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**OFFICE OF  
THE INSPECTOR GENERAL**

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**SOCIAL SECURITY ADMINISTRATION**

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**CLAIMANT REPRESENTATIVE FEES PAID  
BUT NOT WITHHELD FROM TITLE II  
PAST-DUE BENEFITS**

**October 2012**

**A-04-11-11102**

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**AUDIT REPORT**

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## **Mission**

**By conducting independent and objective audits, evaluations and investigations, we inspire public confidence in the integrity and security of SSA's programs and operations and protect them against fraud, waste and abuse. We provide timely, useful and reliable information and advice to Administration officials, Congress and the public.**

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- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

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- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

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## SOCIAL SECURITY

### **MEMORANDUM**

Date: October 5, 2012

Refer To:

To: The Commissioner

From: Inspector General

Subject: Claimant Representative Fees Paid but Not Withheld from Title II Past-Due Benefits  
(A-04-11-11102)

### **OBJECTIVE**

Our objective was to determine whether the Social Security Administration (SSA) withheld Title II representative fee payments from claimants' retroactive (past-due) benefits.

### **BACKGROUND**

SSA administers the Old-Age, Survivors and Disability Insurance (OASDI) program under Title II of the *Social Security Act* (Act), as amended. To assist with obtaining Title II benefits, claimants may appoint a qualified representative (attorneys or non-attorneys) to act on their behalf in matters before SSA. Claimants may agree to compensate their representative for services provided to resolve the claim.

Generally, SSA calculates claimants' representative fees based on past-due benefits. Past-due benefits typically accrue from the claimant's benefit entitlement date through the month in which SSA certifies the claim for payment. For example, a claimant applied for Title II disability payments on January 1, 2010, and SSA processed the final actions to pay benefits on July 31, 2010. SSA determined the claimant became entitled to benefits beginning February 2010—the month after the claimant applied for Title II disability benefits. As such, the claimant accrued 6 months of past-due benefits from February through July 2010. The representative fee is based on the 6 months of past-due benefits.

A representative who wants to charge or collect a fee for services provided in any SSA proceeding must generally first obtain SSA's approval.<sup>1</sup> To obtain approval, a representative must submit to SSA either a fee agreement or a fee petition.<sup>2</sup> For both the fee agreement and fee petition processes, SSA determines the maximum fee a representative may charge for services. Under a fee agreement, the maximum fee is the lesser of \$6,000 or 25 percent of past-due benefits.<sup>3</sup> Under a fee petition, the maximum fee is a "reasonable fee" determined by SSA.<sup>4</sup> The "reasonable fee" is based on several factors<sup>5</sup> and, unlike a fee agreement, is not limited to \$6,000.<sup>6</sup>

A claimant's representative may also be eligible for direct payment. That is, SSA will withhold the representative's fee from the claimant's benefits and issue payment directly to the representative.<sup>7</sup> For all of the fees we sampled, SSA paid the representative fee directly to the claimant's representative. To account for representative fees due, SSA staff manually records on the beneficiary's payment record the amount of representative fees to be withheld from the past-due benefit payment. If the amount of the fees is not recorded, SSA may not withhold the representatives' fees from the past-due benefits.

For the 3-year period October 1, 2007 to September 30, 2010, we identified 70,049 representative fee payments that lacked evidence of the manual action(s) necessary to prompt SSA systems to withhold the representative fees from the beneficiaries' past-due benefits. We sampled 250 of the 70,049 representative fees for our audit tests.

Further information regarding our scope and methodology and our sampling methodology and test results is in Appendices B and C, respectively.

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<sup>1</sup> In certain situations, SSA is not required to authorize representatives' fees. In general, SSA is not required to authorize fees when the claimant is relieved of all liability to pay the fee. For example, when the fee is waived or settled through a nonprofit organization or paid by a third party and certain conditions are met. SSA, POMS, GN 03920.010 A and B (September 30, 2011; see also prior versions of this policy).

<sup>2</sup> SSA, POMS, GN 03920.001 A. (August 31, 2009).

<sup>3</sup> SSA, POMS, GN 03940.003 A.3. (September 30, 2011). Effective February 1, 2002 the limit was \$5,300. Effective June 22, 2009, the limit was increased to \$6,000.

<sup>4</sup> SSA, POMS, GN 03920.001 B.1. (August 31, 2009).

<sup>5</sup> A "reasonable fee" is based on such factors as the complexity of the case, extent and type of services provided, level of skill and competence required in providing services, time spent on the case, and results achieved. SSA, POMS, GN 03930.010 A (February 28, 2005).

<sup>6</sup> SSA, POMS, GN 03930.015 D (June 9, 2006; May 20, 2009; January 20, 2010; and December 14, 2011) and GN 03920.015 A.1.a and B (January 28, 2010).

<sup>7</sup> To recover the administrative costs of issuing direct payments, SSA charges a user fee against the representative fee. The user fee is the lower of a flat fee or a percentage applied to the total representative fee. Effective December 1, 2008, the flat rate was \$83 and the percent rate was 6.3 percent. The previous user rate (effective December 1, 2007) applied a \$79 flat rate or a 6.3 percent rate. SSA, POMS, GN 03920.019 A (January 26, 2012).

## RESULTS OF REVIEW

SSA did not always withhold representative fees from beneficiaries' past-due benefits. As such, SSA overpaid beneficiaries by the amount of the representative fees paid. For 26 (10.4 percent) of the 250 sampled representative payments tested, SSA did not withhold the attorney fees, totaling \$74,965, from the beneficiary's past-due benefits. We projected our sample results to the population and estimated SSA did not withhold 7,285 representative fee payments, totaling \$21 million, from the beneficiaries' past-due benefits. See Appendix C for our sampling methodology and test results.

## PAYMENT ERRORS

SSA paid representative fees but did not withhold the fees from beneficiaries' past-due benefits. As such, SSA overpaid beneficiaries. For 26 (10.4 percent) of the 250 sampled representative payments tested, SSA did not withhold fees totaling \$74,965 from the beneficiary's past-due benefits. The fees ranged from \$78 to \$5,707; the average was \$2,883. We projected our sample results to the population and estimated SSA did not withhold 7,285 representative fee payments, totaling \$21 million, from the beneficiaries' past-due benefits.

The payment errors occurred because SSA did not take the necessary manual action(s) on the beneficiary's Title II record<sup>8</sup> to prompt SSA's systems to withhold the representative fee from the beneficiary's past-due benefit payment. Because of the time that had elapsed since SSA paid these representative fees, we did not ask the Agency to provide specific reasons why staff did not take the necessary manual action(s) for each error case. However, given that this is a manual process, we believe most of these errors resulted from oversight.

In 14 of our 26 error cases, SSA paid the representative fees before it paid the past-due benefits. For example, in one case, a claimant filed for disability benefits in November 2005, and SSA issued a favorable decision in May 2008. SSA paid the \$5,300 representative fee in May 2008. However, the Agency did not pay the beneficiary's past-due benefits, which totaled \$22,294, (from November 2005 through May 2008) until January 2009. When Agency staff processed the transaction to pay these past-due benefits, the employee did not reduce the amount to account for the representative fee already paid. As such, a \$5,300 overpayment occurred. We understand that in cases involving fee agreements, SSA may routinely pay representative fees before paying past-due benefits. To ensure paid representative

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<sup>8</sup> SSA establishes a Master Beneficiary Record (MBR) for each Title II disability insurance claimant. The MBR maintains pertinent information needed to accurately pay benefits to the claimant and all entitled dependents. The information maintained includes identification data (name, Social Security number, date of birth, address); earnings history, type and date of disability, and monthly Disability Insurance benefit amounts. The MBR also includes information regarding attorney and non-attorney representation and related fees.

fees are withheld from past-due benefits, staff should always ensure the claimant's Title II record contains evidence of the manual action(s) needed to prompt SSA's systems to withhold the fee.

We also found that in 6 of the 26 error cases, SSA paid the representative fee 300 or more days after it paid the past-due benefits. According to an SSA official, cases involving a fee petition may be paid considerably later than the past-due benefits because SSA must determine the amount of the representative fee. For example, in one case, a claimant filed for disability benefits in January 2004, and SSA issued a favorable decision in November 2006. SSA paid the entire amount of the beneficiary's past-due benefits, which totaled \$16,297, in March 2007. However, the Agency did not pay the \$4,050 representative fee until July 2009. Because SSA staff did not withhold this amount from the past-due benefits, a \$4,050 overpayment occurred.

In these situations, we believe it is imperative that staff processing the past-due payment ensures the representative fee payment is withheld before it releases the past-due benefits.

During our audit, we informed SSA of the 26 overpayment errors. SSA agreed with our overpayment calculations and posted the overpayments to all 26 beneficiaries' records.

## **CONCLUSION AND RECOMMENDATIONS**

SSA did not always withhold representative fees from the payment of past-due Disability Insurance benefits. As such, SSA overpaid beneficiaries. The payment errors occurred because SSA staff did not take action(s) on the beneficiaries' Title II records to prompt SSA's systems to withhold the representative fee from the beneficiary's past-due benefit payment.

Accordingly, we recommend SSA:

1. Issue a reminder to staff processing Title II disability claims involving representative fee payments to take the necessary action(s), on the beneficiary's Title II record, to prompt SSA's system to withhold the representative fee from the past-due benefit payment.
2. Periodically assess Title II disability claims, with the characteristics identified in this audit, to ensure overpayments did not occur.

## **AGENCY COMMENTS AND OIG RESPONSE**

SSA agreed with our first recommendation and disagreed with the second. Regarding the second recommendation, SSA stated it reviews initial Title II claims involving representative fee payments during its Transaction Accuracy Reviews and reports the

findings from these reviews in a year-end report. SSA also stated that in August 2008, it completed a targeted analysis report on Disability Insurance payments, which included an analysis of representative fee payment errors.

Although SSA reviews Disability Insurance claims involving representative fee payments as part of its Transaction Accuracy Reviews, the last targeted review of these types of cases was over 4 years ago. Further, despite this review, our audit found that representative payment errors occurred in about 10 percent of the cases we tested. Accordingly, we believe SSA should reconsider its response to the second recommendation and implement procedures to more frequently review Disability Insurance payments with the specific characteristics we identified in this report.

See Appendix D for the full text of SSA's comments.

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr."

Patrick P. O'Carroll, Jr.

# *Appendices*

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[APPENDIX A](#) – Acronyms

[APPENDIX B](#) – Scope and Methodology

[APPENDIX C](#) – Sampling Methodology and Test Results

[APPENDIX D](#) – Agency Comments

[APPENDIX E](#) – OIG Contacts and Staff Acknowledgments

## ***Appendix A***

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### **Acronyms**

|       |   |
|-------|---|
| Act   | <i>Social Security Act</i>                  |
| MBR   | Master Beneficiary Record                   |
| OASDI | Old-Age, Survivors and Disability Insurance |
| OIG   | Office of the Inspector General             |
| PHUS  | Payment History Update System               |
| POMS  | Program Operations Manual System            |
| SSA   | Social Security Administration              |

# **Scope and Methodology**

For the 3-year period October 1, 2007 to September 30, 2010, we identified 70,049 representative fee payments that lacked evidence of the manual action(s) necessary to prompt the Social Security Administration's (SSA) systems to withhold the representative fees from the beneficiaries' past-due benefits. We sampled 250 of the 70,049 representative fees for our audit tests.

To accomplish our objective, we:

- Queried and reviewed attorney fee information from SSA's
  - Master Beneficiary Record,
  - Payment History Update System (PHUS),
  - Single Payment System, and
  - Recovery of Overpayments, Accounting and Reporting system.
- Interviewed SSA personnel to obtain an understanding of how SSA pays representative fees.
- Reviewed applicable SSA policies and procedures that control payment of attorney fees.
- Reviewed previous Office of the Inspector General reports pertaining to attorney fees.

For our error cases, we provided SSA with our detailed calculations for its review and comments.

We determined the computer-processed data from the PHUS used to select our population were sufficiently reliable for our intended use. We conducted tests to determine the completeness and accuracy of the data and achieve our audit objective.

We performed our audit work in Atlanta, Georgia, between March and May 2012. The entity reviewed was the Office of the Deputy Commissioner of Operations, Office of Public Service and Operations Support. We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix C

# Sampling Methodology and Test Results

### SAMPLING METHODOLOGY

For the 3-year period October 1, 2007 to September 30, 2010, we identified 70,049 representative fee payments that lacked evidence of the manual action(s) prompting the Social Security Administration's systems to withhold the representative fees from the beneficiaries' past-due benefits. We sampled 250 of the 70,049 representative fees for our audit tests. The following chart details our population and sample selection.

**Population and Sample Details**

| Population:<br>Number of<br>Fees | Population:<br>Amount of<br>Fees Paid | Sample<br>Size | Sample<br>Dollars |
|----------------------------------|---------------------------------------|----------------|-------------------|
| 70,049                           | \$277,079,150                         | 250            | \$997,680         |

### SAMPLING AND TEST RESULTS

We projected our test results at the 90-percent confidence level. The following chart details our test results and projections to the population.

**Test Results and Projections to the Population**

| Projections of Attribute and Variable Appraisals        |                  |
|---|------------------|
| Attribute Appraisal Projections                         |                  |
| <b>Population and Sample Data</b>                       | <b>Decisions</b> |
| Total Population  | 70,049           |
| Sample Size   | 250              |
| Representative Fees not Withheld from Past-due Benefits | 26               |
| <b>Projection to Population</b>                         |                  |
| Point Estimate  | 7,285            |
| Lower Limit   | 5,180            |
| Upper Limit   | 9,897            |
| Variable Appraisal Projections                          |                  |
| Population and Sample Data                              |                  |
| Total Population  | \$277,079,150    |
| Sample  | \$997,680        |
| Representative Fees not Withheld from Past-due Benefits | \$74,965         |
| <b>Projection to Population</b>                         |                  |
| Point Estimate  | \$21,005,047     |
| Lower Estimate  | \$12,989,137     |
| Upper Limit   | \$29,020,957     |

We made all projections at the 90-percent confidence level.

## ***Appendix D***

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### **Agency Comments**



## SOCIAL SECURITY

### MEMORANDUM

Date: September 14, 2012 Refer To: S1J-3

To: Patrick P. O'Carroll, Jr.  
Inspector General

From: Dean S. Landis /s/  
Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Claimant Representative Fees Paid but Not Withheld from Title II Past-Due Benefits" (A-04-11-11102)—INFORMATION

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

Please let me know if we can be of further assistance. You may direct staff inquiries to Amy Thompson at (410) 966-0569.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,  
“CLAIMANT REPRESENTATIVE FEES PAID BUT NOT WITHHELD FROM TITLE  
II PAST-DUE BENEFITS” (A-04-11-11102)**

**Recommendation 1**

Issue a reminder to staff processing Title II disability claims involving representative fee payments to take the necessary action(s), on the beneficiary's Title II record, to prompt SSA's system to withhold the representative fee from the past-due benefit payment.

**Response**

We agree.

**Recommendation 2**

Periodically assess Title II disability claims, with the characteristics identified in this audit, to ensure overpayments did not occur.

**Response**

We disagree. We currently review attorney and representative fees during our Title II Transaction Accuracy Reviews (TAR). For any initial claims selected under TAR involving representative fees, we review whether or not the representative fees were correctly withheld and whether the amount of the representative fees is within Program Operations Manual System guidelines. We report our findings as part of our regular TAR end-of-year reports. In August 2008, we completed a targeted analysis report on Disability Insurance payment issues, which included an analysis of attorney and representative fee errors.

## ***Appendix E***

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# OIG Contacts and Staff Acknowledgments

### ***OIG Contacts***

Kimberly A. Byrd, Director, Atlanta Audit Division

Frank Nagy, Audit Manager

### ***Acknowledgments***

In addition to those named above:

Lisa M. Swanson, Senior Auditor

Kenley Coward, IT Specialist

For additional copies of this report, please visit our Website at <http://oig.ssa.gov/> or contact the Office of the Inspector General's Public Affairs Staff at (410) 965-4518. Refer to Common Identification Number A-04-11-11102.

## **Overview of the Office of the Inspector General**

The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

### **Office of Audit**

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

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