

# LEGAL REPRESENTATION IN DISABILITY CLAIMS

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# Overview

- Legal representatives have long played a role in the SSDI application process—at the appellate level
  - Common in other civil law settings, e.g., immigration, housing
  - Not a standard feature of the broader U.S. social safety net
- Despite the \$1.2 billion payout in legal fees per year, we know little about *the value of* legal representation

# Potential Gains to Representation

Process of applying to SSDI is complex: application includes employment history, medical history, requires medical records

Legal representatives may help applicants

- Understand rules, complete application forms, obtain medical records
- Develop stronger cases, matching medical evidence to regulatory criteria
- Obtain the decisive outcome earlier (1/2 of awards made on appeal, 2-yr wait)
  - This benefits the applicant and federal government (reducing the workload and costs)
  - Non-qualifying applicants would spend less time out of labor force

# But Concerns about Aggressive Marketing, Perverse Incentives, and Even Fraud



## THE WALL STREET JOURNAL. Three Indicted for Alleged Social Security Fraud Scheme in Kentucky

Government disbursed benefits in excess of \$600 million as result of scheme, indictment says



Attorney Eric Conn during a Senate committee hearing on Capitol Hill in 2013. He has been indicted by a federal grand jury in Lexington, Ky., on charges including conspiracy to commit mail fraud and wire fraud.

Allegations that reps slow process down to earn a higher fee

# Incentives

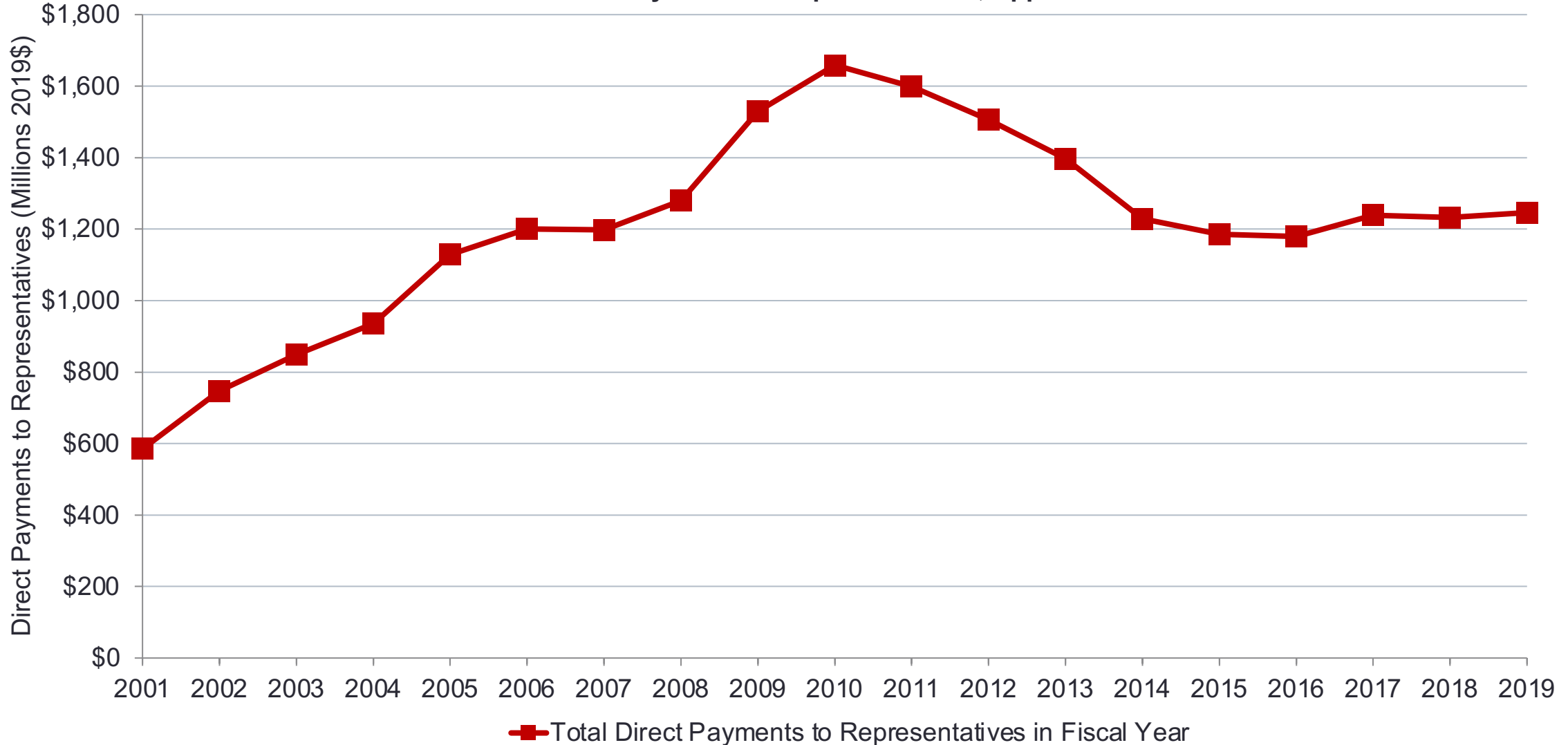
- Reps paid only if they “win” and if “back pay” owed
  - Fee = 25% of back pay up to max of \$6,000; avg fee is \$3,000
  - Back pay = monthly benefit for months from onset to decision (less 5-mo waiting period)
  - SSA deducts fee from the claimant’s back pay, pays rep directly
- Fee payment maximized when cases move slowly (more back pay) but ultimately result in favorable decision

# Our Study

- We investigate the impact of legal representation on case outcomes when representatives engage from **the initial review stage**
- Leverage new **administrative data** linking case files to data on representation
- Track cases through appellate process and final outcomes
- Instrumental variables research design accounts for **non-random assignment** of representatives to cases, motivated by developments at the appellate level that altered market structure for representation, increased use of representation at the initial level

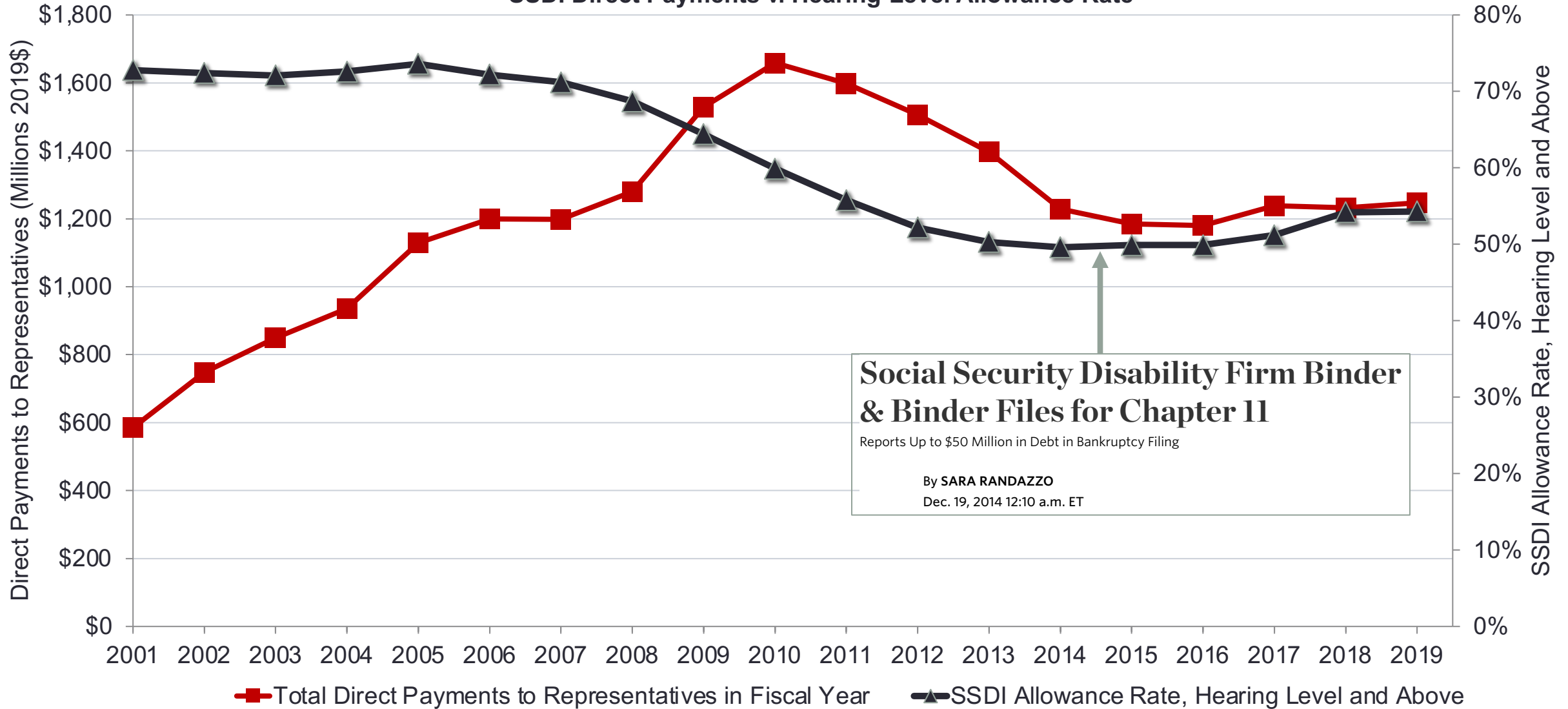
# Rise and Fall in Representative Fee Payments

SSDI Direct Payments to Representatives, Appellate and Initial Levels



# Rise and Fall in Representative Fee Payments

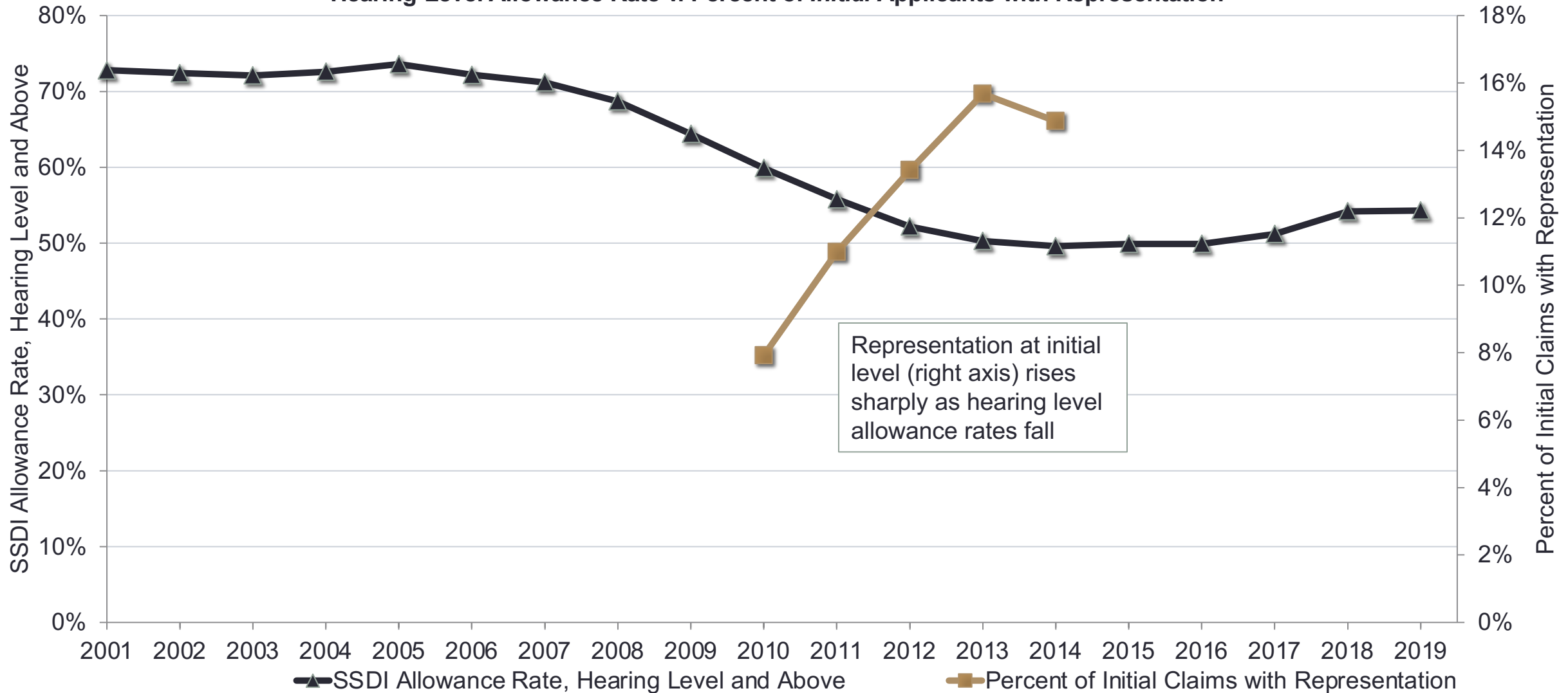
## SSDI Direct Payments v. Hearing-Level Allowance Rate



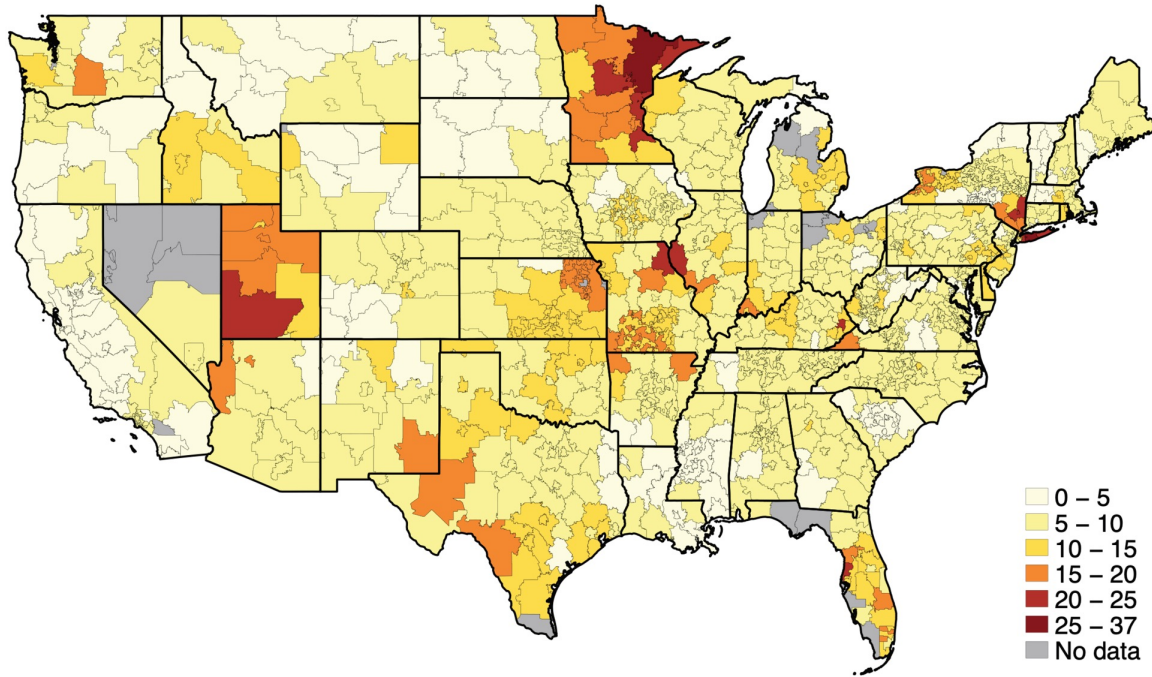


# Rise and Fall in Representative Fee Payments

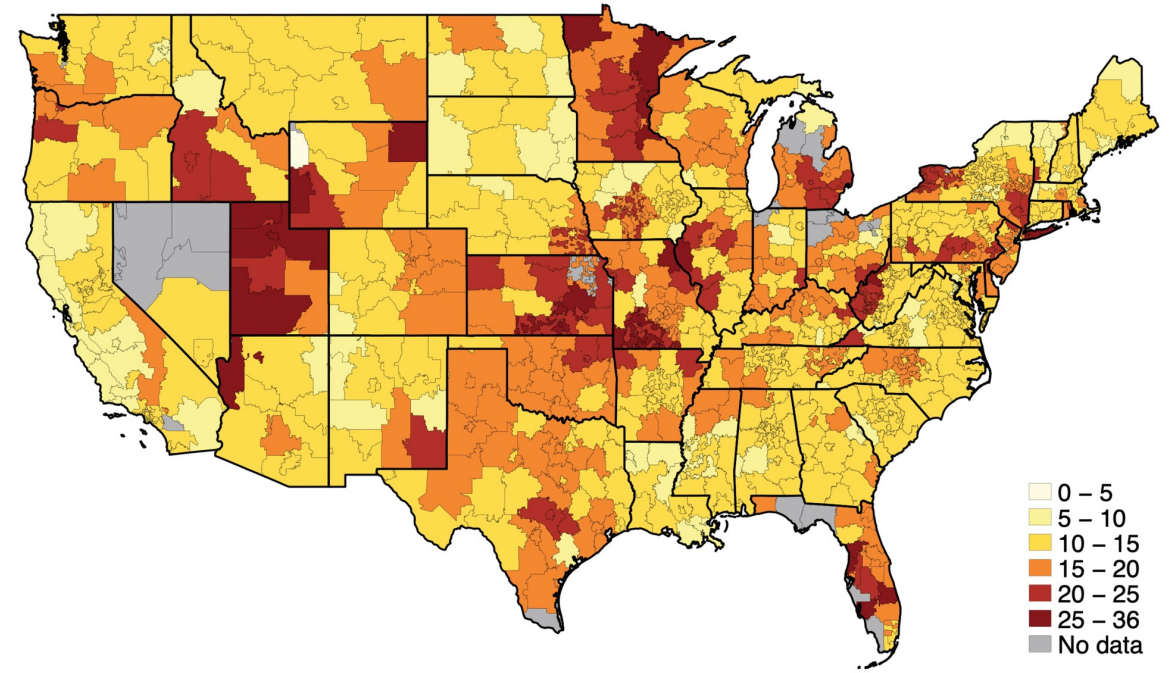
Hearing-Level Allowance Rate v. Percent of *Initial* Applicants with Representation



# Geographic Variation in Representation at Initial Level



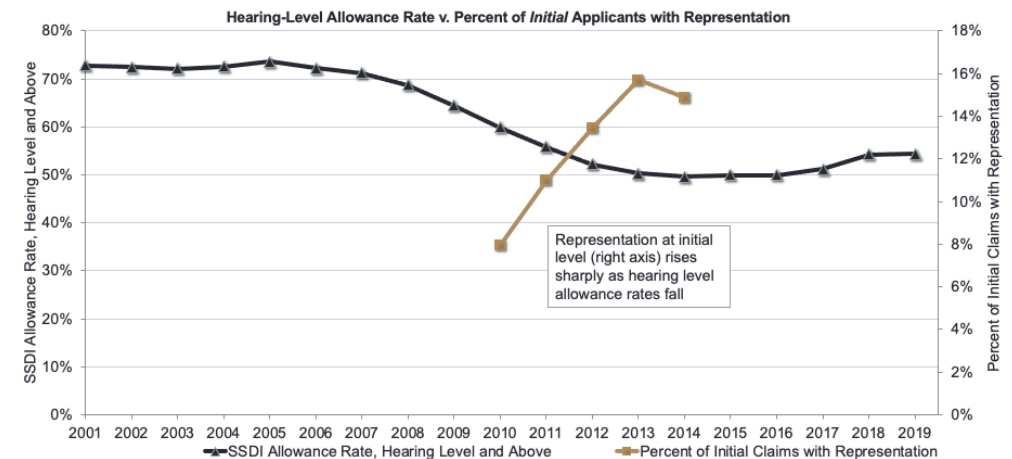
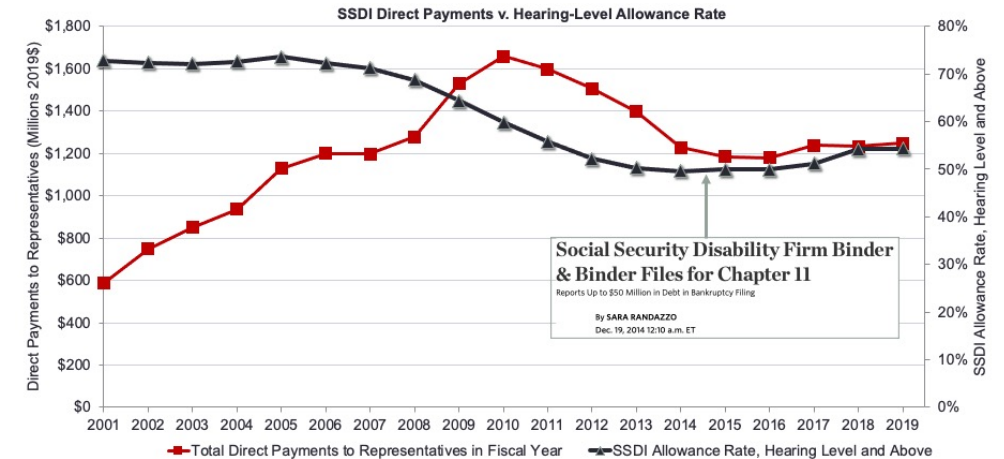
2010



2014

# Instrumental Variables (IV) Approach

- Reduction in appellate allowance rates → reductions in firm revenue (Binder and Binder bankruptcy)
- Firms to seek new revenue sources → enter market for initial applicants
- We construct instruments to capture the existing “market” for reps at appellate level by area-year
- *Intuition:* Applicants living in areas with greater disability law firm presence in appellate cases are more likely to enlist reps for their initial filing, due to local advertising or word of mouth



## Main Findings (IV Estimates)

Initial representation leads to

- 23pp increase in initial allowance
- Large reduction in appeals (deterred by rep? learning about quality in initial stage?)
- Reduces mean total case time by 316 days
- No effect on final allowance (point estimate *negative* and imprecise)
- 10pp increase in denials for insufficient evidence

	Initial Allowance	Initial Denial			Total Processing Time (Days)	Final Allowance
	Any reason	Insufficient Evidence	Refused Medical Exam	Appellate Hearing Observed		
	(1)	(4)	(5)	(6)	(7)	(8)
Legal Representation	0.232** (0.118)	0.103*** (0.038)	0.006 (0.020)	-0.453** (0.181)	-316.1** (151.3)	-0.144 (0.159)
Observations	7,431,904	7,431,904	7,431,904	7,431,904	7,431,904	7,431,904
Over ID test P value	0.012	0.974	0.280	0.377	0.040	0.592
Mean Dep. Var.	0.320	0.043	0.026	0.357	315.8	0.470

## Mechanisms

- Increase in initial allowances comes from 19.7pp increase in meeting the listings
- Technical alignment of medical evidence to allowable conditions

	Initial Allowance		
	Any reason (1)	Meets Listing of Impairments (2)	Medical- vocational (3)
Legal Representation	0.232** (0.118)	0.197*** (0.061)	0.035 (0.105)
Observations	7,431,904	7,431,904	7,431,904
Over ID test P value	0.012	0.012	0.019
Mean Dep. Var.	0.320	0.128	0.192

# Mechanisms

- Improvement in efficiency, administratively and with communication
- No statistically significant increase in processing time at Field Office or DDS
- Rep'd cases 33pp more likely to generate backpay – but because reps get more distant onset dates

	Electronic Communication		Time Segments		
	Claim Filed Electronically	Email Address Given	Processing Time (Days) Field Office	Processing Time (Days) DDS	Time from Onset to DDS Decision greater than 5 Months
	(1)	(2)	(3)	(4)	(5)
Legal Representation	0.416** (0.200)	0.405* (0.219)	9.057 (7.106)	62.84 (40.96)	0.313*** (0.101)
Observations	7,431,904	7,431,904	7,431,904	7,431,904	7,431,904
Mean Dep. Var.	0.364	0.307	6.353	92.24	0.844

[→ back pay]

# Conclusions

- Representation improves case outcomes (on the margin)
  - Increases initial awards by medical listings, fewer appeals, shorter time to decision, no affect on final allowances
- Estimates imply reps obtain earlier disability awards for individuals who would win on appeal -- *“Right decision earlier”*
- Representation in initial claims inefficiently low
  - Large benefits, small costs for applicants; cost-savings for SSA
  - Contingency-fee structure encourages reps to be selective, minimize effort; optimal fee higher than current fee
  - Reps reduce application burdens without loss in target efficiency; possible gains for people with listing-level impairments