

October 2007

# SSA DISABILITY REPRESENTATIVES

## Fee Payment Changes Show Promise, but Eligibility Criteria and Representative Overpayments Require Further Monitoring





Highlights of [GAO-08-5](#), a report to congressional committees

### Why GAO Did This Study

The Social Security Protection Act of 2004 temporarily expanded the practice of paying representatives' fees directly out of a claimant's benefits. This practice, known as fee withholding, was previously available only to attorneys in Disability Insurance (DI) cases. It has been extended to attorneys in Supplemental Security Income (SSI) cases, and to nonattorneys—who meet eligibility criteria—in both DI and SSI cases. The act also mandated that GAO examine (1) the professional experience of disability representatives, (2) how judges and claimants view representatives' performance, (3) how the implementation of fee withholding for nonattorneys has been viewed, and (4) the impact of fee withholding in the SSI program. GAO surveyed representatives and judges, and interviewed claimants and Social Security Administration (SSA), state, and other officials.

### What GAO Recommends

We are recommending that SSA monitor and if necessary adjust the nonattorney eligibility criteria, assess the extent of overpayments to representatives and if necessary implement solutions, and continue to explore options to address benefit payment delays. In its comments on a draft of this report, SSA agreed with our findings and recommendations, and noted actions it plans to take to address our recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-5](#). For more information, contact Daniel Bertoni at (202) 512-7215 or [bertonid@gao.gov](mailto:bertonid@gao.gov).

## SSA DISABILITY REPRESENTATIVES

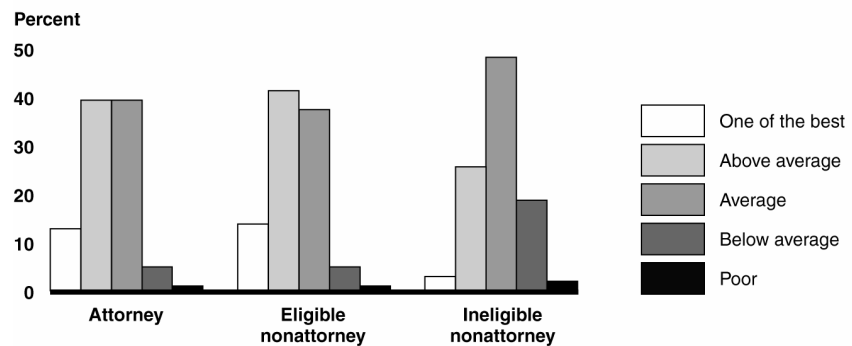
### Fee Payment Changes Show Promise, but Eligibility Criteria and Representatives Overpayments Require Further Monitoring

#### What GAO Found

Nonattorneys who have successfully applied for fee withholding eligibility had more experience representing claimants than attorneys or ineligible nonattorneys. From our surveys, we estimate that eligible nonattorneys had represented on average over 240 disability claimants over 2 years, while other representatives had represented on average fewer than 90. Eligible nonattorneys were also most likely to specialize in disability representation.

Judges and claimants considered the performance of eligible nonattorneys to be generally on a par with that of attorneys, but judges rated ineligible nonattorneys less highly. Judges we surveyed rated eligible nonattorneys as about equal to attorneys overall, and many said a law degree is not necessary for effective disability representation. Claimants we interviewed were generally satisfied with their representatives, regardless of type.

**Judges Rated Attorneys and Eligible Nonattorneys Most Highly Overall**



Source: January/February 2007 GAO survey of administrative law judges in 10 SSA hearing offices.

Judges and eligible nonattorneys were generally satisfied with the implementation of fee withholding for nonattorneys, including most of the eligibility criteria for nonattorneys. However, both groups expressed concern about the experience standard, which currently allows nonattorneys who have represented as few as five disability claims before SSA over a 2-year period to qualify for fee withholding. Most judges we interviewed and more than half of the eligible nonattorneys considered this insufficient. And, according to an association of representatives, fee withholding is attracting more inexperienced nonattorneys to the field of disability representation.

Fee withholding has increased the number of SSI claimants represented by attorneys, but has also complicated payments in certain SSI cases. In some cases, representatives can now inappropriately receive more than the fee authorized by SSA. At least 10 states pay fees to representatives of successful SSI claimants, and SSA does not coordinate with most of these states to prevent overpayments to representatives through fee withholding and state payments. Also, claimants eligible for both DI and SSI have experienced delays in receiving their benefits as a result of fee withholding in the SSI program. SSA has tentative plans to address these delays.

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# Contents

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<b>Letter</b>		<b>1</b>
	Results in Brief	3
	Background	5
	Nonattorneys Eligible for Fee Withholding Have the Most Experience Representing Disability Claimants and Are Most Likely to Specialize in Disability Representation	12
	Attorneys and Eligible Nonattorneys Were Regarded about Equally Well Overall, while Other Nonattorneys Were Rated Less Highly by Judges	19
	While There Is General Satisfaction with the Implementation of Fee Withholding for Nonattorneys, the Minimum Experience Requirement May Be Insufficient	26
	Fee Withholding Has Increased the Number of SSI Claimants Represented by Attorneys but Has Complicated Payments in Certain Types of SSI Cases	28
	Conclusions	34
	Recommendations for Executive Action	35
	Agency Comments	36
<b>Appendix I</b>	<b>Objectives, Scope, and Methodology</b>	<b>37</b>
<b>Appendix II</b>	<b>Nonattorney Representatives' Highest Level of Education</b>	<b>48</b>
<b>Appendix III</b>	<b>Geographic Distribution of Representatives by Type</b>	<b>49</b>
<b>Appendix IV</b>	<b>Comments from the Social Security Administration</b>	<b>50</b>
<b>Appendix V</b>	<b>GAO Staff Contact and Acknowledgments</b>	<b>53</b>
<b>Related GAO Products</b>		<b>54</b>

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## Tables

Table 1: Demonstration Project Applicants and Their Pass Rates, 2005-2007	12
Table 2: Dispositions of Representative Survey Nonrespondents for Survey of Attorneys and Ineligible Nonattorneys	40
Table 3: Hearing Offices Selected for ALJ Survey	42
Table 4: Total Responses and Response Rate for Survey of ALJs	44

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## Figures

Figure 1: SSA's Disability Claims Process	7
Figure 2: Percentage of Claimants with Representation at Their Hearing, Fiscal Years 2000-2006	9
Figure 3: Eligible Nonattorneys Represented More Disability Claimants over a 2-Year Period than Other Representatives	13
Figure 4: Representatives Who Specialize in Disability Represented Substantially More Disability Cases over a 2-Year Period than Those Who Do Not	14
Figure 5: Many Nonattorneys Had Prior Relevant Work Experience	16
Figure 6: Attorneys and Eligible Nonattorneys Are More Likely to Work in the Private Sector	18
Figure 7: Judges Rated Most Highly the Overall Performances of Attorneys and Eligible Nonattorneys	20
Figure 8: Judges Rated Attorneys Most Highly in Their Performance during Hearings	22
Figure 9: Judges Rated Attorneys and Eligible Nonattorneys Equally for Other Facets of Disability Representation	24
Figure 10: Many Eligible Nonattorneys Consider Most Eligibility Requirements Reasonable or Appropriate	27
Figure 11: Attorneys Include Fewer SSI Cases in Their Caseloads than Nonattorneys Do	30
Figure 12: The Extension of Fee Withholding to the SSI Program Has Resulted in Later SSI Payments to Claimants Receiving Both SSI and DI Benefits in Cases Where SSA Withholds the Representative's Fee	34

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## **Abbreviations**

ALJ	administrative law judge
CPMS	Case Processing Management System
DDS	disability determination service
DI	Disability Insurance
ODAR	Office of Disability Adjudication and Review
SSA	Social Security Administration
SSI	Supplemental Security Income
SSR	Supplemental Security Record

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United States Government Accountability Office  
Washington, DC 20548

October 15, 2007

The Honorable Max Baucus  
Chairman  
The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Charles B. Rangel  
Chairman  
The Honorable Jim McCrery  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Each year, several million Americans apply for benefits from the federal government's two largest disability programs—Disability Insurance (DI) and Supplemental Security Income (SSI). The DI program provides benefits to individuals with a sufficient amount of work experience who become unable to work because of a disability. The SSI program is a means-tested program that serves low-income individuals with disabilities, regardless of their work history. The disability application process begins with the filing of a claim with a Social Security Administration (SSA) field office, and may progress to a hearing before an administrative law judge (ALJ) if the claim is denied. Since the end of 2003, about 46,000 attorneys and 18,000 nonattorneys have served as representatives for DI and SSI claimants at hearings, and some research indicates that claimants with such representation are more likely to be successful in obtaining benefits than those without. This may be because claims can be complex, and claimants may need help with their applications, with the submission of their medical evidence, or with the questioning of an expert witness in a formal hearing.

To encourage representatives to accept disability claim cases, Congress has authorized a practice known as fee withholding, which guarantees that representatives are compensated for their services when claimants are successful. The amount of the representative's fee is set by SSA, after the representative files a request. Under fee withholding, SSA pays the representative directly from an amount it withholds from the claimant's benefits. Until the Social Security Protection Act of 2004 was passed, only

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attorneys had access to fee withholding, and only for DI cases. The option of fee withholding has been temporarily extended to attorneys in SSI cases, and—through a demonstration project—to certain nonattorneys in both DI and SSI cases.<sup>1</sup> The act extended fee withholding to qualified representatives of SSI claimants in an effort to promote representation for more SSI claimants. Partly because of the absence of fee withholding from the SSI program, the representation rate for SSI claimants has historically been lower than that for DI claimants. To ensure that nonattorneys who qualify for fee withholding are competent, the act established certain eligibility criteria for the demonstration project, including passing an exam. More than 400 nonattorneys have successfully applied for inclusion in the demonstration project so far and—provided they satisfy certain ongoing requirements—are eligible for fee withholding. All other nonattorneys remain ineligible for fee withholding, although these ineligible nonattorneys could apply for inclusion in the demonstration project and try to become eligible for fee withholding in the future. These changes were implemented in February 2005 for a 5-year period.

The act also required that GAO assess the implementation of these fee withholding changes. Specifically, the mandate directs GAO to examine (1) the professional experience of different types of disability representatives, (2) how judges and claimants view the quality of services provided by the representatives, (3) how judges and nonattorneys eligible for fee withholding view the implementation of fee withholding for nonattorneys, and (4) how the extension of fee withholding to the SSI program has affected claimants and representatives. To address these questions, we surveyed the nonattorneys eligible for fee withholding at the time of our study. We also surveyed random samples of attorney representatives of disability claimants and nonattorney representatives who are currently ineligible for fee withholding. We are able to make estimates about the entire population of attorneys and ineligible nonattorneys at a 95 percent level of confidence with calculated sampling errors. We asked ALJs in 10 hearing offices to rate the performance of all representatives who came before them over a 1-month period. We conducted interviews with judges in selected hearing offices, other SSA officials, state officials, external stakeholder groups, and a small number

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<sup>1</sup> Prior to the act, attorneys had access to fee withholding for all claims arising under Title II of the Social Security Act, including Old Age and Survivors Insurance as well as DI claims. Under the act, eligible nonattorneys similarly have access to fee withholding for all claims arising under Title II. However, in this report we focus on representatives involved in DI and SSI claims.

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of disability claimants. Finally, we reviewed an analysis SSA performed to determine whether sufficient funds were available to pay representatives their full fees in certain types of cases. We conducted our work between June 2006 and September 2007 in accordance with generally accepted government auditing standards. (See app. I for more details on our objectives, scope, and methodology, including our response rate for the surveys and our criteria for selecting hearing offices to participate in the ratings by judges.)

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## Results in Brief

Nonattorney representatives who have met the eligibility requirements for fee withholding under the demonstration project have more experience representing disability claimants and are more likely to specialize in disability representation than attorneys or ineligible nonattorneys. According to our surveys, we estimate that nonattorneys eligible for fee withholding have represented on average over 240 disability claimants in a 2-year period, whereas other representatives have represented on average fewer than 90. Nearly all eligible nonattorneys specialize in disability representation, a fact that may explain why they have substantially more experience representing disability claimants. Although both eligible and ineligible nonattorneys lack advanced legal training, many had relevant work experience before becoming disability representatives, such as having worked at SSA. In terms of current employment, attorneys and eligible nonattorneys predominantly work in the private sector, but many ineligible nonattorneys work at nonprofit organizations and government agencies, which may not charge claimants fees.

Judges rated attorneys and eligible nonattorneys about equally well overall, and more highly than ineligible nonattorneys, while claimants did not distinguish substantially among the three groups. In overall performance, judges at the 10 sites we surveyed during January and February 2007 viewed attorneys and eligible nonattorneys as comparable, although they rated attorneys more highly in a few specific areas of disability representation. Judges rated about 55 percent of overall performances by both attorneys and eligible nonattorneys as above average or among the best, and only about 6 percent as below average or poor. Many judges also told us they believe that experience in the field rather than legal training is the key to effective representation of disability claimants. However, judges did rate attorneys somewhat more highly than the eligible nonattorneys in certain facets of disability representation, such as in questioning of vocational and medical experts. By contrast, judges viewed nonattorneys who are ineligible for fee withholding as less capable than both attorneys and eligible nonattorneys, both in overall performance



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and in every facet of disability representation. Ratings by the limited number of claimants we interviewed, on the other hand, did not distinguish substantially among the various representatives in their overall performance.

Judges and eligible nonattorneys were generally satisfied with the overall implementation of fee withholding for nonattorneys, but they expressed some concern about the experience standard for nonattorney eligibility. Almost all eligible nonattorney representatives were satisfied with SSA's overall management of the program. Eligible nonattorneys also report that eligibility for fee withholding has benefited them by, for example, allowing them to take on more cases because they spend less time trying to collect fees from claimants. We found that judges and eligible nonattorneys considered most of the eligibility requirements for participation in the demonstration project to be reasonable. However, both groups, in addition to advocacy groups we spoke with, questioned the adequacy of the experience standard, which calls for nonattorneys to have represented at least five claimants before SSA over a 2-year period. Most of the judges we interviewed and more than half of the eligible nonattorneys considered this to be insufficient experience. Judges, and also advocacy groups we spoke with, said that the standard would not ensure that eligible nonattorneys are well qualified in disability representation.

Fee withholding has succeeded in encouraging some attorneys to represent more SSI claimants, but it has also complicated payments to representatives and claimants in certain SSI cases. Attorneys reported that before fee withholding was extended to SSI, the possibility of not collecting their fees affected their decision to represent SSI claimants. Because of the availability of fee withholding, approximately one-third of attorneys with disability practices report that they are now representing more SSI claimants than in the past. Fee withholding, however, has also complicated payments to attorney and nonattorney representatives, as well as to claimants. In some cases, representatives may inappropriately receive both SSA and state payments that may total more than the SSA-authorized fee. Most states provide cash assistance to SSI claimants during the application process. At least 10 of these states pay fees to representatives of successful SSI claimants to encourage representatives to take SSI cases, and therefore increase the number of state residents receiving federal rather than state assistance benefits. Because SSA does not coordinate with these states to prevent overpayments, representatives can collect more than the authorized fee through payments from both SSA and the state—something that under the Social Security Act, representatives are not allowed to do. In addition, fee withholding in the

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SSI program has delayed benefit payments to claimants. In cases where claimants receive benefits from both the SSI and DI programs at the same time, SSA performs a calculation to determine the total benefits and the amount of the representative's fee. With the extension of fee withholding to the SSI program, SSA cannot pay benefits until after it has performed this calculation. According to SSA and two disability representative associations, this change has led to delays in claimants receiving their payments, although SSA has not determined the extent of these delays. SSA is tentatively planning to make changes that would address this issue.

We are recommending that the Commissioner of SSA monitor the nonattorney eligibility criteria to help ensure that only well-qualified representatives receive access to fee withholding, and if necessary adjust these criteria; assess the extent of overpayments to representatives in cases involving state fees, and if necessary take steps to prevent these overpayments; and continue to explore options to address benefit payment delays for recipients receiving both SSI and DI benefits. In its comments on a draft of this report, SSA agreed with our findings and recommendations, and noted actions it plans to take to address our recommendations.

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## Background

SSA administers two programs under the Social Security Act that provide benefits to people with disabilities: DI and SSI. Established in 1956, the DI program provides monthly cash benefits to workers with disabilities (and their spouses and dependents) whose employment history qualifies them for disability benefits. In 2006, SSA paid about \$82 billion in DI benefits to about 8.5 million workers with disabilities and their spouses and dependents. On average these disabled workers received \$946 a month and their spouses and children received \$248 and \$281 a month, respectively. SSI is a means-tested income assistance program created in 1972 that provides a financial safety net for individuals who are aged or blind or have other disabilities and who have low incomes and limited resources. Unlike the DI program, SSI has no prior work requirement. In 2006, SSA paid about \$25 billion in federal SSI benefits to about 5 million people with disabilities. These SSI beneficiaries received on average \$422 per month. To be considered eligible for either program as an adult, a person must be unable to engage in substantial gainful activity—work that allows the person to earn a certain amount of money each month—because of a physical or mental impairment that is expected to last at least a year or result in death. Some disability recipients receive both DI and SSI benefits because of the low level of their income and resources.

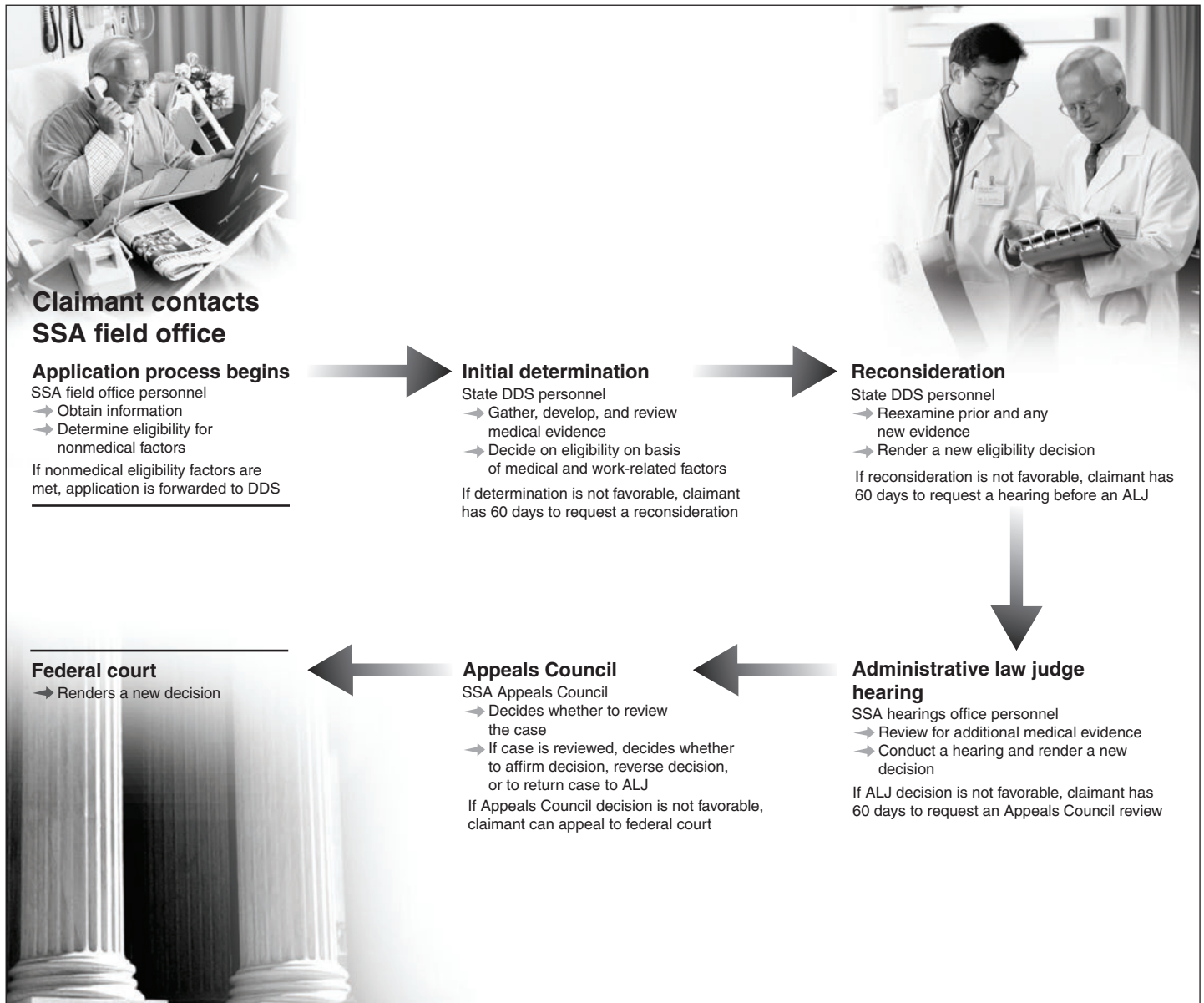
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The disability determination process is complex and multilayered. The process begins at a field office where an SSA staff member determines whether a claimant meets the programs' nonmedical eligibility criteria. Claims meeting these criteria are evaluated by state disability determination service (DDS) staff members, who review medical and other evidence and determine the initial disability decision. A claimant denied at this level may ask the DDS for a reconsideration of its finding. If the claim is denied again, the claimant may appeal to SSA's Office of Disability Adjudication and Review, where an ALJ will review the claim during a hearing and render a decision. A claimant whose appeal is subsequently denied may request a review by SSA's Appeals Council and, if denied again, may file suit in federal court.<sup>2</sup> (See fig.1.)

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<sup>2</sup> In March 2006, SSA issued a final rule establishing a number of changes to its disability determination process. These changes include the replacement of the DDS reconsideration stage with a review by a federal reviewing official and the elimination of the Appeals Council. SSA initially implemented these changes only in its Boston region, starting in August 2006. However, as of 2007, these changes have been put on hold while SSA examines the program to determine which portions need to be adjusted and which portions can continue to be implemented.

**Figure 1: SSA's Disability Claims Process**



Source: SSA documents. Images, top: Rubberball Productions, bottom: GAO.

## Representation of Disability Claimants

Disability claimants may be represented in their interactions with SSA by an attorney or a nonattorney. Claimants who choose to use a

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representative must appoint that individual and notify SSA of this appointment. They may be represented at any stage of the disability application process, from the initial application to an appeal to the federal courts.<sup>3</sup> A representative may act on a claimant's behalf in a number of ways, including getting information from the claimant's Social Security file, helping the claimant obtain medical records to support the claim, preparing the claimant and any witnesses for a hearing, accompanying the claimant to a hearing, and questioning witnesses at a hearing.

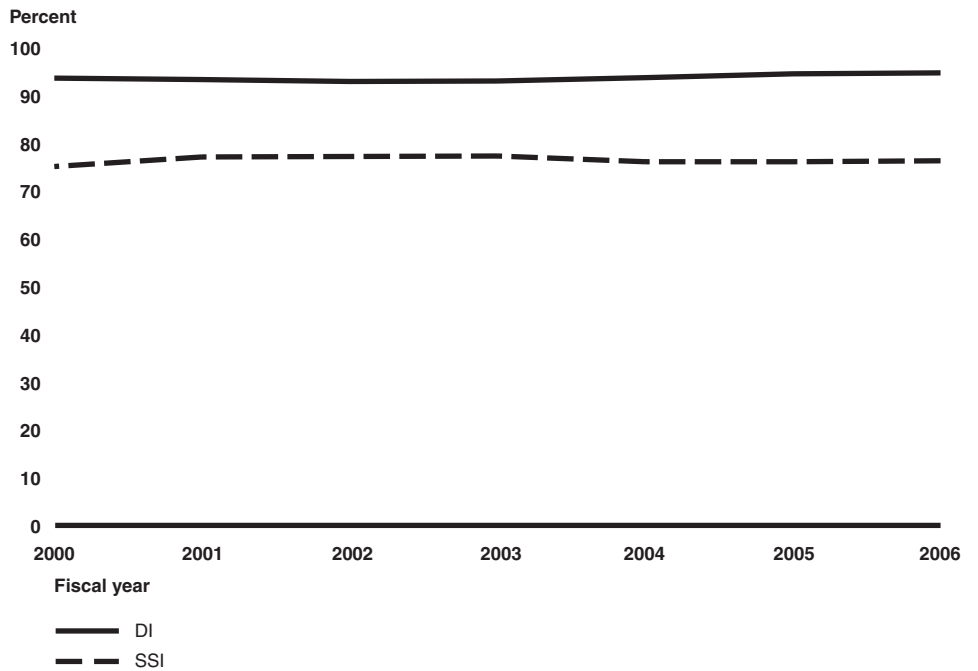
While no data are available on representation at the initial and reconsideration stages, the majority of DI and SSI claimants who attend hearings before an ALJ have representation at their hearings. DI claimants have historically been more likely to have representation at their hearings than SSI claimants (see fig. 2). Also, both DI and SSI claimants have been more likely to be represented by attorneys than by nonattorneys. For example, in fiscal year 2006, 88 percent of DI claimants were represented by attorneys and 7 percent by nonattorneys. Similarly, 66 percent of SSI claimants were represented by attorneys and 10 percent by nonattorneys.<sup>4</sup>

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<sup>3</sup> Only attorneys may represent claimants in appeals to the federal courts.

<sup>4</sup> Because of the approximately 500-day time lag between requesting a hearing and receiving a decision from an ALJ, data on representation at hearings in a given fiscal year may not reflect claimants' decisions about securing representation during that fiscal year. For example, claimants with hearings during fiscal year 2006 may have requested a hearing and secured representation during fiscal years 2004 or 2005. As the fee withholding changes were implemented in February 2005, any effects of these changes on claimants' decisions about securing representation would likely be seen in representation data for fiscal year 2007 or later.

**Figure 2: Percentage of Claimants with Representation at Their Hearing, Fiscal Years 2000-2006**



Source: SSA Case Control System.

SSA has established broad guidelines regarding who may represent disability claimants. Attorney representatives must be in good standing and be admitted to practice before the highest court of the state or a federal court. Nonattorney representatives must be known to have a good character and reputation, and must be capable of providing valuable help to the claimant in connection with the claimant's disability application. The agency also has specific rules of conduct for representatives. For example, representatives are required to promptly obtain and submit evidence in support of a claim, to help claimants respond quickly to requests for information from SSA, and to be familiar with relevant laws and regulations. Representatives are prohibited from, among other things, knowingly collecting any fees except what is specifically allowed by law, and unreasonably delaying the processing of a claim. If SSA has any evidence that a representative does not meet the qualification requirements or has violated the rules of conduct, the agency may file charges with the goal of suspending or disqualifying the individual from serving as a representative.

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If a claimant's application for benefits is successful, the representative may receive a portion of the claimant's past-due benefits as a fee,<sup>5</sup> provided the representative has received authorization from SSA to receive this fee. Representatives typically seek such authorization by entering into a fee agreement with the claimant, which then must be submitted to SSA for approval. Under an approved fee agreement, a representative receives 25 percent of the claimant's past-due benefits, up to a maximum of \$5,300. In some cases, the representative may instead seek this authorization through a fee petition, which requires the representative to itemize his or her expenses and hourly charges and lets SSA determine a reasonable fee. Since 1967, for attorneys representing DI claimants, SSA has withheld fees from claimants' past-due benefits and paid the attorneys directly—guaranteeing the attorneys payment of their fees. By contrast, nonattorney representatives and attorneys representing SSI claimants have historically had to collect their fees from the claimants. Some organizations, such as legal aid agencies, provide certain disability claimants with free representation, rather than charging them a fee.

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## Expansion of Fee Withholding

The Social Security Protection Act of 2004 expanded the practice of fee withholding in two ways. First, it established a demonstration project allowing certain nonattorney representatives to also qualify for fee withholding. Second, in an effort to promote representation for more SSI claimants, it extended fee withholding to qualified representatives of SSI claimants—both attorneys and qualified nonattorneys. These changes were implemented in February 2005 for a 5-year period.

To ensure that nonattorneys who qualify for fee withholding are competent, the act establishes certain eligibility criteria. Applicants must

- have a bachelor's degree or the equivalent combination of education and work experience,
- pass an examination that assesses knowledge of the SSI and DI programs and relevant law,
- have liability insurance,
- pass a criminal background check, and
- meet requirements for continuing education.

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<sup>5</sup>In general, past due benefits are the total amount of benefits due to claimants (and their spouses and dependents, if eligible) that have accumulated from the month in which the claimant was determined to be entitled to benefits up to the month before effectuation of a favorable disability decision for DI claims and the month of effectuation for SSI claims.

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The specifics of these criteria—for example, the level of liability insurance coverage and the amount and type of continuing education—are determined by SSA. SSA has determined that a representative without a bachelor’s degree must have a combination of education and relevant professional experience totaling at least 4 years. The agency has set the minimum level of liability insurance coverage between \$500,000 and \$5 million depending on the type of insurance and number of employees covered. And SSA has also established that participants must complete 12 hours of qualifying continuing education courses during an initial 18-month period and complete 24 hours of instruction in each subsequent 2-year period. In addition, SSA has added an experience requirement for eligibility, namely that a representative must have represented, before SSA, at least five claimants in 2 years.

SSA uses a private contractor, CPS Human Resource Services, to administer the process for determining eligibility for nonattorneys, and charges nonattorney representatives a fee in the amount of \$1,000 to cover the costs of administering the eligibility process. CPS Human Resource Services collects application information from representatives, works with SSA to ensure applicants meet the eligibility criteria, and administers the examination. CPS Human Resource Services also monitors two ongoing eligibility requirements: professional liability insurance coverage and continuing education requirements. Participants lose eligibility if they let their liability insurance lapse or fail to meet continuing education requirements.

As shown in table 1, 630 nonattorneys applied for inclusion in the demonstration project during the first 3 years. The examination has been given four times. In total, 460 nonattorneys passed these examinations and were deemed eligible for fee withholding, though some may have left the program or been dropped if they did not meet ongoing eligibility requirements. All other nonattorneys remain ineligible for fee withholding.



**Table 1: Demonstration Project Applicants and Their Pass Rates, 2005-2007**

Exam period	2005 (A) <sup>a</sup>	2005 (B) <sup>a</sup>	2006	2007	Total
<b>Initial applicants</b> (Applicants who submitted an application for inclusion in the project)	242	124	106	158	<b>630</b>
<b>Exam participants</b> (Applicants who met the eligibility criteria and were scheduled to take the exam)	234	118	101	148	<b>601</b>
<b>Eligible nonattorneys</b> (Applicants who passed the exam and became eligible for fee withholding)	203 (87%)	83 (70%)	71 (70%)	103 (70%)	<b>460 (77%)</b>

Source: SSA.

<sup>a</sup>The examination was offered on two occasions in 2005.

## Nonattorneys Eligible for Fee Withholding Have the Most Experience Representing Disability Claimants and Are Most Likely to Specialize in Disability Representation

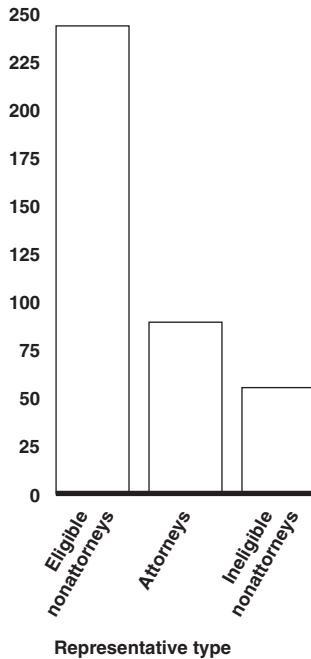
Nonattorneys who have met the eligibility requirements for fee withholding have more experience representing disability claimants than attorneys or nonattorneys who are currently ineligible. On the basis of our survey, we estimate that nonattorneys eligible for fee withholding have represented on average more than 240 disability claimants in a 2-year period.<sup>6</sup> In the same amount of time, we found that attorneys and ineligible nonattorneys represented an average of 89 and 55 disability claimants, respectively, according to our surveys (see fig. 3).<sup>7</sup>

<sup>6</sup> We surveyed all 343 nonattorneys who had met the eligibility criteria and were demonstration project participants as of August 2006 and received an 88 percent response rate. For more detailed information on this survey, see appendix I.

<sup>7</sup> We also surveyed random probability samples of 494 representatives coded as attorneys and 491 representatives coded as ineligible nonattorneys who represented disability claimants at the hearing level—and we received an overall response rate of 47 percent. All percentage estimates from the survey have margins of error of plus or minus 10 percentage points or less, unless otherwise noted. Specific margins of error for numerical estimates are described in footnotes and table notes. Because only representatives who have appeared at hearings were surveyed, representatives who work at the initial and reconsideration levels may be underrepresented. While the extent of representation at the initial and reconsideration level is unknown, our survey results indicate that both attorneys and nonattorneys work on cases prior to a hearing. In fact, ineligible nonattorneys who represent claimants professionally begin representing the majority of their claimants at the initial and reconsideration levels. For more detailed information on this survey, see appendix I.

**Figure 3: Eligible Nonattorneys Represented More Disability Claimants over a 2-Year Period than Other Representatives**

Average number of disability cases represented



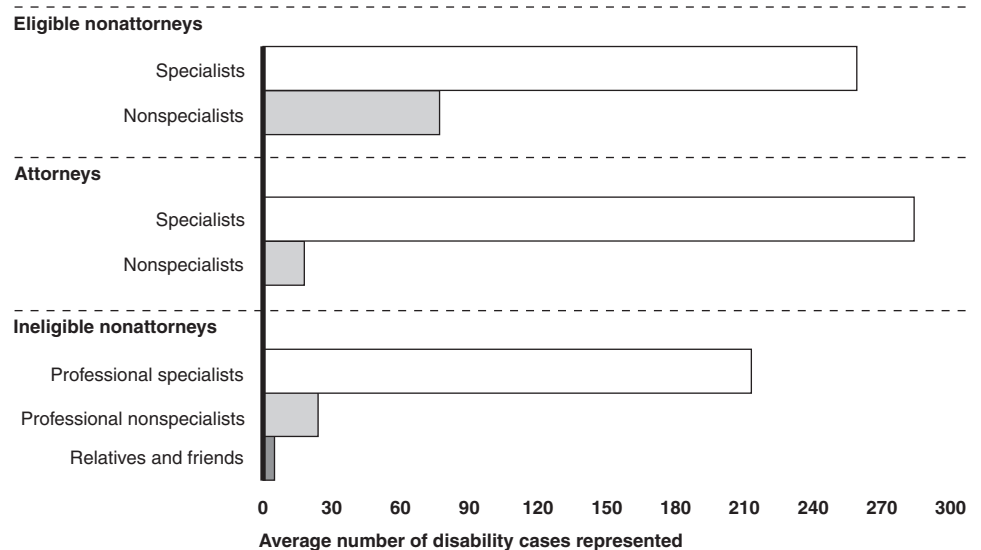
Source: GAO surveys of representatives.

Note: The survey of attorneys and ineligible nonattorneys was administered from February to April 2007, and respondents were asked how many claimants they have represented over the past 2 years. The survey of eligible nonattorneys was administered from November 2006 to February 2007, and respondents were asked how many claimants they have represented over the past 2 years. The numbers of disability cases represented by attorneys and ineligible nonattorneys are population estimates and have confidence intervals ranging from 65 to 112 and from 33 to 77, respectively. Because the survey of eligible nonattorneys was not a sample survey, the results are not estimates and have no sampling errors.

Eligible nonattorneys may generally have larger disability caseloads because they are more likely to specialize in disability representation. According to our surveys, nearly all eligible nonattorneys specialize in disability representation, but only some attorneys and ineligible nonattorneys do so. We found that one-quarter of attorneys with disability cases are disability specialists, and they have represented substantially more disability claimants than attorney representatives who are not disability specialists. One judge told us that many attorney representatives work in other areas of the law as well. For example, an attorney might primarily represent workers' compensation cases but also represent disability claimants on occasion. Like attorneys, only some ineligible nonattorneys specialize in disability representation. About half of the

ineligible nonattorneys represent claimants on a professional basis, and some of them specialize in disability representation; the other half are claimants' relatives and friends. Those ineligible nonattorneys who represent claimants professionally have substantial experience representing disability claimants, especially those who specialize in disability representation. In contrast, relatives and friends of claimants generally have very limited representation experience, perhaps just a few cases, and according to some judges are generally not competent to serve as representatives. During hearings these judges strongly discourage relatives and friends from acting as representatives and instead encourage them to be witnesses. (See fig. 4 for a comparison of caseloads between representatives who specialize in disability and those who do not.)

**Figure 4: Representatives Who Specialize in Disability Represented Substantially More Disability Cases over a 2-Year Period than Those Who Do Not**



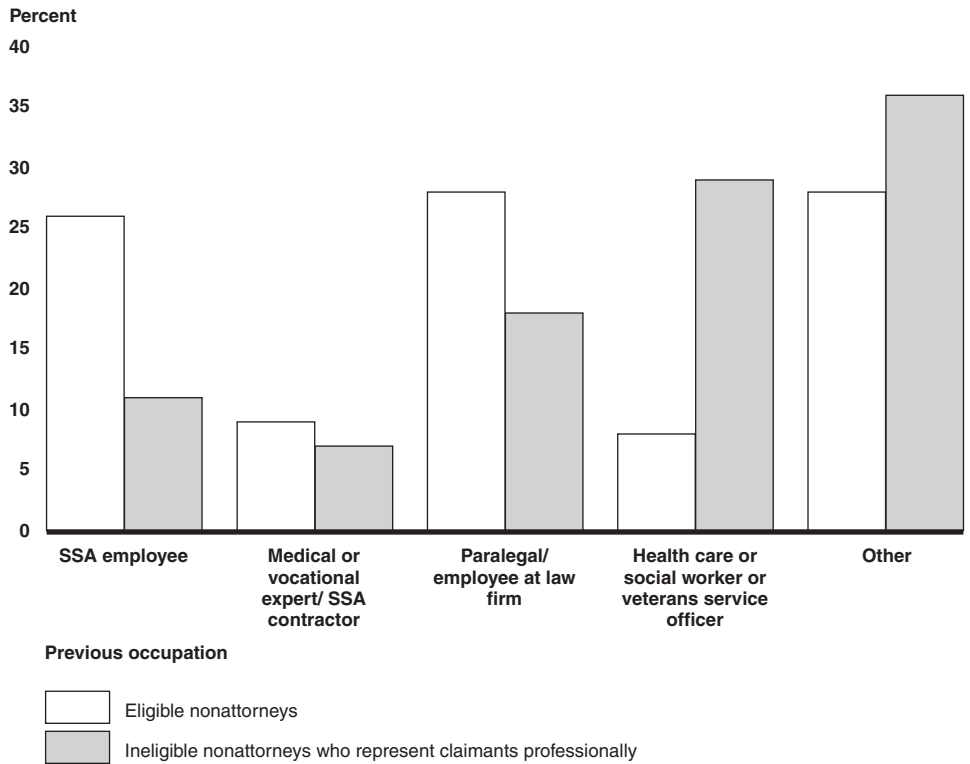
Source: GAO surveys of representatives.

Note: The survey of attorneys and ineligible nonattorneys was administered from February to April 2007, and respondents were asked how many claimants they have represented over the past 2 years. The survey of eligible nonattorneys was administered from November 2006 to February 2007, and respondents were asked how many claimants they have represented over the past 2 years. The numbers of disability cases represented by both specializing and nonspecializing attorneys are population estimates and have confidence intervals ranging from 214 to 354 and from 12 to 23, respectively. The numbers of disability cases represented by ineligible nonattorneys who represent claimants professionally and who either specialize or do not specialize are also population estimates; specialists' case estimates have confidence intervals ranging from 119 to 307 and estimates of nonspecialists have confidence intervals ranging from 11 to 37. Estimates of relatives and friends have confidence intervals ranging from 0 to 9. Because most eligible nonattorneys completed our survey, the number of disability cases they have represented is not an estimate and, therefore, is not associated with confidence intervals.

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Nonattorneys generally do not have advanced legal training, as attorneys do. However, most nonattorneys who represent claimants professionally have at least a college degree and many had prior relevant work experience. (See app. II for more detailed information on nonattorneys' levels of education.) For example, before becoming disability representatives, the majority of eligible nonattorneys worked at SSA or in a law-related occupation such as a paralegal. In addition, many ineligible nonattorneys who represent claimants professionally had previous careers in social work or health care. (See fig. 5.)

**Figure 5: Many Nonattorneys Had Prior Relevant Work Experience**



Source: GAO surveys of representatives.

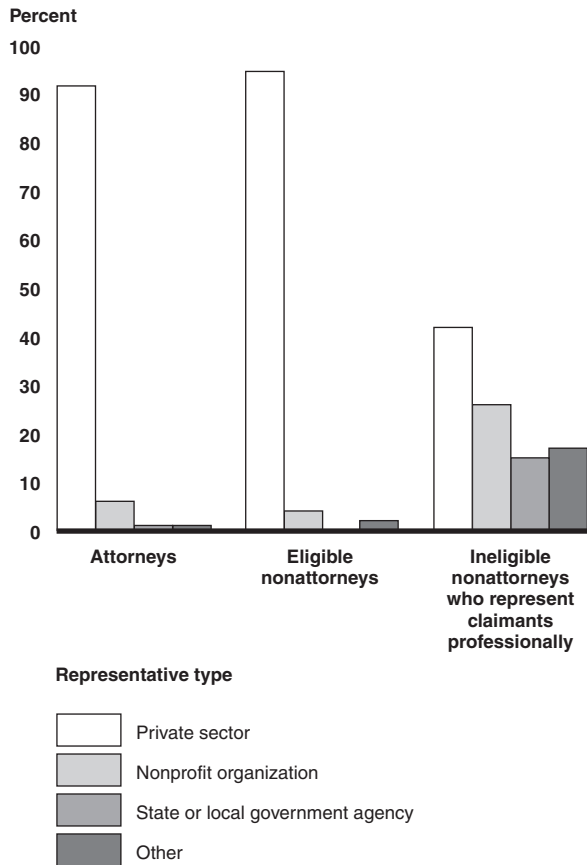
Note: Survey respondents were only permitted to select one response regarding their previous occupation. The Other category includes a number of professions, such as teacher, accountant, and student. The responses provided by ineligible nonattorneys who represent claimants professionally regarding their previous occupations are population estimates and are subject to sampling errors of no more than plus or minus 11 percentage points. However, in some cases the application of a general error margin does not provide enough specificity; in the case of the estimate for medical or vocational expert/SSA contractor the confidence interval starts with 3 and does not exceed 15. Because the survey of eligible nonattorneys was not a sample survey, the results are not estimates and have no sampling errors. Ineligible nonattorneys who do not represent claimants professionally were not instructed to provide any information on their previous occupation. Percentages may not add up to 100 due to rounding.

With regards to current employment, attorneys who represent disability claimants and eligible nonattorneys predominantly work in the private sector, but many ineligible nonattorneys who represent claimants professionally work for nonprofit organizations and state and local government agencies. On the basis of our survey, we estimate that nearly all of these attorneys who represent disability claimants work at private law firms or are sole practitioners. Similarly, most nonattorneys eligible for fee withholding are sole practitioners or work at claimant

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representative firms other than law firms. We found that these privately employed representatives rarely waive or reduce fees charged to claimants, but may do so when the fee is a financial hardship for the claimant. When attorneys and eligible nonattorneys do charge fees, they virtually all elect to have their fees withheld. In contrast to other representatives, almost half of the ineligible nonattorneys who represent claimants professionally work for nonprofit organizations or government agencies. (See fig. 6.) Some nonprofit organizations and government agencies do not charge claimants fees, so their employees may have no incentive to apply for fee withholding eligibility.

**Figure 6: Attorneys and Eligible Nonattorneys Are More Likely to Work in the Private Sector**



Source: GAO surveys of representatives.

Note: The Other category includes a wide variety of employers, most commonly health care organizations. The responses provided by ineligible nonattorneys who represent claimants professionally regarding their current employment are population estimates and are subject to sampling errors of no more than plus or minus 11 percentage points. The responses provided by attorneys are also population estimates and are subject to sampling errors of no more than plus or minus 5 percentage points. However, in some cases the application of a general error margin does not provide enough specificity; in the case of the estimates for State or local government agency and Other the confidence intervals start with 0 and do not exceed 5. Because the survey of eligible nonattorneys was not a sample survey, the results are not estimates and have no sampling errors. Percentages may not add up to 100 due to rounding.

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**Attorneys and Eligible  
Nonattorneys Were  
Regarded about  
Equally Well Overall,  
while Other  
Nonattorneys Were  
Rated Less Highly by  
Judges**

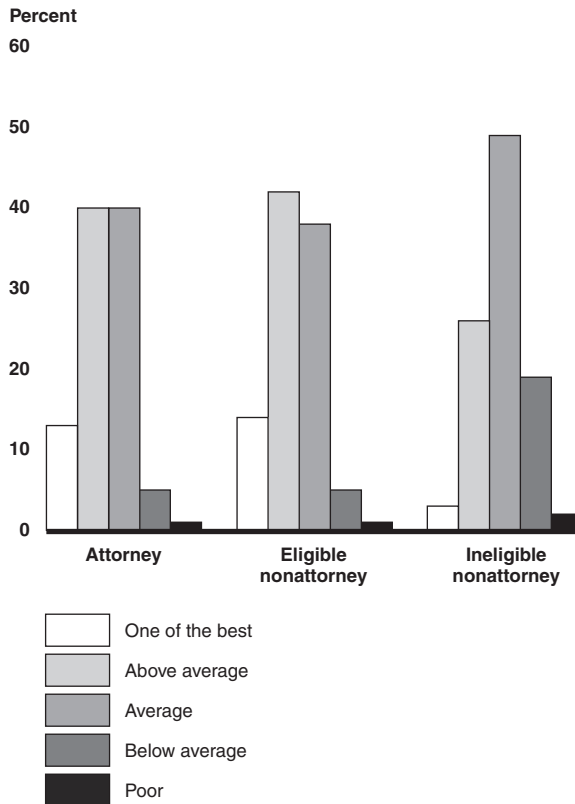
Judges viewed attorneys and eligible nonattorneys—those who have successfully applied for inclusion in the demonstration project—as about equal in their overall performance, and viewed ineligible nonattorneys as less capable. Judges we surveyed in 10 hearing offices over a 1-month period rated about 55 percent of overall performances by both attorneys and eligible nonattorneys as above average or one of the best, and about 6 percent of overall performances by these groups as below average or poor.<sup>8</sup> By contrast, judges rated only about 30 percent of the overall performances by ineligible nonattorneys as above average or among the best, and about 20 percent as below average or poor. (See fig. 7.)

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<sup>8</sup> Administrative law judges from the following hearing offices participated in our survey: Charleston, South Carolina; Charleston, West Virginia; Dallas (Downtown), Texas; Fort Worth, Texas; Kingsport, Tennessee; Minneapolis, Minnesota; Orlando, Florida; San Antonio, Texas; Tulsa, Oklahoma; and Voorhees, New Jersey. We asked the judges to complete a survey on the representative's performance after each hearing they presided over in which the claimant had representation, over a 4-week period (January 29 to February 23, 2007, for most judges). The surveys we received did not identify either the judge or the representative being assessed. We obtained a response rate of 68 percent. See appendix I for more details on this survey.



**Figure 7: Judges Rated Most Highly the Overall Performances of Attorneys and Eligible Nonattorneys**



Source: January/February 2007 GAO survey of administrative law judges in 10 SSA hearing offices.

Similarly, many of the judges we interviewed in eight hearing offices told us that overall, the performances of nonattorneys eligible for fee withholding are comparable to that of the typical attorney. Most of the judges we interviewed had been employed at SSA for at least 5 years, and were often familiar with the professional background of specific representatives who appear before them. Many of these judges expressed the view that experience in disability representation rather than formal legal training is the key to effective representation, or that it is not necessary to have a law degree to effectively represent disability claimants. For example, a judge in Forth Worth, Texas, told us that experience is the main factor in determining who is a good representative, and that experienced nonattorneys often perform better than inexperienced attorneys. Furthermore, judges in most of the eight offices told us that ineligible nonattorneys typically do not perform as well as either attorneys or eligible nonattorneys. A judge in Orlando, Florida, for

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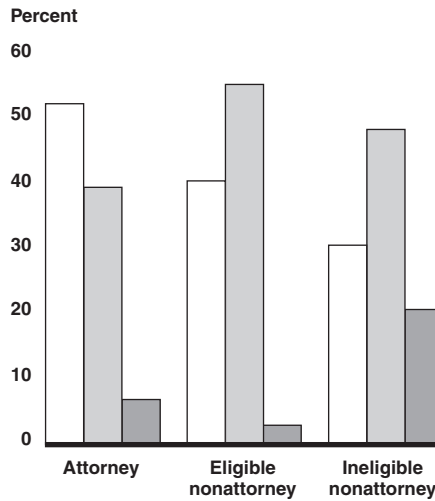
example, said eligible nonattorneys are more experienced and more comfortable with the relevant laws than those who are ineligible.

Judges' opinions of representatives' performance in specific areas of disability representation—such as representatives' submission of evidence before the hearing and their questioning of claimants during the hearing—were generally similar to their opinions of representatives' overall performance. Judges we surveyed rated attorneys and eligible nonattorneys as about equal in most areas of disability representation that we asked about, and they rated ineligible nonattorneys as less capable than the other two groups in every area of disability representation.

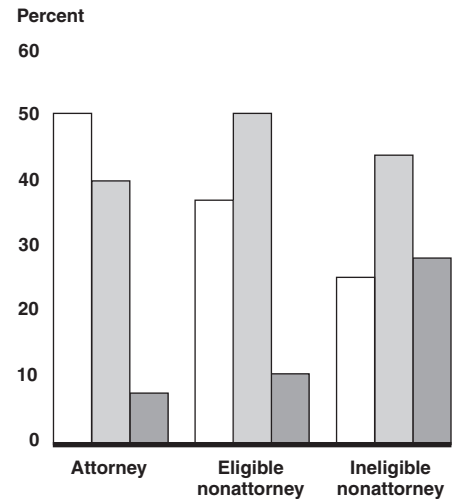
However, judges did rate attorneys more highly than eligible nonattorneys in some areas related to representatives' performance during the actual hearing, in particular their opening and closing statements and their questioning of medical and vocational experts (see fig. 8). Similarly, almost all the judges in the offices that took part in interviews told us that attorneys generally perform better than eligible nonattorneys during the hearing itself. In particular, many judges said attorneys have an advantage in their ability to question witnesses during the hearing. For example, judges in Charleston, South Carolina, told us that as a result of their legal training and courtroom experience, attorneys are better at questioning claimants without using leading questions, and at questioning medical and vocational experts in a way that points out inconsistencies in their testimony.

**Figure 8: Judges Rated Attorneys Most Highly in Their Performance during Hearings**

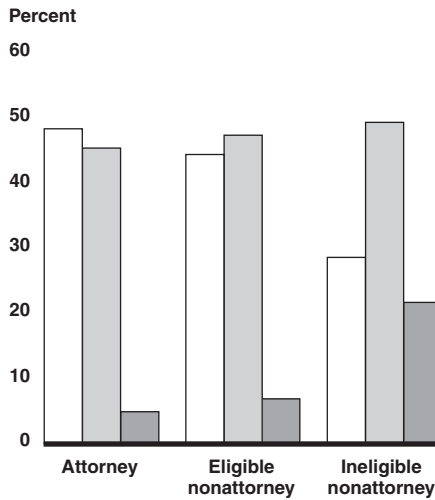
**Opening and closing statements**



**Questioning of experts**



**Questioning of claimant and claimant's witnesses**



- One of the best/above average
- Average
- Below average/poor

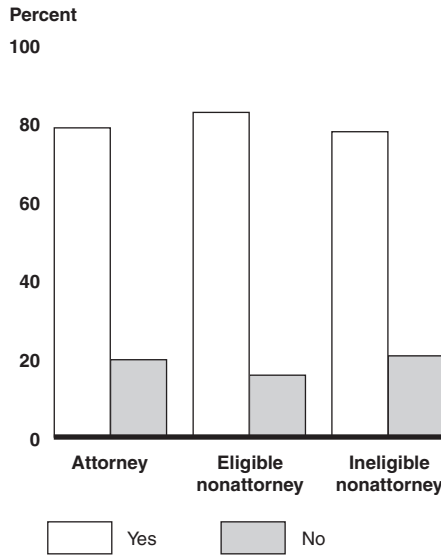
Source: January/February 2007 GAO survey of administrative law judges in 10 SSA hearing offices.

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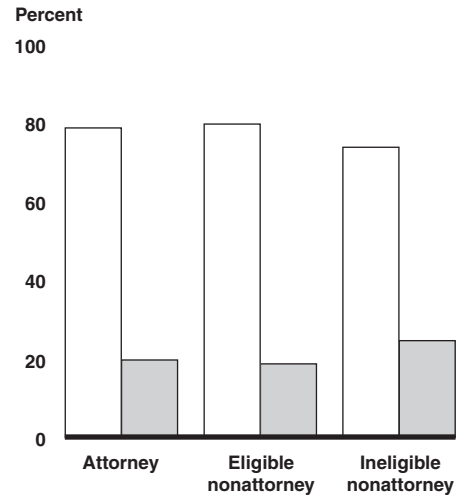
By contrast, in our survey judges rated attorneys and eligible nonattorneys equally for submitting evidence before the hearing, knowledge of the law and regulations, and knowledge of case-specific details (see fig. 9). Several judges we interviewed saw no significant difference between attorneys and eligible nonattorneys in these areas. However, judges in a few offices told us that attorneys are superior to eligible nonattorneys in their knowledge of the law. On the other hand, some judges felt that eligible nonattorneys perform better than attorneys in their submission of evidence and their knowledge of case details. For example, judges in Kingsport, Tennessee, told us that eligible nonattorneys tend to be better prepared and more familiar with the details of their cases than attorneys, saying that attorneys often delegate the collection of case materials to paralegals rather than doing it themselves, and that some attorneys from large firms do not meet their client until the day of the hearing.

**Figure 9: Judges Rated Attorneys and Eligible Nonattorneys Equally for Other Facets of Disability Representation**

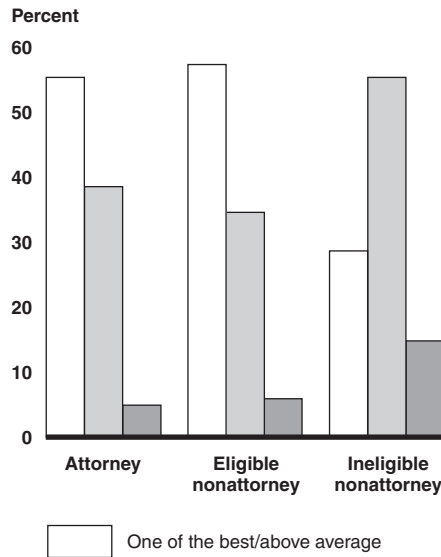
**Submitted all available evidence**



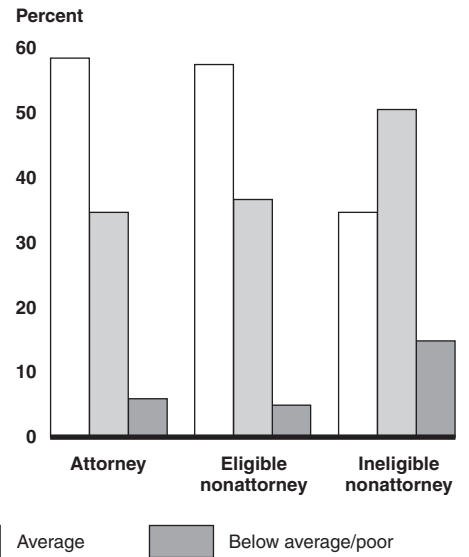
**Submitted evidence on time**



**Knowledge of law and regulations**



**Knowledge of case details**



Source: January/February 2007 GAO survey of administrative law judges in 10 SSA hearing offices.

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Ratings by claimants we interviewed did not distinguish substantially among various types of representatives, at least for overall performance. The 30 claimants we interviewed rated their representatives about equally well for overall performance, and they were generally satisfied with their representatives.<sup>9</sup> Nine of the 10 claimants represented by attorneys, 9 of the 10 represented by eligible nonattorneys, and 8 of the 10 represented by ineligible nonattorneys were either satisfied or very satisfied with their representative overall. There was some divergence in responses, however, when we asked claimants about their representatives' performance for certain facets of disability representation.<sup>10</sup> While most of the claimants were at least satisfied with their representatives' performance in the areas we asked about, the claimants represented by attorneys and by ineligible nonattorneys were more likely to be very satisfied than those represented by eligible nonattorneys. For example, in assessing their representatives' performance during the hearing, 6 claimants represented by attorneys and 5 represented by ineligible nonattorneys were very satisfied, compared to 2 represented by eligible nonattorneys. Similarly, in assessing their representatives' responsiveness to their questions and concerns, 6 claimants represented by attorneys and 6 represented by ineligible nonattorneys were very satisfied, compared to 2 represented by eligible nonattorneys.

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<sup>9</sup> We conducted phone interviews with 30 disability claimants who had recently attended a hearing with the assistance of a representative in one of three hearing offices: Dallas (Downtown), Texas; Fort Worth, Texas; and Orlando, Florida. We were able to complete interviews with about 40 percent of the claimants whom we contacted. Of the claimants we interviewed, almost all were unaware of the outcome of their claim at the time of the interview. SSA conducted over 500,000 hearings during fiscal year 2006. We cannot generalize from the results of our interviews to the experiences of all claimants who participated in hearings nationwide. See appendix I for more details on these interviews.

<sup>10</sup> We asked claimants about their representatives' performance in several specific areas of disability representation: helping claimants understand the disability application process, collecting medical evidence, preparing claimants for their hearing, performance during the hearing, and responding to the claimant's questions and concerns.

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## While There Is General Satisfaction with the Implementation of Fee Withholding for Nonattorneys, the Minimum Experience Requirement May Be Insufficient

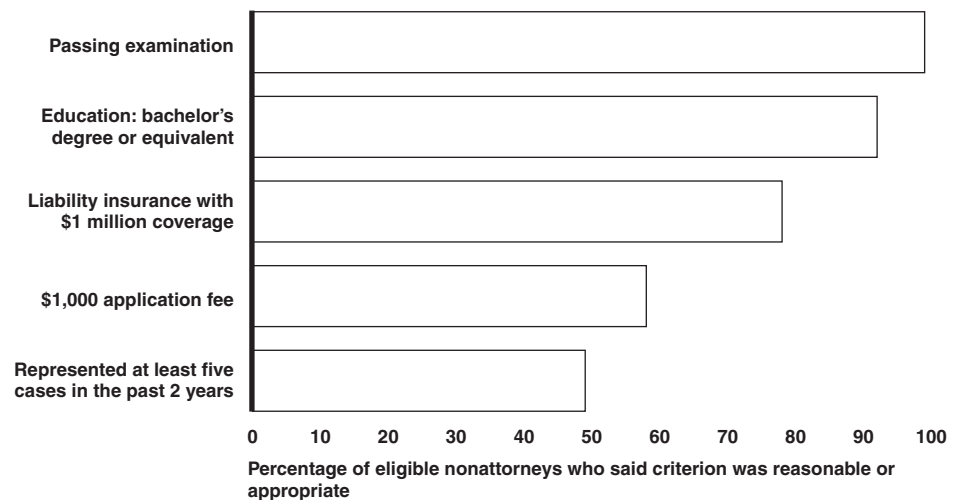
Judges and eligible nonattorneys were generally satisfied with the overall implementation of fee withholding for nonattorneys. For their part, almost all of the nonattorney representatives who have become eligible for fee withholding under the demonstration project were satisfied with SSA's overall management of the extension of fee withholding to nonattorneys. Specifically, more than 80 percent of project participants reported on our survey that they were either very or somewhat satisfied with SSA's management of the demonstration project. In addition, most of the participants noted that they were very satisfied with the contractor's management of the eligibility application process. For example, one participant commented that the contractor's staff was very professional and prompt in answering questions. Officials we spoke with from professional organizations for Social Security claimants' representatives also were generally satisfied with the implementation of the fee withholding project.

The eligible nonattorney representatives also report that having guaranteed payments through fee withholding had benefited them in several ways. A few eligible nonattorneys told us that before the extension of fee withholding, they had lost tens of thousands of dollars in uncollected fees, and that eligibility for fee withholding has helped them to stay in the profession. Nearly half of the eligible nonattorneys also reported that their caseloads had increased as a result of their eligibility for fee withholding. A few participants explained in our survey that this was because they have been able to devote more time to their clients and less time to fee collection. Finally, officials from the National Association of Disability Representatives—a nonprofit organization for professional Social Security representatives, most of whom are nonattorneys—reported that the availability of fee withholding under the demonstration project has been drawing more nonattorneys into the field of disability representation. In fact, they reported that as a result of fee withholding the organization is allocating more resources than before towards educating nonattorneys who have just started their careers as disability representatives.

With regard to the eligibility criteria for nonattorneys, we found that both judges and eligible nonattorneys, as well as representatives of professional organizations, considered the criteria to be generally reasonable. Some of the judges we interviewed said that the criteria were reasonable overall, while offering suggestions for additional requirements, such as training in legal writing or on the hearing process. Most eligible nonattorneys thought that most of the criteria were generally appropriate. As shown in fig. 10, almost all eligible nonattorneys thought, for example, that the requirement

to pass an examination was reasonable. In addition, most said that the questions on the exam were relevant to the knowledge required to professionally represent claimants. Professional organizations we spoke with also considered the criteria to be sufficient overall. One official, for example, expressed approval of the flexibility in the education requirement, which allows either a bachelor's degree or a combination of training and work experience that the agency determines to be equivalent to a bachelor's degree.

**Figure 10: Many Eligible Nonattorneys Consider Most Eligibility Requirements Reasonable or Appropriate**



Source: GAO survey of representatives.

However, judges, eligible nonattorneys, and professional organizations all questioned the adequacy of the experience requirement set by SSA—that applicants must have represented at least five claimants before SSA over a 2-year period. This requirement was considered too low by most judges we interviewed and more than half of the eligible nonattorneys. Advocacy group representatives and judges we spoke with expressed the view that this level of experience does not indicate sufficient qualification in disability representation, and suggested several alternative requirements. Officials from the National Association of Disability Representatives suggested that a record of wins over time, such as winning 10 cases over 2 years, would be a better measure of effectiveness. Officials from the National Organization of Social Security Claimants' Representatives suggested that the experience requirement should include some cases at the hearing level—for example, a requirement of 10 cases over 2 years,



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with at least 5 at the hearing level. Finally, some judges suggested that increasing the requirement to 20 to 25 cases over 2 years would be appropriate. They did not specify whether these should be cases that are won, but said that a greater number of cases would ensure representatives have the necessary experience and knowledge to represent claimants effectively.

In addition to the experience requirement, other aspects of the implementation of fee withholding for nonattorneys have raised concerns, though SSA has been considering or has taken steps already to address them. On the basis of our survey, we estimate that many ineligible nonattorneys were unaware of the project, and both the National Association of Disability Representatives and some eligible nonattorneys raised concerns regarding SSA's outreach to potential participants. SSA has advertised the demonstration project through several venues, including a notice in the *Federal Register*, its Web site for claimant representatives, and flyers at hearing offices. Agency officials said they also added information about the demonstration project to certain forms that all representatives normally complete, and that these revised forms are expected to be used beginning in fall 2007. Finally, over one-quarter of eligible nonattorneys reported problems with processing of their fees, which they said were sometimes not withheld for them or were significantly delayed. Both representatives and SSA officials attributed this problem to the fact that eligible nonattorneys were often improperly coded as not eligible for fee withholding in SSA databases. However, SSA has recently instituted changes to the process that officials told us they believe will reduce such problems.

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## Fee Withholding Has Increased the Number of SSI Claimants Represented by Attorneys but Has Complicated Payments in Certain Types of SSI Cases

As a result of the extension of fee withholding to the SSI program, some attorneys who represent disability cases report including more SSI claimants in their caseloads. However, fee withholding has complicated payments to representatives and claimants in certain types of SSI cases. One of these complications is that representatives can be inappropriately paid more than the SSA-authorized fee. Some states pay fees to representatives of successful SSI claimants. Because SSA does not coordinate payments with these states, representatives could collect more than the authorized fee through a combination of SSA fee withholding and the state payment—which, under the Social Security Act, representatives are not allowed to do. Another complication is that the extension of fee withholding has delayed payments to claimants when they receive benefits from both the SSI and DI programs at the same time. However, SSA is tentatively planning to make changes that would address this issue.

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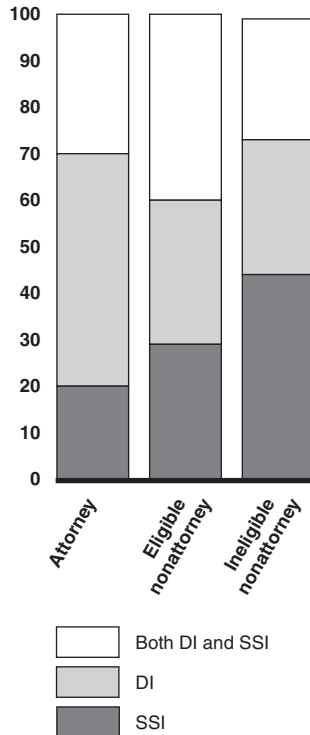
## About One-Third of Attorneys Who Represent Disability Cases Have Included More SSI Claimants in Their Practices as a Result of Fee Withholding

Some attorneys are now including more SSI cases in their disability practices because fee withholding is available in the SSI program. Most attorneys with disability cases reported that before fee withholding was an option, the possibility of not collecting their fees affected their decision to represent SSI claimants. In fact, before the extension of fee withholding to the SSI program, attorneys reported that they had not received their full fee in approximately half of their SSI cases. Along with problems collecting fees, representatives and judges cited other disincentives to representing SSI claimants that have contributed to representation rates that have been lower for SSI than for DI. For example, fees in SSI cases are generally lower than fees in DI cases. In addition, SSI claimants may have characteristics that make their cases more difficult to win than DI cases, such as problems with substance abuse or a lack of medical records. Despite these continued disincentives, approximately one-third of attorneys reported that they were representing more SSI claimants in their disability practices as a result of the availability of fee withholding. Some judges, representatives, and professional organizations we spoke with said that if fee withholding were permanently extended to the SSI program, the representation rate of SSI claimants would increase—fulfilling one of the goals of the act.

While about one-third of attorneys who represent disability claimants reported they were representing more SSI claimants as a result of fee withholding, they nonetheless have fewer SSI cases in their disability caseloads than nonattorneys do (see fig. 11). While SSI cases made up just under 20 percent of the caseloads of attorneys, they made up almost 30 percent of the caseloads of eligible nonattorneys, and over 40 percent of those of ineligible nonattorneys. As previously mentioned, the SSI program serves individuals who have low incomes and limited resources. SSI claimants have historically been represented largely by nonprofit organizations, such as legal aid associations, according to some professional organizations we spoke with, and ineligible nonattorneys are more likely to work for nonprofit organizations.

**Figure 11: Attorneys Include Fewer SSI Cases in Their Caseloads than Nonattorneys Do**

Percentage of cases in current disability caseload



Source: GAO surveys of representatives.

Note: Caseload data were current as of November 2006 to February 2007 for eligible nonattorneys, and as of February to April 2007 for attorneys and ineligible nonattorneys. The responses provided by attorneys and ineligible nonattorneys regarding the types of disability cases they represent are subject to sampling errors of no more than plus or minus 7 percentage points. The responses provided by eligible nonattorneys are not subject to sampling errors. See appendix I for more information on our methodology.

### Lack of Collaboration between SSA and States on Certain Cases Allows for Excess Payments to Representatives

Now that fee withholding is available in the SSI program, representatives may inappropriately receive both SSA and state payments that may total more than the SSA-authorized fee. Under the Social Security Act, SSA prescribes the maximum fee allowed, and representatives may not knowingly collect more than the fee that SSA authorizes them to receive for a case. However, we found that in cases involving interim assistance payments, representatives may be able to collect payments from the state and through fee withholding—and these payments may total more than the authorized fee.

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Most states provide cash assistance to SSI applicants, which is known as interim assistance, during the SSI application process.<sup>11</sup> If an SSI claim is successful, SSA uses the claimant's past-due benefits to reimburse the state for this interim assistance. Then, in cases involving fee withholding, SSA pays the representative out of any remaining past-due benefits.<sup>12</sup> Finally, SSA pays the claimant the remainder of the past-due benefits, subject to some conditions (for example, the benefits may be paid in installments).

At least 10 states also use a portion of the interim assistance reimbursements they receive from SSA to pay fees to representatives.<sup>13</sup> According to state documents, states may pay these fees in order to encourage representatives to take SSI cases, and therefore increase the number of state residents receiving federal rather than state assistance benefits. While SSA reimburses the state for interim assistance out of the claimant's past-due benefits, states assume the cost of any fees they pay to representatives.

We found that SSA does not coordinate payments with most states that pay fees to representatives. SSA has no systematic process in place to inform states when representatives have been paid through fee withholding, and SSA does not track which states pay representatives fees. As a consequence, representatives could receive dual payments—from the claimant's past-due benefits through SSA, and from the state—which would total more than the authorized fee. SSA and many states rely on the representative or the claimant to inform them of these overpayments. For example, SSA informed us of one case in which a claimant complained that their representative had collected fees from SSA and the state, and SSA then filed charges against this representative.

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<sup>11</sup> This assistance is provided by states to help claimants meet basic needs, such as shelter, while their application is pending and is distinct from the state SSI supplement. Payments in states where we interviewed officials ranged from \$100 to over \$700 per month.

<sup>12</sup> According to a January 2005 analysis conducted by SSA, in almost all cases, there are enough past-due benefits for SSA to pay the representative's full fee even after the state is reimbursed for interim assistance. Therefore, any fee paid by the state in a fee withholding case would almost always result in the representative collecting more than the SSA-authorized fee.

<sup>13</sup> The fee structure varies from state to state—for example, the fee may be the SSA-authorized fee or a percentage of the interim assistance reimbursement received by the state.

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If a representative does collect more than the authorized fee through SSA and the state, there is no law regarding who should be repaid. If SSA becomes aware of the overpayment, its policy is to collect the excess payment from the representative, and then pass it along to the claimant. If the state finds out about the overpayment first, it can ask for the return of the fee that it paid the representative. For example, in another overpayment case, a claimant called the state to say that his representative had been overpaid through a combination of the state payment and SSA's fee withholding. The state then asked the representative to return its payment, and the claimant still received the full amount of past-due benefits he was owed.

Some states are making adjustments now to prevent overpayments to representatives, such as requiring representatives to submit documentation indicating whether their fee was withheld by SSA, and not paying the representatives if they are also receiving a fee through withholding. Other states are considering eliminating the fee payments they make to representatives. Although SSA officials acknowledged that this overpayment vulnerability exists, the agency has not yet taken any actions to address the problem, because it is not aware of the extent of the problem and because it is waiting to see whether the extension of fee withholding to the SSI program will be made permanent. SSA officials suggested that the agency could address the problem by, for example, revising the notice that representatives receive with their SSA fee payment to explain that they may not collect more than their authorized fee through a combination of SSA fee withholding and a state payment, or by amending the alert sent to the state when a case is approved to also indicate whether SSA will withhold the representative's fee.

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## Fee Withholding Has Resulted in Delayed Payments to Claimants Receiving Both SSI and DI Benefits

Fee withholding in the SSI program has delayed payments to some claimants in cases where claimants receive benefits from both the SSI and DI programs. In such cases, SSA calculates the total benefits a claimant should receive and adjusts the benefits paid from each program accordingly.<sup>14</sup> Because the representative's fee is a percentage of the total past-due benefits owed to the claimant, this calculation also affects the fee. In the past, when a claim was approved in such a case, SSA paid the claimant the full SSI benefits first. Then the agency calculated the total amount of SSI and DI benefits owed to the claimant and determined the fee owed to the representative. Finally, SSA paid the DI portion of the fee and notified the claimant of how much to pay the representative out of the past-due SSI benefits he or she received.<sup>15</sup>

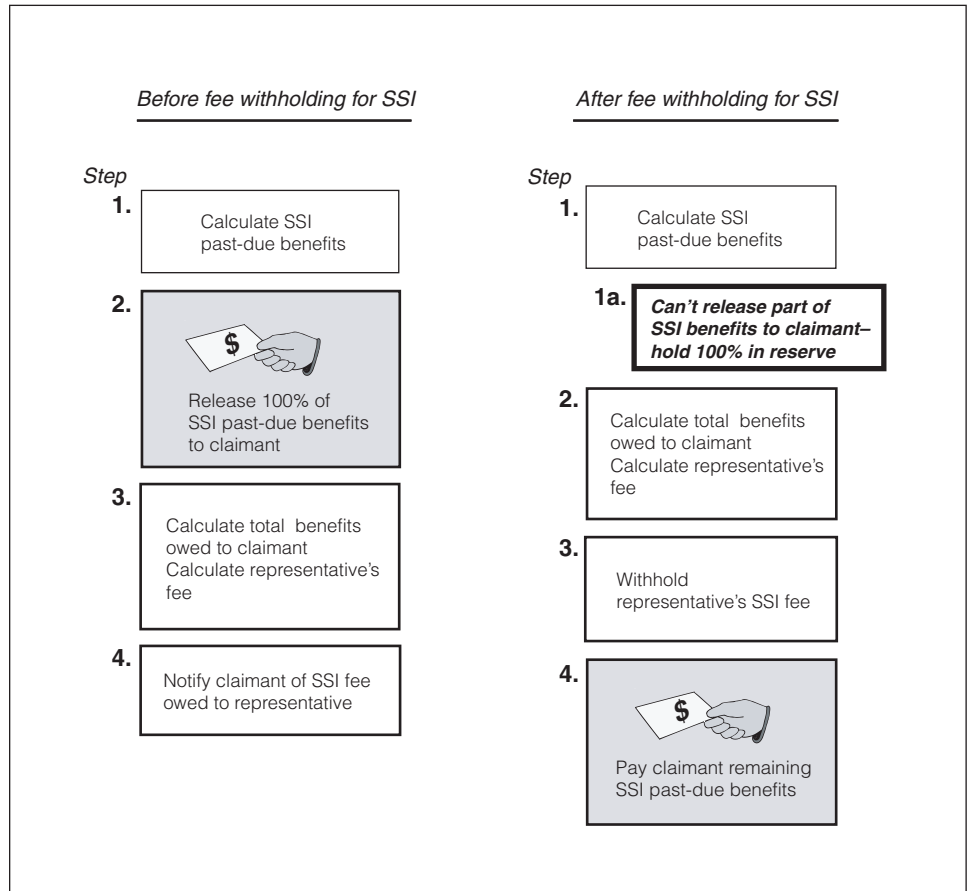
However, since the extension of fee withholding to the SSI program, the process has changed for cases in which the representative is eligible for fee withholding, and payments to claimants have been delayed as a result of computer system limitations. Now, SSA generally cannot pay the claimant any past-due SSI benefits until after it has calculated the total SSI and DI benefits owed to the claimant, and withheld the representative's fee. This is because when a claim is approved for a case in which the claimant will receive both SSI and DI benefits, SSA's computer systems have only two options: to pay the claimant all of the SSI past-due benefits or to hold all of the benefits in reserve until the representative's fee has been calculated and withheld. In other words, the agency cannot pay part of the benefits and hold the rest in reserve for the representative's fee. According to SSA and two disability representative associations, this change in process has resulted in delayed payments to claimants. SSA officials acknowledged delays, and speculated that the delays in releasing benefits could be more than a month, but said that the agency has not assessed the extent of these delays. (See fig. 12 for the process before and after fee withholding was extended to SSI cases.)

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<sup>14</sup> SSI benefits are based on a claimant's income, as well as other requirements, and DI benefits are considered income. Therefore, when a claimant receives DI benefits for all or some of the months for which he or she is owed SSI benefits, the SSI benefits must be reduced. This is an adjustment known as the windfall offset. In practice, however, because receiving SSI benefits makes claimants eligible for the Medicaid program, the reverse happens: The agency pays the claimant the SSI benefits first, and reduces the amount of DI benefits by the windfall offset amount. The claimant still receives the same amount of total benefits as if the SSI benefits had been reduced instead of the DI benefits.

<sup>15</sup> In some cases, the full amount of the fee may have been paid out of the DI past-due benefits and therefore the claimant may not have needed to pay the representative out of the SSI past-due benefits.

**Figure 12: The Extension of Fee Withholding to the SSI Program Has Resulted in Later SSI Payments to Claimants Receiving Both SSI and DI Benefits in Cases Where SSA Withholds the Representative's Fee**



Source: GAO analysis.

Note: Because fee withholding was previously available in the DI program, the timing of DI benefit payments was not substantially affected by the extension of fee withholding to the SSI program.

The agency is tentatively planning to make changes to its computer systems to address this issue. The changes would allow SSA to reserve 25 percent of the past-due SSI benefits for the representative's fee—the maximum amount of benefits that would be needed—and release the other 75 percent to the claimant more quickly. However, the agency has not yet made a final decision on these changes.

## Conclusions

The implementation of the fee withholding changes has gone relatively smoothly, and according to preliminary evidence, the changes appear to

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be having their intended effects—limiting eligibility for fee withholding to well-qualified nonattorneys and providing greater access to representation for SSI claimants. The nonattorneys who have met the eligibility criteria for fee withholding in SSI and DI cases so far appear to be the most experienced and well qualified of the nonattorney population, which suggests that the criteria have generally been effective in ensuring the quality of the representatives participating in the demonstration project. Also, the extension of fee withholding to the SSI program has proven an incentive for some attorneys to represent more SSI claimants, and may increase the representation rate for SSI claimants.

However, a few potential issues have arisen in the implementation of the fee withholding changes that could become more significant if the changes are extended permanently. Although the nonattorneys who have met the fee withholding eligibility criteria up to now are generally well-qualified to represent disability claimants, it may be too early to conclude that the criteria will always screen out less qualified representatives. To the extent that the availability of fee withholding draws more nonattorneys into the field of disability representation for the first time, it is possible that in the future some less qualified nonattorneys could satisfy the criteria. For example, a number of judges and representatives believe that the experience standard set by SSA may not be sufficiently rigorous to ensure that representatives are well qualified. In addition, there is a risk that without enhanced coordination between SSA and the states that pay representatives fees out of their interim assistance reimbursements, some representatives of SSI claimants will get paid more than their authorized fees and not properly return the excess. So far there is only limited evidence that representatives are improperly keeping dual payments, but it is possible that this problem is more widespread and simply underreported. Another problem related to the fee withholding changes is delayed benefit payments to individuals who receive both SSI and DI benefits. The extent of these delays is not known, but any delays in receiving their benefits could be a financial hardship for these low-income recipients, who typically rely on the benefits to pay for basic needs.

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## Recommendations for Executive Action

We recommend that the Commissioner of SSA:

- Monitor the effectiveness of the nonattorney eligibility criteria in continuing to ensure that only well-qualified representatives receive access to fee withholding, and if necessary adjust the experience standard or other criteria.



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- Assess the extent to which representatives collect more than their authorized fee through a combination of state payments and fee withholding, and if necessary identify and implement cost-effective solutions to ensure that representatives either are not paid more than their authorized fee or return anything they receive in excess of their authorized fee.
  - Continue to explore cost-effective changes that would address SSI benefit payment delays related to fee withholding in cases where recipients receive both SSI and DI benefits.

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## Agency Comments

We provided a draft of this report to officials at SSA for their review and comment. In its comments, SSA agreed with our findings and recommendations. Specifically, SSA indicated that if the fee withholding changes are extended permanently, it plans to review the eligibility criteria for nonattorneys and make adjustments as necessary, and to work with the states to ensure that representatives do not receive overpayments. The agency also confirmed that it plans to make systems changes to address delays in benefit payments to recipients of both SSI and DI benefits. SSA also provided technical comments, which were incorporated as appropriate. SSA's comments are reproduced in appendix IV.

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We are sending copies of this report to the Commissioner of SSA, relevant congressional committees, and others who are interested. Copies will also be made available to others upon request. The report is also available at no charge on GAO's Web site at <http://www.gao.gov>.

Please contact me on (202) 512-7215 if you or your staff have any questions about this report. Other major contributors to this report are listed in appendix V.



Daniel Bertoni  
Director, Education, Workforce, and Income Security Issues

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# Appendix I: Objectives, Scope, and Methodology

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We were mandated by the Social Security Protection Act of 2004 to assess the extension of fee withholding to certain nonattorneys and to representatives of Supplemental Security Income (SSI) claimants. Specifically, we were directed to examine (1) the professional experience of different types of disability representatives, (2) how judges and claimants view the quality of services provided by the representatives, (3) how judges and nonattorneys eligible for fee withholding view the implementation of fee withholding for nonattorneys, and (4) how the extension of fee withholding to the SSI program has affected claimants and representatives. To address these questions, we conducted surveys of disability claimant representatives; we surveyed administrative law judges (ALJs) and interviewed a small number of judges and disability claimants regarding representatives' performance; and we requested information from states that receive interim assistance reimbursements from the Social Security Administration (SSA). We interviewed officials from SSA, several states, the National Organization of Social Security Claimants' Representatives, the National Association of Disability Representatives, the Association of Administrative Law Judges, and the National Association of Disability Examiners. Finally, we also examined an analysis that SSA had performed regarding fee withholding and representative payments. We conducted our work from June 2006 to September 2007 in accordance with generally accepted government auditing standards.

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## Surveys of Representatives

To learn about the characteristics and opinions of nonattorneys eligible for fee withholding, we conducted a survey of all 343 nonattorneys who had met the eligibility criteria and were demonstration project participants as of August 2006. SSA provided us with a list of these eligible nonattorneys. We conducted this survey by mail, from November 2006 to February 2007, and obtained an 88 percent response rate. Because this was not a sample survey, there are no sampling errors. The survey included questions on topics such as representatives' education, experience with representing disability claimants, and current disability caseloads; how they heard about the fee withholding demonstration project and their satisfaction with the implementation of the project; and how often they waive fees for claimants.

To learn about the characteristics and opinions of attorney representatives and of nonattorney representatives who are not currently eligible for fee withholding, we surveyed a random sample of attorneys and a random sample of ineligible nonattorneys. Like our survey of eligible nonattorneys, this survey was voluntary and individuals were not required to complete it. We surveyed 985 individuals who had represented a disability claimant at a

hearing—494 who were labeled as attorneys in SSA’s database and 491 who were labeled as nonattorneys. We conducted the survey by mail from February to April 2007. Our weighted response rate was 47 percent overall, with a 46 percent weighted response rate among attorneys and a 49 percent weighted response rate among nonattorneys. We sent the same survey to all 985 representatives in our sample. This survey included questions for all representatives on topics such as their experience representing disability claimants and their current caseloads. It also included questions specifically for attorneys, on topics such as the impact on them of the extension of fee withholding to the SSI program and how often they waive fees for claimants.<sup>1</sup> In addition, the survey included questions specifically for ineligible nonattorneys, on topics such as their education and whether they were aware of the fee withholding demonstration project.

Data Source for Survey of  
Attorneys and Ineligible  
Nonattorneys

To develop our sample of representatives for this survey, we used SSA’s Case Processing Management System (CPMS), which contains data on hearings held at SSA since 2003, including data on the claimant’s representative if the claimant had a representative. Data on the representative includes name, address, and whether the representative is an attorney or a nonattorney. Each representative in the database is associated with at least one identification number, and possibly more than one, because representatives are assigned different identification numbers when their information is entered in the system by different hearing offices; no identification number is associated with more than one representative. For this reason, it is not possible to identify the universe of unique representatives using identification numbers. To draw our sample, we first developed a list of all unique representative identification numbers. This list still contained many cases in which multiple identification numbers were associated with the same representative name. In an effort to generate a list of unique representatives, we developed a list that included only one identification number, whenever multiple identification numbers were associated with the same representative’s first name, last name, and state of residence. We also eliminated from this list the names of nonattorney representatives who were demonstration project participants. This list included 77,413 representatives—60,880 labeled as attorneys and 16,533 labeled as

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<sup>1</sup> While we asked attorneys if they had represented more SSI claimants as a result of the availability of fee withholding, we did not ask this same question on our survey of eligible nonattorneys, who were newly eligible for fee withholding in both SSI and DI cases.

nonattorneys—and was our best approximation of a list of unique representatives. However, it still included some cases in which multiple identification numbers were associated with the same representative, for example, because a representative’s name or address was spelled slightly differently when associated with different identification numbers. In other words, even though we had taken these steps to eliminate duplicate representatives, some representatives still appeared more than once in the list, and had a higher probability of being selected in our sample than other representatives. We randomly selected a probability sample from this list of 500 representatives identified as attorneys and 500 identified as nonattorneys, and then eliminated a small number of attorneys and nonattorneys from the sample because they were duplicate records or there was some other problem with the data associated with them in the database.

#### Efforts to Increase Response Rate for Survey of Attorneys and Ineligible Nonattorneys

We received a total of 483 survey responses—248 from attorneys and 235 from nonattorneys. We took several steps to enhance our response rate: We sent reminder postcards to the entire sample after about one and a half weeks, conducted follow-up phone calls to nonrespondents encouraging them to complete the survey after about 4 weeks, and re-sent the survey to nonrespondents after about 5 weeks. In cases where CPMS had an incorrect phone number—for example, because the information was outdated—and we had not received a survey response, we used Internet search tools to try to locate current information for the record. If in the course of our phone calling we learned a correct address, we sent another copy of the survey to the current address. Five hundred and two representatives in our sample did not return the survey. We were unable to locate current phone numbers for over 40 percent of these nonrespondents.<sup>2</sup> We attempted to contact all the other survey recipients who did not return a survey. We were unable to reach many of these nonrespondents; the others either agreed to complete the survey but did not do so within the survey time frame, refused to complete the survey, or were out of scope. (See table 2.) Our response rate on the survey of attorneys and ineligible nonattorneys, coupled with our comprehensive nonrespondent follow-up efforts, allowed us to generalize our survey results to the population of attorneys and ineligible nonattorneys representing disability cases before SSA.

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<sup>2</sup> When the percentages of nonrespondents with an incorrect phone number and those with both an incorrect mailing address and phone number are added, the total is 43 percent.

**Table 2: Dispositions of Representative Survey Nonrespondents for Survey of Attorneys and Ineligible Nonattorneys**

Category	Percentage of nonrespondents
Incorrect phone number	28
Agreed to complete, but did not do so within survey time frame	24
Left phone message but could not reach individual	21
Incorrect mailing address and phone number	15
Refused to complete	8
Out of scope (e.g., deceased or have not represented a disability claimant in past 5 years)	3
Survey returned, but completion inadequate	2

Source: GAO analysis.

**Weighting of Data from Survey of Attorneys and Ineligible Nonattorneys**

On the basis of the responses to our survey of attorneys and ineligible nonattorneys, we were able to calculate the probability of being selected for each representative in our sample, and to weight each respondent to account statistically for the representatives in our population. One element of this weighting was the number of times that each representative selected in our sample appears in the overall list of representatives from which we drew the sample. To determine this part of the weighting, we compared our sample of 985 names against the entire list of 77,413 to manually determine the number of duplicate records for each representative in the sample. The other factor affecting the weighting was that some nonattorneys were incorrectly labeled in the CPMS database as attorneys, and some attorneys were incorrectly labeled as nonattorneys. These data errors affected the size of the attorney and nonattorney populations, and therefore the actual probability of being selected. On the basis of the rates of duplication and misclassification we found among our survey respondents, we estimated the actual number of attorney and nonattorney representatives. Using both pieces of information—the number of duplicate records associated with each representative, and the estimated actual number of attorneys and of nonattorneys—we calculated weighted response rates for the attorneys and nonattorneys.

**Possible Errors Inherent in Probability Samples**

Survey results based on probability samples are subject to sampling error. Each of the two samples (attorneys and ineligible nonattorneys) is only one of a large number of samples we might have drawn from the respective populations. Because each sample could have provided different estimates, we express our confidence in the precision of our two particular samples' results as 95 percent confidence intervals. These are

intervals that would contain the actual population values for 95 percent of the samples we could have drawn. As a result, we are 95 percent confident that each of the confidence intervals in this report will include the true values in the respective study populations. Unless otherwise noted, the margin of error for questions answered just by attorneys is plus or minus 9 percentage points at the 95 percent level of confidence. Unless otherwise noted, the margin of error for questions answered just by ineligible nonattorneys is plus or minus 10 percentage points at the 95 percent level of confidence.

### Efforts to Minimize Nonsampling Errors

The practical difficulties of conducting any survey may also introduce other types of errors, commonly referred to as nonsampling errors. For example, difficulties in how a particular question is interpreted, in the sources of information that are available to respondents, or in how the data were entered into a database or were analyzed can introduce unwanted variability into the survey results. With both surveys—the survey of eligible nonattorneys and the survey of attorneys and ineligible nonattorneys—we took steps to minimize these nonsampling errors. For example, GAO survey specialists designed the questionnaires in collaboration with GAO staff with subject matter expertise. Then the draft questionnaires were pretested with disability representatives to ensure that the questions were relevant, clearly stated, and easy to comprehend. When the data were analyzed, a second, independent analyst checked all computer programs.

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### Survey of ALJs

To learn how ALJs view the performance of different types of representatives, we asked judges in 10 hearing offices to assess representatives' performances. We asked the judges to assess the performance of all representatives appearing before them over a 1-month period. Judges completed a short paper survey on the representative's performance after each hearing in which the claimant had representation during the survey period. The only identifying information provided to GAO on the surveys was the name of the hearing office and the category of representative being assessed. Judges did not add their own names or the names of representatives to these surveys. Across the 10 sites, we received surveys for 68 percent of the hearings that took place during the survey period in which the claimant had representation. The hearing sites at which we deployed the survey were purposefully selected and the results cannot be generalized. Our survey does not assess how judges across all of SSA's hearing offices nationally view representatives' performance.

Site Selection Criteria

We used several criteria to select 10 offices from the 140 hearing offices administered by SSA’s Office of Disability Adjudication and Review (ODAR). Because we wanted to ensure a sufficient number of survey responses on the performance of eligible nonattorneys (those participating in the demonstration project), our most important criterion was the number of hearings held at each office in which the representative was an eligible nonattorney. We used SSA’s CPMS database and the list of eligible nonattorneys provided by SSA to estimate the number of hearings held in each office nationally since late 2003 in which the representative was an eligible nonattorney. We then ranked the hearing offices according to this estimate. Another key factor in our site selection was geographic diversity, and among the hearing offices with the most appearances by eligible nonattorneys we chose sites in 5 of ODAR’s 10 regions. Finally, we also based our site selection on input from SSA officials on whether certain hearing offices would be well suited to participating in the survey effort—for example, we avoided offices that had recently experienced transitions in their management. (See table 3 for a list of the 10 selected sites and their key characteristics.)

**Table 3: Hearing Offices Selected for ALJ Survey**

Hearing office	National ranking in number of hearings in which representative was eligible nonattorney, December 2003–October 2006 <sup>a</sup> (out of 140 offices)	SSA region
Charleston, South Carolina	10	4
Charleston, West Virginia	16	3
Dallas (Downtown), Texas	9	6
Fort Worth, Texas	2	6
Kingsport, Tennessee	18	4
Minneapolis, Minnesota	5	5
Orlando, Florida	3	4
San Antonio, Texas	1	6
Tulsa, Oklahoma	12	6
Voorhees, New Jersey	23	2

Source: GAO analysis of CPMS data.

<sup>a</sup>CPMS includes data on hearings back to December 2003, and we obtained the CPMS data available as of October 2006.

Before administering the survey, we took several steps to ensure the success of the survey instrument and the administration method. For example, we pretested the survey with several judges to ensure that the questions were comprehensible and covered the major aspects of

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disability representation. Also, we pretested the survey and deployment approach at two hearing offices—San Antonio, Texas, and Birmingham, Alabama—between December 4 and December 15, 2006. On the basis of the results of this initial implementation phase, we adjusted our survey instrument and the method of administration used when the survey was implemented in all 10 sites. We incorporated the pretest data from San Antonio into our final survey results, but did not incorporate the pretest data from Birmingham because the way we asked judges to respond during that pretest did not match the way we asked judges to respond in the final survey.

#### Response Rate

In general, we implemented the survey in all 10 sites between January 29 and February 23, 2007.<sup>3</sup> We worked closely with hearing office directors and other administrative staff to implement the surveys. We sent each office blank surveys and a list of eligible nonattorneys. Hearing office staff agreed that before each hearing during the survey period in which the claimant had representation, hearing office staff would determine the type of representative (attorney, eligible nonattorney, or ineligible nonattorney), indicate the representative type on a blank survey, and provide the survey to the relevant judge. After the hearing, judges would complete the paper surveys and return them to hearing office staff, who would return the surveys to us. Because of the approach we took, individual judges and representatives were not identified in our survey data, allowing judges more freedom to provide an honest appraisal. We calculated an aggregate response rate by comparing the total number of surveys we received from all 10 sites during the survey period to administrative data provided by SSA on the total number of hearings held in the 10 sites in which the claimant had representation (see table 4).

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<sup>3</sup> Judges in the San Antonio hearing office participated in the survey for a total of 4 weeks: 2 weeks during the pretest period, and then another 2 weeks from February 5 to 16, 2007.



**Table 4: Total Responses and Response Rate for Survey of ALJs**

	Responses	Hearings with representation	Response rate
Attorneys	1,606		
Eligible nonattorneys	194		
Ineligible nonattorneys	156		
<b>Total</b>	<b>1,956</b>	<b>2,872</b>	<b>68%</b>

Source: SSA data and GAO analysis.

Note: Data for hearings by representative category were not provided; therefore, response rates were not calculated for individual categories.

### Assessment of CPMS Data Reliability

We used data from SSA’s Case Processing Management System to draw samples of attorneys and ineligible nonattorneys and to select sites for the ALJ survey. To assess the reliability of the CPMS data, we reviewed SSA documentation such as the data dictionary, interviewed knowledgeable agency officials, and performed electronic testing of certain data. We found some limitations with the data, for example, the lack of a unique identifier with which to generate a unique list of representatives. However, we judged the data we used to be sufficiently reliable for the purposes of our reporting objectives.

### Interviews with ALJs

In addition to asking judges in 10 hearing offices to complete surveys on representatives’ performance, we also conducted phone interviews with judges at some of these same offices. We interviewed 20 judges in eight offices: Charleston, South Carolina; Charleston, West Virginia; Fort Worth, Texas; Kingsport, Tennessee; Minneapolis, Minnesota; Orlando, Florida; Tulsa, Oklahoma; and Voorhees, New Jersey. We asked these judges about the performance of different types of representatives, as well as about other topics, including the eligibility criteria for nonattorneys to participate in the demonstration project and the implications of extending fee withholding to the SSI program.

### Interviews with Disability Claimants

To assess disability claimants’ satisfaction with different types of representatives, we conducted phone interviews with 30 claimants who had had representation at their hearings: 10 represented by attorneys, 10 represented by eligible nonattorneys, and 10 represented by ineligible nonattorneys. These claimants had attended hearings at 3 of the 10 hearing sites that participated in our survey of judges: the hearing offices in Dallas

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(Downtown), Fort Worth, and Orlando. They included individuals applying for DI benefits, SSI benefits, and both DI and SSI. We asked claimants about their overall satisfaction with their representative and about their satisfaction with their representative's performance in specific areas, such as the representative's efforts to help them understand the disability application process and the representative's responsiveness to their questions and concerns.

We obtained from hearing office staff the names and contact information for claimants who had had hearings recently, as well as information on the type of representative who had assisted them. We attempted to call 71 claimants and successfully completed interviews with 30 of them (42 percent). Reasons we could not complete interviews included that claimants refused to participate and that the phone number provided by the hearing office was disconnected. Among the claimants who did complete interviews, in almost all cases we called soon enough after the claimants' hearings that they did not yet know the outcomes of their claims.

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### Questions for States on Interim Assistance Reimbursement

To gain an understanding of fees paid to representatives by states, we sent questions regarding these fees by e-mail to state officials. We contacted officials in the 38 states and the District of Columbia that have interim assistance reimbursements agreements with SSA (agreements that allow the state to be reimbursed out of a claimant's past-due benefits for interim assistance it provides to the claimant while the claim is pending). Twenty-nine states responded to our questions. In addition, we interviewed officials in 7 of the states by phone. We selected these states based on a variety of factors, including the amount paid for interim assistance and whether SSA officials reported the existence of informal state efforts to coordinate payments to representatives.

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### Assessment of SSA's Analysis of Administrative Data

To assess the effect of interim assistance reimbursements on SSA's ability to pay representatives' fees, we reviewed an analysis performed by SSA in January 2005. As noted in the discussion of representative overpayments, SSA analyzed a sample of cases from the Supplemental Security Record (SSR), which contains administrative data on the SSI program. The agency examined whether there were any cases in this sample in which, after reimbursing a state for interim assistance payments out of the claimant's past-due benefits, there might not be sufficient benefits remaining to withhold and directly pay the representative's full fee. We found that SSA's approach was logical and that the computer program it used to conduct

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the analysis was sound. We also assessed the reliability of the SSR data used in the analysis by interviewing agency officials and reviewing related documentation, and found these data to be sufficiently reliable for the purpose of our reporting objective.

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**Incomplete Data on Representatives' Compensation**

The Social Security Protection Act of 2004 directs GAO to study the characteristics of different types of disability claimant representatives, including the amount and the method of payment of any compensation paid to representatives. However, we are unable to provide all of the requested information on representatives' compensation. On the basis of our surveys, we do report some information on the method of compensation—specifically, the extent to which attorneys and eligible nonattorneys utilize withholding. But we do not report data on the amount of compensation paid to different types of representatives. We did not ask questions about the amount of compensation received on our surveys of representatives, because we judged that these questions would be too sensitive to produce reliable information. Also, complete compensation data are not available through SSA's administrative databases. SSA collects some data on the amount of fees withheld and directly paid to attorneys and eligible nonattorneys, but at the time of our study this information was limited in several ways. For example, it was not broken out between fees paid to attorneys and fees paid to eligible nonattorneys. Furthermore, while SSA also collects some data on the amount of fees authorized for representatives, there may be some problems with the reliability of these data, and the agency was not able to provide us with this information because of limitations in how the data are collected.

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**Data Not Available to Isolate Impact of Representation on Claim Outcomes**

The Social Security Protection Act of 2004 directs GAO to assess the effectiveness of the different types of representatives by examining the outcomes of disability claims handled by each representative type, adjusted for other factors that also affect claim outcomes. We considered using SSA administrative data to perform a regression analysis in which we would isolate the impact of different types of representatives on claim outcomes, after controlling for claimant characteristics and other factors that affect outcomes. However, after investigating the data available in several SSA databases, we decided that it is not possible to conduct a regression analysis that provides useful information on the relative effectiveness of attorneys, eligible nonattorneys, and ineligible nonattorneys. The available data do not include complete and reliable information on claimant characteristics that affect claim outcomes, such

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as severity of impairment, so it is not possible to isolate the impact of representative type from these other factors.

SSA in the past collected data on some of these key claimant characteristics. However, this data collection effort has been discontinued, and the way in which these data were collected would not have permitted the identification of eligible nonattorneys—our group of interest.

# Appendix II: Nonattorney Representatives' Highest Level of Education

Percent			
Highest level of education	Eligible nonattorneys	Ineligible nonattorneys who represent claimants professionally	Ineligible nonattorneys who are claimants' relatives and friends
Graduate degree	34	26	12
College degree	45	51	32
Some college	18	17	28
High school diploma	3	6	17
Less than high school	0	0	11

Source: GAO surveys of representatives.

Note: The responses provided by both groups of ineligible nonattorneys regarding their highest level of education are population estimates and are subject to sampling errors of no more than plus or minus 11 percentage points. Because most eligible nonattorneys completed our survey, the data presented are not estimates and, therefore, are not subject to sampling errors. Percentages may total more than 100 due to rounding.

# Appendix III: Geographic Distribution of Representatives by Type

Percent			
<b>Geographic regions</b>	<b>Attorneys</b>	<b>Eligible nonattorneys</b>	<b>Ineligible nonattorneys</b>
Midwest	24	17	21
Northeast	25	9	21
South	39	63	34
West	12	12	25

Source: GAO analysis of SSA's list of eligible nonattorneys and the CPMS database.

Note: The four geographic regions (Midwest, Northeast, South, and West) are those used by the U.S. Census Bureau. Some attorneys and ineligible nonattorneys may be misclassified since the data source for this analysis incorrectly coded some attorneys as nonattorneys and some nonattorneys as attorneys. Percentages may total more than 100 due to rounding.

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# Appendix IV: Comments from the Social Security Administration

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## SOCIAL SECURITY

The Commissioner

September 14, 2007

Mr. Dan Bertoni  
Director, Education, Workforce and  
Income Security Issues  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

Dear Mr. Bertoni:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report, "SSA Disability Representatives: Fee Payment Changes Show Promise, but Eligibility Criteria and Representative Overpayments Require Further Monitoring" (GAO-08-5). The attached comments provide specific responses to the recommendations and identify technical corrections that should be made to enhance the accuracy of the report.

If you have any questions, please contact Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Astrue".

Michael J. Astrue

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE MD 21235-0001

**COMMENTS ON THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO) DRAFT REPORT, "SSA DISABILITY REPRESENTATIVES: FEE PAYMENT CHANGES SHOW PROMISE, BUT ELIGIBILITY CRITERIA AND REPRESENTATIVE OVERPAYMENT REQUIRE FURTHER MONITORING" (GAO-08-5)**

Thank you for the opportunity to review and provide comments on this draft report. We find the report to be well-balanced and very thorough.

First, we would like to note that we are proud of the innovative work that went into the timely implementation of Sections 302 and 303 of the Social Security Protection Act (SSPA) of 2004. Particularly with respect to the direct pay demonstration project for non-attorneys, the Social Security Administration (SSA) had little or no experience with many of the activities required to implement this demonstration project. We are pleased that all of our efforts have been generally well-received.

We are also pleased that you found that the implementation of the fee withholding process has gone well and had the intended effects. We would like to note that the statements made by some of the SSA interviewees related to representative performance are their opinions and do not represent the official position of the Agency.

Our responses to the specific recommendations are provided below.

**Recommendation 1**

The Commissioner of Social Security should monitor the effectiveness of the nonattorney eligibility criteria in continuing to ensure that only well-qualified representatives receive access to fee withholding, and if necessary adjust the experience standard or other criteria.

**Comment**

We agree. We believe that requiring applicants to meet all of the eligibility criteria, including passing an examination testing the applicant's knowledge of relevant provisions of the Social Security Act and regulations, in addition to the representational experience requirement, ensures that only well-qualified representatives receive access to fee withholding. However, if direct payment to non-attorneys is extended beyond March 2010, we will review the eligibility criteria to determine if adjustments need to be made.

**Recommendation 2**

The Commissioner of Social Security should assess the extent to which representatives collect more than their authorized fee through a combination of state payments and fee withholding, and if necessary, identify and implement cost-effective solutions to ensure that representatives either are not paid more than their authorized fee or return anything they receive in excess of their authorized fee.



Comment

We agree. Withholding and direct payment of fees to representatives in Title XVI claims is scheduled to sunset in March 2010. If direct pay to representatives becomes permanent, we will work with the States to ensure that representatives do not receive fees in excess of that approved by SSA for services performed before SSA.

Recommendation 3

The Commissioner of Social Security should continue to explore cost-effective changes that would address Supplemental Security Income (SSI) benefit payment delays related to fee withholding in cases where recipients receive both SSI and Disability Insurance (DI) benefits.

Comment

We agree. A proposal to modify SSA systems has been funded for fiscal year (FY) 2008 that should reduce the delay currently experienced by some Title II and Title XVI beneficiaries in receipt of their Title XVI underpayment due to direct payment of fees in Title XVI.

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# Appendix V: GAO Staff Contact and Acknowledgments

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## GAO Contact

Daniel Bertoni, (202) 512-7215, bertoniid@gao.gov

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## Staff Acknowledgments

In addition to the contact named above, Melissa Emrey-Arras, Lorin Obler, Amy Sweet, Kathryn O’Dea, Kathleen Padulchick, Robert Robertson, Brett Fallavollita, Susan Bernstein, Carl Barden, Stuart Kaufman, Minette Richardson, Daniel Schwimer, Vanessa Taylor, Walter Vance, and Joan Vogel made key contributions to this report.

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# Related GAO Products

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*Social Security Administration: Agency Is Positioning Itself to Implement Its New Disability Determination Process, but Key Facets Are Still in Development.* [GAO-06-779T](#). Washington, D.C.: June 15, 2006.

*Federal Disability Assistance: Wide Array of Programs Needs to Be Examined in Light of 21st Century Challenges.* [GAO-05-626](#). Washington, D.C.: June 2, 2005.

*Social Security Administration: More Effort Needed to Assess Consistency of Disability Decisions.* [GAO-04-656](#). Washington, D.C.: July 2, 2004.

*Social Security Disability: Commissioner Proposes Strategy to Improve the Claims Process, but Faces Implementation Challenges.* [GAO-04-552T](#). Washington, D.C.: March 29, 2004.

*SSA Disability Decision Making: Additional Steps Needed to Ensure Accuracy and Fairness of Decisions at the Hearing Level.* [GAO-04-14](#). Washington, D.C.: November 12, 2003.

*SSA Disability Decision-Making: Additional Measures Would Enhance Agency's Ability to Determine Whether Racial Bias Exists.* [GAO-02-831](#). Washington, D.C.: September 9, 2002.

*Social Security Disability: Efforts to Improve Claims Process Have Fallen Short and Further Action Is Needed.* [GAO-02-826T](#). Washington, D.C.: June 11, 2002.

*Social Security Disability: Disappointing Results from SSA's Efforts to Improve the Disability Claims Process Warrant Immediate Attention.* [GAO-02-322](#). Washington, D.C.: February 27, 2002.

*Social Security Administration: Information Systems Could Improve Processing Attorney Fee Payments in Disability Program.* [GAO-01-796](#). Washington, D.C.: June 29, 2001.

*Social Security Administration: Systems Support Could Improve Processing Attorney Fee Payments in the Disability Program.* [GAO-01-710T](#). Washington, D.C.: May 17, 2001.

*Social Security Administration: Paying Attorneys Who Represent Disability Applicants.* [GAO/T-HEHS/AIMD-00-166](#). Washington, D.C.: June 14, 2000.

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**Related GAO Products**

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*Social Security: Review of Disability Representatives.*  
[GAO/HEHS-99-50R](#). Washington, D.C.: March 4, 1999.

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