

**National Organization of
Social Security Claimants' Representatives
(NOSSCR)**

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**Executive Director
Nancy G. Shor**

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Walt Henderson, Director
EFT Strategy Division
Financial Management Service
401 14th Street, SW Room 303
Washington, DC 20227

Filed at: www.regulations.gov

**Re: Docket No. Fiscal-FMS-2009-0003, Management of Federal Agency
Disbursements**

Dear Mr. Henderson:

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR) in response to the notice of proposed rulemaking (NPRM) regarding, Management of Federal Agency Disbursements, 75 Fed. Reg. 34394 (June 17, 2010), Docket No. Fiscal-FMS-2009-0003.

Founded in 1979, NOSSCR is a professional association of attorneys and other advocates who represent individuals seeking Social Security disability or Supplemental Security Income (SSI) benefits. NOSSCR members represent these individuals with disabilities in legal proceedings before the Social Security Administration and in federal court. NOSSCR is a national organization with over 4,000 members from the private and public sectors and is committed to the highest quality legal representation for claimants.

The proposed changes are intended to increase the number of payments made electronically and to reduce the number of waivers available. The Department of Treasury is seeking comments of for circumstances where Electronic Funds Transfer (EFT) waivers are needed.

We interpret the Notice of Proposed Rulemaking (NPRM) to apply to fee payments to attorneys and eligible non-attorney representatives who represent claimants for benefit payments issued by the Social Security Administration (SSA).¹ Although a waiver may

¹ The current statute, 31 U.S.C. § 3332 (f), requires all Federal non-tax payments to be made by EFT except as waived by the Secretary for certain limited circumstances. The interpreting regulations, 31 C.F.R. §

be granted for nonrecurring payments,² the current definition of nonrecurring, which is “one payment per year from the same agency to the same recipient,” would not include fees paid to professional representatives who may represent and receive fees for hundred of claimants each year. The NPRM includes no proposed changes to either “federal payment” or “waiver.” Our reading of the NPRM is that, as of March 1, 2013, fee payments would no longer be available by paper checks.

For the reasons set forth below, we recommend that the U.S. Department of Treasury exempt attorneys’ fee payments from the mandatory direct deposit requirement. Attorneys and eligible non-attorneys should be able to ask for direct deposit, but its use should not be required.

Under the Social Security Act, SSA withholds 25% of a successful claimant’s past-due benefits for possible payment to the claimant’s attorney or non-attorney representative who is eligible for direct fee payment. Once SSA determines the amount of the fee, SSA pays that fee from the withheld benefits directly to the representative. In the vast majority of cases the remainder is then released to the claimant.

The Social Security Act also authorizes SSA to charge a fee of 6.3%, with a cap of \$83, as a “user fee” for the service of directly paying the fee to the attorney or eligible non-attorney. The stated purpose of this user fee is “to achieve full recovery of the costs of determining and certifying fees to attorneys, but not in excess of 6.3 percent.” 74 Fed. Reg. 68897 (Dec. 29, 2009).

The user fee is charged only when the representative’s fee is withheld from the claimant’s past due benefits and paid directly to the attorney or eligible non-attorney. It is not assessed when the representative will be paid directly by the client. Yet both circumstances require the calculation of the amount of the fee and notification of the authorized amount to both representative and claimant. The only difference in these situations is the direct payment of the fee. Therefore, the user fee assessment must be based on the additional costs of printing and sending a check to the representative. These costs do not exist if the fee is paid by direct deposit. If the user fee is assessed to cover the government’s cost of making the fee payment by printing and mailing a paper check, a user fee should not be assessed – or should be far less – if the fee is paid by direct deposit.

For many claimants’ representatives, direct deposit of SSA fee checks is not currently working well. Banks will not allow a fee to be electronically deposited into an account if the payee is not an owner of the account. In addition, representatives are not provided with adequate information to determine for which client the fee payment is made. For these reasons, we are opposed to a requirement mandating the use of direct deposit in the future.

208.2(g)(1)(iv), define “federal payments” as “any payment made by an agency,” which “includes but is not limited to ... [m]iscellaneous payments including ... fees.”

² 31 C.F.R. § 208.4

In February 2010, we surveyed our members about their use – or nonuse – of direct deposit. We received about 400 responses. As an attachment to these comments, we have set out a summary of the responses, following the survey format. By a two to one margin, our members report that they do not use direct deposit.

Although some of our members using direct deposit now for fee payments are very satisfied, many others report that they prefer paper checks – in fact, they rely on paper checks. There are two main reasons that they do not, and in some cases cannot, use direct deposit.

1. Recipient of payment is not “owner” of the firm’s bank account.

Many attorneys and eligible non-attorneys are precluded from using direct deposit because they are associates or employees of their firms. The checks are made payable to the individual representative. Since those associates are not “owners” of the firm’s bank account, their checks cannot be deposited electronically. If SSA were to recognize firms, the fees would be payable to firms, and this problem would disappear. As one member from Oklahoma told us:

While I am a member of the law firm, I do not “own” the account and I understand that [direct deposit] may require that I open another bank account and then transfer money to the firm’s account ... Even if separate accounts were feasible, the amount of clerical time required would be clearly excessive.

2. Banks do not provide claimant/client identifying information.

Many of our members who have tried direct deposit are frustrated by their banks’ unwillingness, or perhaps inability, to provide all the information needed to identify the client. The following are excerpts of reports from our members:

- From an attorney in Arkansas: I have had extensive discussions with my bank and have been advised that when such a proposed transfer is made [i.e., a direct deposit of fees], there will be no way to determine on which client the payment was made. This procedure will make it literally impossible to track payments, determine when follow-ups should be made ... Bank of the Ozarks will simply have the date, the source of the payment, and the amount.
- From an attorney in Oklahoma: In the past, the firm has experimented with electronic deposit of Social Security attorney fees and found it was not workable. Our bookkeeper was not able to identify the client on whose account the deposit was made.
- From an attorney in Georgia: If the fee needs to be split, then mailing of the check is better since it can be deposited into the escrow account. If the check is electronically deposited, there must be better identifying information, such as SSN. We have too many

clients that change their name or SSA uses an old surname. Also if it is a widow's claim, the identification is important. Nothing could be more difficult for checks being deposited than being unable to identify the client for whom the check pertains.

- From an attorney in Colorado: Virtually all of the income in my law practice is from representing individuals in disability claims with the Social Security Administration. My fees are approved by Social Security and then paid from funds withheld from my clients' retroactive benefits. At present, I choose to receive these via paper check rather than electronic funds transfer. You may wonder why I choose to continue to do business this way rather than what would seem to be a more efficient, safe, and speedy direct deposit.

During a short period of time I had these fees directly deposited to my checking account, as you propose to do for all payments in the future in this rule. However, this process created a bookkeeping nightmare for me, because my bank could not give me any information about which client a given deposit was for. Because there is a cap on my fees, many payments for fees are exactly the same dollar amount, representing the maximum fee. Therefore, I often could even match up the amount of the fee with a specific case.

According to Social Security, the identifying information for each deposit was sent to the bank; however, my bank said they did not have that information; SSA insisted they did, the bank insisted they did not. Hence the nightmare. Consequently, I was forced to return to getting my fees via the very 20th century paper check. I therefore find myself in the rather awkward position of advocating against this rule, which would, on its face, appear to be a welcome advance.

In fairness to my bank, they should not have to carry the burden of informing me which client is represented by a given deposit. It is not information they need or want to do their business. Therefore, if you enact this rule, I propose that it be amended to require that either the U.S. Treasury or Social Security itself be required to send practitioners such as myself a simultaneous email when the deposit is made, informing me of the name of the client the payment represents. This process would leave my bank out of a loop that they do not need or want to be in.

* * *

For the reasons described above, we recommend that the U.S. Department of Treasury exempt attorneys' fee payments from the mandatory direct deposit requirement. Attorneys and eligible non-attorneys should be able to ask for direct deposit, but its use should not be required.

Sincerely,

Nancy G. Shor
Executive Director

Barbara Silverstone
Staff Attorney

ATTACHMENT

DIRECT DEPOSIT – RESULTS OF NOSSCR SURVEY

In February 2010, we surveyed our 4,000 members about their use – or nonuse – of direct deposit. We received about 400 responses. We have set out a summary of the responses, following the survey format. By a two to one margin, our members report that they do not use direct deposit.

IF YOU CURRENTLY RECEIVE YOUR FEES BY DIRECT DEPOSIT:

Which bank do you use?

- Local and community banks were more often cited than national banks.

What type of information about the deposit does your bank provide?

Some banks provided the date, the amount, the name of the claimant, and the claimant's full Social Security number.

- Some banks provided the date, the amount, and only the name of the claimant.
- Some banks provided the date, the amount, and only the claimant's full Social Security number.
- Some banks provided the date, the amount, and only the last four digits of the claimant's Social Security number.
- Many banks provide only the date and the amount. There is no information provided that would identify the claimant. Members report they must call or visit the bank, and track each deposit individually.
- Some banks provide only the date and the amount. There is no information provided that would identify the claimant. These banks say they cannot provide any additional information because SSA does not give it to them: Chase; Chevy Chase; and PBI Bank (Bowling Green, KY).
- Some banks provide only the date and the amount, although they provided more in the past. From a member in Michigan: "I am no longer getting a cross reference of the last four digits of my client's Social Security number when I receive a direct deposit. My bank tells me that the government stopped doing this the first of the year. How do I know what client the fee is for? Should I go back to asking for a paper check instead?"

Does your bank charge for providing this information?

- Most banks do not charge a fee.

Have you seen anything different in payments for title II, Title XVI, and EAJA fees?

- It is clear which fees are for Title II and which are for Title XVI.
- There seem to be a consensus that EAJA fee payments are not made by direct deposit. Several years ago, direct deposit of EAJA fees was routine.
- Court-ordered fees (section 406(b)) fees are not paid by direct deposit.

Comments:

Although relatively few members report that they use direct deposit, most of them are very satisfied. They are generally in solo practice, so the payee named on the electronic payment is the same as the owner of the bank account.

For those users who do not receive all the identifying information on their bank record, there is a universal plea that it appear there. Many complaints about the time it takes to "match" deposits

with clients, and about frequent telephone calls and visits to banks. The banks generally are telling their depositors that they are putting on the bank record all of the information that they receive from SSA.

One comment is that it is difficult to register a new bank account with SSA. Another comment is from a user who is dissatisfied with direct deposit and wants to return to paper checks; he is having a hard time registering this request with the agency. We have heard this complaint from many members outside the survey responses.

IF YOU CURRENTLY DO NOT RECEIVE YOUR FEES BY DIRECT DEPOSIT:

Is this because you are not the "owner" of your firm's bank account (fees can be electronically deposited only into accounts for which the payee is an owner)?

- Many associates advise that they are not eligible for direct deposit because they are not owners of their firms' accounts. They indicate that recognition of firms would solve this problem.

Is it because your bank won't provide the information about the deposit (i.e., the name and Social Security number of your client)?