannot process cases timely because they cannot contact the claimant directly to obtain needed information or follow up on requested evidence.

- *Representative Viewpoint:* Their job is to act on the claimant's behalf, answering questions and obtaining needed information. They are in the best position to contact the claimant and respond to FO/DDS requests
- *FO/DDS Viewpoint:* When they have to go through the representative to get information, it delays the claim. What is frequently a quick conversation with the claimant turns into multiple contacts between the FO/DDS and the representative, and then the representative and the claimant.

What Available Data Reveal

Although some of the data requested from SSA were unavailable, we were nonetheless able to conduct a preliminary analysis regarding the third party process. Specifically, we were able to obtain the number of represented claims, processing times, and allowance rates at the initial level of disability adjudication during recent years. While a thorough investigation will require more detailed data and sophisticated analysis, the intent of this section of the report is to describe what we know about representation from the data we received and identify areas that will require further exploration.

One of the primary questions from the start of this project has been to identify how many claims at the initial level of adjudication are represented by a professional third party. The graph in Figure 4 shows what percentage of all claims is represented, separately for SSI and SSDI in fiscal years 2009-2011.

The following paragraph describes figure four: a graph entitled, "Percentage of Claims Represented at the Initial Level, by Program Type, fiscal year 2009 to 2011." For SSDI, the percentage of represented claims rose from 9.8% in 2007 to 14.3% in 2011. For SSI claims, the percentage of represented claims rose from 4.1% in 2009 to 4.8% in 2011.

While the number of represented initial claims for both programs is increasing, represented SSDI claims have increased more rapidly; between 2009 and 2011 alone there was an increase of 4.5 percentage points. Factors that could contribute to future trends in represented cases include the increase in the number of disability claims filed, marketing efforts by representatives, and any statutory or regulatory changes to the governance of representatives that could encourage or discourage representation of SSDI/SSI claimants.

In addition to looking at the percentage of represented cases at the initial level, we were also able to obtain some data on the specific *type* of representation for those cases. Figure 5 shows the distribution by type of representatives for both SSDI and SSI for fiscal year 2011.

The following paragraph describes the data retrieved for 'figure 5': a graph entitled, "Percentage Distribution of Initial SSDI and SSI Claims, by type of Representation, fiscal year 2011." The vast majority of cases were not represented by a third party (86% of cases for SSDI and 95% for SSI). Of SSDI cases that were represented, 9% of cases had attorney representatives, 1.5% had non-attorney representatives for whom SSA administered the fee reimbursement, 3.8% were non-attorney representatives whose fees were not administered by SSA, and 0.01% fell under the category of "other." The "other" group included cases that likely were represented at some point in the adjudicative process, but could not be categorized due to SSA systems limitations. Of SSI cases that were represented, 0.6% of cases had attorney representatives, 0.3% had non-attorney representatives for whom SSA administered the fee reimbursement, 2.9% were non-attorney representatives whose fees were not administered by SSA, and 1.2% fell under the category of "other." Notes: percentages may not total 100 due to rounding. The "other" group includes cases that likely were represented at some point in the adjudicative process, but unfortunately cannot be categorized by representative type due to SSA systems limitations.

As Figure 5 shows, of the 14 percent of SSDI claims that were represented at the initial level in fiscal year 2011, attorney representation accounted for nine percent of the cases, while non-attorney representation was involved in about five percent of the cases. Of the roughly five percent of SSI claims that were represented at the initial level, less than one percent were represented by attorneys while a little over three percent were represented by non-attorneys. A substantial majority of claimants applying for SSDI and SSI benefits, however, did not have any type of representation at the initial level of adjudication.

We also wanted to know whether third party assistance increases the likelihood that claimants will receive a decision earlier in the adjudicative process. To answer this question, we requested data from SSA on initial level processing times for both represented claims and unrepresented claims. Processing time is calculated as the number of days it takes from when the application is filed, including protective filing time, to when a final decision is made.

Figures 6A and 6B show processing times at the initial level for both SSDI and SSI, respectively, and are further broken down by type of representation. Overall, processing times are lowest for claims that are not represented. Further, the data we have show that, while any type of representation increases processing times, attorney representation results in the highest overall processing times. The difference in processing times between attorney representation and no third party representation is on average around 25 days (approximately a 23 percent difference) for the years shown; this is true for both the SSDI and SSI programs.

The following paragraph describes the data for “figure 6A and 6B” which are two graphs entitled, "Initial Level SSDI/SSI Processing Times by Type of Representation, fiscal years 2009-2011" that show processing times at the initial level for both SSDI and SSI claims, respectively, and are further broken down by type of representation. For SSDI cases involving no third party representative, average processing time was 100 days in 2009, 109 days in 2010, and 107 days in 2011. SSDI case processing times involving an attorney representative averaged 128 days in 2009, 134 days in 2010, and 128 days in 2011. SSDI case processing times involving a non-attorney registered for direct pay averaged 117 days in 2009, 125 days in 2010, and 119 days in 2011. SSDI case processing times involving a non-attorney not registered for direct pay averaged 111 days in 2009, 122 days in 2010, and 119 days in 2011. For SSI cases that did not involve a third party representative, case processing times averaged 100 days in 2009, 111 days in 2010, and 109 days in 2011. SSI case processing time involving attorney representation averaged 124 days in 2009, 134 days in 2010, and 135 days in 2011. SSI case processing times involving a non-attorney registered for direct pay averaged 105 days in 2009, 122 days in 2010, and 124 days in 2011. SSI case processing times involving a non-attorney not registered for direct pay averaged 103 days in 2009, 114 days in 2010, and 117 days in 2011. Note: there were considerable limitations in SSA’s systems’ ability to provide represented SSI case processing times. All represented cases with waived fees are excluded.

This evidence, though weak, indicates that processing times for represented claims are longer; however, there is a lack of data specifying *what* exactly contributes to this outcome. While SSA stores processing time data for different segments of the process, i.e., field office versus DDS, the data do not distinguish represented claims from unrepresented claims. Unfortunately without this more detailed information, it is not possible to assess the more specific impact of representation on case preparation. For example, if the processing time for represented claims while they are in the field office was available, some assessment could be made about the time it takes representatives to prepare cases before they are sent to the DDS; this could then be compared to cases without representation. If represented claims are sent to the DDS for evaluation with the needed evidence already in file, data showing the average processing time for represented cases while at the DDS would give some indication of the degree to which well-documented cases contribute to a faster decision.

A third question that the Board sought to address was: does third party assistance increase the likelihood that claimants will be awarded disability benefits. To measure this, we compared allowances between claims that were represented at the initial level and the overall number of allowances at that level.

Figure 7 depicts this comparison between initial level allowance rates for third party represented SSDI and SSI cases and the agency's overall initial level allowance rates. From 2007 to 2010, overall initial allowance rates were typically in the 36-37 percent range for SSDI and 32-34 percent range for SSI, respectively. The SSDI allowance rate for represented claims was only slightly higher, typically ranging from 37-41 percent, but the SSI allowance rate for represented claims was significantly higher – ranging from 60-64 percent, almost double the overall allowance rate.

The following paragraph describes the data retrieved for a “figure 7”: a graph entitled, "Initial Level Allowance Rates: Represented Claims vs. All Claims, calendar years 2007-2010." Initial SSDI claims that were represented had an average allowance rate of 40% in 2007, 41% in 2008, 41% in 2009, and 37% in 2010. Initial SSI claims that were represented had an average allowance rate of 62% in 2007, 64% in 2008, 63% in 2009, and 60% in 2011. When looking at all initial claims, SSDI claims showed an average allowance rate of 36% in 2007, 37% in 2008, 38% in 2009, and 36% in 2010 while SSI claims in this category showed an average allowance rate of 32% in 2007, 33% in 2008, 34% in 2009, and 32% in 2010.

One possible explanation for the higher SSI allowance rate for represented claimants is that representation of claimants with the least ability to navigate the complex filing process is more likely to have a greater impact. For instance, claimants who are homeless or have serious mental health problems or intellectual disabilities may not have the ability, knowledge and/or resources to successfully apply for benefits on their own. Another explanation is that there may be some selection bias occurring in that representatives may screen potential clients for the probability of an allowance; i.e. they assist only claimants with the strongest cases thereby inflating their allowance rates. Representatives may be even more motivated to screen SSI cases because there is little likelihood that these claimants would have the personal funds

(without the retroactive benefits from an allowance) to pay the representative's fees. Yet another reason for the higher represented SSI allowance rate may be that SSI claimants are more likely to be connected with disability-specific non-profit organizations with staff members who may be more qualified to handle the special needs of the SSI claimant as they assist them to apply for benefits.

At present, however, we can only speculate when examining this data on allowance rates because it is incomplete and does not capture the entire picture. For example, there is no data available regarding the specific type of impairments individuals alleged, nor what type of representation they employed, i.e. attorney, non-attorney, non-profit, or eligibility service. This type of data would be necessary to control for selection bias. Furthermore, as shown in Figures 4 and 5, only about 5 percent of all SSI claims are represented at the initial level. Therefore, until proper statistical modeling of the relationship is performed, no definitive assertion can be made about the impact on allowance rates if a greater portion of SSI claimants were to engage representation.

In summary, while the data available to us are incomplete, we are able to make several observations about the effectiveness and scope of the representation process. Although the percentage of represented claims at the initial level is relatively small, data show that number has been steadily increasing over the last few years. Of those represented cases, SSDI claims are more likely to be represented by attorneys, while SSI claims are more likely to be represented by non-attorneys. The data also show evidence that processing times are longer for represented claims – particularly when represented by attorneys. With respect to allowances rates, we found that represented cases have higher allowance rates, significantly so for SSI, but barely so for SSDI cases.

Conclusion

Summary of Findings

We began this report by acknowledging that representation has been a part of SSA's disability process from the start of the disability programs that the agency administers. More recently, however, we have witnessed growth in the industry, not only in the number of representatives and the different types of representatives, but also at what stage they become involved. In the past, representation was most commonly carried out by attorneys at the administrative law judge hearing level. Increasingly, attorneys are becoming involved at the initial claims level as well. Further, attorneys today are joined by a growing number of non-attorney representatives. Various businesses such as eligibility services companies have found a niche in representing claimants while non-profit organizations often see assisting vulnerable and disability-specific populations as part of their mission.

As we looked at how the involvement of representatives is managed by the agency, we found the lack of any meaningful, effective governance process. Allegations of misconduct and/or poor service are pervasive, but little seems to be done to address the issues which can

ultimately affect the services the claimant receives and accrue costs savings for SSA. Agency staff seem to rarely use the formal communication channel to convey concerns, report infractions and/or file formal complaints against representatives whom they believe are engaging in misconduct. Without effective tracking of these allegations, official action to sanction representatives for misconduct is rare. We want to reiterate that we definitely heard from some representatives and field office and DDS employees about productive, collaborative working relationships. Unfortunately, we more often heard complaints from both sides about the quality of service provided. These complaints came from very disparate parts of the country, so we believe the problems are systemic, not localized.

In studying the data that were available to us, we have found that the percentage of represented claims at the initial level of adjudication is relatively low – around 14 percent for SSDI claims and around five percent for SSI claims, although there has been a significant increase in recent years. While we have some data that show an increase in the number of representatives who have registered on SSA’s website in the last five years, there is not a clear picture of the total number of representatives who assist SSA claimants, and what representative sectors those people represent. How many representatives are attorneys and how many are non-attorneys? How many representatives work for profit and how many work for non-profit organizations? How many are professional representatives and how many are simply family members or friends assisting claimants apply for benefits? In addition, we have no way to determine if there is any correlation between the kind of representative, and the kind of disability alleged, the time a claim is in the field office or DDS, the allowance rate and any allegations of conflict or claims of productive working relationships. There is simply insufficient data to make many conclusions with any level of confidence.

There is one fact that we were able to determine from the data available to us – that fees being paid to representatives directly by the agency have increased significantly for both programs at all adjudicative levels. From 2007 to 2010, fees paid based on fee agreements in SSDI cases saw a 45 percent increase. During that same period, SSI fees based on fee agreements saw a 75 percent increase although the total fees paid in SSI cases was much smaller than fees in SSDI cases. The total of all fees paid was \$1.74 billion in 2010, increasing 48 percent from \$1.18 billion in 2007. With the ongoing increase in disability applications coupled with the marketing efforts employed by disability representatives, we anticipate the numbers of representatives – and the fees paid to them – will continue the upward climb.

Our review of information on allowance rates confirmed our initial expectation with some qualification. Representation for SSI claims did show significantly higher allowance rates. However, we do not know whether there would be the same high allowance rates if a larger percentage of SSI claims were represented. In contrast, representation for SSDI claims revealed only slightly higher allowance rates.

In response to our question on whether represented claims received faster decisions, the data that were available revealed that represented claims actually take longer to process than claims without representation. This statement, however, must also be qualified because we do

not know enough about the type of represented claims and any effect that would have on the time it takes to make a decision. For instance, some claimants who are homeless or who move often may be harder for representatives to track down for information, appointments and medical exams. Other claimants who might have intellectual, neurological or psychiatric disabilities may be personally ill-equipped to remember information or relay it accurately to their representatives. For claimants who are not represented, SSA has some policies in place that mandate a certain number of attempts to reach claimants or seek relevant evidence. Once those time limits expire and the evidence has not been provided or the claimant is nowhere to be found, it is likely that claims will be denied, which may contribute to a shorter processing time. Again, we have no data to confirm or refute these speculations.

In order to fully understand the impact that representatives have on the disability process, a great deal more information about representatives must be gathered and studied and analyzed. During the course of this study, it became clear that data needed to answer many vital questions about representation are either non-existent, or inaccessible; i.e., they are not housed in any single system, instead they are in multiple systems and databases that do not interact. What data we were able to pull together required many months of contacts with many different departments within SSA, and piecing together numbers that did not align on multiple factors. The difficulty we had obtaining data to analyze the impact of representation for the purposes of this study will likewise make it difficult for SSA to make informed decisions about procedures and policy regarding third party representation. Nonetheless, we hope the following recommendations will direct the agency's attention to some specific areas that we believe are in particular need of improvement.

Recommendations

DATA COLLECTION

- In order to create informed policy, SSA first needs to create data collection systems that gather comprehensive data and that also allow for analysis of cases with representation. SSA was unable to answer our most basic question regarding the number and type of representatives involved in disability cases. In addition to the small amount of existing data it is able to pull from operational systems, we urge SSA to collect information that will provide a comprehensive picture of who the representatives are, and what impact they have on the system. This information is vital to policy decision-makers, and could be valuable in making third party representation more transparent to all stakeholders.
- Currently, SSA's database of representatives only includes representatives that have registered for direct payment – an operationally-driven decision to collect only the information that is necessary for payment. Claimant records contain some information on the representatives, but they do not interface with the representative database. We suggest that the agency further develop the appointed representative database to capture comprehensive data on all individuals that represent claimants; this database could track and assist SSA in addressing the allegations of misconduct or poor performance.

TECHNOLOGY

- We suggest that SSA improve the online application process; not just for representatives, but for claimants as well. Online applications that are user-friendly should assist claimants, representatives, and the agency to compile and provide the necessary information for improving the disability decision-making process. One reason that many applications filed online are incomplete is due to the fact the users are required to complete multiple “forms,” or detached sections before the application process is considered complete, yet these multiple forms are not all seamlessly connected online. While we have heard that “marrying” the different sections is on an agency “to-do” list, we believe the years of delay have led to a lack of full support for the online process by claimants, employees and representatives, and we strongly urge the agency to expedite this important enhancement.
- We support the recent action of the agency to mandate online filing for certain representatives,

Footnote 31: The current requirement for representatives to file online appeals only applies to representatives seeking direct payment from SSA.

and encourage the agency to continue phasing out paper filing. In this spirit, we also urge SSA to develop the full online application for SSI in order to facilitate a fully electronic application. Currently, only SSDI applicants can complete the filing process online.

- With respect to systems enhancements, we also encourage SSA to develop protocols that private software developers can use in designing their electronic applications to transfer data seamlessly into SSA's processing systems. Many representatives have their own database software to collect their applicants' information. Currently, with no ability to transfer data directly, representatives must either key the information into the SSA online application or, more likely, submit paper applications that require field office employees to re-key the information. A process similar to what is used by the IRS and tax filers such as Turbo Tax, H&R Block and Jackson Hewitt would save time, energy and fiscal resources for both representatives and SSA, and would also reduce errors that occur with re-keying.

POLICY

In general, we believe SSA needs to examine its policies (or lack of policies) affecting representatives in order to properly encourage, incentivize, and support well-documented, efficiently-processed claims, and resulting in good service to claimants.

- In a more specific sense, we support the current agency proposal to standardize the protective filing period to 60 days for both SSDI and SSI claims (reducing the period for

SSDI claims from six months), and we strongly urge SSA to take immediate action to move this regulation forward. We agree with the proposed language that states that standardizing the filing period simplifies procedures for the claimants, and we believe that it supports good public service by moving claims more quickly through the system. Also, the regulation would help address the allegation that representatives unnecessarily delay claims because it would condense the period they have to prepare their cases.

- In addition, we strongly recommend that SSA hold professional representatives responsible for the completeness of the applications they file. Currently, applications filed by professional representatives are accepted in any state of completion and work done by field office and DDS employees to complete these applications is done at the taxpayer's expense. The agency should set clear protocols, time-lines, work incentives, and rules for represented claims in order to reduce conflicts, enhance the efficiency of the application process, and potentially increase the accuracy of the final decision. As an example, representatives should be required to certify completion of the disability application prior to the field office initiating any work on the claim.
- Given the reality of SSA's need for hard decisions about the allocation of resources, SSA's role in administering representative fees, including paying travel expenses for representatives, should be examined. We have heard about the complexity of the process and the amount of agency resources devoted to this workload. We believe that paying third parties is beyond the scope of the core mission of the agency and recommend that policy makers review the appropriateness of continuing to allocate agency resources for this process.

COMMUNICATIONS

Overall, we recommend improved and expanded communications between agency employees and the representative community.

- We suggest that a formal means of communication be established between agency employees and the representatives in the same service area. An appointed liaison could address specific issues, troubleshoot problems, and track recurring complaints for intervention.
- We also suggest that SSA investigate policy and procedures regarding agency access to claimants when a professional representative is involved. The lack of direct access to claimants can slow the application process and limit the ability to authenticate case information and evidence.
- The SSA webpage for representatives should be redesigned to convey the message to representatives (and to the public) that the focus of effective representation should be on providing good service before receiving payment. Rather than the current design that starts with links to payment information, the primary emphasis should be on information that is needed for the completion of the application. There should also be a section for current alerts that can be reviewed quickly by professional representatives to ensure they

are up-to-date with policy releases. This approach would help ensure that representatives know exactly what is expected of them so that proper procedures are followed and accurate, complete claim information is submitted early in the process, thus necessitating as little re-contact as possible.

- Although a representative has the ability to access his or her claimant's information via the electronic folder if a hearing is pending, no such opportunity is currently available at the initial claims level. This means that a representative has no way to verify electronically that certain information has been received and assimilated into the claimants' folder. At present, a representative needs to contact the field office or DDS in order to obtain information about an initial claim, which is time-consuming and labor intensive for both agency employees and for representatives. One of the major complaints we heard from both agency employees and representatives was about the amount of resources that are continually being expended on the exchange of such information between the two parties. We therefore recommend the expansion of access to the electronic folder to representatives beginning at the initial claims stage.
- SSA should consider expanding its suite of services for representatives to include access to other information that may be pertinent to the claims process but is not in the electronic folder, such as earnings history data.
- An ongoing exchange between SSA and the representative community to discuss systems and related processes would foster collaboration and improvements that benefit everyone involved. Just as the IRS has incorporated feedback from tax professionals in developing its online filing system, SSA can benefit from input from representatives in developing services that support the goal of quality public service for disability claimants.

ALLEGATIONS

During the course of our discussions with both agency employees and professional representatives, we heard allegations of undesirable behavior and outcomes from both sides. We do not have data to support or refute these allegations; yet the frequency of the comments leads us to recommend that a thorough investigation of the complaints needs to be conducted in order to either show the claims are unsubstantiated or to put policies in place to address the problems. Specifically, we recommend the following allegations should be investigated:

- Do representatives intentionally delay the processing of claims in order to increase their fee or are they making the best use of a protected time period to gather necessary evidence?
- Is the proper role of the representative to present evidence in the manner that is in the best interests of the claimant or should the emphasis be on full disclosure of all information regardless of the impact on the claim?
- Are representatives contributing to a better claims process or are they blocking access to the claimant and impeding case development by agency staff?

We began this study more than two years ago with the belief that, due to the complexity of the disability application process, there are some claimants who could benefit from the assistance of a representative at the initial claims stage, and that such assistance could enable claimants who meet the disability qualifications to receive benefits at the earliest possible point while also assisting the agency in processing this workload. In essence, we believed that representation was beneficial to claimants. Over the course of our study to verify this belief, however, we asked a number of questions for which we were not able to obtain conclusive answers. As a result, the findings and recommendations we cite in this report can only partially address the issues that surfaced during this study. Therefore, we urge SSA to undertake a thorough review of both the policy and operational aspects of the representation process, and to collaborate with representatives in a manner similar to the IRS collaboration with tax preparers, so that any adverse impacts on the disability process can be minimized, and that acceptable service to disability claimants is provided.

Appendix A: Persons Consulted during the Preparation of this Report

Footnote 32: While we encouraged candid discussions of the issues, our conversations with the individuals consulted for this report did not include specific details such as names or dates regarding any of the allegations mentioned; instead, the individuals provided information about general problems and trends they observed in their work.

Social Security Administration – Headquarters (Baltimore, MD)

Office of General Counsel

Sarah Humphreys, Director, Disclosure Law Division
Andrew Maunz, Staff Attorney

Office of Income Security Programs

Nancy Webb, Deputy Associate Commissioner

Office of Retirement and Survivors Insurance Systems

Anne Nicodemus, Director

Office of Disability Programs

Jim Twist, Director

Field Visits

Members of the Public – Columbus, OH

Robert Carlson
David Gray
Marlene Gray
Deborah Stone

Social Security Administration/Disability Determination Services

Martha Lambie, Acting Regional Commissioner, Denver Region, SSA
Jan Foushee, Regional Communications Director, Denver Region, SSA
Angelica Rosa, Salt Lake City Field Office Manager, SSA
Gary Nakao, Utah DDS Administrator
Dave Carlson, Medical Relations Officer, Utah DDS
Marcia Mosley, Deputy Regional Commissioner, Chicago Region, SSA
Carmen Moreno, Public Affairs Officer, Chicago Region, SSA
Doug Schneck, Columbus, Ohio Area Director, SSA
Michael Link, Manager, Columbus Downtown Field Office, SSA
Gatian Justice, Acting Assistant District Manager, Columbus North Field Office, SSA

Erik Williamson, Director, Ohio, Division of Disability Determination

Associations and Organizations

National Association of Disability Examiners

Andrew Martinez, President
Tom Ward, President-Elect
Jeff Price, Legislative Director

National Association of Disability Representatives

Trisha Cardillo, President
Jeanne Morin, Public Policy Advisor
Sandy Fambrough, Director-At-Large
Eva Sirman, Administrator
Art Kaufman, Legislative Co-Chair

National Council of Social Security Management Associations

Kathy Vanetta, Chair, Disability Committee
Steve Clifton, President, District Manager, Greeley, CO
Scott Hale, Vice President, District Manager, Mobile, AL
Joe Dirago, Past President, District Manager, Newburg, NY
Rachel Emmons, Government Relations Consultant, Washington, DC Representative

National Organization of Social Security Claimants' Representatives

Nancy Shor, Executive Director
Ethel Zelenske, Director of Government Affairs

Non-Profit Groups and Projects

Center for Vocational Alternatives – Columbus, OH

Tanya Chiles, Benefit Specialist
Carrie Printz, Benefit Specialist

Mount Carmel West Hospital Clinics – Columbus, OH

Darlene Orsley, Hospital Counselor

Ohio State University Medical Center – Columbus, OH

Brandy N. Moorehead, Financial Counselor

SSI/SSDI Outreach, Access, and Recovery

Deborah Dennis, Project Director
Yvonne Perret, Executive Director, Advocacy & Training Center

Utah Project – Salt Lake City, UT

Lloyd Pendleton, Utah State Team Lead
Brent Newreen, Employment Center Manager
Kathy Franson, Supervisor
James Whitaker, Utah Department of Workforce Services
John Pierpont, Utah Department of Workforce Services

Solutions for Progress (Benefit Bank) – Philadelphia, PA

Robert Brand, President and CEO
Carolyn Lee Daffron, Director of Research and Policy
Deborah Wyse, Project Coordinator for the SSI/SSDI Initiative

SSI Ohio Project – Columbus, OH

Raven Bias, Project Coordinator

Southeast Mental Health Center – Columbus, OH

Steven Atwood, Executive Director

For-Profit Representatives: Individuals and Agencies

Binder & Binder – New York, NY

Charles Binder, Partner

Chamberlin Edmonds – Atlanta, GA

Ulrich Brechbuhl, President and CEO
Suzy Perlman, SSA Liaison

GENEX Services, Inc. – Wayne, PA

Melissa J. Davey, Vice President of Disability Services

Leventhal, Sutton & Gornstein – Trevese, PA

Thomas D. Sutton, Partner Attorney

Appendix B: SSA's Policy on Prohibited Actions for Representatives

Source: Social Security Program Operation Manual Section [GN 03970.010C](#)

A representative must not:

1. In any manner or by any means threaten, coerce, intimidate, deceive, or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Social Security Act.
2. Knowingly charge, collect, or retain, or make any arrangement to charge, collect, or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation.
3. Knowingly make or present, or participate in the making or the presentation of, false or misleading oral or written statements, assertions, or representations about a material fact or law concerning a matter within SSA's jurisdiction.
4. Through his or her own actions or omissions and without good cause, unreasonably delay or cause to be delayed, the processing of a claim at any stage of the administrative decision-making process. Unreasonable delay is delay that is not justifiable, or delay that is preventable with reasonable care.
5. Divulge, without the claimant's consent, except as authorized by regulations prescribed by SSA or as provided by Federal law, any information SSA or the DDS furnishes or discloses about a claim or prospective claim.
6. Attempt to influence, directly or indirectly, the outcome of a decision, determination, or other administrative action by offering or granting a loan, gift, entertainment, or anything of value to a presiding official, SSA or DDS employee, or witness who is or may be expected to be involved in the administrative decision-making process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence.
7. Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to:
 - o repeated absences from, or persistent tardiness at, scheduled proceedings without good cause;
 - o willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and
 - o threatening or intimidating language, gestures or actions directed at a presiding official, witness, or SSA or DDS employee that results in a disruption of the orderly presentation and reception of evidence.
8. Violate any section of the Act for which the law prescribes a criminal or civil monetary penalty.
9. Refuse to comply with any of our rules or regulations.
10. Suggest, assist, or direct another individual to violate our rules or regulations.

11. Advise any claimant or beneficiary not to comply with any of our rules or regulations.
12. Fail to comply with our decision about sanctions.
13. Knowingly assist someone who is suspended or disqualified to provide representational services or exercise the authority of a representative as described in 20 CFR 404.1710 and 416.1510.

Appendix C: Related Legislation and Regulations

Social Security Act Amendments of 1939	Established rules and regulations governing claimant representatives and set the maximum fee attorneys could charge (at the time it was \$10).
Social Security Act Amendments of 1954	Created the first actual Social Security disability system with the establishment of the “disability freeze.” Disability, as originally defined by these amendments, was the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.”
Social Security Act Amendments of 1956	Created monthly “cash” benefits to permanently and totally disabled workers ages 50-64, as well as to disabled children aged 18 or older of retired or deceased workers (if their disability began before age 18).
Social Security Act Amendments of 1960	Modified the <i>Social Security Act</i> to provide disability insurance benefits to disabled workers of all ages and to their dependents.
Social Security Act Amendments of 1965	Created the rule for fee withholding – attorney fees cannot exceed 25 percent of the claimant’s past-due benefits. This was to ensure that claimants would have access to effective legal representation at a fair compensation amount. These amendments also changed the original definition of disability of “long-continued and indefinite duration” to “expected to last for a continuous period of 12 months or longer.”
Social Security Act Amendments of 1967	Established “widows” and “widowers” as new types of beneficiaries eligible for monthly cash benefits at reduced rates, as early as age 50. To be eligible for the benefits, the individual must have become totally disabled not later than 7 years after the spouse’s death.
Social Security Act Amendments of 1972	Established the Supplemental Security Income (SSI) program. Officially beginning in 1974, SSI is a means-tested, federally administered program that is funded by general revenues. Unlike SSDI, this program did not originally authorize fee withholding for direct payment of attorneys from a claimant’s past-due benefits.
The Omnibus Budget Reconciliation Act of 1990	Created the fee agreement process as a way to streamline payment of fees to attorneys. Also continued the exclusion of SSI claims from the direct payment of attorney fees from a claimant’s past-due benefits.
The Ticket to Work and Work Incentives Improvement Act of 1999	Authorized SSA to charge an assessment (not to surpass 6.3 percent) to recover the costs for defining and certifying fees to attorneys.
The Social Security Protection Act of 2004	Included a number of key third party-related provisions: <ul style="list-style-type: none"> • Required all persons/companies providing SSA-related services to disclose that services for which they charge a fee are available directly from SSA free of charge. • Gave the Commissioner authority to disqualify an attorney or non-

	<p>attorney representative who has been disbarred or suspended from any court or bar in the state(s) of which he or she was previously admitted to practice.</p> <ul style="list-style-type: none"> • Capped the SSA assessment amount at the lower of \$75 or 6.3 percent of the attorney’s fee (revised annually based on cost-of-living adjustments). • Temporarily extended attorney fee withholding payment system to SSI claims. • Temporarily extended fee withholding payment system to non-attorney representatives through a 5-year demonstration project.
<p>The Social Security Disability Applicants’ Access to Professional Representation Act of 2010</p>	<p>Made permanent the extension of fee withholding payment system for SSI claims. The act also made permanent the extension of fee withholding payment system to non-attorneys representing Title II or Title XVI claims of the <i>Social Security Act</i>. In order for non-attorneys to receive direct pay from SSA, however, they are required to:</p> <ul style="list-style-type: none"> • Hold a bachelor’s degree, • Pass an examination written and administered by the Commissioner, • Secure professional liability insurance or the equivalent, • Undergo a criminal background check, and • Complete continuing education courses.
<p>Federal Register Regulation: “Requiring Use of Electronic Services by Certain Claimant Representatives,” September 2011</p>	<p>Required certain attorneys and non-attorneys to use SSA’s electronic services when conducting business with the agency. It does not force claimants to use SSA’s electronic services directly; rather, it only requires their representative(s) to use the services, and only for cases in which a representative requests a direct fee payment from SSA.</p>
<p>Federal Register Regulation: “Revisions to Rules of Conduct and Standards of Responsibility for Representatives,” December 2011</p>	<p>Revised the former list of prohibited actions in order to ensure that attorney and non-attorney representatives comply with SSA’s rules. It also added an additional prohibited action that a representative may not help a suspended or disqualified person provide representational services.</p>

Appendix D: Sections of the Code of Federal Regulations regarding Representation

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

Table of Contents

Subpart R—Representation of Parties

[404.1700](#) Introduction.

[404.1703](#) Definitions.

[404.1705](#) Who may be your representative.

[404.1706](#) Notification of options for obtaining attorney representation.

[404.1707](#) Appointing a representative.

[404.1710](#) Authority of a representative.

[404.1715](#) Notice or request to a representative.

[404.1717](#) Demonstration project on direct payment of fees to non-attorneys.

[404.1720](#) Fee for a representative's services.

[404.1725](#) Request for approval of a fee.

[404.1728](#) Proceedings before a State or Federal court.

[404.1730](#) Payment of fees.

[404.1735](#) Services in a proceeding under title II of the Act.

[404.1740](#) Rules of conduct and standards of responsibility for representatives.

[404.1745](#) Violations of our requirements, rules, or standards.

[404.1750](#) Notice of charges against a representative.

[404.1755](#) Withdrawing charges against a representative.

[404.1765](#) Hearing on charges.

[404.1770](#) Decision by hearing officer.

[404.1775](#) Requesting review of the hearing officer's decision.

[404.1776](#) Assignment of request for review of the hearing officer's decision.

[404.1780](#) Appeals Council's review of hearing officer's decision.

[404.1785](#) Evidence permitted on review.

[404.1790](#) Appeals Council's decision.

[404.1795](#) When the Appeals Council will dismiss a request for review.

[404.1797](#) Reinstatement after suspension—period of suspension expired.

[404.1799](#) Reinstatement after suspension or disqualification—period of suspension not expired.

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION (Revised as of April 1, 2011)

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart O—Representation of Parties

[416.1500](#) Introduction.

[416.1503](#) Definitions.

[416.1505](#) Who may be your representative.

[416.1506](#) Notification of options for obtaining attorney representation.

[416.1507](#) Appointing a representative.

[416.1510](#) Authority of a representative.

[416.1515](#) Notice or request to a representative.

[416.1517](#) Demonstration project on direct payment of fees to non-attorneys.

[416.1520](#) Fee for a representative's services.

[416.1525](#) Request for approval of a fee.

[416.1528](#) Proceedings before a State or Federal court.

[416.1530](#) Payment of fees.

[416.1535](#) Services in a proceeding under title XVI of the Act.

[416.1540](#) Rules of conduct and standards of responsibility for representatives.

[416.1545](#) Violations of our requirements, rules, or standards.

[416.1550](#) Notice of charges against a representative.

[416.1555](#) Withdrawing charges against a representative.

[416.1565](#) Hearing on charges.

[416.1570](#) Decision by hearing officer.

[416.1575](#) Requesting review of the hearing officer's decision.

[416.1576](#) Assignment of request for review of the hearing officer's decision.

[416.1580](#) Appeals Council's review of hearing officer's decision.

[416.1585](#) Evidence permitted on review.

[416.1590](#) Appeals Council's decision.

[416.1595](#) When the Appeals Council will dismiss a request for review.

[416.1597](#) Reinstatement after suspension—period of suspension expired.

[416.1599](#) Reinstatement after suspension or disqualification—period of suspension not expired.

Appendix E: Sections of SSA's Program Operation Manual System (POMS) regarding Representation

[GN 03910.000](#): Representation of Claimants

[GN 03913.000](#): Individual Registration for Appointed Representative Services and Direct Payment of Fees

[GN 03920.000](#): Administering Representatives Fees Provisions

[GN 03925.000](#): Appointed Representative Fees Internet Registration

[GN 03930.000](#): Fee Authorization Under the Fee Petition Process

[GN 03940.000](#): Fee Authorization Under the Fee Agreement Process

[GN 03943.000](#): Implementation of Increased Maximum Dollar Limit on Fee Agreements

[GN 03950.000](#): Administrative Review of Fee Authorizations Under the Fee Petition Process

[GN 03960.000](#): Administrative Review of Determinations Under the Fee Agreement Process

[GN 03970.000](#): Suspension or Disqualification of Representatives

[GN 03980.000](#): Conflict of Interest

[GN 03990.000](#): Equal Access to Justice Act

Social Security Advisory Board

In 1994, when Congress passed legislation establishing the Social Security Administration as an independent agency, it also created a 7 member bipartisan Advisory Board to advise the President, the Congress, and the Commissioner of Social Security on matters related to the Social Security and Supplemental Security Income programs. Advisory Board members are appointed to six year terms, made up as follows: three appointed by the President (no more than two from the same political party); and two each (no more than one from the same political party) by the Speaker of the House (in consultation with the Chairman and the Ranking Minority Member of the Committee on Ways and Means) and by the President pro tempore of the Senate (in consultation with the Chairman and Ranking Minority Member of the Committee on Finance). Presidential appointments are subject to Senate confirmation.

Members

Marsha Rose Katz, Acting Chair

Marsha Rose Katz is a Project Director at the University of Montana Rural Institute in Missoula, where her work has concentrated on assisting persons with disabilities to utilize Social Security work incentives to start their own businesses or engage in wage employment. Since coming to the Rural Institute in 1999, Ms. Katz has focused on providing training and technical assistance on both employment and SSI/SSDI to rural, frontier and tribal communities across the country. Previously, she worked for nearly 20 years in a disability rights community based organization, the Association for Community Advocacy (ACA), a local Arc in Ann Arbor, Michigan. She served as both Vice President of ACA, and Director of its Family Resource Center. It was at ACA that Ms. Katz began her nearly 30 years of individual and systems advocacy regarding programs administered by SSA, especially the SSI and SSDI programs. Ms. Katz has written numerous articles and created many widely distributed user-friendly general handouts on SSI and SSDI, the majority of which focus on the impact of work on benefits, and utilizing work incentives. She is the author of *Don't Look for Logic; An Advocate's Manual for Negotiating the SSI and SSDI Programs*, published by the Rural Institute. Her Bachelor's and Master's Degrees are from the University of Michigan. Ms. Katz's many years of experience as a trainer, technical advisor, and advocate have been guided and informed by her partnership with people with disabilities, from her husband, Bob Liston, to the people she assisted in her work with ACA and the Arc Michigan, her current work at the Rural Institute, and her longstanding participation in ADAPT, the nation's largest cross-disability, grassroots disability rights organization. Term of office: November 2006 to September 2012.

Jagadeesh Gokhale

Jagadeesh Gokhale is a senior fellow at the Cato Institute. He earlier worked at the American Enterprise Institute as a visiting scholar (2003), the U.S. Treasury Department as a consultant (2002), and the Federal Reserve Bank of Cleveland as a senior economic advisor (1990-2003). An economist by training, his main research fields are macro and public economics with a

special focus on the effects of fiscal policy on future generations. During 2008, he served as a member of the Task Force on Sustainability Issues for the Federal Accounting Standards Advisory Board. Dr. Gokhale has written extensively on policy issues including Social Security and Medicare reform, national saving, private insurance, financial planning, wealth inequality, generational accounting, and public intergenerational transfers and he has testified several times before Congress on these topics. He has published several papers in such top-tier journals as the *American Economic Review*, *Journal of Economic Perspectives*, *Quarterly Journal of Economics*, *Review of Economics and Statistics*; in publications of the National Bureau of Economic Research and the Cleveland Federal Reserve; in the US Budget report's *Analytical Perspectives*; and in popular newspapers and online media such as the *Wall Street Journal*, *The Financial Times*, *The Washington Post*, *American Spectator*, and *Forbes*. Dr. Gokhale is a co-author of *Fiscal and Generational Imbalances* (2003) that revealed the U.S. fiscal imbalance to be in the tens of trillions of dollars. Another book by him entitled, *Social Security: A Fresh Look at Policy Alternatives*, was published in 2010. Term of Office: November 2009 to September 2015.

Dorcas R. Hardy

Dorcas R. Hardy is President of DRHardy & Associates, a government relations and public policy firm serving a diverse portfolio of clients. After her appointment by President Ronald Reagan as Assistant Secretary of Human Development Services, Ms. Hardy was appointed Commissioner of Social Security (1986 to 1989) and was appointed by President George W. Bush to chair the Policy Committee for the 2005 White House Conference on Aging. Ms. Hardy has launched and hosted her own primetime, weekly television program, "Financing Your Future," on Financial News Network and UPI Broadcasting, and "The Senior American," an NET political program for older Americans. She speaks and writes widely about domestic and international retirement financing issues and entitlement program reforms and is the co-author of *Social Insecurity: The Crisis in America's Social Security System* and *How to Plan Now for Your Own Financial Survival*, Random House, 1992. A former CEO of a rehabilitation technology firm, Ms. Hardy promotes redesign and modernization of the Social Security, Medicare, and disability insurance systems. Additionally, she has chaired a Task Force to rebuild vocational rehabilitation services for disabled veterans for the Department of Veterans Affairs. She received her B.A. from Connecticut College, her M.B.A. from Pepperdine University, and completed the Executive Program in Health Policy and Financial Management at Harvard University. Ms. Hardy is a Certified Senior Advisor and serves on the Board of Directors of Wright Investors Service Managed Funds as well as several nonprofit organizations. First two terms of office: April 2002 to September 2010. Current term of office: October 2010 to September 2016.

Barbara B. Kennelly

Barbara B. Kennelly became President and Chief Executive Officer of the National Committee to Preserve Social Security and Medicare in April 2002 after a distinguished 23-year career in

elected public office. Mrs. Kennelly served 17 years in the United States House of Representatives representing the First District of Connecticut. During her Congressional career, Mrs. Kennelly was the first woman elected to serve as the Vice Chair of the House Democratic Caucus. Mrs. Kennelly was also the first woman to serve on the House Committee on Intelligence and to chair one of its subcommittees. She was the first woman to serve as Chief Majority Whip, and the third woman in history to serve on the 200-year-old Ways and Means Committee. During the 105th Congress, she was the ranking member of the Subcommittee on Social Security. Prior to her election to Congress, Mrs. Kennelly was Secretary of State of Connecticut. After serving in Congress, Mrs. Kennelly was appointed to the position of the Counselor to the Commissioner at the Social Security Administration (SSA). As Counselor, Mrs. Kennelly worked closely with the Commissioner of Social Security Kenneth S. Apfel, and members of Congress to inform and educate the American people on the choices they face to ensure the future solvency of Social Security. She served on the Policy Committee for the 2005 White House Conference on Aging. Mrs. Kennelly received a B.A. in Economics from Trinity College, Washington, D.C. She earned a certificate from the Harvard Business School on completion of the Harvard-Radcliffe Program in Business Administration and a Master's Degree in Government from Trinity College, Hartford. First term of office: January 2006 to September 2011. Current term of office: March 2012 to September 2017.

Mark J. Warshawsky

Mark J. Warshawsky is Director of Retirement Research at Towers Watson, a global human capital consulting firm. He conducts and oversees research on employer-sponsored retirement programs and policies. A frequent speaker to business and professional groups, Dr. Warshawsky is a recognized thought leader on pensions, social security, insurance and healthcare financing. He has written numerous articles published in leading professional journals, books and working papers, and has testified before Congress on pensions, annuities and other economic issues. A member of the Social Security Advisory Board for a term through 2012, he is also on the Advisory Board of the Pension Research Council of the Wharton School. From 2004 to 2006, Dr. Warshawsky served as assistant secretary for economic policy at the U.S. Treasury Department. During his tenure, he played a key role in the development of the Administration's pension reform proposals, particularly pertaining to single-employer defined benefit plans, which were ultimately included in the Pension Protection Act ("PPA") of 2006. He was also involved extensively in the formulation of Social Security reform proposals, and oversaw the Department's comprehensive 2005 study of the terror risk insurance program. In addition, Dr. Warshawsky led the efforts to update and enhance substantially the measures and disclosures in the Social Security and Medicare Trustees' Reports, as well as the setting of the macroeconomic forecasts, which underlie the administration's budget submissions to Congress. Dr. Warshawsky's research has been influential in the 2001-2002 regulatory reform of minimum distribution requirements for qualified retirement plans, the increasing realization of the importance of financial protection against outliving one's financial resources in retirement, and a product innovation to integrate the immediate life annuity and long-term care insurance. For the

latter research, he won a prize from the British Institute of Actuaries in 2001 for a professional article he co-authored. Favorable tax treatment for this integrated product was also included in PPA due to Dr. Warshawsky's advocacy. Dr. Warshawsky has also held senior-level economic research positions at the Internal Revenue Service, the Federal Reserve Board in Washington, D.C. and TIAA-CREF, where he established the Paul A. Samuelson Prize and organized several research conferences. A native of Chicago, he received a Ph.D. in Economics from Harvard University and a B.A. with Highest Distinction from Northwestern University. Term of office: December 2006 to September 2012

Staff

Deborah Sullivan, Staff Director
Jacqueline Chapin, Ph.D., Professional Staff
Jeremy Elder, Research Assistant
Joel A. Feinleib, Staff Economist
Beverly Sheingorn VanDerhei, Executive Officer
Robin Walker, Staff Assistant
David Warner, Professional Staff

If you would like to join our mailing list to receive Board publications, please contact us at

400 Virginia Avenue, S.W.,
Suite 625
Washington, D.C. 20024
(202) 475-7700
info@ssab.gov
www.ssab.gov