THE WHITE HOUSE
OFFICE OF THE PRESS SECRETARY

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CONTACT: 202-456-7035

VICE PRESIDENT ANNOUNCES REINVENTION OF SOCIAL SECURITY OPERATIONS

WASHINGTON--As part of the Clinton Administration's continuing efforts to reinvent the federal government, Vice President Al Gore today announced a set of reinvention initiatives for the Social Security Administration. While the President was in Warm Springs, Georgia, commemorating the 50th anniversary of the death of President Franklin D. Roosevelt, Vice President Al Gore said: "Social Security is one of FDR's most important legacies to the nation."

In unveiling reinvention proposals to improve social security operations while preserving FDR's legacy, the Vice President said: "We'll have a system ready for the next century, providing world class service to its customers."

The Clinton-Gore reinvention recommendations for Social Security include:

PAYMENT DAY CYCLING FOR NEW BENEFICIARIES: Monthly payments are currently paid on the third of each month. This results in peak workloads for SSA and the banking and business communities. With approximately 3.5 million beneficiaries coming on the rolls annually, there is real concern that SSA could not cope with the workloads. Therefore, new beneficiaries will have their payments staggered over a number of payment dates throughout the month to eliminate workload spikes and allow SSA to provide better customer service without adding staff.

In developing this proposal the Social Security Administration followed the practice of the Administration's National Performance Review by using customer input to improve SSA operations. Interviews with the public conducted in "focus groups" showed that many retirees have already built their monthly activities around the day their payment arrives. Social Security Commissioner Shirley Chater said: "To change that practice would be disruptive to them, so the payment day for those already on SSA's roles will remain the same unless they ask to participate in our new cycling of payments." That is why payment cycling will apply only to new Social Security beneficiaries. One day of every week in the month would, in fact, become "payment day" for a certain number of new Social Security beneficiaries.

IMPROVE 1-800 TELEPHONE SERVICE: SSA spent the last six months meeting with some of American's top rated customer telephone service companies to determine

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the best ways SSA can provide world class telephone service. SSA learned that these companies rely on modern computer systems to give them the capacity and capability to provide quick and accurate service. SSA is striving to develop the same capability. Commissioner Chater said, "We need to create a technological infrastructure that will allow us to do more and do it better without asking for more resources. Nothing is more important to our agency than getting this infrastructure up and running and serving our customers."

DIRECT DEPOSIT/ ELECTRONIC BENEFITS TRANSFER SERVICES: SSA will increase the number of recipients who are paid by direct deposit in three phases over four years. The first, already underway, is directed to all new beneficiaries who have bank accounts. The second phase will focus on those with bank accounts and who do not use direct deposit services. The final phase will require that all beneficiaries without bank accounts must select one of the electronic benefits transfer services that will be available to receive their monthly benefit payments.

More than forty percent of Social Security's 43 million beneficiaries are still paid by check. Direct deposit would save $.35 per check, or $70 million per year. In addition, more than 35,000 checks are reported lost each month, and the overwhelming majority of these problems would be eliminated by going to direct deposit.

ONE STOP BENEFIT APPLICATION: The Administration wants to give people who are applying for retirement or Medicare benefits more options. Many people may find it more convenient and more comfortable to file for benefits through their own personnel office at work. Today, about one percent of people filing for benefits use this option--and where they are able to do so they use the old paper application process.

The Social Security Administration wants to create a controlled, confidential, electronic process through which employees at large companies can quickly file for retirement and/or Medicare through the company personnel office. This option would allow workers to apply for a company pension, Social Security and health benefits all at one time and in one place.

REGIONAL OFFICE CONSOLIDATION: SSA will be moving hundreds of front-office administrative employees into direct service positions by consolidating 10 regional offices into five. "In an age of instantaneous electronic communication, we will be able to function just as efficiently with five fewer administrative sites," Commissioner Chater said.

STOP COLLECTING ATTORNEYS' FEES: SSA will no longer be a collection agency for attorneys who have clients who appeal Social Security judgments. SSA now approves the fee an attorney (or non-attorney representative) may charge and withholds a part of past due benefits for the attorney. "We are getting out of that business," Commissioner Chater said. "The agency will no longer approve fees or withhold benefits to pay attorneys." Social Security workers now involved in paying attorneys would now be able to provide direct service to beneficiaries. She noted, however, that there will be statutory limits on what attorneys may charge.

EMPLOYERS' ELECTRONIC WAGE REPORTING: All employers, except those who employ only household workers, will be required to file W-2 wage reports with SSA on magnetic media or by electronic transmission. Time and effort now spent in processing and checking paper will be eliminated to allow Social Security to focus more on the important needs of customers.

IMPROVE THE DISABILITY ADJUDICATION PROCESS: State agencies currently have the authority to make disability determinations, fully financed by SSA and following SSA rules. Average claim processing times vary greatly by state, ranging from as low as 42 days to as high as 115 days. SSA will work with the states to jointly establish minimum performance standards and a period of time during which states will be required to meet these standards. In addition "performance enhancement teams" from the highest performing states will be made available on an as needed basis to provide on site assistance. SSA will also encourage the formation of labor/management partnerships in order to find ways of increasing performance. This initiative is intended to raise the level of the lowest performing states and to narrow the gap between the highest and lowest performing states.

IMMIGRATION AND NATURALIZATION SERVICE (INS) WILL PROCESS APPLICATIONS FOR SOCIAL SECURITY CARDS: Aliens will apply for Social Security cards at the time they complete INS immigration paperwork. Currently, the alien applicant is required to furnish almost the same information to SSA as to INS. This will provide "one stop" service, will reduce the potential for issuing cards based on fraudulent INS documents and will result in efficiencies for the government.

END DUPLICATIVE SSA-IRS FILING: Beneficiaries who work and earn over the exempt amount are required to report their earnings to SSA by April 15th each year. Beneficiaries are also required to report their wages for the prior year. To reduce the paperwork burden on the public and provide "one-stop" service, beneficiaries will only report to IRS and include on their income tax return the amount that would otherwise be reported to SSA. IRS will issue any payment due to SSA beneficiaries. In addition, SSA and IRS will work together to determine how IRS can offset overpayment against tax refunds.

These proposals will result in $850 million in savings from FY 1997 to FY 2000.

OFFICE OF THE VICE PRESIDENT
WASHINGTON

April 6, 1995

MEMORANDUM FOR THE PRESIDENT

From: The Vice President

Subject: National Performance Review Phase II Proposals: Decisions Related to the Social Security Administration

Commissioner Shirley Chater has committed to a set of proposals that would result in $900 million in savings from FY 1997-2000 (SSA discretionary savings of $400 million, additional discretionary savings of $30 million at Treasury, and $470 million in mandatory off-budget program savings).

We are scheduled to announce these proposals on April 12 at an event in a local SSA office in the Washington D.C. area. This is the anniversary of the day that Franklin Roosevelt died. A photograph of FDR and Ms. Frances Perkins may be used at the event. We will also take this opportunity to announce plans to improve the 800 number service as a result of the recent NPR-sponsored teleservice benchmarking study. Following are key recommendations which require your attention. Attached are further details as well as descriptions of additional proposals that are less controversial.

Cycle timing of benefit payments. All Social Security benefits are paid on the third day of each month. These disbursements create a peak in SSA and banking workloads during the first ten days of the month. This proposal would stagger disbursement throughout the month for new beneficiaries. Legislation is not required. Even though focus groups show support for payment cycling, this may be a sensitive issue as Social Security benefits have been paid on the same day for 50 years.

Consolidate Regional Offices. Reduce regional offices from 10 to 5. This proposal will streamline SSA operations, but the choice of sites could be sensitive.

Eliminate Attorney Fee Program. SSA currently approves the fee that may be charged by an attorney to represent a claimant in administrative proceedings. SSA will discontinue approving attorney fees and withholding benefits to pay attorneys. Instead, statutory limits on the amount an attorney or representative may charge will be set. Claimants will be allowed to seek relief from SSA if overcharged.

Authorize the Commissioner to contract out all or part of the Disability Adjudication Process. State agencies currently have the authority to make disability determinations, fully financed by SSA and following SSA rules. Average claim processing times vary greatly by state, ranging from as low as 40 days to as high as 120 days. This proposal would give the Commissioner flexibility in managing the workload, speed claims processing, and result in 5-year savings of $120 million. SSA would work with the states to establish minimum performance standards. Initially, SSA would focus on the worst performing states and develop strategies to improve their performance. For example, high performing states could compete to conduct determinations for the poor performers. States and state employee unions are expected to oppose this proposal, since they currently have a monopoly on this function.

Delegate authority to disburse electronic payment of benefits from Treasury to SSA. The Treasury Department has disbursing authority for all benefits paid by SSA and maintains 6 regional finance centers around the country to make these payments. This proposal would grant SSA the authority to disburse benefit payments when the method of payment is electronic. This would eliminate duplication of the payment process, as SSA presently has the same capabilities as those performed by Treasury. SSA would also be able to reduce the number of overpayment due to changes that occur after SSA has sent their tape to Treasury. Treasury is expected to oppose this proposal, as it would drastically reduce their benefit payment workload. Further analysis to determine the impact on Treasury and to develop an implementation plan is necessary.

Other Proposals and Efforts. SSA offers a number of other streamlining proposals that are detailed in the accompanying fact sheet. Significant ongoing efforts resulting from benchmarking activities are also provided in the fact sheet as well as a deferred recommendation on Hearing Reform.

Presidential Decision

Approve ________

Other ________

Attachment - NPR Fact Sheet: Social Security Administration Phase II

Proposals

copy: Leon Panetta
Harold Ickes
Erskine Bowles

NATIONAL PERFORMANCE REVIEW FACT SHEET
SOCIAL SECURITY ADMINISTRATION
PHASE II PROPOSALS

MAJOR PROPOSALS:

Cycle the timing of benefit payments. Monthly benefit payments are currently paid to Title II beneficiaries on the third of each month. This results in peak workload for Social Security and the business and banking community, and reduced SSA customer service throughout the first 10 days of each month. This will continue to be a significant concern as the number of beneficiaries continues to grow. SSA recommends cycling payments so they are staggered over a number of payment dates throughout the month. Legislation is not required. The proposal provides that cycling will be mandated for new OASDI beneficiaries only. Since some current beneficiaries have told SSA that they would be willing to convert to a new cycle, SSA may also solicit volunteers to switch benefit dates.

Total 5-year savings: Discretionary, -$4 million; Mandatory off-budget, $240 million.

Consolidate Regional Offices. SSA proposes to consolidate 10 regional offices into 5. This number will ensure an adequate level of service to the 1300 field offices, 54 State Disability Determination Services, the 132 Offices of Hearings and Appeals and other Federal, State and local agencies, yet realize significant savings (the amount is dependent upon sites chosen for elimination). This proposal facilitates streamlining and delayering. The choice of sites to consolidate is expected to be sensitive.

Total 5-year savings: Discretionary, $50 million.

Eliminate Attorney Fee Program. SSA currently approves the fee that may be charged by an attorney to represent a claimant in administrative proceedings. SSA withholds a specified amount of past due disability or black lung benefits for direct payment to the attorney. SSA recommends they no longer approve fees, withhold benefits or pay attorneys. The proposal provides for a statutory limit on the amount a representative may charge and allows for claimants to seek relief from SSA if overcharged by their attorneys. Attorneys who are assured payment under the current system will object.

Total 5-year savings: Discretionary, $80 million.

Authorize the Commissioner to contract out all or part of the Disability Adjudication Process. State agencies currently have the authority to make disability determinations, fully financed by SSA and following SSA rules. Average claim processing times vary greatly by state, ranging from as low as 40 days to as high as 120 days. This proposal would give the Commissioner flexibility in managing the workload, speed claims processing, and result in 5-year savings of $120 million. SSA would work with the states to establish minimum performance standards. Initially, SSA would focus on the worst performing states and develop strategies to improve their performance. For example, high performing states could compete to conduct determinations for the poor performers. States and state employee unions are expected to oppose this proposal, since they currently have a monopoly on this function.

Total 5-year savings: Discretionary, $120 million.

Delegate authority to disburse electronic payments from Treasury to SSA. Treasury has disbursing authority for all payments issued each month by SSA. This includes 26 million payments issued as electronic direct deposit payments. To effect these payments, Treasury maintains six regional finance centers throughout the country. SSA is seeking authority to disburse its own electronic benefit payments, using its extensive automated data processing capability. SSA would be able to release its payment files later in the month, thereby preventing about four days of incorrect payments due to changes occurring over that period.

Opposition can be expected from Treasury, as SSA comprises over 80 percent of all electronic payments issued by Treasury. Since other agencies have the capability and desire to disburse their own electronic payments, this proposal could be consolidated into a multi-agency package. This concept will require OMB, NPR, and SSA to further analyze the impact on Treasury and to develop an implementation plan.

Total 5-year savings: SSA Discretionary, $10 million; SSA Mandatory off-budget, $20 million; Treasury Discretionary, $30 million.

OTHER STREAMLINING PROPOSALS:

Increase electronic funds transfer (Direct Deposit). Since direct deposit is a more reliable payment mechanism and a vastly more cost-effective method to disburse payments ($0.39 per check versus $0.06 for direct deposit disbursement), SSA proposes to increase the number of recipients who are paid by direct deposit in three phases. The first phase is already underway and presumes that direct deposit will be used by all new recipients having bank accounts. Phases II and III will require government-wide legislation sponsored by Treasury . Phase II will require use of direct deposit by all banked recipients. Phase III establishes a sunset date of September 30, 1999, by which all unbanked recipients must select one of the electronic benefits transfer services that will be available to receive their monthly benefit payments.

Total 5-year savings: SSA Discretionary, $70 million; SSA Mandatory, $200 million.

Increase electronic and magnetic wage reporting. IRS currently requires employers with 250 or more W-2 wage reports for the tax year to file on magnetic media with SSA. Recently, SSA has developed the capability of receiving W-2 wage reports electronically over telephone lines from employers with a computer and modem. Computer software is available for creating W-2 records on diskette. SSA proposes to revise Internal Revenue Code to require all employers (except those with only household workers) to file W-2 wage reports with SSA electronically since it results in faster and more accurate reporting at lower cost to the government. Employers without computer capability can have reports prepared for them using any of the many tax preparation, bookkeeping and payroll services available.

Total 5-year savings: Discretionary, $40 million.

Transfer administration of annual earnings to IRS. Reduces reporting burden and provides "one-stop" service to beneficiaries. Beneficiaries would only report to IRS instead of to IRS and SSA. There is a potential for increased compliance with reporting requirements. IRS could issue an underpayment to beneficiaries, as well as work toward offsetting overpayment against tax refunds. Minimal discretionary savings anticipated unless overpayment enhancement can be implemented.

Transfer enumeration of aliens to INS. Provide "one stop" service to aliens, who would apply for Social Security cards at the time they complete INS immigration paperwork. Eliminates requirement for SSA to recertify INS documents and reduces potential for issuing cards based on fraudulent INS documents.

Total 5-year savings: SSA Discretionary, $20 million.

Increase third party claims taking. SSA proposes establishing a controlled third party claims-taking environment where large employers would assist retiring employees in filing their Social Security claims electronically. This would be a service to retiring employees, providing total benefit/health insurance considerations at one time and place. SSA employee unions may oppose.

Total 5-year savings: Discretionary, $8 million.

SIGNIFICANT ONGOING EFFORTS:

800 number service improvements and benchmarking. In 1994, SSA handled over 64 million calls to its 800 number. SSA conducted a number of customer surveys to clarify customer expectations and found that demand is growing, along with a demand for the range of services provided through the 800 number. A clear link exists between reduced customer satisfaction and the number of times the customer calls and gets a busy signal (this problem would be significantly reduced with payment cycling). Another major element of customer satisfaction relates to whether or not SSA is able to handle a matter to completion with one call. SSA joined NPR and other Federal agencies in benchmarking 800 number services provided by the best in business. As a result, SSA has a comprehensive road-map for providing world-class service and will implement recommendations for closing the gap between their current service and the best service in the business.

SUPPORTED BY NPR STEERING COMMITTEE AND THE VICE PRESIDENT BUT NOT RECOMMENDED AT THIS TIME:

Hearing Reform (Disability Redesign Phase II). The disability hearing process is besieged by increasing numbers of pending cases, inordinate processing times and a significant number of cases overturned at the ALJ hearing stage. Three changes are recommended to support appeals-level-outcomes envisioned under the current SSA Disability Redesign Plan. (1) Closing the record after the ALJ hearing will ensure cases are not dragged out indefinitely, and that correct decisions are made at the earliest possible point in the process. (2) Court appeals would be limited to issues of law only, with ALJ decisions being final on issues of fact. Medical information could not be added to the record after the ALJ decision. (3) Eliminating the role of the ALJ in developing evidence in support of a claim reasserts that claimants must bear the responsibility for developing evidence for claims at the ALJ hearing level. Adjudication Officers would develop evidence for unrepresented claimants.

Since strong opposition to these proposals has already been expressed in interviews with various advocacy groups, implementation of hearing reform should be deferred until there has been a successful implementation of the initial stages of Disability Process Redesign ("Phase I"). However, SSA should continue to study and prepare a case for implementing hearing reforms.

REGO II: SSA's ATTORNEY FEE PROPOSAL

Current law

SSA provides an administrative service to claimants and their attorneys when a claimant hires an attorney to appeal a denial, usually for Disability Insurance benefits. SSA personnel provide up-front authorization of representative's fees, as long as they do not exceed 25% of the claimants past-due benefits or $4,000, whichever is less. SSA also provides a petition process, for those attorneys who seek reimbursement beyond this cap. Finally, SSA calculates the withholding for the attorney's fees and pays the attorneys directly.

Rationale

Given budget constraints and decreasing FTE levels, SSA believes it can no longer afford to provide this service to individuals and attorneys seeking to appeal a denial for DI benefits, at a time when SSA believes it is more important to devote scarce resources to processing initial disability claims.

REGO II Proposal

signed off on by POTUS + VP

The proposal, publicly announced by the White House earlier this year, would eliminate SSA's role in both the fee authorization and the fee petition processes and the calculation of withholding and payment of fees directly to attorneys. In May, SSA proposed to establish a limit of $2,500 on the total amount of the fee a representative may receive. At the time, SSA estimated that the average fee for all claims was a little less than $2500. This proposal offers administrative savings of $80 million and 1,600-1,800 work years through FY 2000.

Reaction to REGO II Proposal

Legal groups + the

The Bazelon Center and ~~other~~ disability advocacy and legal groups criticized the REGO II proposal on the grounds that (2) ~~1)~~ claimants will not be able to get representation because the reimbursement for attorneys is too low, particularly for complex cases; (1) attorneys won't get paid by some clients, without the SSA withholding; and 3) the average fee will tend to rise to the cap and attorneys will end up claiming more of the client's benefit, for those clients that do pay.

=> ltrs Members

White House Working Group Alternative Proposal

-> SS sent draft leg to OMB - asked to reconsider ; wkg gp estabd, cons'g of ——
given comments

Our informal working group developed an alternative to address some of the concerns of the critics. (While this is not a perfect proposal, it may offer an acceptable middle ground) The proposal would cap attorney fees at $3,250 and retain the fee petition process for attorney's whose costs exceed the cap. This plan would also eliminate all other SSA roles including the calculation, withholding, and direct payment of fees. The savings is estimated at $46 -60 million and 1,100-1,500 work years through FY 2000. The advantage of this proposal are that:

- The higher cap of $3,250, in combination with the ability to petition for higher fees, should ensure an adequate supply of quality attorneys for claimants. On an individual case basis the $3,250 cap may, on average, give attorneys more than under the 25%/$4,000 cap. Given expectations of defaults and/or debt collection costs for attorneys, we are in essence, recommending that attorneys be able to charge a higher amount on average for each case to take the risk that some of their clients won't pay.

- This proposal retains two-thirds of the savings of the original REGO II proposal, and attempts to address the concerns of the advocacy community that the quality of representation be maintained by not diminishing the total pool of dollars available for representation.

- Retaining the fee petition process minimizes any disincentive for attorneys to take complex cases.

The down side to raising the cap to $3,250 is the possibility that a larger percentage of the claimants retroactive benefits will go toward attorney's fees. This is a balancing issue between setting a level high enough to ensure adequate representation and not overcharging claimants who pay, to cover costs of claimants who default. One important issue to consider, however, is that the attorney is securing eligibility for future benefit payments which could potentially span the individual's life time. Thus the true value of the attorney's services cannot only be viewed with regard to the retroactive benefits secured.

Congressional Action
As promised, Congress introd leg as pt of ret'mt earnings
original → $25
Jacobs → $4,000
Rpt - ...

Current Options:
- To Make Lawyers happy
retain w/holding (how many fee's?)

- work w/ Senate (Harkin)

Summary of Attorney Fee Proposal and Alternative Estimates

Proposal/Description	FY 1997-2000 Cost /(Savings) Workyears	FY 1997-2000 Cost /(Savings) $Millions
Rego II Attorney Fee Proposal Eliminate representative fee authorization and direct payment of fees to attorneys.	1,600-1,800	80
OMB Alternative 1: Eliminate attorney fee withholding. Claimant determines the fee based on a statutory cap of 25 percent of past-due benefits or $4,000 as indicated in the award letter.	1,040	48
OMB Alternative 2: Same as OMB alternative 1 exept that it caps the attorney fee payment at 30 percent of past-due benefits or $6,000, whichever is less or level which minimizes "fee petitions".	740	32
OMB Alternative 3: Automate the attorney fee process using a set formula; determine the fee without regard for any adjustment (except for concurrent entitlement); include automated paragraph explaining the maximum amount chargeable.	1,040	48
OMB Alternative 4: Allow for 25 percent of each back payment check to be made payable jointly to the recipient and the attorney (two-party check alternative).	(440)	(10)
White House Staff Alternative 1		
Cap $2,500	800-1,200	30-50
Cap $3,250	1,100-1,500	46-60
Cap $4,000	1,500-1,700	60-70
Eliminate fee withholding. Keep fee petition process. Replace percentage-based fee calculations with a cap.		
White House Staff Alternative 2	Attorney	Non-Attorney
Recover SSA costs associated with current process by assessing a user's fee under one of two options.		
Option 1: Assess costs only to attorney representatives.	$160	0
Option 2: Separate user fee for non-attorney representatives.	$165	40

ATTORNEYS FEES
TWO-PARTY PAYMENT PROPOSALS

COST/(SAVINGS) ESTIMATES
Dollars in millions
Totals may not add due to rounding

Proposal		FY96	FY97	FY98	FY99	FY00	5-year	FY01	FY02	7-year
A. Paper check only worker, max. $4000										
	WY	10	110	110	(210)	(210)	(180)	(210)	(210)	(600)
	$	1	2	2	(10)	(10)	(14)	(10)	(10)	(33)
B. Direct deposit, only worker, max. $4000										
	WY	10	190	190	190	(210)	360	(210)	(210)	(53)
	$	1	5	5	5	(10)	7	(10)	(10)	(12)
C. Paper check, worker & aux., max. $4000										
	WY	10	140	140	(180)	(208)	(80)	(208)	(208)	(500)
	$	1	3	3	(9)	(10)	(10)	(10)	(10)	(29)
D. Direct deposit, worker & aux., max. $4000										
	WY	10	260	260	260	(205)	560	(205)	(205)	172
	$	1	8	8	8	(10)	15	(10)	(10)	(3)
E. Entire 1st retro check as 2-party, paper check										
	WY	10	(177)	(217)	(217)	(217)	(818)			
	$	.5	(8.5)	(10)	(10)	(10)	(37.8)			
F. House bill										
	WY	400 to 440 each year					1600-1800			
	$	20 each year					80			

12/20/95

Summary of proposals

A. SSA would issue a 2-party paper check payable to attorney and claimant. There would be only one 2-party check issued and checks issued to auxiliaries would not be covered. This cost/(savings) estimate applies whether that check is (a) $4000 or (b) the lesser of the first retroactive check or $4000. SSA would not be involved with setting fees in individual cases.

B. Same as proposal A, except that payment would be a direct deposit to an escrow account.

C. Same as proposal A, except that if the 2-party check did not equal $4000 and there were auxiliaries, then the auxiliaries' benefits would be issued as 2-party checks until the total issued as 2-party checks equaled $4000.

D. Same as B, except that payment would be a direct deposit to an escrow account.

E. SSA would issue the entire first retroactive check as a 2-party paper check. There would be only one 2-party check issued. SSA would not be involved with setting fees in individual cases.

F. The house bill would establish a maximum fee of $4000, but SSA would not be involved with setting the fee and would not withhold payment or issue 2-party checks.

12/20/95

⇒ Herger amed: 1 mos ~~SSI~~ payment to jails

⇒ rpt out of W&M unanimously — Dole will support on S. side
- part of Retirement Earnings
Andy Jacobs ⇒ 4,000

in mark-up,
- called Admin. proposal
press releases

Mark up comments: would attys get paid?

Judy: not

⇒ w/holding - biggest issue for lawyers

Harkin → interest in modification
① ~~$4,000 + fee petition~~ ② leave it as is

? Ab't how they'll deal w/ in Senate
- S. Finance Mark-up

= pressure has been from lawyers, not advocates

6-2987

= Spencer Rich, W. Post
→ next ½ hr
→ Barry Toiv

December 4, 1995

MEMORANDUM FOR DISTRIBUTION

FROM: Jeremy Ben-Ami, Molly Brostrom, Diana Fortuna

RE: HR 2668, Senior Citizens Right to Work Act

Following is background information on the Retirement Earnings Test and Attorneys Fees proposals in HR 2668, "The Senior Citizen Right to Work Act."

A. RETIREMENT EARNINGS TEST

Background
An increase in the Retirement Earnings Test was part of the "Contract for America."

Under existing law, seniors between 65 and 70 can earn approximately $11,500 in 1996, gradually rising to $14,400 in 2002, before benefits would be reduced. For every $3 earned above this limit, Social Security benefits are reduced by $1.

HR 2668 would increase the income limitation to $14,000 next year with additional increases that would raise it to $30,000 by 2002. CBO estimates the bill would cost the OASDI trust fund $7 billion over seven years.

The cost offset provisions include:

- $3 billion from limiting payments for drug addiction and alcoholism -- this provision is in the welfare reform part of Reconciliation;
- Establishing a revolving fund mechanism for continuing disability reviews; and a
- One year delay in "recomputations." Currently, people who are retired on Social Security and resume work have their earnings added to their Social Security lifetime earnings record, resulting in a higher benefit the next year. Under the bill, they would have to wait an extra year for the increase. During the House markup, Rep. Gibbons said this provision would mean lower benefits for 1.2 million people over age 66.

Past Administration Support
Putting People First called for "lifting the Social Security earnings test" -- no dollar amount was specified. In a January "Contract for America" hearing, Commissioner Chater stated that the Administration supports a "moderate" increase to the earnings test, provided we are able to fund it. When pressed, she mentioned past support for a one to three thousand dollar increase.

B. ELIMINATION OF SSA'S ROLE IN ATTORNEY FEES

Current Law
SSA provides an administrative service to claimants who hire attorneys to represent them on appeals of benefits claims. SSA approves the fees and makes sure they do not exceed 25% of the claimants' past-due benefits or $4,000, whichever is less. SSA also reviews and acts on petitions for higher fees from those attorneys who seek reimbursement beyond this cap. Finally, SSA withholds the fee from the claimants' past-due benefits and pays the attorneys directly.

Instead, the working group focused on developing an alternative to address *some* of the concerns of the critics. The proposal would cap attorney fees at $3,250 and retain the fee petition process for attorney's whose costs exceed the cap. This proposal would also eliminate all other SSA roles including the calculation, withholding, and direct payment of fees. Savings for this alternative are estimated at $46 -60 million and 1,100-1,500 work years through FY 2000.

The advantages of this alternative are: 1) the higher cap of $3,250 -- attempts to set a level high enough to ensure adequate representation while limiting overcharging of claimants; 2) retaining fee petition process minimizes any disincentive for attorneys to take complex cases; and 3) retains two-thirds of the savings of the original REGO II proposal.

<u>Congressional Action</u>
The House Ways and Means Committee reported the "Seniors Right to Work Act" out unanimously this week. The attorneys fee proposal is identical to the original SSA REGO II proposal except that the cap was raised from $2,500 to $4,000. Sen. McCain has introduced an identical bill in the Senate. Swift action in both chambers is expected -- if identical bills are passed, the bill can be sent directly to the President.

Rationale
Because of budget constraints, decreasing FTE levels, and huge backlogs of claims, SSA believes it can no longer afford to provide this service to individuals and attorneys seeking to appeal a denial for DI benefits. SSA believes it is more important to devote scarce resources to processing initial disability claims.

REGO II Proposal
The proposal was reviewed and cleared by the White House as part of the regular REGO II process and announced by the White House in April of this year. It was anticipated that the proposal would be opposed by legal and disability advocates. The proposal would eliminate SSA's role in the fee authorization and the fee petition processes, and in the calculation, withholding and payment of fees directly to attorneys. However, in the interest of still providing some basic protection for claimants, SSA proposed to set a cap on attorneys' fees.

In May, SSA proposed to set that cap at $2,500. At the time, SSA estimated that the average fee for all claims was a little less than $2,500. This proposal would save $80 million and 1,600-1,800 work years through FY 2000.

Reaction to REGO II Proposal
Legal groups and the Bazelon Center, a disability advocacy group, criticized the proposal on the grounds that: 1) claimants will find it more difficult to get representation because the reimbursement for attorneys is too low, particularly for complex cases, and because attorneys will have a more difficult time recovering their fee; and 2) the average fee will tend to rise to the cap and attorneys will end up claiming more of the client's benefit, for those clients that do pay.

Several Senate Democrats have written the White House and SSA expressing concerns with the proposal, including Sens. Daschle, Harkin, and Pryor.

Staff here raised concerns with the $2,500 cap, and agreed that we needed to revisit the proposal. A few months ago, an informal working group was established that included staff from DPC, NEC, OMB, including OIRA, NPR, and SSA. Counsel's office has been informed of progress and invited to meetings, but has not attended. We have told concerned that we are taking a second look at the specifics of the proposal, but have not yet publicly reported on the outcome of this process.

Alternative Proposal
The working group decided not to back away from the proposal for several reasons:

- The administrative costs of the program are very high. SSA administrative cuts, combined with the backlog, makes their argument about needing to focus on processing disability claims persuasive.

- This is the only government program which withholds and directly pays lawyers; this would be seen as a precedent: lawyers who represent claimants at VA are pushing for similar administrative services there.

- Comparisons with SSI, where there is no witholding or direct payment of fees and the clients are more likely to be poor, show a fairly comparable representation rate (65% for SSI; 75% for SSDI).

- There is substantial money in representing these clients that lawyers will not want to give up.

October 31, 1995

MEMORANDUM FOR CAROL H. RASCO

FROM: Molly Brostrom and Diana Fortuna

RE: SSA Attorneys Fee Meeting

Wednesday morning, 9:15-10:00 am, there will be a meeting in your office to discuss the SSA Rego II Attorneys Fee proposal. An informal workgroup that we convened has met several times to discuss concerns with the initial proposal and to try and come up with an alternative. At this meeting, we would like to present to you and the other participants a possible alternative proposal.

The goal of the meeting is to get feedback from all of you on: 1) whether the new proposal makes sense from a policy standpoint -- in particular from the disability community's perspective, whether we feel confident that beneficiaries will have adequate access to representation; and 2) whether the political tradeoffs are worth taking -- in particular, heat from attorneys (and possibly advocates and Hill Democrats). It may not be possible to get definitive responses because there are still some outstanding questions, but we hope to end the meeting with some direction on both of these issues and/or what additional questions need to be answered.

BACKGROUND

Description of Current Process and Change Proposed in RegoII: Today, for successful claimants in the SSDI program who hire attorneys, SSA performs several services:

- o calculating a fair fee (usually the lesser of $4,000 or 25% of past due benefits);
- o informing both attorney and claimant of the approved fee;
- o withholding the attorney's fee from the beneficiary's check and sending it to the attorney;
- o keeping track of how any subsequent changes in what is owed affects the fee, and informing the attorney and claimant of this;
- o running a "fee petition" process for attorneys who feel that their fee is too low.

SSA argued in the RegoII process that this was expensive, unnecessary assistance to the attorney, and outside of SSA "core mission." The RegoII proposal took the leap of entirely eliminating SSA's role in this process. However, they were nervous about leaving the determination of the fee entirely to market forces, so they decided to set a dollar cap. Today the average attorney's fee is around $2,500. Originally SSA proposed setting the new cap at $4,000. When it was pointed out to them that this would encourage all attorneys to charge their clients the maximum $4,000, they decided to reduce it to $2,500. But this created the new problem that half of all approved attorneys' fees today are <u>over</u> $2,500, making this look like a very arbitrary cutback. It was this feature of the RegoII proposal that led us all to say we needed to go back to the drawing board.

SSA's budget assumes the implementation of this proposal, with savings at $80 million over 4 years.

<u>Comparable Situations:</u> You should know that SSA does not perform this service for the SSI program. However, the percentage of SSI clients who are represented by attorneys is lower than the percentage of SSDI clients (around 65% vs. 75%) -- although this could be explained by the fact that SSI clients have fewer resources to attract lawyers in the first place. However, the advocates claim that, in programs like state workers' comp, it is common to use two-party checks to ensure payment to lawyers.

<u>Feedback from Advocates/Lawyers:</u> One difficulty in evaluating the impact of this proposal is that the advocates for people with disabilities are very often lawyers themselves who "wear two hats." We have heard from a group representing attorneys who do this type of work. They are represented by Beryl Anthony, with whom we met; they brought the Bazelon Center's Len Rubenstein with them to the meeting. They argue vehemently that the current process works well; that it was "fixed" once already around 1990; that SSA is approaching this purely from a budget perspective and is being very closed and bureaucratic in response to questions and suggestions; that the proposal is being pushed at SSA by a group of "closet Reaganites" whose real goal is to thin the disability rolls rather than to save administrative costs; and that it will be much harder for people with disabilities to get lawyers as a result if this proposal is enacted into law.

A number of prominent Democrats have written SSA to say that the proposal is unfair to people with disabilities, including Sens. Daschle, Harkin, and Pryor. Beryl Anthony told us that he believes he can kill the proposal on the Hill and that it is supported "only" by Republicans.

Options Considered/Recommended: Our working group has come up with a compromise proposal that would set the fee cap at $3,250 and retain a "fee petition" process for attorneys who feel that that is too low, but it would abandon SSA's practice of withholding attorneys' fees and directly paying them to attorneys. This would save $46-60 million over four years.

This will satisfy the legitimate objection of outside groups that the $2,500 cap was too low, especially without a fee petition process. However, the attorneys will still be upset that we are not withholding their payments, and will still charge that it will be more difficult for claimants to get representation.

Other options considered and rejected (for now) include:

- o user fee; this was suggested by the advocates on the assumption it would be $25. However, in order to cover SSA's costs, it would have to be $160 per case. There is also the risk that attorneys would try to pass this cost along with their clients. Also, SSA does not care for this proposal because it does not allow them to reduce their FTE headcount.

- o two-party checks or escrow accounts; these are more expensive than the current system.

Administration Points of View: SSA feels strongly that they want to get out of this business. They are not at all persuaded by the concerns of the lawyer/advocates -- although they can't prove that access to lawyers won't be reduced. They feel that the business of representing claimants is lucrative.

You should also know that it was Paul Dimond and Ellen Seidman of NEC who originally stopped this proposal from proceeding to the Hill, arguing that the $2,500 cap was patently unfair and that it wasn't worth taking on the disability community on this issue in the middle of the budget fight. We also understand that NPR feels strongly that we should proceed with as much of the original proposal as possible.

The meeting participants are:

- SSA: Commissioner Chater, Chief of Staff Brian Coyne, Judy Chesser (Congressional Affairs), and Toni Lenane (Chief Policy Officer)

- Elaine Kamarck, Daniel Neal (NPR)

- Sally Katzen, Laura Oliven (OIRA, OMB)

- Ken Apfel, Richard Green (OMB)

- Ellen Seidman (NEC)

- Bruce Lindsey (Counsel's Office) (He has not previously been involved in our meetings, although we have invited counsel's office to participate.)

Richard Green will begin the meeting by giving a brief overview of the original and alternative proposals. The meeting will then be open to discussion and questions.

November 8, 1995

INDIVIDUALS & ORGANIZATIONS WITH DEMONSTRATED OR POTENTIAL INFLUENCE REGARDING PROPOSAL TO ELIMINATE REPRESENTATIVE'S FEE PROGRAM

(Note: Asterisk * indicates face-to-face contacts known to SSA--stakeholder meetings, individual briefings, etc.)

Attorneys

For Profit (represent claimants in Social Security claims)

*National Organization of Social Security Claimants' Representatives ((201) 444-1415; Executive Director: Nancy Shor; Lobbyist Beryl Anthony)
Tom Carl Weisbrod (214) 373-3761; referred to T. Lenane by Bill White, Deputy Secretary for DOE; also has written and spoken to Rep. Eddie Bernice Johnson and VP Gore's Deputy Chief of Staff David Strauss
Denver Thornton ((501) 862-7989; friend of President Clinton from El Dorado, Arkansas)
? Neil Short ((307) 234-2401; favors proposal but wants $5000 cap and 2-party check)
Matt Greenbaum ((504) 523-2210; Melanie A. Leavitt (800-256-4345; both wrote to Sen. Breaux)
California Applicants' Attorneys Association (Melissa Brown, (916) 444-5155)
David Harp & William Hill ((501) 783-7600; both wrote to Rep. Tim Hutchinson)
Cooper Geraty ((804) 971-8303; wrote to Sen. John Warner)
Michael DePree ((319) 323-4345; wrote to Sens. Tom Harkin & Chas. Grassley)
David Sutterfield ((217) 342-3100; wrote to Sen. Carol Mosley-Braun)
Allegheny Bar Association ((412) 261-6161; Martin Singer; wrote to Rep. Frank Mascara)
Steven Kommel ((207) 780-0915; wrote to Sen. William Cohen)
Elizabeth R. Jones ((603) 669-9400; wrote to Sen. Judd Gregg)
Robert H. Hallsted ((302) 655-1800; John S. Grady (302) 678-1265; wrote to Sen. William Roth)

Not for Profit (claimant advocacy groups led by attorneys)

*Bazelon Center for Mental Health Law ((202) 467-5730; Executive Director Leonard Rubenstein; met with SSA and wrote to Sally Katzen & Elaine Kamarck)
*National Senior Citizens Law Center ((202) 887-5280; Ethel Zelenske, met with SSA and wrote to Commissioner Chater)
Evergreen Legal Services (Ronald Roseman)

Nancy Shor + Beryl Anthony

November 8, 1995

Non-attorneys

For Profit (represent claimants in Social Security claims) opposing privatization

Allsup Inc., Social Security Disability Case Management ((800) 854-1418; Jim Allsup, president--a former SSA employee) - problem is leakage
Health Advocates, Inc. - Tampa, FL (June Simpson & Mary May (813) 873-0902; expressed support for proposal)
Applied Benefits, Inc. - Shreveport, LA (318) 226-8543
Disability Advocacy Clinic - Albuquerque and Taos, NM (505) 842-8111
Disability Analysis - San Antonio, TX (210) 732-9551
Disability Income Associates - Columbia, MD
Disability Services, Inc. - Novi, MI (810) 344-4444
MASH - Dallas, TX - (headed by former SSA employee) (214) 270-0222
Healthcare Assistance Corporation - Dallas, TX - (headed by former SSA employee)
Following individuals are former SSA employees now representing claimants:
Bob Maxwell (Oklahoma City, OK); Ken Collins (Dallas, TX); Virginia DeWitt (Dallas, TX); Bill Buckley (San Antonio, TX); Art Johnson (Baton Rouge, LA).

Not for Profit (claimant advocacy groups)

American Association of Retired Persons (Horace Deets) (202) 434-2277
Families USA (Ron Pollock) (202) 737-6340
National Alliance of Senior Citizens (Peter Luciano) (202) 986-0117
American Rehabilitation Association (Tony Young)
American Foundation for the Blind (Scott Marshall) (202) 457-1487
Consortium for Citizens with Disabilities (Martha "Marty" Ford) (202) 785-3388)
Save our Security (202) 624-9557
Disabled American Veterans (also represents Social Security claimants) (202) 554-3501
Paralyzed Veterans of America (also represents Social Security claimants) Doris Lentz, (202) 416-7707
National Committee to Preserve Social Security and Medicare Martha McSteen, (202) 822-9459 - R
The ARC, Inc. (Martha "Marty" Ford (202) 785-3388)
United Cerebral Palsy (Alan Bergman (202) 776-0406)

November 8, 1995

Members of Congress

House

Eva Clayton
Ronald V. Dellums
Peter King
Richard Pombo
*Eddie Bernice Johnson
Patricia Schroeder
Martin Frost

Senate

Patty Murray
*David Pryor (SSA met with staffers)
*Tom Daschle (SSA met with staffers)
Tom Harkin

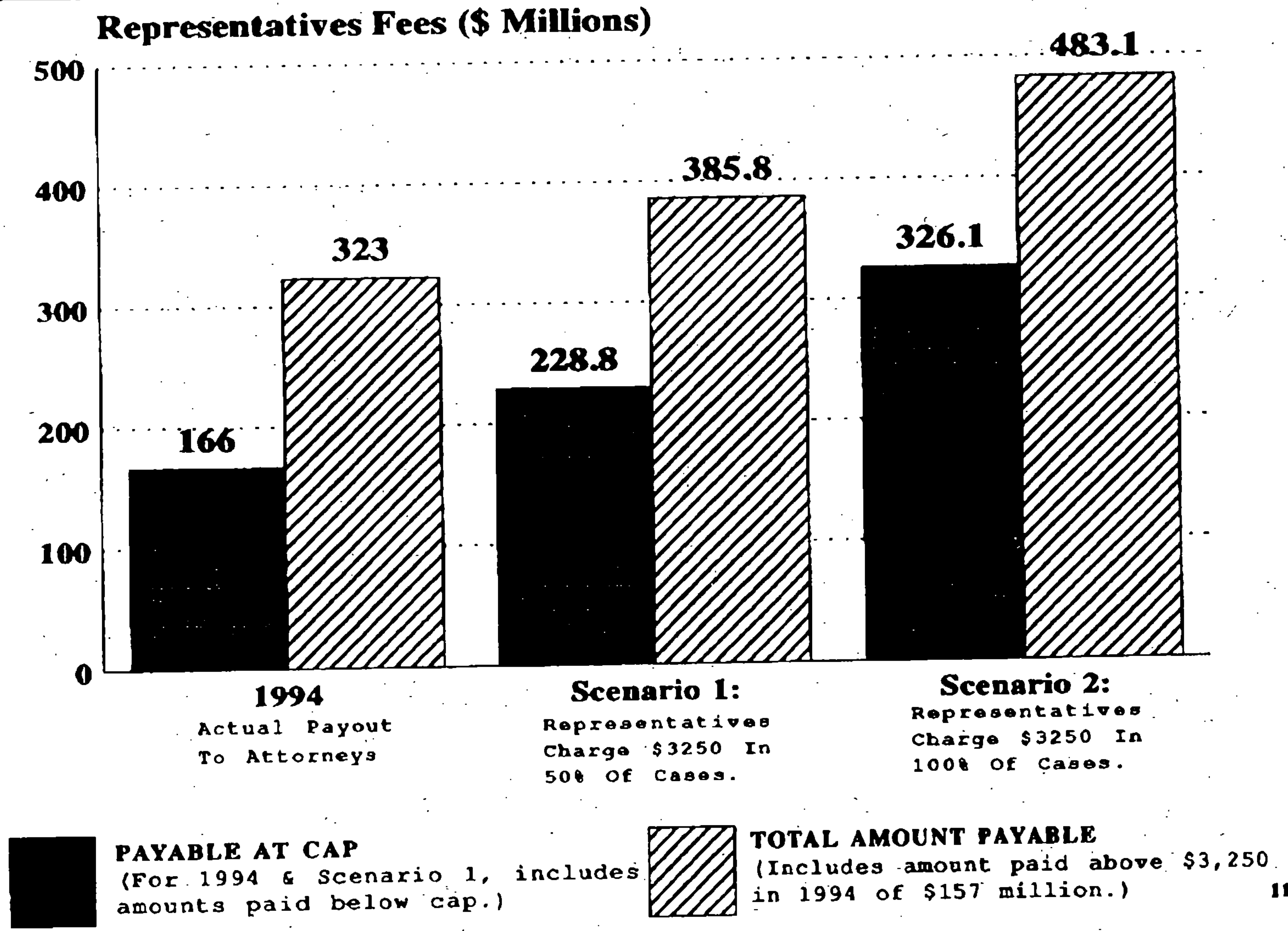
Ellen - Bruce Morrison (head of Hsg Finance Board)

Notes:

(1) House Ways & Means Subcommittee on Social Security Chairman Jim Bunning and Ranking Democrat Andrew Jacobs have either express or implied interest in this proposal.

(2) The following Senators introduced attorney fee legislation that provided the basis for the OBRA 1990 streamlining (i.e., addition of fee agreement process): Pryor, Bumpers, Harkin, Heflin, Simon, Glenn, Nunn. Also involved were former Senators DeConcini, Riegle, Matsunaga and Fowler.

Effect Of $3,250 Cap On Representative Fees Payable Under Two Scenarios



11/08/95

Per request.

9/26/95

ATTORNEY FEE LETTERS

The following is a list of representatives who have written to SSA regarding the attorney fee issue. In some cases, there is more than one letter to the same representative (on behalf of different constituents). All but seven of the 70 letters received from representatives are on behalf of constituents, most of whom are attorneys.

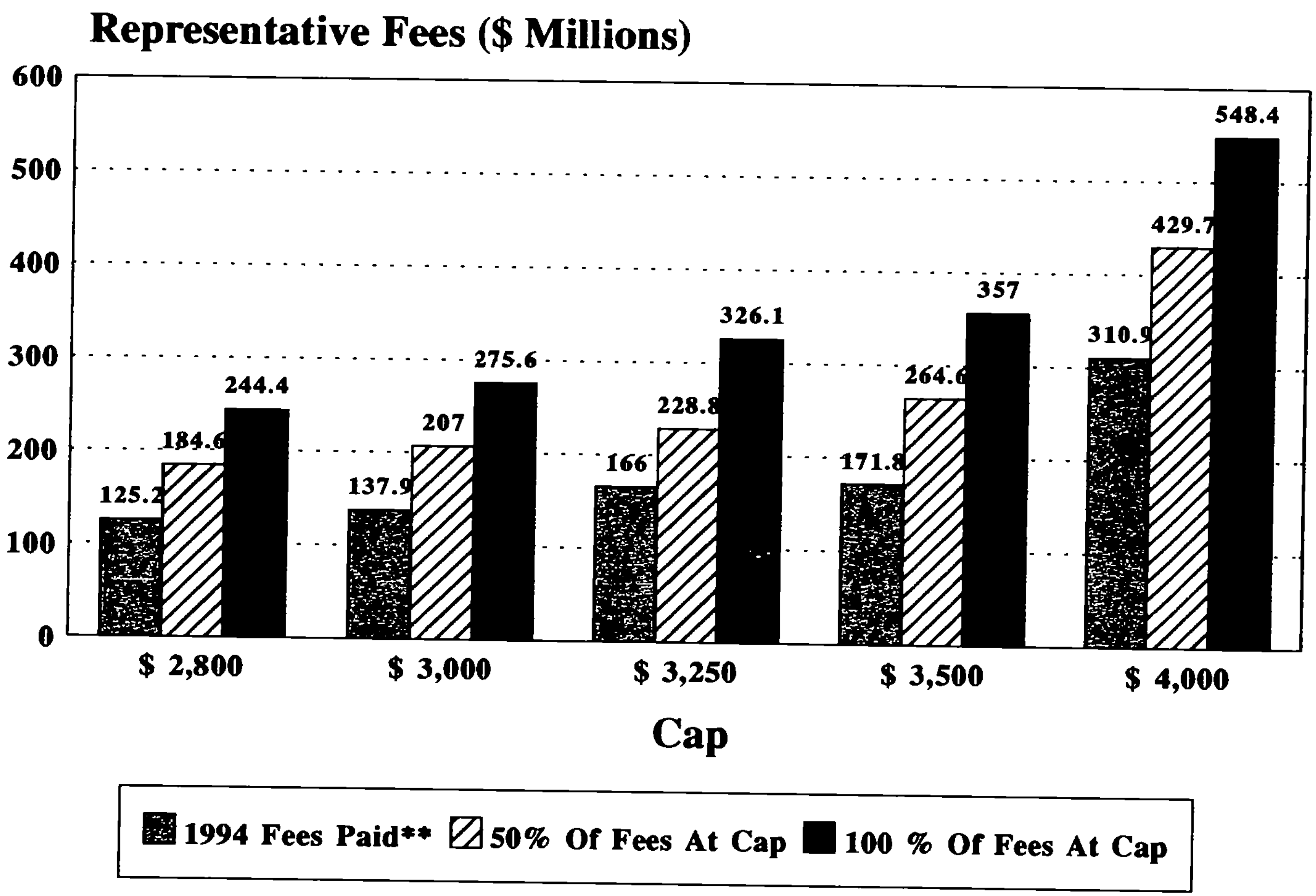
1. Carol Mosely-Braun on behalf of Beth A. Alpert
2. Carol Mosely-Braun on behalf of Shauna S. Kincheloe
3. **Patty Murray**
4. **Eva Clayton**
5. Scott Klug on behalf of John D. Neal
6. Mike Ward on behalf of Harris J. Berman
7. Deborah Pryce on behalf of John R. Allen
8. Charles E. Grassley on behalf of Michael DePree
9. Hank Brown on behalf of John Hayman
10. Phil Gramm on behalf of Donald E. Sample
11. Phil Gramm on behalf of Howard G. Skolnick
12. **Matthew G. Martinez**
13. Robert W. Goodlatte on behalf of several constituents
14. Robert S. Walker on behalf of Jon C. Lyons
15. William V. Roth, Jr. on behalf of Robert H. Hallsted
16. Tim Hutchinson on behalf of several constituents
17. Dianne Feinstein on behalf of Jeffrey J. Preefer
18. J. Robert Kerrey on behalf of Robert A. Laughlin
19. Max S. Baucus on behalf of Ingrid Gustafson
20. **David Pryor**
21. Ernest F. Hollings on behalf of Richard J. Paul
22. Don Nickles on behalf of Zona Whittaker
23. Barbara F. Vuvanovich on behalf of David Kladney
24. William V. Roth on behalf of John S. Grady
25. G. V. Montgomery on behalf of Henry S. Davis, Jr.
26. Carol Mosely-Braun on behalf of Ellen C. Hanson
27. Gerald Weller on behalf of Ellen C. Hanson
28. John B. Breaux on behalf of Matt Greenbaum
29. Tom Bevill on behalf of Pat Nelson
30. Kika de la Garza on behalf of Leon Hilliard
31. Sam Nunn on behalf of several constituents
32. Deborah Pryce on behalf of Linda J. Lawrence
33. James A. Barcia on behalf of John A. Lally
34. James Talent on behalf of John A. Lally*
35. Jay Kim on behalf of Charlie Stancavage
36. **Ronald V. Dellums**
37. Sonny Callahan on behalf of David L. Ratcliffe
38. Jim Chapman on behalf of Mary A. Rea
39. John Breaux on behalf of Melanie A. Leavitt
40. Fred Upton on behalf of several constituents
41. Edward M. Kennedy on behalf of several constituents
42. Glenn Poshard on behalf of David Sutterfield
43. Strom Thurmond on behalf of Leonard Jackson
44. Carol Mosely-Braun on behalf of Frank G. Tuzzolino

45. Carol Mosely-Braun on behalf of Jerrold S. Zivic
46. Carol Mosely-Braun on behalf of David Sutterfield
47. Carol Mosely-Braun on behalf of Jessica Napoles
48. Phil Gramm on behalf of Kay Fulgham
49. Phil Gramm on behalf of Tom Durham
50. Strom Thurmond on behalf of Harris L. Beach, Jr.
51. Ken Calvert on behalf of Janis Moore
52. Ralph Hall on behalf of Tom Durham
53. **Peter King**
54. Peter King on behalf of Stanley F. Meltzer
55. Thad Cochran on behalf of Lawrence J. Hakim
56. Don Young on behalf of Lawrence Mendel
57. **Richard Pombo**
58. Phil Gramm on behalf of Mary Ann Rea
59. Sonny Callahan on behalf of Jonathan P. Gardberg
60. Richard Lugar on behalf of Frank R. Hahn
61. James Talent on behalf of Joan J. Corderman
62. Sherwood Boehlert on behalf of Mary Jo Long
63. Jeff Bingaman on behalf of several constituents
64. L.F. Payne, Jr. on behalf of Michael K. DeBord
65. Don Nickles on behalf of Miles L. Mitzner*
66. Tom Harkin on behalf of Michael DePree*
67. Judd Gregg on behalf of Elizabeth R. Jones*
68. Phil Gramm on behalf of Louis J. Fohn
69. Kika de la Garza on behalf of Richard T. Haase
70. Carol Mosely-Braun on behalf of Stephen McCarty*

* Letters to these representatives have not been released pending approved language. We were holding previously for language on the statutory cap issue.

Testing Effects Of Alternative Caps On Representative Fees Payable Under Two Options:

Option 1. Assumes Representatives Will Charge The Cap In 50% of Cases *; And
Option 2. Assumes Representatives Will Charge The Cap In 100 % of Cases.



*Option 1 assumes that the fee charged in the other 50% of cases will remain at the 1994 paid amount
**1994 fees paid represents cumulative average fees paid at or below level shown.
Based on amounts paid attorneys in 1994.

Bazelon:

suggestion: 1) reasonable cap (25% past due)

2) 2-party check or check to lawyer as escrow agent

• impact of legal aid cuts

? Lawyers say we "fixed" in 1991 w/ automatic fee ($4,000 or 25%)

SSA - 26M/yr to admin

Other govt examples?

⇒ VA looking at this as precedent

Probs: 1) shift to claimants

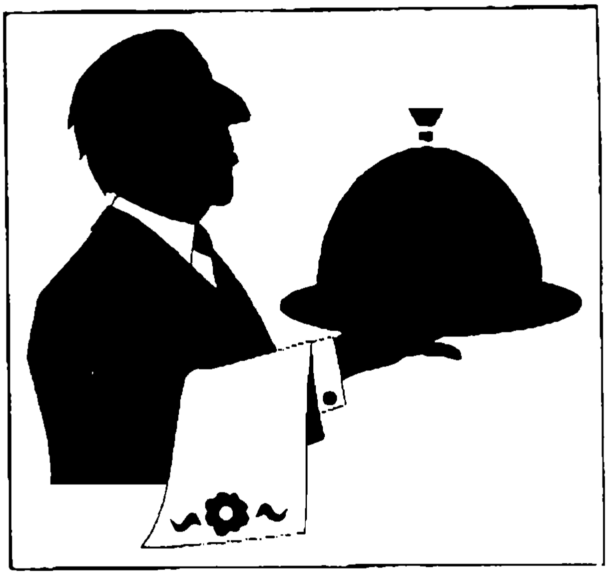
~~2)~~

but savings to FTES

Timeline: requires legis hope for impl by 1/97

Social Security Administration
Baltimore, Maryland
Office of the Chief Policy Officer
FAX NO: (410) 966-6250

COMING AT YOU FROM CPO--
PROUD TO SERVE!!!



from the desk of ***DARLYNDA K. BOGLE***
phone no: (410) 965-3609

to: *Molly Brostrom*

fax no: *(202) 456-7028*

phone no: *(202) 456-5561*

number of pages: cover + 4

date: *11/8/95*

subject: *SSA's Attorney Fee proposal*

remarks: As a follow-up to my call earlier today, attached are copies of the list of contacts and a revised graph on the $3250 cap. Perhaps these will help you in determining whether a meeting is necessary. I will look forward to hearing from you.

Darlynda

Darlynda Bogle

WHITE HOUSE ALTERNATIVE TO REGO II PROPOSAL TO ELIMINATE REPRESENTATIVE'S FEE PROGRAM

Description:

Under this proposal, SSA would:

- Eliminate withholding and direct payment of attorney fees;
- Replace percentage-based fee calculations with a cap of $3250;
- Require representatives who charge a fee equal to or less than the cap to negotiate and collect such a fee without SSA involvement;
- Retain the fee petition process for those representatives who do not negotiate with their clients a fee equal to or less than the cap;
- Initiate proceedings to suspend or disqualify representatives only when the claimant notifies SSA that they have been charged in excess of the cap or the authorized fee petition amount; and
- Allow a court rendering a judgment in the case of a represented claimant to determine a reasonable fee for such judicial representation.

Optional feature:

- Charge and collect a $200 user's fee from representatives who choose the fee petition process. The user's fee would be adjusted through regulations as necessary.

Discussion:

This alternative, which combines the elements of a capped fee with a fee petition option, would relieve SSA of most of the activity surrounding the representative's fee process. It is unlikely that this alternative will fully satisfy attorneys because it does not provide for withholding or direct payment; however, it would satisfy their concern about being able to charge adequate fees in complex cases. Under this alternative, we could realize up to three quarters of the dollar and workyear savings estimated in our REGO II proposal (i.e., $2500 cap and no fee petition).

With the introduction of a users' fee option to the fee petition process SSA would realize all of the dollar savings and slightly more than half of the workyear savings originally projected under our REGO II proposal. However, SSA would need authorization to adjust the user's fee--through regulations--as soon as possible to cover changes in the costs of this process due to inflation, the number of fee petitions actually received, or the discovery of additional factors not originally included in the estimate. We would require that the legislation specify that all income from the user fee be returned to SSA to process debt management/collection activities associated with the users' fee, and not be subject to SSA's LAE.

Under this alternative ~~SSA is:~~

- Establishing a cap on the amount of fees representatives may charge without SSA's authorization provides some protection for claimants against being overcharged by their representatives;

-- There is some risk that the cap could become the standard--and not just the maximum--fee; however, claimants would be apprised through notices and other public information efforts that the cap is the maximum fee, and that they could negotiate a fee <u>up to</u> that amount.

- Setting the cap at $3250 permits representatives to charge fees that would adequately compensate them in the majority of cases;

  -- Available data for FY 1994 reflect that only 27 percent of fees paid were for more than $3250. [Note: The percentage of fees <u>authorized</u> over $3250 might be greater; SSA does not keep fee data on cases with no past-due benefits or SSI cases.)

  -- Compared to $2500 (the cap originally proposed under REGO II), a $3250 cap more adequately reflects a reasonable fee for difficult cases, and thus should minimize the number of fee petitions filed. But if the cap becomes the standard fee, claimants could end up paying--on average--35 percent more than the current average fee of $2400.

- Retaining the fee petition process provides a way for representatives to pursue fee authorization from SSA in those cases in which a reasonable fee might be higher than the statutory cap. Actual fee petition involvement will depend on representative behavior in response to certain risk/benefit factors.

  -- For instance, an increase in the number of fee petitions might occur if representatives (1) believed that the fee petition process would yield a higher fee (SSA might actually authorize a fee <u>less</u> than the statutory cap); (2) could endure a potentially lengthy wait for fee authorization; and (3) were willing to assume the risk that claimants would spend their past-due benefits pending authorization of a fee. (Note: This could lead representatives to arrange an up-front retainer or escrow account).

  -- On the other hand, a decrease in the number of fee petitions might occur if representatives (1) believed that they could get their fees quicker without petitioning (even when they believed they would have been entitled to more than the cap); and (2) wanted to reduce the risks associated with waiting for fee authorization.

With the addition of the users' fee option:

- SSA would be relieved of the administrative costs associated with the fee petition process, and thereby reduce the uncertainty associated with predicting representative behavior. However, it would continue and possibly increase SSA's FTE involvement in the current fee petition process. Moreover, it would require additional FTEs to process the debt/management collection of the users' fee at a time when SSA must reduce the number of FTEs involved in the current process in order to meet other budgetary commitments. In addition, this is not a process that lends itself to contracting out because of the linkage to SSA's adjudicative processes;

-- This option might create an additional financial burden on claimants because the users' fee will probably be passed on to them as an out-of-pocket expense, which does not require SSA authorization; and

<u>Estimated Savings Range for the period FY 1997-2000</u> :

Original REGO II proposal: $ 80 million and 1600 to 1800 WYs

Alternative: $ 46-60 million and 1100-1500 WYs

Alternative with users' fee option: $ 80 million + 900 WYs

- The savings estimates represent the maximum possible savings for this alternative and do not include all types and levels of fees requested or approved.

<u>Savings Assumptions</u>:

- SSA would no longer review fee agreements or issue checks to the attorneys;

- SSA will not be involved in fee violations unlessn the claimant notifies the Agency that a representative has charged more than the statutory cap or authorized fee petition amount;

- SSA estimated, based on FY 1994 data that showed 27 percent of fees paid were for more than $3250, that representatives could petition for a fee in 17 to 37 percent of all cases with representation;

- Full implementation will occur in FY 1997. However, a fully automated debt collection system will not be available in FY 1997. We expect that a costly, labor intensive manual processing of this workload will continue for at least 2 years, and possibly up to 4 years.

Under users' fee option:

- SSA would assess a users' fee for each case in which representatives choose the fee petition process (for cases with multiple representation, the users' fee would be divided by the number of representatives who petition for a fee). In addition, the users' fee requires additional FTEs to process the debt management/collection functions associated with this workload; and

NATIONAL PERFORMANCE REVIEW
AL GORE
Vice President of the United States

National Performance Review
750 Seventeenth Street N.W.
Washington, D.C. 20006
voice 202.632.0150
fax 202.632.0390

FAX TRANSMITTAL COVER SHEET

Date: 13 June 95 Number of Pages Plus Cover Sheet ____

To: Molly Bostrum

Telephone Number: ____

Fax Number: 456 . 7028

From: Daniel Neal — Ext.: 147

Special Message or Comments:

Molly:

I couldn't find the memo I sent to Dimond, but I think the arguments are reflected in these materials. Call if you've any questions.

Thanks.

NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)
6 PROSPECT STREET
MIDLAND PARK, NEW JERSEY 07432

NANCY G. SHOR
EXECUTIVE DIRECTOR

BARBARA R. SILVERSTONE
STAFF ATTORNEY

(201) 444-1415
(800) 431-2804
FAX: (201) 444-1823

May 19, 1995

Re: REGO II Initiative

Last month, the Social Security Administration presented a package of initiatives as part of the Administration's "Re-inventing Government" efforts. One item in the package is "Eliminate Attorneys Fee Program." This proposal would effectively end the ability of Social Security claimants to obtain representation from private counsel, at a time when funding for legal services programs is begin severely curtailed. It will be easy for SSA to deny claims of unrepresented claimants. The net result is that disabled claimants who are entitled to receive disability benefits never will.

The REGO II proposal is an abdication of SSA's responsibility towards claimants. First, it sets $4,500 as a "reasonable fee" in <u>every</u> Social Security case. The fee could easily be 100%, or more, of the claimant's past-due benefits. Second, it eliminates the current statutorily-mandated direct payment of the fee to the attorney. Permitting claimants to be overcharged and discouraging attorneys from accepting Social Security cases because of the unlikelihood of their fees being paid are insupportable legislative goals.

The present attorney fee program, most recently greatly streamlined in 1989, works very well in preserving access to representation while protecting claimants from being overcharged. Yet we understand that in the current cost-cutting climate, every bureaucratic program is being scrutinized. If a Congressional decision is made to change the present law, we offer a proposal which achieves the twin goals of preserving claimants' access to private representation while virtually eliminating administrative costs.

First, the fee should be no more than 25% of past-due benefits, not a flat fee of $4,500. This follows the standard model in comparable legal matters, where attorney fees are routinely and widely-known to be a percentage of the claimant's recovery. It is a smaller percentage than the one-third typical in other types of disability claims. Our proposal comports with the REGO II statement, "Claimants, if they choose, would contract for Social Security representation as they do for any other legal service." Claimants can understand at the beginning of representation that the fee will be no more than one-quarter of the amount that they receive. They understand that for every dollar their attorney receives, they will receive at least three. Our proposal has no administrative cost because the process requires the attorney to make the calculation.

Second, we believe that a direct payment mechanism is crucial to the continued ability of claimants to obtain private representation. The process in comparable legal cases, including worker's compensation and personal injury, provides for the issuance of a check, paid jointly to client and attorney, sent to the attorney. The payment mechanism is vital; whether it is accomplished through an electronic transfer directly to the attorney's escrow account, or directly in the appropriate amounts to the claimant's account and the attorney's account, or sent as a joint check to the attorney is a decision to be made on the basis of least administrative cost. The Social Security Administration's own 1988 study of the attorney fee program recommended the substitution of a two-party check for the present withholding mandate of the statute.

8 June 1995

TO: Rick Hernandez

FROM: Daniel Neal

RE: SSA Attorney Fee Program

Here's how I'd respond to the NOSSCR paper on this subject:

- NOSSCR incorrectly states that the proposal "sets $4,500 as a 'reasonable fee' in every Social Security case." The proposal would set $4,500 as the **maximum** fee a representative can charge. The precise amount of the fee would be negotiated between the claimant and the claimant's representative.

- NOSSCR presupposes that claimants' representatives will routinely connive to bill their clients for the maximum amount in all cases. Several factors will prevent this: 1) claimants are in most cases able to engage representatives effectively and negotiate appropriate fees; 2) codes of legal and professional conduct prohibit such activity, and professional associations exist to enforce such codes; and 3) market forces will determine the price level of representation services.

- SSA will retain authority to investigate complaints of overcharging, and to impose sanctions in the event overcharging is discovered. Potential sanctions will include suspension and permanent disqualification of the offending representative. Claimants and SSA also have the option of referring offending attorneys to State bar associations.

- SSA will take steps to ensure that claimants know they have a right to legal services.

- The cost of accounting for and disbursing representative's fees should not be borne by the government. The fees charged by representatives should incorporate such normal business expenses as accounting and provisions for unpaid accounts.

Please let me know if you need more information.

Thanks.

2 June 1995

TO: Rick Hernandez

FROM: Daniel Neal

RE: SSA Attorney Payments

Here's what I've learned about federal workers' compensation benefits:

1. The program that administers workers' comp for Federal employees (in the Dept. of Labor) issues one check to claimants for past due benefits.

2. Claimants are expected to pay their representatives.

3. DOL reviews and approves proposed representative fees. The DOL Secretary has authority to change the fees.

4. Fees are itemized for services rendered; contingency fees are not permitted.

If further information is needed on payment of workers' compensation claims, please contact Herman Cain on 202.219.8453.

Thanks.

THE SOCIAL SECURITY DISABILITY PROGRAM
REPRESENTATIVE FEES
PRESERVING RIGHTS AND CREATING SAVINGS

THE SOCIAL SECURITY ADMINISTRATION'S PLAN TO ELIMINATE THE REPRESENTATIVE FEES PROGRAM WILL HARM DISABILITY CLAIMANTS AND WILL NOT PRODUCE THE PROMISED BUDGET SAVINGS.

REPRESENTATIVE FEES PROGRAM REINVENTED IN EARLY 1990's

The Omnibus Reconciliation Act of 1990 created a streamlined process, termed the "fee agreement process" for approval of attorneys fees in the Social Security disability program. Under that program, the Social Security Administration (SSA) approves any fee reached jointly by a claimant and a representative that does not exceed 25 percent of **past due** benefits, or $4000, whichever is less. SSA withholds the 25 percent and pays the representative directly. By law, representatives are prohibited from receiving any portion of future disability benefits paid to claimants.

In certain circumstances where the $4000 limit would be inappropriate, a "fee petition process" can be used to determine the fee. An Administrative Law Judge (ALJ) has the authority to consider factors such as the complexity of the case, time spent in rendering services, skills needed and the results in determining if a fee is reasonable.

The new "fee arrangement" procedure was put in place in 1991. The change was made in response to a 1988 SSA report which found that the then existing "attorney fee authorization and payment process is complex, difficult to administer uniformly and consistently, and burdensome for both SSA and attorneys."[1] Prior to 1991, SSA was required to play several roles, acting as stakeholder, fiduciary and disbursing agent, in defining what constituted a reasonable fee, establishing the guidelines for determining "reasonableness" and then imposing judgment.[2]

Before 1991, the SSA reviewed and approved the fee in <u>each individual</u> disability case. Attorneys were required to file a written request, or petition, in order to charge and receive a fee. Based upon criteria established by the SSA, the agency then approved fees. Eight factors were considered, including the economic security of the claimant, the extent and type of services provided, the complexity of the case,

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[1] Social Security Administration, Report to Congress on Attorney Fees Under Title II of the Social Security Act , 1 (1988).

[2] Ibid, p. 12.

the level of skill and competence required, the amount of time spent on the case, and related factors. The process was more suited to a fee-for-service case, despite the contingency-basis of most disability proceedings. Finally, before any fee was authorized, thirty days passed, during which time claimants had the opportunity to comment on the fee requested.

By establishing a system to automatically approve most fee arrangements, the SSA has already saved considerable time and money. With the proposal to now eliminate this new, streamlined process SSA has "reinvented" itself one time too many.

FIXING WHAT'S NOT WRONG -- SSA'S PROPOSAL

SSA recommends eliminating the fee arrangement system (by which most attorneys fees are approved), as well as the fee petition system. In addition, the SSA would eliminate the 25 percent calculation, and set a maximum fee of $2500. With respect to court cases, the current statute permits courts to determine fees, subject to a maximum of 25 percent of past due benefits. The SSA would eliminate the 25 percent maximum for court cases.

The agency claims that this process will result in annual budget savings of $20 million and will permit disability claimants to "contract for Social Security representation as they do for any other legal service." Neither claim is accurate.

BUDGET SHAM

The plan will not create the budget savings claimed. Social Security argues that withholding attorney fees costs the agency $20 million, or approximately $144 per case in which an attorney is present. However, the fact is that the $20 million figure includes <u>both</u> the cost of withholding attorney fees and calculating the amount of the fee. And further, most of the true cost is associated with calculating, not withholding and paying, the fee. In addition, changing the maximum fee from the lowest of 25 percent of past-due benefits or $4000 to a flat amount will have no impact on the budget of the Social Security Administration and would end up costing some claimants <u>more</u> for legal representation.

Moreover, SSA would continue to permit claimants to challenge the fees charged by representatives. Instead of a policy that encourages claimants and representatives to agree up front to a fee, based upon federal guidelines, SSA proposes to leave claimants in the precarious position of complaining after the fact. This will end up costing the agency, claimants, and attorneys more in the long run.

POLICY LEFT IN THE DUST

More importantly, with this proposal, SSA has lost sight of its primary function -- to ensure that it administers laws fairly and that claimants are treated justly. This is in contrast to the agency's goals in 1988, when it announced that the following policy considerations would govern its review of the representative fees program:

> "ensuring that claimants who choose to be represented have access to qualified representatives, including attorneys; ensuring that any such representation is procured at a fair price in light of the need to protect claimants' economic security interests; and ensuring, in the case of attorney representatives in title II proceedings, a source of compensation for services performed."[3/]

SSA recognized that "most claimants do not have the funds to pay a retainer or compensate attorneys as services are rendered. In most instances, claimants can only pay a fee at the conclusion of representation if found eligible for benefits."[4/] To encourage access to attorney representation and ensure a source of compensation, SSA withholds a portion of the past-due benefits of successful claimants and pays the attorney directly.[5/]

INSULATING THE GOVERNMENT FROM ITS CITIZENS

SSA's current proposal will ensure that Social Security disability claimants will have less access to legal representation in dealing with some of the most complex regulations affecting one of the most vulnerable populations of American citizens. Instead of focusing on SSA's oft-mentioned goal of improving customer service, this proposal actually seeks to make the government less responsible, less open, less available to the average citizen at a time when the American people are clearly demanding more responsiveness from government officials.

The process for applying for Social Security disability benefits involves one of the most complex applications for any government program, as follows:

- First, a determination is made as to whether an individual is engaging in substantial gainful activity (SGA). This determination involves calculating earnings net of impairment-related work expenses.

[3/]Ibid., p. 2.

[4/]Ibid., p. 3.

[5/]Ibid., p. 2.

- Second, the severity and duration of the impairment is explored. Determining severity is exceedingly complicated and has been the subject of numerous federal court cases, ultimately including the United States Supreme Court.

- If an individual is judged to have a severe impairment, then a determination is made as to whether the impairment "meets" or "equals' the medical listings published in regulations by SSA and whether the impairment will last for twelve months.

- The SSA's regulations contain over 100 examples of medical conditions, and describe specific, medically acceptable clinical and laboratory findings and signs which establish the severity of the impairments.

- This stage in the process requires considerable knowledge and understanding, both of legal and medical issues, that can be beyond the reach of the average citizen.

- If an impairment does not meet or equal the listing, but meets the 12-month duration rule, a determination is then made of whether the claimant can carry out his/her former occupation.

- If he/she cannot, the nonmedical factors are considered. At this stage, the burden of proof switches from the claimant to the Government to show that the individual can, given his/her impairment, age, education and work experience, engage in some other kind of substantial gainful activity existing in the national economy.

- A vocational grid has been established by the SSA to evaluate whether an individual can engage in SGA existing in the national economy. The grid takes into account characteristics such as age, education and experience in relation to the individual's functional capacity to perform work-related physical and mental activities.

- If a particular level of residual work capability (Sedentary, Light, Medium, Heavy and Very Heavy) is found, then an automatic finding of disabled or not disabled is required when applied to various combinations of age, education and work experience.

- Where the claimant's impairments do not fit precisely the parameters of the grid, then an individual assessment is required. Its purpose is to determine whether there are jobs, existing in significant numbers in the national economy, which the claimant is able to do. This requires vocational input.

If an individual's claim is denied, an appeals and case review process, described as a "complex, multilayered structure that is inextricably linked with the disability determination process," is available for claimants. It is at this stage when most claimants seek legal representation to help them through the maze.

REDUCES REPRESENTATION

If SSA's proposal is enacted into law, fewer attorneys will be available for disability claimants seeking the advice of legal counsel. Social Security disability cases are complex, can take often two years or more to complete, and are not particularly lucrative. In fact, the average attorney fee for a case, according to SSA's own figures, is about $2400. Overall, attorneys fees represent just four percent of the amount of lifetime benefits received by successful Social Security disability claimants. Unlike the average contingency fee arrangement, which SSA must have in mind when it states that claimants can contract for representation just like any other case, attorneys representing disability claimants can NOT collect any amount from future awards.

The flat $2500 fee is equally unfair. As SSA itself noted in 1988:

> "Flat fees also create incentives for minimizing the amount and quality of service, particularly in complex and time-consuming cases."[6/]

And yet, SSA today recommends just such an arrangement, while providing no explanation as to why it planned to eliminate the 25 percent alternative.

TWO-PARTY CHECK APPROACH

The National Organization of Social Security Claimants' Representatives proposes that SSA adopt one of the recommendations the agency itself made in 1988: to issue two-party checks jointly to both disability claimants and their representatives. Two-party checks would be simpler to administer and less expensive than the current withholding system. It would also preserve the important policy of ensuring access to legal representation for Social Security disability beneficiaries. Unfortunately, SSA's response has been to claim, without any proof, that it would be infeasible. It appears that the agency is opposed to any remedy short of eliminating the representatives fees program (and with it, meaningful representation of disability claimants) altogether.

If the true goal of the "reinventing government" program is to run the government in a more efficient and cost-effective manner, then the two-party check is the perfect answer. It is already used significantly in the private sector, often by insurance companies, and has its grounding the common law principle of the "attorney's charging lien" by which settlement proceeds are issued in both the name

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[6/] Ibid., p. 22.

of the individual and his/her attorney. Moreover, it is already used by state governments (in Workers Compensation cases) and the federal government in numerous instances, including the Internal Revenue Service (which issues tax refund checks jointly to both husbands and wives), in decisions before the Board of Veterans Appeals, and in SSI claims that are paid jointly to recipients and States.

CONCLUSION

In conclusion, SSA's proposal to eliminate the representatives fees program will turn an efficient policy that protects claimants, their representatives, and the government, into a policy that insulates the agency from accountability. It will reduce the ability of citizens to seek representation in disability cases. The proposal will also shift costs from administering a streamlined fee process to resolving attorney-claimant disputes. The goal of reinventing government is to encourage agencies to think more clearly and operate existing programs more efficiently, By refusing to consider the appropriateness of a two-party check in disability cases, SSA has reverted to a "can't do" mode. The end result will be to punish some of our country's most deserving citizens.

KEY ELEMENTS OF PROPOSALS TO ELIMINATE REPRESENTATIVES' FEES PROGRAM

	Statutory Limit That Includes a Percentage of Past-due Benefits	Fee Petition Process	Attorney Fee Withholding	Savings in Dollars (1997-2000)	Savings in FTEs
current law	YES, $4,000 or 25% of past-due amount, whichever is less	YES	YES	---	---
NPR proposal	NO, $2,500 cap	NO	NO	$80 million	1600-1800
alternative 1	NO, $2,500 cap	YES	NO	$30-50 million	800-1200
alternative 2	NO, $4,000 cap	YES	NO	$60-70 million	1500-1700
alternative 3	**NO, $3,250 cap**	**YES**	**NO**	**$46-60 million**	**1100-1500**
alternative 4	NO statutory limit	NO	NO, but provide for two-party check for 25% of each back-payment	($10 million)	(440)

SAVINGS ESTIMATES FOR ALTERNATIVE 1

Cap: $2,500

- A cap of $2,500 was selected for the same reasons we used to support this amount in our current proposal forwarded to OMB.
- Since almost 46 percent of the fees paid in FY 1994 were for more than $2,500, we estimated that fee petitions for this proposal could represent between 36 and 56 percent of all cases with representation.

Estimated Savings Range:

$ 30-50 million for the period FY 1997-2000-------800-1200 WYs

Cap: $4,000

- A cap of $4,000 was selected since it is the amount of the cap contained in current law under the fee agreement process.
- About 4 percent of the fees paid in FY 1994 were for more than $4,000. Therefore, we estimated that fee petitions for this proposal could represent between 4 and 14 percent of all cases with representation.

Estimated Savings Range:

$ 60-70 million for the period FY 1997-2000-------1500-1700 WYs

Cap: $3,250

- A cap of $3,250 was selected since it is the amount between the $2,500 and $4,000 caps of the other two proposals.
- Almost 27 percent of the fees paid in FY 1994 were for more than $3,250. Therefore, we estimated that fee petitions for this proposal could represent between 17 and 37 percent of all cases with representation.

Estimated Savings Range:

$ 40-60 million for the period FY 1997-2000-------1100-1500 WYs

-doesn't solve FTE issue

SAVINGS ESTIMATES FOR ALTERNATIVE 2

OPTION 1

(Users' fee for attorneys only)

Estimated Users' Fee:

$ 165/per case

OPTION 2

(Separate users' fee for attorney and non-attorney representatives)

Estimated Users' Fee:

$ 40/per case for non-attorney representatives

$ 160/per case for attorney representatives

Table 6--Number of primary beneficiaries with an attorney fee, by type of benefit and amount, 1994

	Amount of fee		Total	Disabled Workers 1/	Other	
	Total		142362	138207	4155	
13,316	$499 OR less	9.4 %	13316	12637	679	9.4
29,489	$500-999	20.7 %	16173	15522	651	11.4
47,143	$1000-1499	33.1 %	17654	17079	575	12.4
63,197	$1500-1999	44.4 %	16054	15538	516	11.3
77,424	$2000-2499	54.4 %	14227	13789	438	10.0
89,751	$2500-2999	63.0 %	12327	11983	344	8.7
100,349	$3000-3499	70.5 %	10598	10336	262	7.4
108,663	$3500-3999	76.3 %	8314	8154	160	5.8
137,104	$4000	96.3 %	28441	28044	397	20.0
138,187	$4001-4499	97.1 %	1083	1055	28	.8
139,148	$4500-4999	97.7 %	961	935	26	.7
141,188	$5000-5499	99.2 %	2040	2007	33	1.4
141 373	$5500-5999	99.3 %	185	180	5	.1
142 362	$6000 OR more	100.0 %	989	948	41	.7

1/ Includes 935 disabled spouses and children of disabled workers, who were primary beneficiaries

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

14-Nov-1995 08:56am

TO: Molly Brostrom
TO: Diana M. Fortuna
TO: Laura A. Oliven

FROM: Ellen S. Seidman
National Economic Council

SUBJECT: Workers Comp

First, Molly can you pass this on to the other people involved; I've never gotten their last names straight enough to e-mail them.

At Joe Dear's suggestion, I spoke yesterday to a Richard Fiechter (or something like that) at a place called something like the Research Center on Workers Compensation. Joe says he's the most knowledgable person in the field. The phone number, for future reference, is 617-494-1240. Getting through his maze of secretaries and assistants is a trip.

What he told me is that yes, indeed, attorneys are paid directly, BUT THAT THIS IS STANDARD INSURANCE PRACTICE, AND IS DONE NOT BY THE STATE AS THE ADMINISTRATOR OF WORKERS COMP BUT BY EITHER THE PRIVATE INSURANCE COMPANY, THE EMPLOYER WHO SELF-INSURES, OR THE STATE INSURANCE FUND AS A MATTER OF STANDARD INSURANCE PRACTICE. (Apparently not all state insurance funds do this, but many do.) He also said that the situation we have, of massive back benefits, is extremely rare in workers comp cases.

I'm not entirely sure where this leaves us, since the analogy would be that the disability FUND would pay the attorneys, but as I understand the situation, SSA is given an appropriation to do all the admninistrative work for the fund, and that's the appropriation we're trying to not spend. On the other hand, MANY, MANY workers comp cases depend for payment of the attorneys on private parties -- whether an insurance company or an employer -- not the state. About the best we may be able to do is to say the analogy doesn't really hold. But maybe one of you can think of something more clever.

Ellen

BRIEFING PACKAGE

OCTOBER 20, 1995

WHITE HOUSE FOLLOW-UP BRIEFING ON ALTERNATIVES TO REGO II PROPOSAL TO ELIMINATE REPRESENTATIVES' FEE PROGRAM

TAB A: **ANALYSIS & SAVINGS/COST ASSUMPTIONS FOR WHITE HOUSE STAFF ALTERNATIVES**

TAB B: **EXPANDED WORK FLOW CHART ON REPRESENTATIVE'S FEE PROCESS**

TAB A

WHITE HOUSE STAFF ALTERNATIVE NO. 1

Description:

Under Alternative 1, SSA would:

- Eliminate attorney fee withholding;
- Replace percentage-based fee calculations with a cap;
- Require representatives who charge a fee equal to or less than the cap to negotiate and collect such a fee without SSA involvement;
- Retain the fee petition process in its current form for those representatives who do not negotiate a fee--equal to or less than the cap--with their client; and
- Suspend or disqualify representatives only when claimants notify SSA that they have been charged in excess of the statutory cap, or the authorized fee petition amount.

Discussion:

This alternative attempts to address concerns about the availability of representation for claimants with difficult cases by retaining the current fee petition process. Through the fee petition process, representatives are allowed to request a fee that is commensurate with their services; such a fee could be higher than the cap. However, in choosing the fee petition process, a representative risks receiving a fee that is lower than the cap.

SSA was asked to develop cost estimates for this alternative using three different fee caps. The caps were to be set in such a way that SSA could predict the possible behavior of attorneys, and thereby estimate the number of fee petitions that would be received and the associated savings at each capped level. In addition, one cap was to be set at a level that would minimize the number of fee petitions received. In response, SSA set the caps at $2500, $3250, and $4000 (A discussion of how these amounts were selected is under each option).

SSA does not have comprehensive and discrete data on all types and levels of fees requested or approved. Therefore, in order to reasonably predict the behavior of attorneys under this alternative, we decided to use three different sets of assumptions for each cap, and developed savings estimates for each assumption. For each set, the first assumption was based on available data for the number and amount of fees paid to attorney representatives in 1994. For the other two assumptions, we assumed a 10 percent increase and decrease in the first assumption. Based on 1994 fee requests, we believed it was reasonable to assume that there could be a 10 percent fluctuation in fee petitions under the following situations:

- An increase in the number of fee petitions might occur, if representatives:
  - -- Believed that the fee petition process would yield a higher authorized fee;
  - -- Could wait for authorization of their fee petition; and
  - -- Were not concerned that their clients would spend any past-due benefits before paying them; or

- A decrease in the number of fee petitions might occur, if representatives:
  - -- Believed that they could get their fees quicker without petitioning; and
  - -- Wanted to reduce the risk of not getting paid at all, particularly when claimants would have their past-due benefits to spend pending a fee petition authorization.

Savings Assumptions:

- The savings estimates represent the maximum possible savings for this alternative and do not include known categories of fee petitions and agreements since SSA does not have complete data on all types and levels of fees requested or approved. For instance, we do not collect data on cases where no past-due benefits exist, some cases involving administrative review, SSI cases where fees are not withheld or directly paid to the representatives.

- SSA would no longer issue checks to the attorneys, or review fee agreements;

- SSA will not be involved in individual fee disputes for any reason unless the claimant notifies SSA that their representative has charged more than the statutory cap or authorized fee petition amount;

- Full implementation will occur in FY 1997.

Table 6--Number of primary beneficiaries with an attorney fee, by type of benefit and amount, 1994

	Amount of fee		Total	Disabled Workers 1/	Other	
	Total		142362	138207	4155	
13,316	$499 OR less	9.4 %	13316	12637	679	9.4
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63,197	$1500-1999	44.4 %	16054	15538	516	11.3
77,424	$2000-2499	54.4 %	14227	13789	438	10.0
89,751	$2500-2999	63.0 %	12327	11983	344	8.7
100,349	$3000-3499	70.5 %	10598	10336	262	7.4
108,663	$3500-3999	76.3 %	8314	8154	160	5.8
137,104	$4000	96.3 %	28441	28044	397	20.0
138,187	$4001-4499	97.1 %	1083	1055	28	.8
139,148	$4500-4999	97.7 %	961	935	26	.7
141,188	$5000-5499	99.2 %	2040	2007	33	1.4
141,373	$5500-5999	99.3 %	185	180	5	.1
142,362	$6000 OR more	100.0 %	989	948	41	.7

1/ Includes 935 disabled spouses and children of disabled workers, who were primary beneficiaries

WHITE HOUSE STAFF ALTERNATIVE NO. 2

Description:

Alternative 2 would retain all aspects of the current representative fee process and relieve SSA of the administrative costs associated with this process by assessing a users' fee--under one of two options. This users' fee would cover these administrative costs as well as the costs associated with debt management/ collection activities associated with a users' fee process.

While this alternative relieves SSA of the administrative costs associated with the current process, it does not reduce the amount of FTEs required to process the current representative fee workload. Furthermore, additional FTEs would be required to handle the debt/management collection of the users' fee at a time when SSA must reduce the number of FTEs involved in the current process in order to meet other budgetary commitments. In addition, this is not a process that lends itself to contracting out because of the linkage to SSA's adjudicative processes.

The two options for this alternative are:

- **Option 1**--The users' fee would be assessed only to attorney representatives; and

- **Option 2**--One of two different users' fee would be assessed to representatives depending on whether or not the representative was an attorney.

Savings Assumptions:

- The savings estimates do not include known categories of fee petitions and agreements, since SSA does not have complete data on all types and levels of fees requested or approved. For instance, we do not collect data on cases where no past-due benefits exist, some cases involving administrative review, SSI cases where fees are not withheld or directly paid to the representatives.

- In addition, these savings estimates do not include the costs associated with determining the users' fee in multiple representative situations or subsequent awards.

- SSA would continue all aspects of the current process;

- SSA would assess a users' fee on a per case basis, (i.e. for cases with multiple representation, the users' fee would be divided by the number of representatives who owe a fee);

- The users' fee would be increased through regulations as necessary to cover increases in the costs of this process due to inflation or discovery of additional costs not originally included in the estimate.

- Full implementation will occur in FY 1997. However, a fully automated debt collection system will not be available in FY 1997. We expect manual processing of this workload for at least 2 years, and possibly up to 4 years.

OPTION 1

Discussion:

The current fee authorization process is lengthy for both attorney and non-attorney representatives. However only attorney representatives receive direct payment of authorized fees. Thus, only attorneys directly benefit from the retention of the current lengthy process. In addition, most of the costs associated with the current process are related to this attorney payment process. Therefore, we developed a users' fee that would be assessed to attorney representatives only, and would cover the costs associated with maintaining the current process for attorney and non-attorney representatives.

We understand that the fee petition process is more costly than the fee agreement process and attempted to develop separate users' fees depending on which process the attorney selected. However, because the administrative review process is available for attorneys who wish to collect more than the amount derived from the fee agreement process, it is possible that attorneys could bypass the fee petition process in order to be assessed a lower users' fee at a substantial cost to SSA. Therefore, this option includes one users' fee that represents the cost for both of these processes.

Although we have no way of predicting how a users' fee will affect claimants' behavior, it is possible that claimants could seek non-attorney representation in order to avoid the users' fee which we believe attorneys will undoubtedly pass along to the claimant in the form of an out-of-pocket expense, which is excluded from SSA's authorization. For claimants who choose attorney representation, the users' fee under this option could be viewed as unfair because it:

- Shifts the administrative expense of a process from the government to the claimant, with the benefit going to the attorney and with no direct benefit to the claimant; and

- Requires claimants with attorney representation to bear the expense of administering this process for claimants with non-attorney representation.

OPTION 2

Discussion:

Although non-attorney representatives do not receive their fees directly from SSA, their collection of fees is simplified by SSA's calculation and notification of their client's past-due benefits, and by SSA's notification to claimants of their responsibility to pay their representative in the current process. Therefore, SSA and attorney representatives could argue that non-attorney representatives benefit from the current process even though they are not directly paid by SSA. Moreover, SSA claimants are protected against excessive fees by retaining non-attorney representatives in the current process, since SSA regulations bind non-attorney representatives in much the same way as States govern attorneys through codes of professional responsibility.

However, administrative costs associated with the current process are very different for attorney and non-attorney representatives, primarily because of the costs associated with payment of fees to attorneys. Therefore under this option, we have taken into consideration each of these issues and developed two users' fees which reflect the portion of the costs incurred for maintenance of the current process, and the users' fee debt management/collection process based on whether or not the representative is an attorney.

Since this users' fee will undoubtedly be passed on to the claimant, representatives will probably not oppose this option; especially attorney representatives who retain direct payment of their fees. However, this option would create an additional financial burden on the claimant because the users' fee will probably be passed on to the claimant as an out-of-pocket expense which does not require SSA authorization.

TAB B

WORKFLOW CHART -- REPRESENTATIVE'S FEE PROCESS