



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

## **President's FY 2019 Budget Would Limit Disability Claimants' Access to Representation**

Social Security Disability Insurance and Supplemental Security Income (SSDI and SSI) provide financial stability to millions of Americans with severe disabilities. The Social Security Administration (SSA) has extremely strict standards for disability. Fewer than 4 in 10 applications for disability benefits result in an award; according to the Organisation for Economic Co-operation and Development, (OECD), the United States has one of the narrowest standards of disability among its member nations.<sup>1</sup>

Applying for disability benefits can be difficult and time-consuming. Applicants may choose to be represented at any stage of the process, and many hire representatives to explain the process, give them personalized advice, help them gather and submit medical records and other evidence to SSA, and present their cases to adjudicators. These services are especially valuable to people whose severe health conditions present obstacles to navigating SSA's policies and procedures: the very people for whom SSI, SSDI, and related health care benefits are so vitally important. The Government Accountability Office (GAO) found that claimants with representatives were allowed benefits at a rate nearly three times higher than those without representatives.<sup>2</sup>

In addition to helping claimants, representatives are also a valuable resource for SSA. Representatives gather evidence that SSA would otherwise need to collect. They explain the complexities of Social Security law and policies to their clients so that SSA staff does not have to. They point out the most critical portions of often lengthy files and identify cases that can be processed in an expedited fashion. These roles help SSA run more smoothly; indeed, when SSA's Office of the Inspector General studied why certain hearing offices experienced delays in processing disability claims, staff in those offices attributed the long processing times to the additional challenges posed by processing applications from unrepresented claimants.<sup>3</sup> The help representatives give to SSA on their shared mission of obtaining prompt and accurate disability determinations is one reason why the Social Security Act requires SSA to give denied applicants information about how to locate a private attorney or free legal assistance.<sup>4</sup>

Claimant representatives work on a contingency fee basis: they are only paid if their clients are awarded benefits. By statute, the fee is a portion of past-due benefits (the money SSA owes the claimant for the time before the agency determined that the claimant qualified for disability benefits): in most cases, SSA limits the fee to 25% of past-due benefits, with a maximum fee of

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<sup>1</sup> <https://www.americanprogress.org/issues/poverty/reports/2014/07/08/93386/social-security-disability-insurance/>

<sup>2</sup> <https://www.gao.gov/products/GAO-18-37>

<sup>3</sup> <https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-05-17-50268.pdf>

<sup>4</sup> 42 USC §406(c); 42 USC §1383(D)(2)(B).

\$6,000.<sup>5</sup> SSA must calculate and authorize the fee due to the representative. Most representatives who charge fees for their services opt for “direct payment” of fees. This means that SSA withholds the fee from the claimant’s past-due benefits and sends it directly to the representative. Representatives pay a “user fee” to cover SSA’s costs for this workload.<sup>6</sup>

President Trump’s Fiscal Year 2019 proposed budget recommends that Congress pass legislation that would end SSA’s responsibility for fee approval, withholding, and payment functions.

If SSA no longer calculates, withholds, and directly pays representative fees, many claimants will lose the ability to be represented. Most disability claimants, whose impairments have left them unable to earn at a substantial level during the years it can take for SSA to process their claims, would be unable to pay a retainer fee. Without direct payment of fees or a retainer, representatives would have no way to ensure they would be paid for their efforts and could be forced to limit or end completely their representation of disability claimants. This legislative proposal also prevents SSA from being able to ensure that representatives are charging their clients the correct amount of fees.

This harmful proposal is estimated to cost \$310 million over the next ten years.<sup>7</sup> SSA has many needs: the agency’s administrative funding has decreased while workloads have grown, primarily driven by more and more Baby Boomers filing retirement claims.<sup>8</sup> Congress should give SSA adequate funding so the agency can hire staff, modernize its technology, and better serve the millions of Americans who rely on Social Security benefits as a critical part of their financial stability. Congress should not spend \$310 million on a proposal that harms Social Security disability claimants and makes it more difficult for them to obtain assistance during a challenging time in their lives.

The CCD Social Security Task Force urges all Members of Congress not to introduce or support legislation related to the President’s proposal regarding representative fees.

*Prepared by the CCD Social Security Task Force, March 2018. For more information contact Lisa Ekman, NOSSCR, [lisa.ekman@nosscr.org](mailto:lisa.ekman@nosscr.org); Tracey Gronniger, Justice in Aging, [tgronniger@justiceinaging.org](mailto:tgronniger@justiceinaging.org); Jeanne Morin, NADR, [jmorin.ppa@gmail.com](mailto:jmorin.ppa@gmail.com), or T.J. Sutcliffe, The Arc of the United States, [sutcliffe@thearc.org](mailto:sutcliffe@thearc.org).*

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<sup>5</sup> The average fee for an SSDI case in Fiscal Year 2017 was \$3,167; fees in SSI cases were likely lower. <https://www.ssa.gov/representation/statistics.htm>

<sup>6</sup> The current user fee is the lower of \$93 or 6.3% of the representative’s fee. <https://www.ssa.gov/oact/cola/attorneyfee.html>

<sup>7</sup> <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf> p.138

<sup>8</sup> <https://www.cbpp.org/research/social-security/more-cuts-to-social-security-administration-funding-would-further-degrade>