

Informational Report

Agency Payments to Claimant
Representatives

OIG

Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: July 15, 2015 Refer To:

To: The Commissioner

From: Inspector General

Subject: Agency Payments to Claimant Representatives (A-05-15-15017)

The attached final report presents the results of our review. We reviewed claimant representative direct payments to understand fee characteristics, including the average payment amount per claimant representative, distribution of earnings between representatives and affiliated firms, and representatives and affiliated firms with the highest earnings. We also reviewed a few other relevant trends.

If you wish to discuss the final report, please call me or have your staff contact Steven L. Schaeffer, Assistant Inspector General for Audit, at (410) 965-9700.



Patrick P. O'Carroll, Jr.

Attachment

Agency Payments to Claimant Representatives

A-05-15-15017



July 2015

Office of Audit Report Summary

Background

A claimant may appoint a qualified individual to act on his/her behalf in matters before the Social Security Administration (SSA). An appointed representative can request that the Agency pay the authorized fee directly out of a claimant's past-due benefits if he/she is an attorney or a non-attorney who has met certain prerequisites. SSA will withhold 25 percent of the claimant's past-due benefits if the appointed claimant representative properly notifies SSA that direct payment will be requested.

SSA is required to file an information return (Form 1099-MISC) with the Internal Revenue Service (IRS) when it pays \$600 or more to claimant representatives during the tax year (TY). While SSA pays fees directly to individual representatives, the associated income can be shared between the claimant representatives and affiliated firms.

In this report, we focus on income to show the portion of funds attributable to representatives' employment with firms as well as the overall income received by those firms.

Summary

In TY 2013, SSA reported to the IRS approximately \$1.4 billion in direct payments to claimant representatives. These payments related to about 15,300 claimant representatives and 3,200 firms for services provided to approximately 446,000 claimants, with the paid amounts coming directly from claimant funds.

As part of the direct payment process, claimant representatives can attribute all, part, or none of the income associated with the SSA direct payments to their work on behalf of firms. SSA prepares the Forms 1099-MISC based on the information provided by claimant representatives. The portion of direct payments attributed to a firm becomes that firm's taxable income. Of the \$1.4 billion in direct payments, about \$575 million (40 percent) in taxable income related to individual claimant representative income, and the remaining \$872 million (60 percent) in taxable income related to affiliated firms.

The median annual income per individual claimant representative associated with these direct payments was about \$7,800, with 9 percent receiving more than \$100,000 in income. Firm median annual income was approximately \$44,100, with about 5 percent of the firms receiving more than \$1 million in income. Moreover, the 10 firms with the highest income received approximately \$191 million, representing about 22 percent of all direct payment income shared with firms in TY 2013.

Firm	Income in TY 2013
1	\$66.6 million
2	\$34.6 million
3	\$18.0 million
4	\$11.8 million
5	\$10.8 million
6	\$10.2 million
7	\$10.2 million
8	\$9.9 million
9	\$9.8 million
10	\$9.3 million
Total	\$191.2 million

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ABBREVIATIONS

EIN	Employer Identification Number
IRS	Internal Revenue Service
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSN	Social Security Number
TY	Tax Year
U.S.C.	United States Code

Forms

1099-MISC	<i>Miscellaneous Income</i>
SSA-1694	<i>Request for Business Entity Taxpayer Information</i>
SSA-1695-F3	<i>Identifying Information for Possible Direct Payment of Authorized Fees</i>
SSA-1696-U4	<i>Appointment of Representative</i>
SSA-1699	<i>Registration for Appointed Representative Services and Direct Payment</i>

BACKGROUND

A claimant may appoint a qualified individual to act on his/her behalf in matters before the Social Security Administration (SSA).¹ An appointed representative can request that the Agency pay the authorized fee directly out of a claimant's past-due benefits if he/she is an attorney or a non-attorney who has met certain prerequisites.² SSA will withhold 25 percent of the claimant's past-due benefits if the appointed representative properly notifies SSA that direct payment will be requested.³

SSA is required to file an information return (Form 1099-MISC) with the Internal Revenue Service (IRS) if it made \$600 or more in direct payments to a claimant representative in a calendar year.⁴ While SSA only pays fees to individual representatives, these representatives inform SSA about the portion of the payments representing taxable income of affiliated firms.⁵ SSA and the IRS established a 1099-MISC process that allows taxable income to be allocated to an affiliated firm since individual representatives may be firm employees rather than self-employed, and firm employees do not want to be taxed for income incurred on their employers' behalf.⁶ In this report, we focus on income to show the portion of funds attributable

¹ *Social Security Act §§ 206 and 1631(d)(2), 42 U.S.C. §§ 406 and 1383(d)(2).* Claimants must sign and file a Form SSA-1696-U4, *Appointment of Representative*, or an equivalent written statement constituting proof of appointment.

² On February 27, 2010, the *Social Security Disability Applicants' Access to Professional Representation Act of 2010* amended sec. 206 of the *Social Security Act* to permanently extend the fee withholding provisions to attorneys for Title XVI and those non-attorneys who qualify (Pub. L. No. 111-142, as codified at 42 U.S.C. 406(e)). These provisions had been temporarily previously established by sections 302 and 303 of the *Social Security Protection Act of 2004* Pub. L. No. 108-203, 118 Stat. 493, 521 (2004).

³ A claimant representative who seeks fees via direct payment must register using Form SSA-1699, *Registration for Appointed Representative Services and Direct Payment*. SSA will use the information from the Form SSA-1699 to prepare and issue a Form 1099-MISC to claimant representatives. A claimant representative must submit a Form SSA-1695-F3, *Identifying Information for Possible Direct Payment of Authorized Fees*, in connection with each claimant he/she represents to request direct payment of fees.

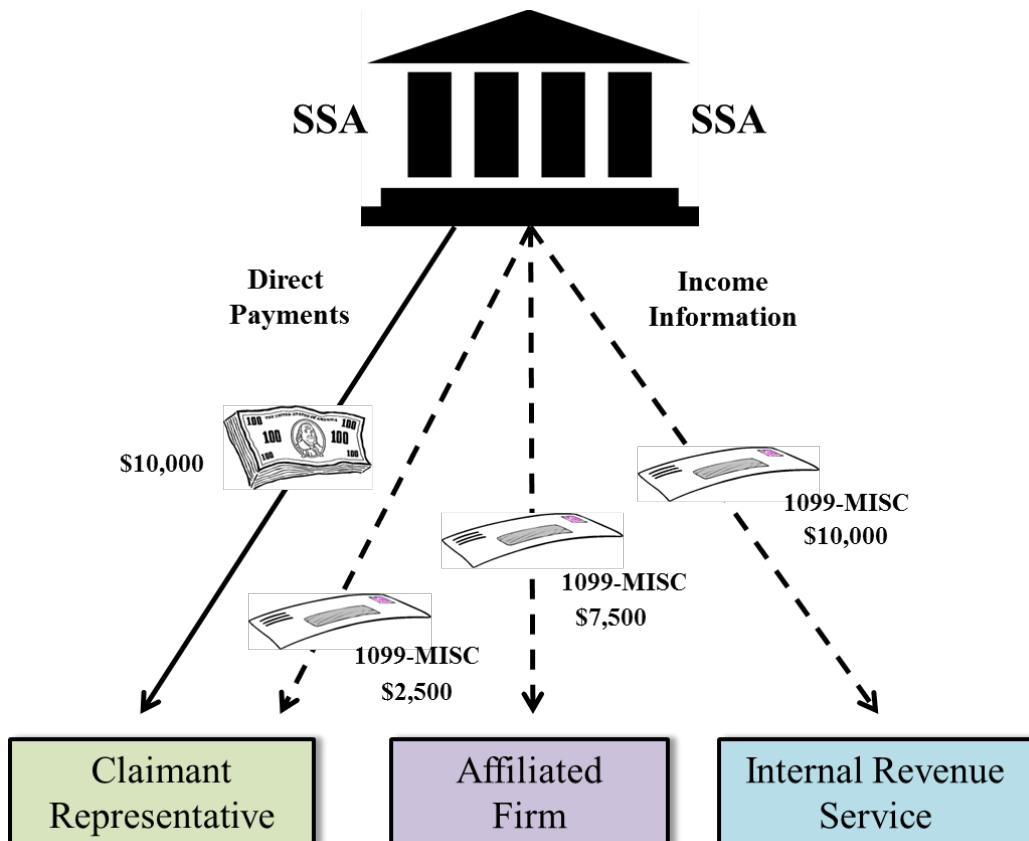
⁴ 26 C.F.R. § 1.6041-1(a)(1)(i).

⁵ SSA encourages firms or organizations that have individual representatives as employees or partners to register voluntarily in order to receive IRS Forms 1099-MISC. This will allow SSA to report to the IRS that the payments made to the individual representatives are taxable income to the firm or organization rather than to the individual representatives. To register, these firms or organizations may file Form SSA-1694, *Request for Business Entity Taxpayer Information*. When the Agency receives information—such as name, address, and Employer Identification Number (EIN)—that reflects a representative is an employee or affiliate of a firm, SSA issues two Forms 1099-MISC, one to the firm reporting fees in box 7, and another to the representative who received the payments to report income in box 14. The latter is an informational Form 1099-MISC that reflects a representative's income passed to the firm. If SSA did not receive a SSA-1694 from the firm, it will report the aggregate payments as taxable income to the individual representative.

⁶ For example, if SSA makes total direct payments of \$10,000 during TY 2013 to a claimant representative, he or she can indicate via Form SSA-1699 that \$2,500 should be reported to the IRS as income under his/her Social Security number (SSN) and the remaining \$7,500 reported as income under his or her employer's EIN. With respect to payments on a single claim, claimant representatives cannot divide the amount between personal income and firm income.

to representatives' employment with firms as well as those firms' overall incomes. Figure 1 shows the Agency's direct payments and related IRS reports.

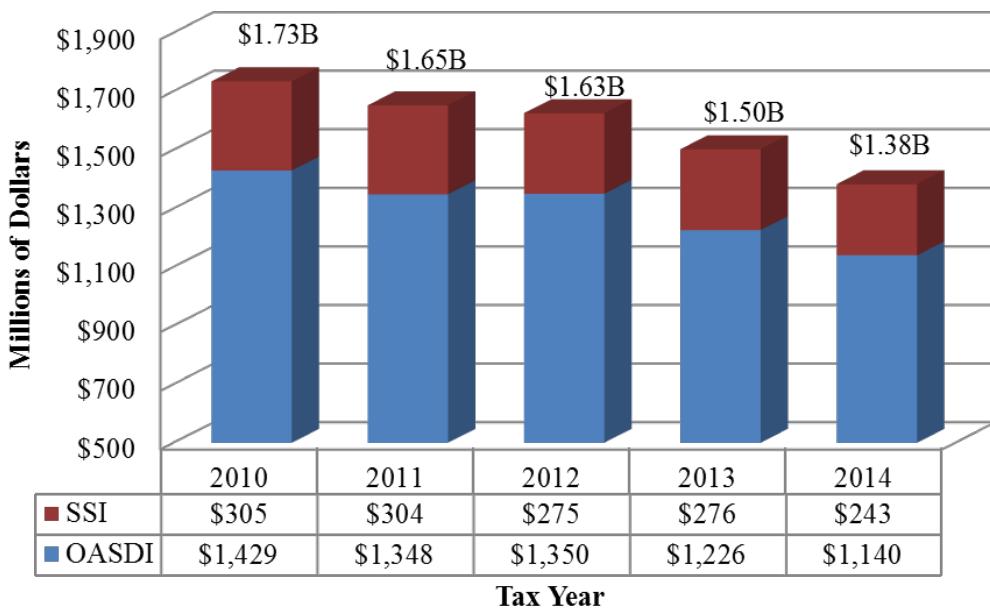
Figure 1: Agency Direct Payments and Related IRS Reports



Note: In the example above, SSA made direct payments totaling \$10,000 to the claimant representative during TY 2013. SSA would issue multiple Forms 1099-MISC to the individual claimant—including one to reflect the \$2,500 in taxable income and a second to reflect the \$7,500 in income passed to the firm. Additionally, SSA would issue a Form 1099-MISC to the firm that employed the individual claimant representative to reflect the \$7,500 in taxable income. SSA would also share the Form 1099-MISC income breakouts with the IRS.

Figure 2 reflects the total SSA direct fee payments made to representatives for TY 2010 through 2014.^{7,8} Allowance rates and dispositions on claimant cases have decreased in recent years, as have direct payments. Allowance rates on initial claims have dropped 3 percent since Fiscal Year 2010, while dispositional allowance rates on hearing claims have dropped approximately 33 percent. Moreover, initial disability processed claims fell about 9.5 percent over the same 5-year period, while hearing dispositions decreased by approximately 7.7 percent.⁹

**Figure 2: Agency Direct Payments to Claimant Representatives
(TYs 2010 Through 2014)**



Source: SSA management information from the Offices of Applications and Supplemental Security Income Systems and Retirement and Survivors Insurance Systems.

⁷ For this review, we analyzed Agency data SSA used to prepare the Form 1099-MISC information sent to claimant representatives, which included about 96 percent of the direct payments in TY 2013. Various factors, including missing SSN, precluded the Agency from reporting all direct payments to the IRS. Moreover, annual direct payments totaling less than \$600 would not be reported to the IRS.

⁸ SSA publishes statistics on its website about direct payments to claimant representatives issued on Old-Age, Survivors and Disability Insurance claims. We obtained data on Supplemental Security Income direct payments in Figure 2 from the Agency.

⁹ SSA, *Annual Performance Report 2014-2016*, p. 81-82 February 2015.

In this report, we focus on income related to SSA direct payments to show the portion of funds attributable to representatives' employment with firms as well as the income received by those firms in TY 2013. We also discuss fee characteristics, including the average and median payment amounts per claimant representative, distribution of earnings between representatives and affiliated firms, and representatives and affiliated firms with the highest earnings.

TAX YEAR 2013 INDIVIDUAL AND FIRM INCOME

In TY 2013, SSA reported to the IRS that it made approximately \$1.4 billion¹⁰ in direct payments to about 15,300 claimant representatives for services provided to approximately 446,000 claimants.¹¹ While payments can only be made to individual claimant representatives, under the Form 1099-MISC process, these claimant representatives can attribute all, part, or none of the income associated with SSA direct payments to their affiliated firms. In this way, the tax liability related to the income can shift from the individual to the firm. In TY 2013, about \$575 million (40 percent) in direct payments related to individual claimant representative income, and the remaining \$872 million (60 percent) related to affiliated firm income. We provide information on both individual claimant representatives and firms below.

Individual Claimant Representative Income

Of the approximately 15,300 claimant representatives, the median annual income per claimant representative related to SSA direct payments was \$7,800.¹² About 91 percent of the claimant representatives had less than \$100,000 in income, another 9 percent had between \$100,000 and \$1 million in income, and about 0.2 percent had income over \$1 million in TY 2013 (see Table 1).

¹⁰ The exact amount reported to the IRS was \$1,448,074,048.68.

¹¹ In Appendix C, we discuss the distribution of direct payments to claimant representatives.

¹² The average annual income per claimant representative related to SSA direct payments in TY 2013 was about \$37,700. This figure includes 2,571 claimant representatives who passed all of their income to an affiliated firm, resulting in no individual income in TY 2013. These claimant representatives are included in our median and average annual income calculations.

Table 1: Distribution of TY 2013 Claimant Representative Individual Income Related to SSA Direct Payments

TY 2013 Income	Number of Claimant Representatives	Percent
Up to \$1,000 ¹	2,908	19.0
\$1,001 to \$10,000	5,437	35.6
\$10,001 to \$100,000	5,541	36.3
\$100,001 to \$500,000	1,260	8.3
\$500,001 to \$1 Million	97	0.6
Greater than \$1 Million	27	0.2

Note 1: Includes 2,571 claimant representatives who attributed all of their income to firms.

The top 10 claimant representatives had individual income of approximately \$23 million in TY 2013 (see Table 2). The income among this group ranged from \$1.5 to \$3.7 million, totaling \$22.9 million, or about 4 percent of all individual income reported to the IRS in TY 2013.

Table 2: Top 10 Claimant Representatives' Individual Income in TY 2013 Related to SSA Direct Payments

Claimant Representative	Individual Income	Income Attributed to Firm(s)	Form 1099-MISC Mailing Address
1	\$3.7 million	\$34.9 million	New York
2	\$3.6 million	\$27.4 million	Utah
3	\$3.3 million	\$374,300	Oregon
4	\$2.3 million	\$5.9 million	New York
5	\$1.9 million	\$7.4 million	Texas
6	\$1.8 million	\$2.4 million	Illinois
7	\$1.6 million	0	Texas
8	\$1.6 million	\$7,500	Kentucky
9	\$1.6 million	\$9.1 million	California
10	\$1.5 million	\$205,500	Kentucky
Total	\$22.9 million	\$87.7 million	

Firm Income

Of the approximately 3,200 firms with income from SSA in TY 2013,¹³ the median annual income per firm related to SSA direct payments was approximately \$44,100.¹⁴ In Table 3, we show the distribution of income among firms associated with the TY 2013 direct payments.¹⁵ About 30 percent of the firms had income between \$100,000 and \$1 million, with about 5 percent of the firms having greater than \$1 million in TY 2013.¹⁶

**Table 3: Distribution of Firm Income in TY 2013
Related to SSA Direct Payments**

Tax Year 2013 Total Income	Number of Firms	Percent of Firms
Up to \$1,000	30	0.9
\$1,000 to \$10,000	701	21.8
\$10,001 to \$100,000	1,382	42.9
\$100,001 to \$500,000	791	24.6
\$500,001 to \$1 Million	166	5.2
Greater than \$1 Million	152	4.7%

The 10 firms with the highest income level accounted for approximately \$191 million, about 22 percent of all income shared with firms in TY 2013 (see Table 4). The top firm received almost twice as much attributed income as the second highest firm.¹⁷

¹³ About 43 percent of the claimant representatives attributed at least a portion of their income to a firm. As we note later in the report, the claimant representative may also be the firm owner.

¹⁴ The average annual income per firm related to SSA direct payments in TY 2013 was about \$270,900.

¹⁵ We used the EIN on the Form 1099-MISC to identify the firms associated with the direct payments. A firm may have more than one EIN.

¹⁶ Until January 1, 2015, SSA had provided a “Fee Detail Summary” with the Form 1099-MISC as a courtesy to representatives with direct payments of \$600 or more in a calendar year. The Agency stated it discontinued this service due to increasing costs and diminishing resources. However, SSA continues to provide identifying information with all direct deposit fee payments sent to financial institutions so representatives can reconcile their client account records.

¹⁷ We also found a relationship between the income of the top claimant representatives and the top firms, with 5 of the top claimant representatives in Table 4 attributing income to 4 of the top 10 firms.

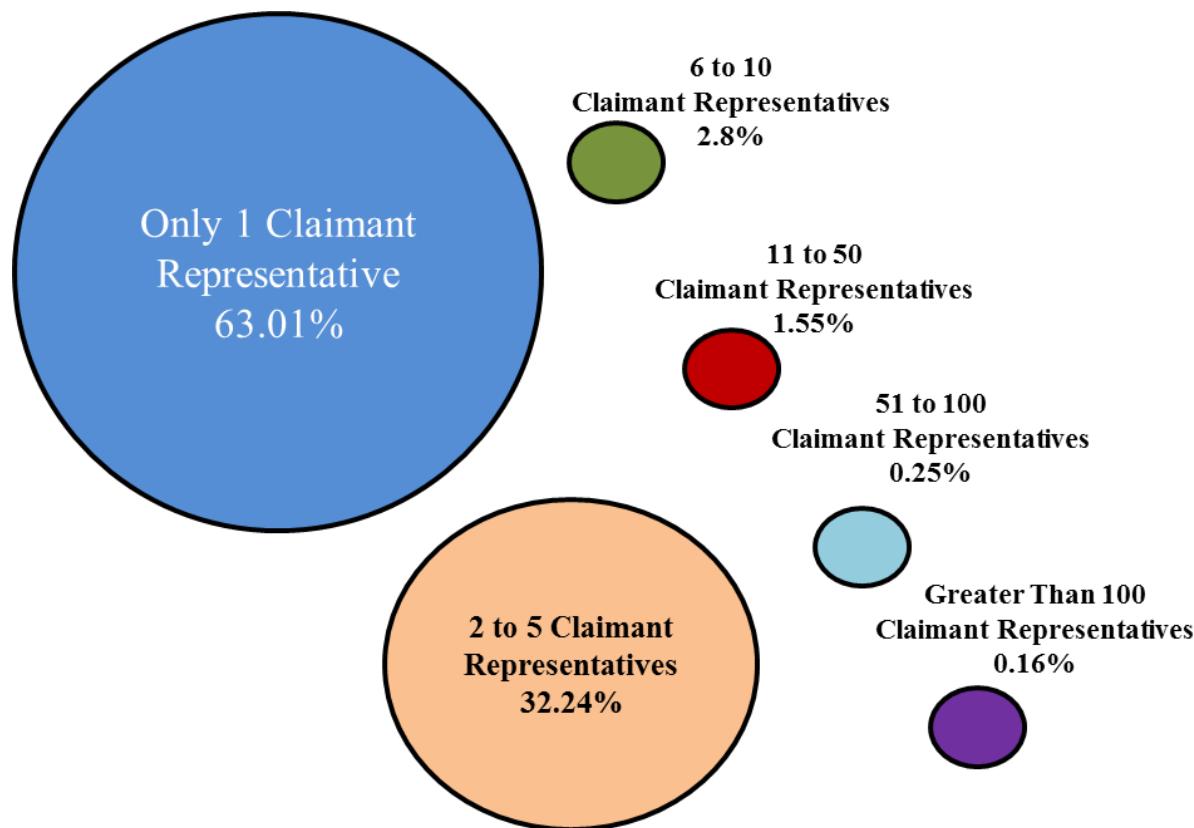
Table 4: Top 10 Firms with the Most Income Related to Direct Payments from Affiliated Claimant Representatives in TY 2013

Firm	Income	Form 1099-MISC Mailing Address
1	\$66.6 million	California
2	\$34.6 million	Utah
3	\$18.0 million	Massachusetts
4	\$11.8 million	Connecticut
5	\$10.8 million	California
6	\$10.2 million	Indiana
7	\$10.2 million	Florida
8	\$9.9 million	Texas
9	\$9.8 million	Massachusetts
10	\$9.3 million	Massachusetts
Total	\$191.2 million	

About 63 percent of the firms had income attributed by only one claimant representative in TY 2013 (see Figure 3).¹⁸ Less than 2 percent of the firms were associated with 11 or more claimant representatives. For instance, we identified a firm with \$10.2 million in income from 122 claimant representatives with addresses in 35 States.

¹⁸ When we reviewed a sample of these cases, we found that many appeared to have the same name as the claimant representative, indicating the employee and the firm was the same except for tax purposes.

Figure 3: Number of Claimant Representatives Attributing Income Per Firm in TY 2013



CHARACTERISTICS OF TAX YEAR 2013 FORM 1099-MISC FILE

We reviewed a number of characteristics related to the TY 2013 Form 1099-MISC data file, including (1) the level of claim approval, (2) the number of claimants per claimant representative, and (3) the claimant representative mailing addresses.

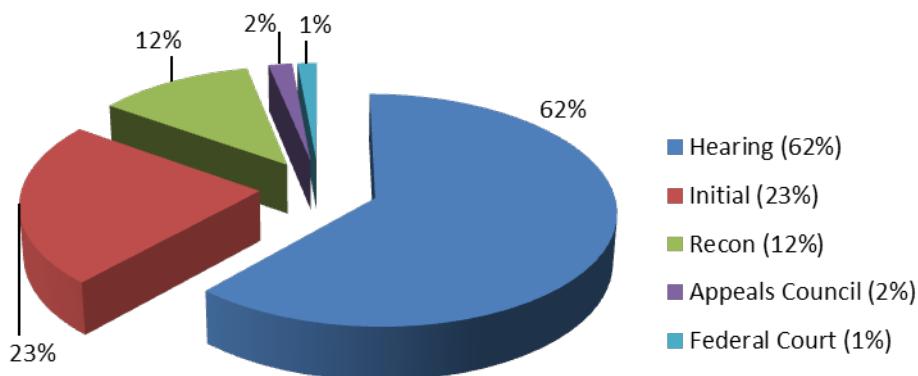
Timing of Direct Payments to Claimant Representatives

We randomly selected 275 cases represented by claimant representatives who received direct payments¹⁹ to determine the level at which SSA allowed the claim. SSA approved about 62 percent of the claims at the hearings level, followed by 23 percent at the initial claims level, 12 percent at the reconsideration level, and the remaining 3 percent at the Appeals Council and Federal Court levels (see Figure 4). Finally, the average claimant fee payment at the initial and reconsideration level decisions was \$1,768, whereas the average payment at the hearings level and above was more than twice that amount at \$3,858. Based on our random sample, we estimate that SSA directly paid claimant representatives approximately \$1.1 billion in fees on

¹⁹ As noted earlier, in TY 2013, SSA reported to the IRS that it made approximately \$1.4 billion in direct payments to about 15,300 claimant representatives for services provided to approximately 446,000 claimants.

cases at the hearing level or above for efforts on behalf of about 289,000 claimants (see Appendix B for more on our methodology).

**Figure 4: Level of Claimant Allowance Associated with Direct Payments
(275 Sample Items from TY 2013)**



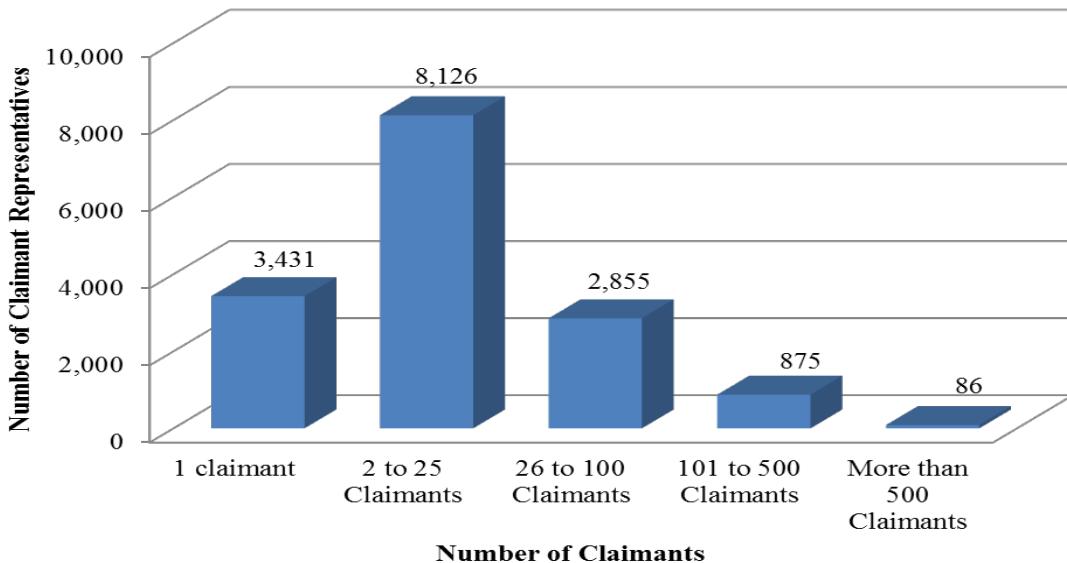
Note: To provide context, SSA allowed approximately 982,000 initial disability claims and about 373,000 hearing-level disability claims in Fiscal Year 2013, though not all of these cases involved representatives.

Number of Claimants Per Claimant Representative

The average claimant representative received direct payments from SSA for 29 claimants in TY 2013, with the number of claimants per claimant representative ranging from 1 to 16,524.²⁰ As Figure 5 shows, while the majority of the claimant representatives received direct payments from SSA for 100 or fewer claimants, about 6 percent of the claimant representatives received payments from SSA for more than 100 claimants, with about 1 percent associated with more than 500 claimants.

²⁰ The figures do not represent all claimants associated with these claimant representatives. Instead, the figures represent those claimants allowed benefits where a direct payment was made to the claimant representative. These figures do not include situations where the claim was denied or dismissed, the claimant representative waived the fee, or where the claimant representative had to seek payment directly from the claimant.

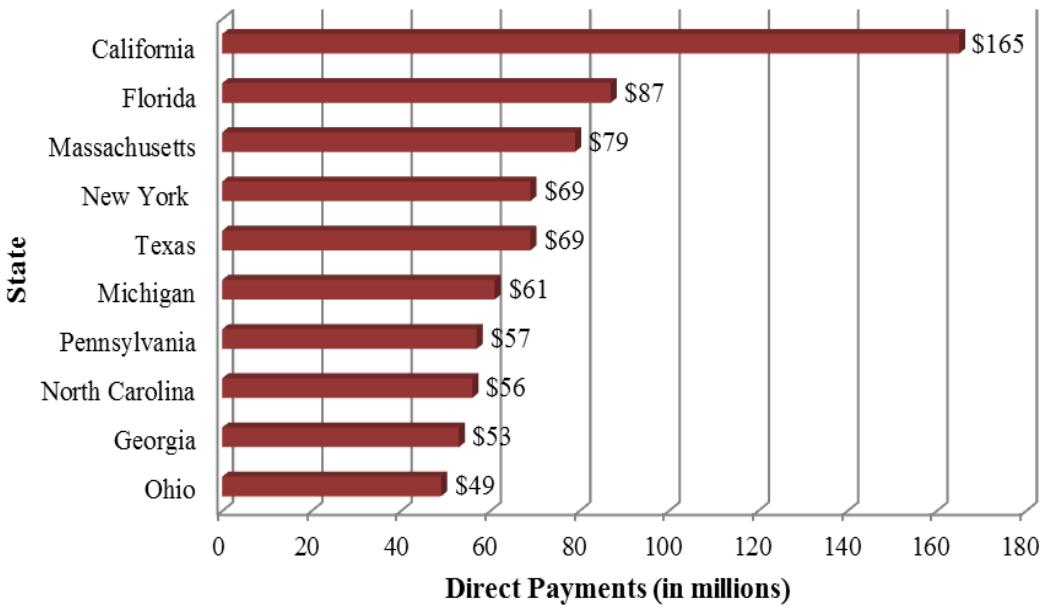
Figure 5: Number of Claimants per Claimant Representatives in TY 2013



Mailing Addresses

The Agency sent Form 1099-MISC information returns to mailing addresses in all 50 States, with the highest amount of reported payments going to addresses in California, Florida, and Massachusetts (see Figure 6). These 10 States represent \$744 million in payments or about 51 percent of direct payments in TY 2013.

Figure 6: Top 10 States Associated with Claimant Representative Direct Payments in TY 2013



SUMMARY

In TY 2013, SSA reported to the IRS approximately \$1.4 billion in claimant representative direct payments. These payments related to about 15,300 claimant representatives and 3,200 firms for services provided to approximately 446,000 claimants. Based on Form 1099-MISC information, individual claimant representatives' taxable income accounted for about 40 percent of the \$1.4 billion in direct payments in TY 2013, and 60 percent of the taxable income was attributed to firms that employed claimant representatives. We also found that about 65 percent of the direct payments in TY 2013 related to claims decided at the hearings level and above.

APPENDICES

Appendix A – SCOPE AND METHODOLOGY

We reviewed Tax Year (TY) 2013 Agency payments to claimant representatives to understand fee characteristics, including the average payment amount per claimant representative, distribution of earnings between representatives and affiliated firms, and representatives and affiliated firms with the highest earnings. To meet our objective, we:

- Reviewed applicable sections of the *Social Security Act* and the Social Security Administration's (SSA) regulations, policies, and procedures, including the Program Operations Manual System.
- Reviewed prior SSA Office of the Inspector General audits.
- Met with Agency managers and staff in SSA's Offices of Disability Adjudication and Review, Operations, and Systems.
- Obtained data on TY 2013 fee payments and IRS Form 1099-MISC information reports from staff in the Office of Systems.
- Obtained management information on TYs 2010 to 2014 fee payments from staff in the Office of Applications and Supplemental Security Income Systems. We also obtained statistics on Title II direct payments to claimant representatives in TYs 2010 to 2014 from SSA's website.
- Analyzed TY 2013 data for Agency payments to claimant representatives reported on Forms 1099-MISC to claimant representatives, affiliated firms, and the Internal Revenue Service. We ranked the claimant representatives and firms based on total direct payments and income. In addition, we also analyzed a TY 2013 Agency file with details on individual fee payments associated with the Form 1099 process. Although we found minor differences with respect to overstated payment amounts (about 0.09 percent) and additional representatives (about 0.7 percent), we considered the differences to be immaterial. We used the Form 1099 details file only once in the report when discussing the number of claimants per claimant representatives.
- Randomly selected 275 sample cases to determine the level of approval and claim type. We reviewed electronic folders for each claim to identify the type of claim and the component that made the determination on the claim (see Appendix B for our results).

We found the TY 2013 data for Agency payments to claimant representatives reported to the IRS used in this review to be sufficiently reliable. The performance period for this review was from January to March 2015 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix B – SAMPLE METHODOLOGY

We randomly selected 275 sample cases from a population of 446,041 unique claimants to determine the level of approval and claim type on claims that resulted in direct payments to claimant representatives in Tax Year (FY) 2013. We reviewed electronic folders for each claim to identify the type of claim and the component that made the determination on the claim. We found that the Social Security Administration (SSA) approved benefits in 178 claims at the hearing, Appeals Council, or Federal Court levels. The remaining 97 cases were allowed at the initial or reconsideration levels. Projecting our sample results to the population, we estimate that SSA directly paid claimant representatives approximately \$1.1 billion on cases at the hearing level or above for about 289,000 claimants. The following table provides the details of our sample results and statistical projections.

Table B–1: Level of Claimant Allowances Associated with FY 2013 Direct Payments Among 275 Claimants Reviewed by Office of the Inspector General

Population Size	446,041
Sample Size	275
Claimants Allowed at the Initial and Reconsideration Levels	
Number of Cases Identified in the Sample	97
Projected Items in the Population	157,331
Lower Limit	132,168
Upper Limit	183,926
Amounts Identified in the Sample	\$171,530
Point Estimate	\$278,216,176
Projection Lower Limit	\$203,898,312
Projection Upper Limit	\$352,534,040
Claimants Allowed at the Hearing, Appeals Council, and Federal Court Levels	
Number of Cases Identified in the Sample	178
Projected Items in the Population	288,710
Lower Limit	262,115
Upper Limit	313,873
Amounts Identified in the Sample	\$686,748
Point Estimate	\$1,113,882,781
Projection Lower Limit	\$986,566,862
Projection Upper Limit	\$1,241,198,699

Note: All statistical projections are at the 95 percent confidence level.

Appendix C – TAX YEAR 2013 DIRECT PAYMENTS

In this appendix, we focus on the Social Security Administration (SSA) payments that can only go to individuals, versus the distribution of income, which relates to individuals and firms. In Tax Year (TY) 2013, SSA reported to the Internal Revenue Service that it made approximately \$1.4 billion in direct payments to about 15,300 claimant representatives for services provided to approximately 446,000 claimants. SSA will only pay fees to individual representatives, even though they can later share the tax liability with an affiliated firm. The median annual direct payment per claimant representative was approximately \$20,300,¹ with annual payments ranging from \$600 to \$38.6 million.² We found about 79 percent of claimant representatives were paid less than \$100,000, another 20 percent earned between \$100,000 and \$1 million, and less than 1 percent received direct payments in excess of \$1 million in TY 2013 (see Table C–1).

**Table C–1: Distribution of Direct Payments
to Individual Claimant Representatives in TY 2013**

TY 2013 Total Payment Amount	Number of Claimant Representatives	Percent
Up to \$1,000	235	1.5
\$1,001 to \$10,000	5,216	34.2
\$10,001 to \$100,000	6,565	43.0
\$100,001 to \$500,000	2,859	18.7
\$500,001 to \$1 Million	271	1.8
Greater than \$1 Million	124	0.8

We identified the 10 claimant representatives who received the most direct payments in TY 2013 (see Table C–2). The payments to this group ranged from \$7.5 to \$38.6 million, totaling \$146.9 million, or about 10 percent of all direct payments in TY 2013.

¹ The average annual payment per claimant representative in TY 2013 was about \$94,800.

² The claimant representative who received \$38.6 million in direct payments attributed \$35 million in income to the affiliated firm and kept the remaining as his own income.

Table C-2: Top 10 Individual Claimant Representatives Receiving Direct Payments in TY 2013

Claimant Representative	Direct Payment Amount	Form 1099-MISC Mailing Address
1	\$38.6 million	New York
2	\$31.0 million	Utah
3	\$16.3 million	Massachusetts
4	\$10.7 million	California
5	\$9.4 million	Texas
6	\$8.5 million	Minnesota
7	\$8.4 million	Florida
8	\$8.3 million	Minnesota
9	\$8.2 million	New York
10	\$7.5 million	New Jersey
Total	\$146.9 million	

Note: Three of the top 10 claimant representatives (Numbers 1, 7, and 9 above) contributed about \$48 million to the same firm (firm #1 among the top 10 firms shown in Table 4 of this report).

Appendix D– MAJOR CONTRIBUTORS

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