Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	To Molly Brostrom from Francine Newsome re: Attorney Fees Proposal Follow-Up Meeting (partial, DOB) (1 page)	00/00/0000	b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Diana Fortuna
OA/Box Number: 12022

FOLDER TITLE:
SSA [Social Security Administration] Rego-Attorney's Fees [1]

2018-0525-S
ry2245

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

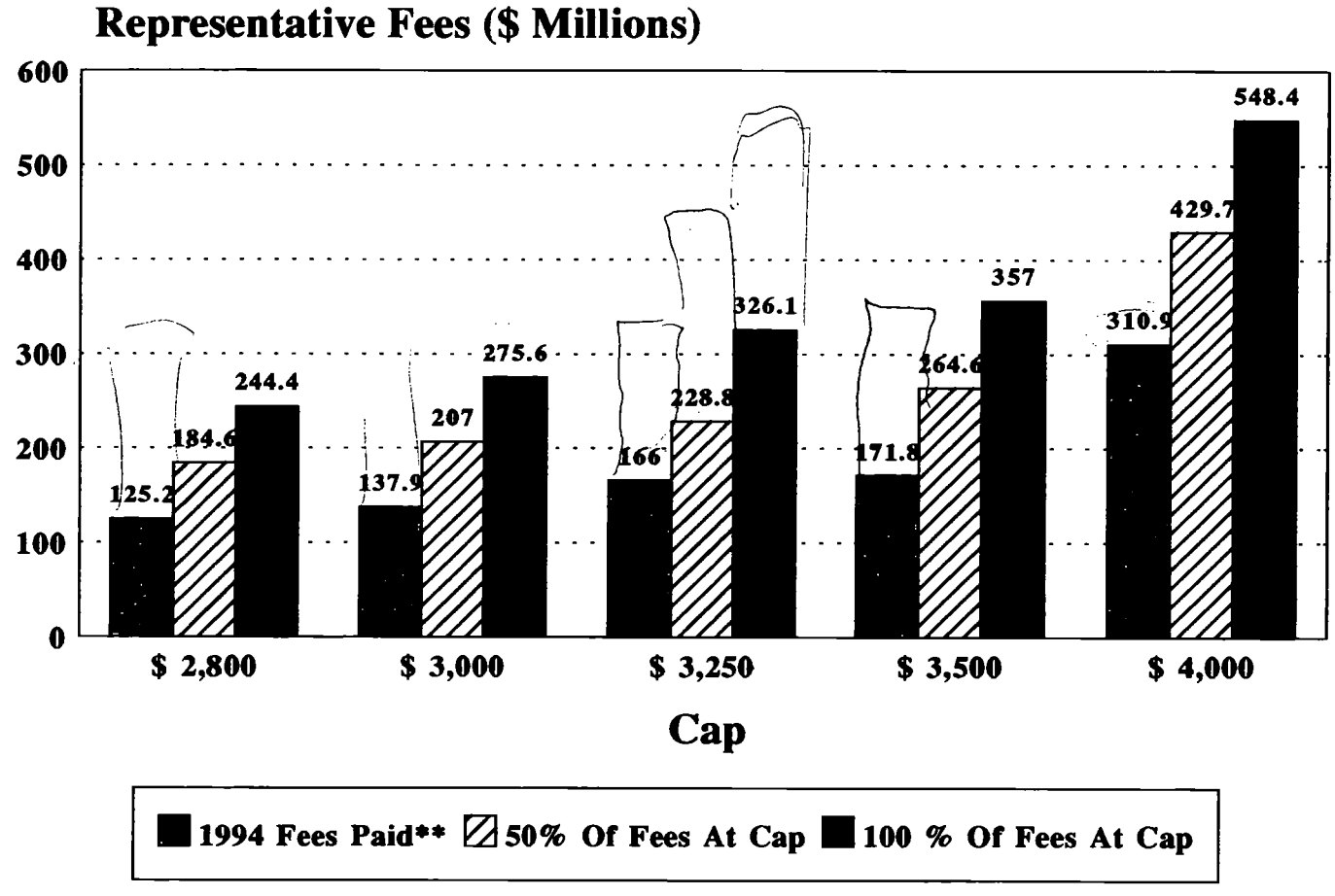
C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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.

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MEMORANDUM

TO: MOLLY BROSTROM

FROM: FRANCINE NEWSOME

RE: ATTORNEY FEES PROPOSAL FOLLOW-UP MEETING

The meeting has been scheduled for Monday, November 13, at 2:30pm in rm. 230 of the OEOB. The following people are expected to attend:

Diana Fortuna
Richard Green
Antonia Lenane
Darlynda Bogle
~~William Daly~~
~~Brian Coyne~~
Ellen Seidman
Laura Oliven
Daniel Neal

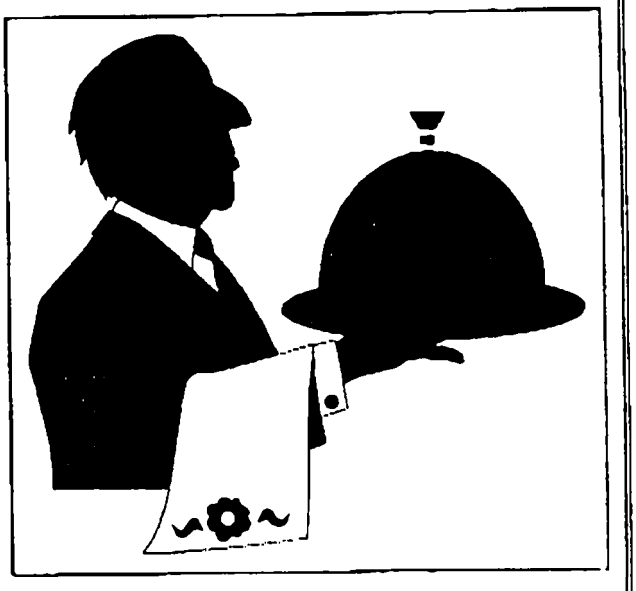
phone

(b)(6)

[001]

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 Bogle

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)
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)

Non-attorneys

For Profit (represent claimants in Social Security claims)

Allsup Inc., Social Security Disability Case Management ((800) 854-1418;
Jim Allsup, president--a former SSA employee)
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
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

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.

BRIEFING PACKAGE
OCTOBER 6, 1995
WHITE HOUSE BRIEFING ON REGO II PROPOSAL TO ELIMINATE REPRESENTATIVES' FEE PROGRAM

TAB A: TALKING POINTS (DESCRIPTION & RATIONALE ON SSA REGO II PROPOSAL)

TAB B: REGO II LEGISLATIVE PROPOSAL (A-19)

TAB C: NUMBERS:
1 - BREAKDOWN OF ESTIMATED SAVINGS FROM REGO II PROPOSAL
2 - DATA ON REPRESENTATION

TAB D: ANALYSIS & COST ESTIMATE ON EACH OMB ALTERNATIVE

APPENDIX: WORK FLOW CHART ON ATTORNEY FEE PROCESS

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A

Divider Title: _____

TAB A

October 5, 1995

TALKING POINTS
OCTOBER 6, 1995
BRIEFING FOR WHITE HOUSE ON
REGO II LEGISLATIVE PROPOSAL
TO ELIMINATE REPRESENTATIVE'S FEE PROGRAM

■ DESCRIPTION

■Proposal eliminates the requirement that SSA authorize representative's fees, and removes the Agency from the process of withholding and paying fees directly to attorneys.

■Also (presently) sets a standard maximum fee--a cap--of $2500 per case for services performed before SSA, and removes the current cap on fees awarded at the judicial level.

■Retains an enforcement provision that would suspend or disqualify representatives who charge a fee in excess of the statutory limit or, in court cases, the amount approved by the presiding judge.

■ RATIONALE

■SSA can no longer justify present level of involvement in representative's fee process because NPR has asked that we:

- streamline processes by eliminating inappropriate functions
- improve customer service
- maximize administrative cost savings

■From outset, budget considerations have been the principal driver, i.e., specific goal under REGO II to achieve $80 million in administrative savings in next five years.

■SSA now faces additional challenge: budget submitted by President presumed highest amount of savings for this and many other REGO II proposals. Now, Congress is looking to cut more in next budget year.

■ If current appropriation figures hold, they will be insufficient to fund all necessary operations.

■ To illustrate: House appropriation bill is $299 million less than President requested; Senate committee recommendation is $364 million less. Some examples of how it will affect SSA:

■ House bill and Senate recommendations for major cut in Disability Investment Fund will result in higher-than-projected end-of-year pending levels for initial disability claims and hearings in FY 1996. This will seriously affect efforts to bring backlogs under control.

■ Reduced funding for automation would only permit SSA to provide new equipment--for which there is a critical need--to half its offices.

■ Senate recommendation puts additional squeeze on already tight funding for salaries and expenses, which would significantly affect SSA's ability to allocate resources as needed.

■ Adding to budgetary uncertainty are: (1) continuing resolution (which fund Agency at level considerably below what is needed); and (2) impending battle surrounding debt ceiling (which if unresolved could force Agency to operate at continuing resolution levels for extended period, and potentially force a furlough to meet Agency's operating costs.)

- Bottom line: it's more imperative than ever that we discontinue any activity not essential to our core mission, and redirect increasingly scarce resources to our highest priority functions.

- Although the REGO II proposal may not represent the optimum solution from every vantage point, the process we have today is not ideal, either:

  - Two different processes, which are cumbersome to administer and often confusing to claimants

  - Contains built-in incentives for delay due to link to past-due benefits

  - Contains no provisions for compensating attorneys who accept cases that do not produce past-due benefits awards

- Point is, we are looking for a way to save money. We believe the current proposal goes farthest toward that end; we have thoroughly considered many alternatives based on suggestions from both within and outside the Agency. If there are additional suggestions, we are open to discuss.

- <u>WHAT'S GOOD ABOUT THIS PROPOSAL</u>: IT DIRECTLY AND FULLY SATISFIES REGO II MANDATE TO STREAMLINE PROCESSES, IMPROVE SERVICE, AND SAVE THE MAXIMUM AMOUNT OF MONEY

- In the short term (within the next five years), eliminating the labor-intensive representatives' fee program would save $80 million and could free up as many as 1,600 to 1,800 workyears to handle critical workloads, such as adjudicating disability claims. As a result of increased attention to processing these claims, claimants could receive more accurate decisions earlier in process, and receive right

amount of benefits sooner.

- In the longer term, combined with other initiatives underway, it could help strengthen SSA's ability to handle workloads that will be generated by retiring baby boom generation--workloads that SSA will begin to confront early in the next century. (More savings and better service)

- Gets SSA out of private contractual matters between claimants and attorneys; allows them to execute own fee contracts, just as they would for other legal services.

- Protects claimants by imposing a statutory cap of $2500 per case. Rationale for setting cap at this level:

  ■Current experience shows tendency to charge maximum fee. For small claims, could result in claimants paying representatives most if not all (or even more than) retroactive benefits amount.

  ■Cap consistent with average pay-out of $2400 per case (based on 1994 figures). About 54 percent of all fees awarded are for less than $2500. With cap of $2500, (slightly higher than average fee), overall amount of program funds available for fee awards would be slightly higher than under current process.

  ■$2500 cap also represents a reasonable limit in redesigned disability claims process environment. Process will be simpler and could produce quicker decisions. Under the current fee process, quicker decisions would drive down the amount of a claimant's retroactive benefits award, which in turn would reduce the average representative's fee. So $2500 cap more in line with expected results from disability

redesign.

- Amount of cap subject to further discussion; challenge is to strike fair balance between protecting claimants and providing adequate compensation to attorneys.

- Also protects claimants by retaining enforcement provision, under which SSA could suspend or disqualify representatives who charge more than the maximum fee.

- Representatives gain, too, i.e., they stand to receive their fees more quickly--about 45 days sooner than under the current process--since funds formerly withheld for payment of fees would be paid to claimants along with the rest of their past-due benefits.

- Removing tie to past-due benefits promotes representative's expeditious action in the case.

CONCERN ABOUT CLAIMANT ACCESS TO LAWYERS

We believe Title II claimants will be able to obtain lawyers because:

- SSI claimants are represented now, despite lack of direct payment of fees for attorneys: 64% of SSI claimants had representatives at the hearings level in Fiscal Year 1994; 72% of representatives were attorneys. Compares with a 73% representation rate (88% attorneys) for Title II claimants.

- We realize that some attorneys in SSI cases are from Legal Aid or participate in State programs that feature direct payment mechanisms. However, we have seen no data indicating the degree or

effect of these sources of representation.

- Non-attorney representation is growing business, even though non-attorneys do not get direct pay under any circumstance. (in FY 1994, non-attorney reps made up 28% of SSI representation and 12% of Title II representation at hearings level). We could expect even greater participation by this group with the introduction of competition.

- About $323 million in fees were withheld for attorneys in FY 1994. Attorneys are unlikely to walk away from this money simply because SSA no longer involved in fee approval.

- Lower representation rates for SSI claimants not solely due to question of fee payment. SSI claimants as group have undesirable image, i.e., many are homeless, destitute or may be suffering from mental impairments or alcoholism.

- But where payment is a concern, Title II claimants are more likely to have economic resources that would make them attractive clients: more apt to have assets, have had a connection to the work force, and be concerned about adverse consequences to their credit ratings. So attorneys handling Title II claims could reasonably expect to be paid, even without SSA involvement.

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TAB B

SOCIAL SECURITY ADMINISTRATION
REGO II LEGISLATIVE PROPOSAL

Representative Fees

Eliminate Representative Fee Authorization Process and Direct Payment of Fees to Attorneys

Current Law: The Commissioner of Social Security, using one of two processes, authorizes the fee that may be charged by an attorney or non-attorney to represent a claimant for Social Security, Supplemental Security Income (SSI), or Part B Black Lung benefits in administrative proceedings.

Under the fee petition process, the representative must request the Commissioner's authorization of fees, but there is no limit on the amount of the fee that may be authorized except that it must be "reasonable." Each fee petition requires an individual evaluation and determination by an Administrative Law Judge (ALJ) or other authorized personnel. Adjudicators, in authorizing a fee, consider factors such as the complexity of the case, the time spent in rendering services, the skills needed, and the results achieved.

Under the fee agreement process, if the representative and claimant have signed and submitted a written agreement as to the amount of the fee, the agreement usually will be approved by the Commissioner if the specified fee does not exceed the lesser of 25 percent of the claimant's past-due benefits or $4,000. The Commissioner then issues a notice of the maximum fee the representative can charge based on the approved agreement.

Social Security regulations provide that a representative may not charge or collect, directly or indirectly, a fee in any amount not authorized by the Social Security Administration (SSA) or a Federal court. The statute and regulations provide that SSA may suspend or disqualify from further practice before SSA a representative who breaks the rules governing representatives.

Under programs other than SSI, in favorable decisions in which the claimant is represented by an attorney, the Commissioner must withhold and pay to the attorney, out of the claimant's past-due benefits, the smaller of: (1) 25 percent of past-due benefits, or (2) the fee authorized by the Commissioner under either the fee petition or fee agreement process. This payment provision does not apply to SSI, because the

Congress decided it would not be appropriate under a means-tested program to reduce a claimant's benefits in order to pay an attorney.

In addition, whenever a court renders a favorable decision under any of the programs (except SSI), the court may allow an attorney a reasonable fee, but not more than 25 percent of past-due benefits, for his or her service before the court, and the Commissioner may pay the authorized fee to the attorney from the 25 percent withheld from past-due benefits.

Proposal: Eliminate--

- the fee petition process by which the Commissioner authorizes the amount of the fee that may be charged by a claimant's representative to represent the claimant in administrative proceedings;

- the fee agreement process by which the Commissioner approves or disapproves the written agreement that the claimant and representative have previously filed, notifies the claimant and representative of the amount of the fee payable under a fee agreement, and reviews the fee upon request of any of the parties involved;

- the requirement that the Commissioner withhold 25 percent of the claimant's past-due Social Security or black lung benefits for direct payment to an attorney who represents a claimant in an administrative or judicial proceeding; and

- the statutory limitation of 25 percent of past-due benefits on the amount a federal court can award.

Impose a statutory limit on the total amount of the fee a representative or representatives may receive for all services provided in representing a claimant in administrative proceedings involving Social Security, SSI, and/or Part B Black Lung benefit programs. The statutory limit shall be $ 2,500 (to be adjusted periodically by the Commissioner).

Allow a court rendering a judgement in the case of a represented claimant to determine a reasonable fee for such judicial representation and, if a court determines such a fee, require the attorney to inform the court whether he or she will charge a fee for representation at the administrative level, or if the claimant had other representatives at the administrative level.

Claimants and their representatives would continue to receive written notification of decisions and the statutory limit on fees for administrative proceedings. Enforcement

would occur as a result of a complaint that the representative has charged a fee in excess of the statutory limit. Under statutory provisions already in force, SSA could suspend or disqualify a representative from representing Social Security claimants before the Agency.

Rationale: The proposal would reinforce claimants' rights to contract for Social Security representation as they do for other legal services without SSA involvement. By limiting its involvement to enforcement activities, SSA would also realize savings in administrative costs and free up additional staff to handle priority workloads, such as initial disability claims.

Retention of an administrative statutory fee cap would protect claimants against excessive fees and permit representatives to charge up to $2,500, which is slightly higher than the average amount of fees SSA paid in 1994 from claimants past-due Social Security disability benefits. Thus, the overall amount of program funds available to representatives would be slightly higher than under the current process. (In 1994, 54 percent of the fees paid were for less than $2,500.) In addition, SSA could release past-due benefits previously withheld to beneficiaries sooner. In turn, as beneficiaries receive all benefits due them sooner, they could pay their representatives sooner.

Opposition to this proposal could be expected on the grounds that some attorneys might not be willing to take on Social Security cases if they are no longer assured of direct payment by SSA. Nonetheless, in FY 1994, 64 percent of the SSI claimants at the hearing level were represented--72 percent of these claimants were represented by attorneys, 28 percent by non-attorneys--without benefit of direct payment of fees. Representative opposition may also be expected to imposing a statutory cap on administrative-level fees, that is less than the current $4,000 cap. This is particularly true for claims in which adjudication takes a long time and could yield higher representatives' fees under the current fee agreement and fee petition processes. (In 1994, almost 46 percent of the fees paid from claimants' past-due Social Security disability benefits were for more than $2,500.)

Effect on Beneficiaries: Under this proposal, claimants could continue to hire private attorney or non-attorney representatives directly and to engage legal aid services and representatives whose fees are paid by third parties (e.g., insurance companies), a growing source of representation before SSA. In addition, with a statutory cap at the administrative level claimants would be aware of the maximum amount representatives could charge for services rendered at such level prior to contracting their services, and would pay less representative fees on average than under the current process when the

decision on their claim is delayed. In addition, representatives would have less incentives to delay claims in order to get higher fees from past-due benefits.

Moreover, ALJs would no longer have to review fee agreements or authorize fees and could devote more time to hearing and deciding cases. (In 1994, about 30 percent of the fee requests at the hearing level were submitted under the fee petition process.) Under this proposal, past-due benefits previously withheld by SSA--to allow time for fee petition/agreement processing--would be paid to claimants with all other past-due benefits, and thus would be available about 45 days sooner to pay attorney fees.

Federalism Impact: None.

Cost: (millions)

	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000
Program[1/]	$3	$33	$8	$3	$3
Administrative	$0	-$20	-$20	-$20	-$20
Long-range cost/savings		To be determined			

1/ Although the total amount of OASDI benefit payments would not change, the proposal would result in an "acceleration" of payments. This results in an increase in OASDI benefit payments on a cash-flow basis, most notable in the second year of operation.

Effective Date: Effective for initial claims and appeals--with first-time representation--filed 60 days after enactment.

Contact Person: Judy L. Chesser, (202) 482-7148

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TAB C

Use fee
SSA closed to advocs.
$2,500 a prob.

THE NUMBERS

WORKYEAR & DOLLAR SAVINGS ON REGO II PROPOSAL

Estimates indicate that approximately 1,600 to 1,800 workyears would be saved over 5 years, resulting in administrative savings of about $80 million over the same period. Note that the savings do not begin to show until after the first full year, to allow time for enactment and implementation. Thus, the total annual figures reflect savings of about 400 - 450 workyears and about $20 million in each of Fiscal Years (FY) 1997 - 2000.

Following is the estimated breakdown of the annual savings (stated in ranges, based on FY 1994 data):

	TOTAL (Agreement & Petition)	FEE AGREEMENT	FEE PETITION
OHA			
Workyears	100 - 120	40 - 50	60 - 70
Dollars (in millions)	$6.8	$2.9	$3.9
ODIO/PSC			
Workyears	300 - 330	30	270 - 300
Dollars (in millions)	$13.5	$1.4	$12.1

WORKLOAD & DOLLAR FIGURES ON REPRESENTATIVE'S FEES
(Based on FY 1994 data)

TOTAL FEE REQUESTS AT HEARING LEVEL: 167,065 (48,626 via fee petition, 118,439 via fee agreement)

(Total fee requests defined as number of fee petitions processed plus fee agreements approved.)

FEES AUTHORIZED AT HEARING LEVEL:

Fee petitions:	Attorney	Non-attorney	Total
	46,778	1,466	48,244
Fee agreements:	108,053	10,386	118,439

FEES WITHHELD BY SSA (ALL LEVELS):

Dollar amount:	$323 million
# of cases:	142, 362

REPRESENTATION DATA (AT HEARING LEVEL):

Claim Type	Attorney	Non-Attorney	Total
Title II - DIB	64.4%	8.5%	72.9%
- RSI	31.3%	10.7%	42.0%
Title XVI	45.7%	18.1%	63.8%
Concurrent	60.4%	13.5%	73.9%
All Claims	54.6%	13.7%	68.3%

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
$499 OR less 9.4 %	13316	12637	679
$500-999 20.7 %	16173	15522	651
$1000-1499 33.1 %	17656	17079	575
$1500-1999 44.4 %	16056	15538	516
$2000-2499 54.4 %	14227	13789	438
$2500-2999 63.0 %	12327	11983	344
$3000-3499 70.5 %	10598	10336	262
$3500-3999 76.3 %	8314	8154	160
$4000 96.3 %	28441	28044	397
$4001-4499 97.1 %	1083	1055	28
$4500-4999 97.7 %	961	935	26
$5000-5499 99.2 %	2040	2007	33
$5500-5999 99.3 %	185	180	5
$6000 OR more 100.0 %	989	948	41

13316
29489
47143
63197
77424
89751
100349
108663
137104
138187
139148
141188
141373
142362

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

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Divider Title: _____

TAB D

Ellen: $2,500, but allow petition

OMB ALTERNATIVE NO. 1

Alternative 1 would eliminate attorney fee withholding, and allow the claimant and attorney to determine the fee based on a statutory cap of 25 percent of past-due benefits or $4,000 as indicated in the award letter.

This alternative modifies SSA's current REGO II proposal by increasing the cap to $4,000 and retaining the calculation of past-due benefits.

Analysis:

While increasing the cap has no effect on savings, the calculation of past-due benefits is costly and problematic because it:

- Does not promote the representative's expeditious action in the case because the fee increases as past-due benefits accumulate;
- Provides no incentive for representatives to accept cases in which past-due benefits are likely to be small or nonexistent (e.g., a continuing disability review or overpayment case); and
- Maintains about the same level of agency involvement that we now have in defining, calculating and notifying claimants and representatives about past-due benefits in each individual case, and responding to such inquiries.

Estimated Savings/(Costs): $48 million for the period FY 1997-2000--1,040 WYs

Savings for this alternative represent the maximum estimated savings and do not include costs to calculate and communicate the new fee derived from subsequent actions (e.g., auxiliaries claims, worker's compensation (WC) offset), and special handling of Drug Addiction and Alcohol (DA&A) cases.

Assumptions:

- SSA would no longer issue checks to the attorneys, or review fee agreements or fee petitions;
- About 25 percent fewer inquiries would be received because attorneys would not be requesting payment. However, SSA would experience about a 25 percent increase in inquiries in instances where the past-due benefits are zero, or in cases involving multiple amounts of past-due benefits;
- SSA will not be involved in fee disputes unless the attorney charges the claimant an amount that is more than the statutory cap; and
- Full implementation will occur in FY 1997.

OMB ALTERNATIVE NO. 2

This alternative is the same as alternative No. 1, except that it caps the attorney fee payment at 30 percent of past-due benefits or $6,000, whichever is less (or whatever percentage and dollar amount seems appropriate to meaningfully minimize the number of cases that would be expected to result in "fee petitions" once the stratification analysis has been completed) and retains the fee petition process.

Analysis:

In addition to the problems associated with the retention of calculating past-due benefits as mentioned in alternative 1, this alternative presents at least as many challenges for SSA as our current involvement in two different fee authorization processes.

SSA would still be required to authorize the fee in a fee petition case under this alternative, and so would have to maintain a process (either the current one or some variation) for authorizing fees, notifying parties, and permitting administrative review of fees in these cases.

Estimated Savings/(Costs): $32 million for the period FY 1997-2000--740 WYs

Savings for this alternative represent the maximum estimated savings and do not include the costs to calculate and communicate the new fee derived from subsequent actions (e.g., auxiliaries claims, WC offset), and special handling of DA&A cases. In addition these savings may be further reduced because SSA does not have discrete data on the levels of fees requested or approved; the Agency has only aggregate data. Consequently, there is no way of determining a fee which would minimize fee petitions.

Assumptions:

Assumptions for estimating the savings on this alternative are the same as those for Alternative 1.

OMB ALTERNATIVE NO. 3

Alternative No. 3 would automate the attorney fee process in the following way:

- Apply a set formula: multiply the monthly benefit amount by the number of months in the retroactive period. The attorney fee would then be a pre-established amount, i.e.,the lesser of 25 percent of the product or $4,000;

- Determine the fee without regard for any adjustment (except for concurrent entitlement);

- Issue in all award notices an automated paragraph explaining "if you were represented in your claim for benefits, the maximum amount your representative may charge you is ___."

Analysis:

While this alternative appears to avoid some of the pitfalls associated with "past-due benefits" (months of retroactive entitlement are easier to determine than amounts of past-due benefits), it is problematic because it:

- Presents many of the same operational and workload challenges as alternative 1 in that it does not promote expeditious action on the part of the representative, or address the issue of the representative's options for requesting a fee in the case of a zero or very low fee derived under the formula; and

- Could disadvantage the claimant by double charging them for the same legal services (e.g., if a claimant was represented by the same attorney for both WC and Disability benefits, the claimant could end up paying the attorney twice). This, in turn could result in additional inquiries.

Estimated Savings/(Costs): $48 million for the period FY 1997-2000--1,040 WYs

Savings for this alternative represent the maximum estimated savings and do not include the costs to calculate and communicate the new fee derived from subsequent actions (e.g., auxiliaries claims, WC offset), and special handling of DA&A cases.

Assumptions:

- All assumptions shown for Alternative 1;

- SSA would still calculate a percentage of some pre-established benefits amount, prepare notices to the attorneys, respond to inquiries, etc.; and

- Despite automation, the number of manual calculations for this alternative would be the same as are currently required for past-due benefits calculations.

OMB ALTERNATIVE NO. 4

This alternative would allow for 25 percent of each back payment check to be made payable jointly to the recipient and the attorney (two-party check alternative).

Analysis:

Although none of the alternatives get SSA out of calculating representative fees this alternative is least within the context of the REGO II mandate because, in addition to calculating the fee, and notifying claimants and their representatives of the fee, we must continue to pay the representative. The systems and operations impact of providing a two-party check would be significant. In addition, this alternative would:

- Directly contravene another of SSA's REGO II goals, i.e., to pay all benefits through direct electronic deposit, and would retain SSA's involvement in all aspects of paper check processing, e.g., lost or stolen checks and address changes; and

- Raise many of the same serious concerns expressed by several members of Congress in rejecting our 1988 proposal to adopt this approach, such as misappropriation of claimants' funds by unscrupulous attorneys and delays in payment, since each party would be required to be present in order to endorse and negotiate the check.

Estimated Savings/(Costs): ($10 million) for the period FY 1997-2000--(440 WYs)

Estimated costs for this alternative do not include the costs to calculate and communicate the new fee derived from subsequent actions (e.g., auxiliaries claims, WC offset); special handling of DA&A cases; or the impact that our continued involvement in a paper check process would have on the Treasury Department's move toward a direct deposit environment.

Assumptions:

- SSA would still have to calculate past-due benefits, prepare notices to the attorneys, respond to inquiries, etc. ;

- About 35 percent more inquiries would be received for cases involving multiple amounts of accrued past-due benefits;

- SSA would no longer withhold 25% of past-due benefits or review fee agreements or fee petitions;

- SSA will not be involved in fee disputes unless the attorney charges the claimant an amount that is more than the statutory cap; and

- All two-party checks would require manual processing. (We are working to determine whether any of the two-party checks can be automated. If automation can be done, any savings from it would come late in the process and would probably be offset by the additional costs entailed by manual processing.)

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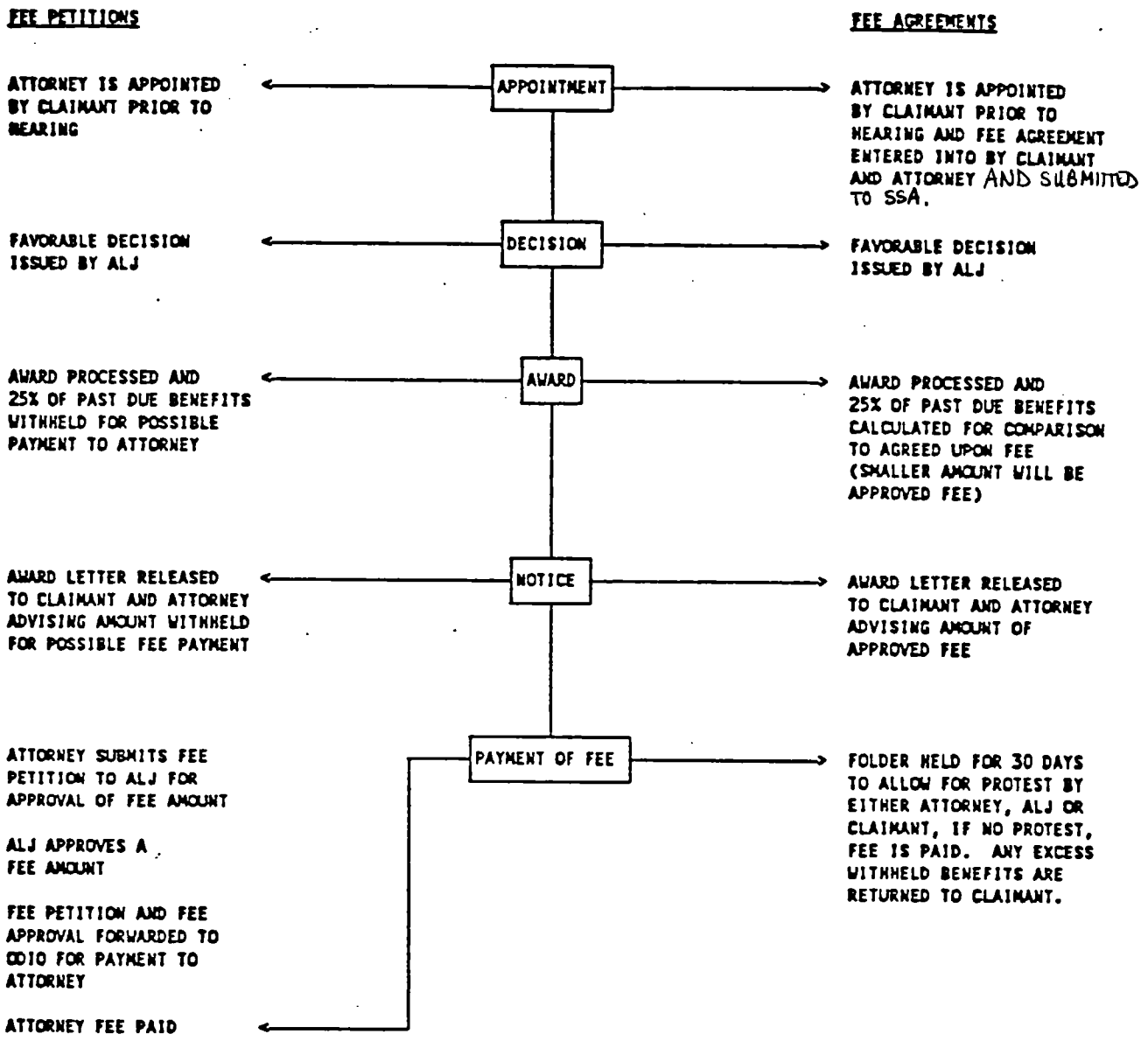
APPENDIX

Divider Title: _____

APPENDIX

ATTORNEY FEE PROCESS



THE WHITE HOUSE
OFFICE OF DOMESTIC POLICY

CAROL H. RASCO
Assistant to the President for Domestic Policy

To: Diana _____ _____

_____ _____

Draft response for POTUS
and forward to CHR by: _____

Draft response for CHR by: _____

Please reply directly to the writer
(copy to CHR) by: _____

Please advise by: _____

Let's discuss: _____

For your information: ✓ _____

Reply using form code: _____

File: _____

Send copy to (original to CHR): _____

Schedule ? : ☐ Accept ☐ Pending ☐ Regret

Designee to attend: _____

Remarks: _____

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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

10-Oct-1995 08:48am

TO: FAX (9-1-501-741-6438,Bishop,Don)

FROM: Carol H. Rasco
Economic and Domestic Policy

SUBJECT: Greetings!

Thank you for your most recent letter. I can assure you the suggestions you have made will be given every consideration.

My best to Sherry and all of your family!

cc Molly
Return to Diana

DONALD E. BISHOP, P.A.
Attorney at Law
601 Capps Road
P.O. Box 512
HARRISON, ARKANSAS 72602-0512
Telephone (501) 741-8100 — Facsimile (501) 741-6438

OCT 5 1995

October 6, 1995

FACSIMILE TRANSMISSION COVER SHEET
NUMBER OF SHEETS TRANSMITTED
INCLUDING THIS COVER SHEET:

4 Pages

TO: Carol H. Rasco
Assistant to the President for Domestic Policy
The White House

CITY/STATE: Washington, DC

FAX NUMBER: (202) 456-2878

Dear Carol:

Enclosed please find the letter I am sending to you today, also, by U.S. Mail.

Very truly yours,

Donald E. Bishop

DEB:bb

IF THERE IS A PROBLEM WITH THIS TRANSMITTAL OR YOU DO NOT RECEIVE SPECIFIED NUMBER OF PAGES, PLEASE NOTIFY OUR OFFICE AT ONCE AT (501) 741-8100. THANK YOU!

DONALD E. BISHOP, P.A.
Attorney at Law
601 Capps Road
P.O. Box 512
HARRISON, ARKANSAS 72602-0512
Telephone (501) 741-8100 — Facsimile (501) 741-6438

October 6, 1995

Ms. Carol H. Rasco
Assistant to the President for Domestic Policy
The White House
Washington, DC 20500

Dear Carol:

I regret missing, due to prior plans, an opportunity to talk with you during the Arkansas festivities in Washington last weekend. Sherry and I met Michael's girlfriend's parents last weekend in Nashville while there for the Arkansas/Vanderbilt game.

Thank you for your letter of September 28, 1995. I was especially heartened to read the statement that the administration is determined to ensure that individuals with disabilities have continued access to legal services. Continued access to services is exactly the issue here. I genuinely believe that access to competent counsel will be denied to disabled claimants as a direct result of part of the Re-inventing Government efforts.

The REGO II proposal sets $2,500 as a maximum attorney fee. Currently, $2,500 is the average fee. How has the Social Security Administration determined that fees are excessive? Is it because there have been so few claimant complaints about fees since Senator Pryor worked so hard to get the streamlined attorney fees process in 1989? The streamlined process ended the time consuming requirement of review of fee petitions where the fee agreements are used. SSA forgets that there is a complaint mechanism in place now to address any fee complaints. Unfortunately, the reason SSA considers fees excessive and should be cut is to drive competent attorneys out of this practice. When that occurs, access to counsel has not been ensured.

The REGO II proposal eliminates the current statutorily mandated direct payment of fees to attorneys under the guise that administrative costs are excessive. SSA asserts that this will leave claimants in the same position as other consumers of legal services. This is not true. In Arkansas, workers' compensation attorney fee checks are paid direct to the attorney by the carrier. In other states, workers' compensation fees, as with personal injury fees, are paid by joint check to client and attorney. Since the recommendation to defray administration expenses through user

fees has been rejected by the SSA, the real rationale must be to drive competent attorneys from the program. Again, this does not ensure access to counsel.

An argument has been made that since some SSI claimants have been represented in the past, then counsel will be available for Title II claimants when attorney fee withholding is eliminated. This analysis does not consider concurrent eligibility cases where Title II benefits have been withheld nor the number of SSI claimants represented by attorneys for Legal Services Corporation offices. How long will Legal Services Corporation be able to take SSI claims or even be in existence? The SSA analysis fails to consider work by attorneys like me who, because I can get paid under Title II, will also take SSI cases because of the feeling of responsibility to assist those in dire straights, as most SSI claimants are, recognizing that in a large percentage of SSI cases counsel will not get paid. Have we done the future SSI claimants a disservice by accepting SSI cases in the past, if poor claimants will no longer be able to find competent counsel?

NOSSCR members recognize 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 goals of preserving access to counsel while virtually eliminating administrative costs.

First, the fee should be no more than 25% of the past-due benefits, not a flat fee of any amount. This follows the standard model in comparable legal contingency fee matters, where attorney fees are routinely and widely known to the public 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 is in harmony 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 of 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 workers' 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 the 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. If it were deemed necessary, we could accept the imposition of a $20 charge per case to cover the administrative costs of administering a direct payment mechanism; please note that in 1990, the HHS Office of the Inspector General recommended just such a "user fee."

Your consideration and involvement in this matter of domestic policy will be greatly appreciated. We support the People First ideas upon which our President ran. This REGO II proposal is the antithesis of the ideals of People First.

We respectfully ask that the administration reconsider the REGO II. We ask that re-engineering or re-inventing plans include the two proposals presented above.

Very truly yours,

Donald E. Bishop, P.A.

DEB/bb

THE WHITE HOUSE
OFFICE OF DOMESTIC POLICY

CAROL H. RASCO
Assistant to the President for Domestic Policy

To _____ _____

_____ _____

Draft response for POTUS
and forward to CHR by: _____ cc: Molly Diane

Draft response for CHR by: _____

Please reply directly to the writer
(copy to CHR) by: _____

Please advise by: _____

Let's discuss: _____

For your information: _____

Reply using form code: _____

File: _____

Send copy to (original to CHR): _____

Schedule ? : ☐ Accept ☐ Pending ☐ Regret

Designee to attend: _____

Remarks: _____

_____

_____

_____

_____

October 18, 1995

Mr. Larry O. Denny
4550 Belleview
Kansas City, Missouri 64111

Dear Larry:

Thank you for your letter expressing your concerns about openings for district judges and changes in the functioning of the Social Security Administration under Reinventing Government Phase II.

As you know, the Vice President and I are looking at federal agencies of all sizes in our efforts to make government work better and cost less. My Administration examined the Social Security Administration in this light, and subsequently raised the issue of changing SSA's role in authorizing and paying attorneys' fees.

Since then, we have consulted with many concerned groups and individuals to determine how the proposal would affect claimants' access to legal representation. We believe that we can reduce the SSA's administrative burden while protecting claimants' representational needs. The SSA is now evaluating the questions that have been raised and is working to ensure that the implementation of such a proposal would not adversely affect claimants.

As we work to bring government in line with the needs of today and tomorrow, we are committed to ensuring that people in need continue to have access to the legal services they require.

I appreciate your sincerity and candor, and I'm glad you took the time to write. I assure you that I'll keep your perspective in mind as we work on this issue and seek to fill the district judge positions. You may be interested in knowing that we hope to announce nominations for these positions soon. Meanwhile, I have forwarded your letter to Carol Rasco at the Domestic Policy Council so that she may know of your concerns.

Sincerely,

BILL CLINTON

BC/SEM/JFB/bws (Corres. #2497886)
(10.denny.lo)

cc: Marvin Krislov
cc: w/inc Carol Rasco

LARRY O. DENNY
Attorney at Law
4550 Belleview
Kansas City, MO 64111
(816) 756-5800
(816) 756-3001 FAX

September 11, 1995

William Clinton, Esq.
President, United States of America
1600 Pennsylvania Avenue
Washington, D.C. 20500

Re: District Court Vacancies -
Western District of Missouri

Dear President Clinton:

By October, 1992, we had two district judges go on senior status. In July, 1995, we had one more district judge go on senior status.

Finally, this summer, one of those positions was filled. Now we have two vacancies and no word that any candidates have been named to fill these positions.

I regularly practice before the U.S. District Court representing claimants for Social Security Disability benefits. With the exception of one Republican district judge, we lose virtually every case before judges appointed by Reagan/Bush. Appeal of these decisions to the Eighth Circuit Court of Appeals is now a waste of time and paper. Whereas the Johnson/Carter appointed judges of the Eighth Circuit reversed seventy-five percent of Social Security cases, the Reagan/Bush team reverses less than three percent. Due process of law is a faint memory.

Claimants for Social Security Disability benefits must win cases before Administrative Law Judges (ALJ's) because unless they draw one of the few remaining "fair" district judges, they have no chance. However, most of the ALJ's are Republican conservatives who are hostile to claimants.

With the system stacked against the claimants, your appointee, Shirley Chater, proposed in April, 1995, to eliminate the withholding of attorney's fees for attorneys successfully securing benefits for a Social Security Disability claimant. The back pay would be sent directly to a claimant and the attorney would hope the claimant would pay the attorney.

Unfortunately, by the time a claimant receives his/her back pay, he/she has usually waited two to three years without any money, and is deeply in debt and therefore, fails to pay attorney's fees.

This is the current situation in SSI cases, and as a result, claimants have a great deal of difficulty hiring an attorney.

Shirley Chater's first proposal sought only to eliminate the withholding of attorney's fees. It was a thinly veiled attempt to eliminate the representation of claimants by attorneys.

Now she has gone further in her attempt to deny claimants representation, and now seeks to eliminate the withholding of attorney's fees from a claimant's back pay and to reduce the maximum attorney fee from $4,000.00 to $2,500.00.

This will certainly save the government money. Claimants will not be able to obtain representation by attorneys and unrepresented claimants will be less successful in obtaining benefits. If this is your goal, you will be successful.

This was not the situation I expected when I hosted parties for your election, gave money and campaigned for all my clients to vote Democratic.

We need two new District Court judges immediately appointed to the Western District of Missouri.

We need Shirley Chater to withdraw her ill-conceived change in attorney fee payments for Social Security Disability attorneys.

Until we get these changes, I am requesting that your re-election committee stop contacting me for money.

If I wanted a Republican president, I would have voted for Bush.

Your policies are making this liberal Democrat strongly consider a third party.

Very truly yours,

Larry O. Denny

LOD:kdc

October 19, 1995

27

Mr. Denver L. Thornton
410 North Jackson
El Dorado, Arkansas 71730

Dear Denver:

Thank you for your thoughtful letter. I'm glad you took the time to express your concerns about changes to the Social Security Administration under Reinventing Government Phase II.

As you know, the Vice President and I are looking at federal agencies of all sizes in our efforts to make government work better and cost less. My Administration examined the Social Security Administration in this vein and subsequently raised the issue of changing the SSA's role in authorizing and paying attorneys' fees.

Since then, we have consulted with many concerned groups and individuals to determine how the proposal would affect claimants' access to legal representation. We believe that we can reduce the SSA's administrative burden while protecting claimants' needs. The SSA is now evaluating the issues that have been raised and is working to ensure that the implementation of such a proposal would not adversely affect claimants.

As we work to bring government in line with the requirements of today and tomorrow, we are committed to ensuring that people in need continue to have access to legal services.

I know this issue is important to you, and I have passed along your letter to Carol Rasco at the Domestic Policy Council as well. I send my best wishes.

Sincerely,

BILL CLINTON

BC/SEM/JFB/bws-emu (Corres. #2471198)
(10.thornton.dl)

cc: w/inc Carol Rasco, DPC

LAW OFFICES
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EL DORADO - MALVERN

OFFICE MANAGER
MARTHA BARRIOS

EL DORADO
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501-862-7989
FAX 501-862-9659

MALVERN
112 E. 3rd
MALVERN, AR 72104
501 - 337-7878

August 18, 1995

95 SEP 11 P3:30

The Honorable Bill Clinton
President of United States
The White House - West Wing
Washington, D.C. 20500-2000

Re: Social Security Reform - REGO II

Dear Mr. President:

The Social Security system has unfortunately become the safety net for the defunct Workers' Compensation system in America.

I am stunned by reported recommendations of your people involving REGO II. If half of the rumors are true, we should call it "REAGAN II."

The Reagan Social Security revolution was brutal. However, the people were saved by the "System", i.e., Judges and Courts. It is rumored that some of your people are suggesting:

(1) Eliminate the Social Security Administrative Law Judges;

(2) Eliminate the Appeals Council review;

(3) Eliminate the attorney by attorney's fee cap of $2,500; and

(4) Non-protection of attorneys' fees - DIB cases.

Even the Reagan group put the attorneys' fee cap at $3,000 and the Congress raised it to $4,000. We still lose a lot of money by the cap but, nevertheless, the $4,000 cap is acceptable.

Mr. President, election time is near. What do I tell the people of South Arkansas and North Louisiana? While you may be out in the rose garden conducting business and having tea, Sam Boyce and I will be out in the bush, nose-to-nose with the electorate.

Let me assure you that the electorate is agile, mobile and hostile.

Please advise.

Your friend,

Denver

EK - other atty vibes
Toudy - feely mtg -

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

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

The Bazelon Center and other disability advocacy and legal groups criticized the REGO II proposal on the grounds that: 1) claimants will not be able to get representation because the reimbursement for attorneys is too low, particularly for complex cases; 2) 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.

White House Working Group Alternative Proposal

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.

- "good enough"? to assure access
  - who knows
  - lawyer/advocates

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)

User fee

Advocates - lawyers
-disab advocs
Registration

[redacted]
John Laura
6-7028

BAZELON CENTER FOR MENTAL HEALTH LAW

Civil Rights and Human Dignity

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Leonard S. Rubenstein

June 13, 1995

Ms. Sally Katzen
Administrator, Office of Information
and Regulatory Affairs
Office of Management and Budget
Old Executive Office Building
Washington, D.C. 20503

Ms. Elaine Kamarck
Senior Policy Advisor to the
Vice President
Office of the Vice-President
Old Executive Office Building
Washington, D.C. 20501

SSI, not SSDI

Dear Ms. Katzen & Ms. Kamarck:

You have generously opened your doors to concerns of the disability community about agency initiatives that may harm people with disabilities. I am writing on behalf of the Social Security Task Force of the Consortium of Citizens with Disabilities about a Reinventing Government (REGO II) initiative that would seriously limit access of Social Security claimants to quality legal representation.

As part if its REGO II process, the Social Security Administration has submitted a proposal to the Office of Management and Budget that would eliminate SSA's role in the determination and payment of attorneys fees in claims arising under Title II of the Social Security Act. Under the current system, where the claimant is represented in a successful appeal, SSA withholds a portion of past due Title II (or Black Lung) benefits, determines an appropriate fee, and then pays the lawyer directly, based on a statutory cap.

The system has a dual purpose: first, by providing a mechanism for payment of fees, it creates an incentive for lawyers to take Social Security cases. In the absence of payment by SSA, lawyers would have no capacity to collect fees because the Social Security Act prohibits transfer or assignment of Social Security benefit payments. 42 U.S.C. §407(a). As a result, the typical contingent fee arrangement -- or indeed any arrangement that allows payment of the fee from a back benefit award -- that assures low income people access to counsel cannot apply to these claims.

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Second, the system protects claimants by assuring that they are not overcharged by their lawyers.

We do not think the system is broken or in need of repair. There are administrative costs to this system, of course, but the benefits in availability of attorneys and the protection of Social Security claimants is worth the price.

Further, SSA has gone about reform in the worst possible way. The twin goals of making lawyers available and protecting claimants could be achieved, albeit not as satisfactorily as in the current system, through an alternative proposal that also eliminates SSA from the fee determination business. But SSA has rejected that solution for reasons that seem to us to exemplify the very bureaucratic ossification that the REGO II initiative was designed to avoid.

Disability advocates proposed that if SSA wishes to replace the current system, it take two simple steps:

1. Place a reasonable cap on fees. We suggested 25% of past-due benefits as a reasonable fee cap.

2. Adopt the payment system most frequently used in litigation involving claims for money by either issuing a check to the lawyer as escrow agent or writing a two-party check to the lawyer and claimant.

We presented these proposals to the Social Security Administration, and explained how the system would both simplify the process and further the goals of access to counsel and claimant protection. In the absence of such a system, reputable lawyers will simply have no mechanism to get paid and thus will not take the cases. Worse, SSA's proposed system is likely to attract unscrupulous claimants' representatives who will charge an up-front flat fee for representation. The potential for rip-off of claimants and ensuing scandal is enormous.

Although SSA never challenged our reasoning, it has nevertheless refused to budge from its proposal to eliminate any significant role for SSA in this process. Most disturbing, it has given us the very bureaucratic response REGO II was supposed to eliminate. In a May 19 letter to me SSA said there was "no systems support for issuing a one-time-only two-party check for retroactive benefits", thus requiring manual, time-consuming processing. In short, instead of proposing a rational solution to a problem, it has retreated to the notion that the very structure of the bureaucracy prevents adoption of a rational solution.

We thought that the very purpose of the reinvention initiative was designed to do away with bureaucratic responses and behavior like this.

Finally, we believe the fee cap SSA proposes is harmful to claimants and an invitation to abuse. The $4,500 cap will quickly become the standard fee, and for small claims will represent a huge percentage (up to 100% in fact) of the past due benefits, compared to the 25% cap now. As representatives of people with disabilities, we seek to assure access to competent counsel, not windfalls for lawyers. Yet that is what SSA is proposing.

I would welcome an opportunity to meet with you about this very distressing proposal from the Social Security Administration.

Sincerely,

Leonard S. Rubenstein

cc: Debbie Fine

Summary of Attorney Fee Proposal and Alternative Estimates

Proposal/Description	FY 1997-2000 Cost /(Savings) Workyears	$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

THE NATIONAL LAW JOURNAL

Monday, September 11, 1995

Social Security Fee Proposal Draws Protest

LAWYERS WHO REPRESENT disabled Social Security claimants before the Social Security Administration are fighting a proposed change in the way they are paid that the agency plans to eliminate the practice of withholding attorneys' fees from their clients' awards.

The SSA says the move is part of a plan to streamline its operations, but lawyers say it is a scheme to prevent claimants from having proper representation—and to thin out the SSA's rolls. The attorneys are calling the proposal the strongest attack on claimants' rights since the Reagan administration's "non-acquiescence" policy of ignoring court precedents in determining Social Security disability benefits.

Since the 1960s the SSA has withheld 25 percent of a successful claimant's past-due benefits to be applied to the attorney's contingency fee, which is subject to the agency's approval. It did so because by the time claims have been processed, clients often are deeply in debt, and lawyers are last on their list of creditors. Because the fee-petition process is costly, in 1991 the agency instituted a system under which the attorney and client agree to an automatic fee capped at $4,000 or no more than 25 percent of back benefits, whichever is less.

Useful: *Victor Fusco says he helps weed out frivolous claims.*

On April 10, the SSA announced that, as part of Vice President Al Gore's REGO II, or Reinventing Government, Phase II, it would seek to end its practice of withholding the fee. The commissioner said that "[c]laimants, if they choose, will contract for Social Security representation as they do for any other legal service." In May the agency proposed to cap the fees at $2,500, the only oversight it would exercise. According to SSA spokesman Philip A. Gambino, moving the proposal on to the Office of Management and Budget has been stalled because of a disagreement within the administration about whether that cap is too low.

Mr. Gambino said that the issue may be resolved as early as this month and that the SSA would work with the OMB to draft a bill for either fiscal year 1996 or 1997. Both sides in the debate agree that the legislation will be controversial in Congress.

Pruning Claims?

Lawyers say the change will make it virtually impossible to continue representing disabled claimants. They believe the administration wants to cut them out of the picture and cut down the ranks of recipients. The lawyers are victims of their own success in making law and expanding opportunities for claimants during the past decade, they say.

"It's a total attack on the legal profession," said Victor Fusco, of Woodbury, N.Y.'s Scheine, Fusco, Brandenstein & Rada P.C. "And it doesn't come from the Republicans. It comes from the Democrats trying to 'out-Republican' the Republicans."

In fiscal year 1993, the agency decided 2.5 million claims. The legal practice is low-paying but high-volume, and it is not unusual for a law office to take several hundred cases per year.

The SSA's Mr. Gambino said the agency has decided that brokering attorney fees, which costs $26 million per year to administer, is not part of its mission. He also said a cap as low as $2,500 will not be unfair because plans are under way to streamline the process so it doesn't take as long: "We disagree that attorneys won't represent these clients. And for those that won't, then they'll get other kinds of representatives."

Proposals Rejected

In its proposal, the administration points out that lawyers are willing to take Supplemental Security Income cases—most involving the indigent disabled—for which the agency does not withhold fees. Lawyers said they do so because many states have their own withholding mechanisms for those cases.

Scheine Fusco's Mr. Fusco, whose firm has seven lawyers representing claimants, predicted that the change will force the SSA to hire more screeners—a function, he said, the lawyers now serve.

"They look at us as adversaries, but [my office interviews] 100 people a month and maybe takes 30," he said. "People don't understand the eligibility and earning requirements."

Nancy G. Shor, executive director of the 3,000-member National Organization of Social Security Claimants' Representatives, based in Midland Park, N.J., said her group had proposed that the administration charge the lawyers a fee for the withholding service or issue checks in both the clients' and the attorneys' names—as in contingency arrangements in torts. She said the agency rejected those proposals. —THOM WEIDLICH

D—
Here's a probable
indication of why
the lawyers are
suddenly
interested
—Molly

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September 18, 1995

Nancy G. Shor
Executive Director
NOSSCR
6 Prospect Street
Midland Park, New Jersey 07432

Dear Ms. Shor:

Please find enclosed the resolution passed by the Federal Bar Asssociation on Saturday, September 16, 1995.

Very truly yours,

Chris A. Cornaghie

CAC:cab

Resolution in Opposition to Proposed Elimination of Social Security Disability Attorney Fee Program

Ref. Item 11, TAB F

THE FEDERAL BAR ASSOCIATION

Resolution 95-

OPPOSITION TO PROPOSED ELIMINATION OF SOCIAL

SECURITY DISABILITY ATTORNEY FEE PROGRAM

WHEREAS, the Social Security Administration is required by law to administer an attorney fee program as part of its disability benefits system, and

WHEREAS. the SSA has proposed the termination of the attorney fee program as part of the Administration's Reinventing Government effort, and

WHEREAS, the attorney fee program has proved to be effective in insuring that disabled workers receive the benefits they are entitled to under the Social Security Act. and

WHEREAS, without the attorney fee program most claimants will be without competent assistance in pursuing their rights.

NOW THEREFORE BE IT RESOLVED. that the Federal Bar Association opposes the elimination of the attorney fee program: and

BE IT FURTHER RESOLVED. that the president of the Federal Bar Association is authorized and directed to communicate copies of this resolution to the Commissioner of Social Security and to the chairmen of the Senate Finance and House Ways and Means Committees.

Under a provision of the Social Security Act (42 U.S.C. sec. 406), the Social Security Administration approves the fee that may be charged by an attorney to represent a disability claimant in administrative proceedings, and withholds 25% of the claimant's award for direct payment to the attorney.

In April 1995, the SSA proposed to eliminate the fee process because, it says, under the Clinton Administration's Reinventing Government program, the process is not a function that is critical to the agency's mission. And in lieu of the statutory limit of 25% of awards of disability benefits, it proposed a fee cap of $4,500 (since revised to $2,500) for legal services.

Representatives of disability claimants have proposed as an alternative that if the process must be eliminated for cost-cutting reasons, it should be replaced by the issuance of a back award check payable jointly to the attorney and client, or, at least, the check should be made payable to the attorney in trust for the claimant. SSA rejected these alternatives on the ground that "systems and operational modifications would be so expensive that SSA would realize none of the savings the initiative is designed to produce."

As Professor Robert E. Rains has explained in the August 1995 issue of *The Federal Lawyer*, if enacted, the SSA proposal would effectively preclude most disabled workers from obtaining legal representation when SSA denies their meritorious claims, most claimants have been out of work for a considerable period of time before their claims rise to the ALJ hearing level, and cannot afford to deposit a reasonable retainer for legal services, leaving them without professional assistance in a complicated process.

The Senior Lawyers Division urges the National Council to approve the attached resolution opposing the elimination of the fee process.

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

NANCY G. SHOR
EXECUTIVE DIRECTOR

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September 11, 1995

RE: REGO II Initiative
Social Security Administration
"Eliminate Attorneys Fee Program"

Last month, the Social Security Administration presented to the Office of Management and Budget a package of initiatives as part of the Administration's "Re-inventing Government" efforts. One item in the package is captioned, "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 will likely prohibit those programs from representing any Social Security and SSI claimants. Under SSA's proposal, it will be easy for the agency 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 who choose to be represented. First, it sets $2,500 as a maximum fee. Currently, $2,500 is the average fee. How has the agency determined that fees are excessive and should be cut in half? Because there have been so few claimant complaints about fees over the past several years, and because the current system already has a complaint mechanism in place to address them, we assume that the agency envisions that cutting the amount of fees in half will drive highly competent attorneys out of this practice. Unfortunately for claimants, they are quite right. Second, the proposal eliminates the current statutorily-mandated direct payment of fees to attorneys, claiming that administrative costs are excessive. The agency asserts that this will leave claimants in the same position as other consumers of legal services. This, however, is not true. In comparable areas of contingency fee representation (such as worker's compensation and personal injury cases), there is a joint check to assure payment of the legal fee. Note that our recommendation to defray these administrative expenses through the imposition of a "user fee" has been rejected by SSA, leaving us to conclude that the real rationale for this proposal is to drive competent attorneys from this program.

The present attorney fee program, which has most recently greatly streamlined the process since 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 any amount. This follows the standard model in comparable legal contingency fee matters, where attorney fees are routinely and widely-known to the public 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 the 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. If it were deemed necessary, we could accept the imposition of a $20 charge per case to cover the administrative costs of administering a direct payment mechanism; please note that in 1990, the HHS Office of the Inspector General recommended just such a "user fee."

In sum, we believe that SSA has not made a case for an overhaul of the attorney fee system. If there is to be a change, however, our recommendation is the appropriate alternative. It ensures that the right to representation for Social Security claimants is not hollow, but is realistic and meaningful. For most claimants, their Social Security claim is the single most important legal event in their lives. It is not surprising that many claimants will choose, at some point in the process, to have a lawyer. How ironic they would find it if the very agency against whom they are fighting for their benefits is the same agency which erects an obstacle to their obtaining representation for that fight.

	statutory cap	fee petition	attorney fee withholding	users fee	savings
current law					
initial SSA proposal					
alternative 1					
alternative 2					
alternative 3					
alternative 4					