

**SOCIAL SECURITY NUMBER AND INDIVIDUAL  
TAXPAYER IDENTIFICATION NUMBER MISMATCHES  
AND MISUSE**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT  
AND  
SUBCOMMITTEE ON SOCIAL SECURITY  
OF THE  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTH CONGRESS  
SECOND SESSION

MARCH 10, 2004

**Serial No. 108-53**

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PRINTING OFFICE

99-672

WASHINGTON : 2005

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For sale by the Superintendent of Documents, U.S. Government Printing Office  
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**SOCIAL SECURITY NUMBER AND INDIVIDUAL  
TAXPAYER IDENTIFICATION NUMBER  
MISMATCHES AND MISUSE**

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**WEDNESDAY, MARCH 10, 2004**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON OVERSIGHT,  
SUBCOMMITTEE ON SOCIAL SECURITY  
*Washington, DC.*

The Subcommittees met, pursuant to notice, at 10:07 a.m. in room 1100 Longworth House Office Building, Hon. Amo Houghton (Chairman of the Subcommittee on Oversight), and Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee on Social Security) presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE  
March 03, 2004  
OV-11

CONTACT: 202-225-7601

### **Hughton and Shaw Joint Hearing on Social Security Number and Individual Taxpayer Identification Number Mismatches and Misuse**

Congressman Amo Hughton (R-NY), Chairman of the Subcommittee on Oversight, and Congressman E. Clay Shaw, Jr. (R-FL), Chairman of the Subcommittee on Social Security, Committee on Ways and Means, today announced that the Subcommittees will hold a joint hearing on Social Security number and Individual Taxpayer Identification Number mismatches and misuse. **The hearing will take place on Wednesday, March 10, 2004, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include representatives of the Social Security Administration (SSA), the Internal Revenue Service (IRS), and the U.S. General Accounting Office (GAO).

#### **BACKGROUND:**

There are two types of taxpayer identification numbers individuals use for Federal tax purposes: Social Security numbers (SSNs) assigned by the SSA, and Individual Taxpayer Identification Numbers (ITINs) issued by the IRS. SSNs were created in 1936 to keep track of the earnings of people who worked in jobs subject to Social Security taxes, in order to assure proper payment of taxes and crediting of wages toward Social Security benefits. The ITIN was created in 1996 to improve compliance with tax laws and is assigned to certain resident and nonresident aliens, their spouses, and their dependents who do not qualify for a SSN but must have a taxpayer identification number for tax purposes.

Neither number was created to serve as a form of identification. However, use of the SSN by both government agencies and the private sector has exploded over the decades as automation of record keeping and other business processes encouraged use of this unique number that virtually every American possesses. As a result, many have called it a *de facto* national identifier. Likewise, use of ITINs as an identifier for those who cannot legally obtain a SSN has rapidly increased during its short period of existence. To date, the IRS has issued more than 7.3 million ITINs.

SSA, the IRS, and U.S. Department of Homeland Security (DHS) all have responsibilities regarding these numbers, and each agency's policies are designed to promote its individual goals. This raises questions regarding whether better coordination across agency boundaries is needed to promote enforcement of laws and regulations.

One example of an area where better coordination of agency policies is needed is the growing Earnings Suspense File (ESF) maintained by the SSA. The ESF houses records of W-2s where the name and SSN do not match the SSA's records. Cumulative earnings in the ESF covering 1937-2001 total over \$420 billion (equaling less than 1 percent of all earnings), representing 244 million wage reports from employers that could not be matched to the correct worker. The SSA has taken steps to

reduce the number of mismatched wages, including voluntary SSN verification services for employers, computer routines to identify typographical errors, letters to employees and employers regarding mismatches, and employer education.

However, the SSA cannot enforce accurate reporting of wages. It must rely on the IRS to penalize employers who submit mismatched wages and the DHS to enforce immigration laws. The IRS to date has not enforced its penalty authority for name and SSN mismatches on W-2s, but intends to begin advising employers of mismatch conditions and their responsibilities under the law starting in the fall of 2004 for tax year 2002. In addition, the IRS only requires employers to send solicitations to the employee asking for the correct SSN information. There is no mandate for the employer to take other action if the employee fails to cooperate. Finally, DHS instructions tell employers to accept documentation of work authorization if it reasonably appears genuine, and that employers cannot specify which documentation a worker must provide from a list of acceptable documents. The DHS does not provide specific written instructions on how employers should respond to a SSA "no-match" letter.

In addition, lack of coordination among agencies potentially aids use of SSNs and ITINs to commit identity fraud and terrorism. In responding to issues raised in the National Taxpayer Advocates *2003 Annual Report to Congress*, the IRS commented that "[t]he Service believes that most ITIN holders whose wages are reflected on valid Forms W-2 furnished to the service are using stolen or fabricated SSNs." The IRS also stated that "[t]he Service is also fully sensitive to the possible dangers that can arise from the misuse of ITINs for the purpose of creating an identity, including the possible threat to national security."

A November 2002 IRS memorandum from the Commissioner of Internal Revenue stated that banks and other financial institutions are accepting ITINs as proof of identity, and illegal aliens are increasingly using ITINs to open bank accounts, which aids their ability to live in the United States without complying with immigration laws or quotas. Also, the ability of third parties to secure ITINs and use them for drivers licenses (which provides them with access to air travel and other transportation systems) and to access financial systems raises national security concerns.

To address these concerns, the IRS sent letters to State departments of motor vehicles and governors warning them of the risks of using ITINs for identity verification purposes. The IRS indicated that it does not validate the authenticity of documents submitted to obtain an ITIN, require applicants to appear in person, or verify applicants' legal presence in the United States. In order to strengthen its controls over ITIN issuance, the IRS recently changed its rules to require more stringent documentation and verification in ITIN applications, as well as proof the ITIN is needed for tax purposes.

Generally, policy coordination and data-sharing across these agencies involves tradeoffs between tax compliance and immigration enforcement. For example, Internal Revenue Code disclosure provisions do not permit the IRS to share returns and return information with other agencies like the DHS to identify or locate illegal aliens or routinely share information with the SSA about likely cases of SSN misuse by unauthorized immigrants and others.

In announcing the hearing, Chairman Houghton stated, "We're holding this hearing to look into what should be the right balance between cooperating with the IRS and maintaining the highest standards of taxpayer privacy. The IRS made great improvements in the ITIN process by making it more secure and reaching out to remind the public that ITINs are to be used only for tax purposes."

Chairman Shaw said, "The Federal Government created SSNs and ITINs for work and tax purposes and has a responsibility to prevent their misuse. Effective coordination across Federal agencies is critical to protecting law-abiding individuals and our nation from identity thieves, or even terrorists."

#### **FOCUS OF THE HEARING:**

The hearing will focus on the respective responsibilities of the SSA, IRS, and DHS in ensuring accurate earnings reporting and tax payments, as well as the degree

to which policies and procedures are coordinated among agencies to prevent misuse of SSNs and ITINs.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, by the close of business, Wednesday, March 24, 2004. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Oversight in room 1136 Longworth House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings. Please note that in the immediate future, the Committee website will allow for electronic submissions to be included in the printed record. Before submitting your comments, check to see if this function is available.

**FORMATTING REQUIREMENTS:**

1. All statements and any accompanying exhibits for printing must be submitted electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, in WordPerfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

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Chairman HOUGHTON. Good morning, everybody. It is great to have you here, and great to have our witnesses. I would like to begin our session and welcome my colleagues from the Subcommittee on Social Security to this joint hearing with the Subcommittee on Oversight. Today, we are going to explore the use of two kinds of numbers, Individual Taxpayer Identification Numbers (ITINs) and Social Security Numbers (SSNs). First, we will hear from the agencies, the Internal Revenue Service (IRS) and the Social Security Administration (SSA), to learn how these numbers are issued and used. We are holding this hearing to look into what should be the right balance between cooperating with the IRS and maintaining the highest standards of taxpayer privacy. The IRS made great improvements in the ITIN process by making it more secure and reaching out to remind the public that ITINs are to be used only for tax purposes.



I would also like to note that we invited the U.S. Department of Homeland Security (DHS) to testify as part of this panel. Unfortunately, they are unable to join us. However, DHS has agreed to provide full answers to any questions that you may have for the record.

Our second panel, which includes the U.S. General Accounting Office (GAO), the Inspector General (IG) for the IRS and the SSA, and the National Taxpayer Advocate (NTA), will present us with their concerns about problems associated with these numbers, and what might be done to improve these programs. While these ITINs and SSNs may assist our government in doing its job, and taxpayers in being tax compliant, as Chairman of the Subcommittee on Oversight, my interest also is in making sure that the programs are secure and that our government agencies are coordinated. Now, I would like to yield to a good friend of mine, the Subcommittee on Oversight's Ranking Member, Mr. Pomeroy from North Dakota, and good morning.

[The opening statement of Chairman Houghton follows:]

**Opening Statement of The Honorable Amo Houghton, Chairman, Subcommittee on Oversight, and a Representative in Congress from the State of New York**

Good morning. I want to welcome my colleagues from the Subcommittee on Social Security to this joint hearing with the Subcommittee on Oversight.

Today, we will explore the use of two kinds of numbers: Individual Taxpayer Identification Numbers—also known as ITINs—and Social Security Numbers (SSNs).

First, we will hear from the agencies—the Internal Revenue Service (IRS) and the Social Security Administration (SSA)—to learn how these numbers are issued and used. We are holding this hearing to look into what should be the right balance between cooperating with the IRS and maintaining the highest standards of taxpayer privacy. The IRS made great improvements in the ITIN process by making it more secure and reaching out to remind the public that ITINs are to be used only for tax purposes.

I also would like to note that we invited the Department of Homeland Security (DHS) to testify as part of this panel. Unfortunately, they are unable to join us. However, DHS has agreed to provide full answers to any questions that we may have for the record.

Our second panel, which includes the General Accounting Office, the Inspectors General for IRS and the SSA, and the National Taxpayer Advocate, will present us with their concerns about problems associated with these numbers, and what might be done to improve these programs.

While these ITINs and Social Security Numbers may assist our government in doing its job and taxpayers in being tax compliant, as Chairman of the Oversight Subcommittee, my interest also is making sure that the programs are secure and that our government agencies are coordinated.

I would now like to yield to a good friend of mine, the Oversight Subcommittee's ranking member, Mr. Pomeroy from North Dakota.

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Mr. POMEROY. Thank you very much, Mr. Chairman. Thank you for calling this hearing. We have made some real strides with the implementation of the ITIN and the SSN, and that brings us to a new conundrum that we need to wrestle with, balancing the purpose for which this national identification number is to be used. Strictly for the taxpayer purposes, as it was designed, or should it be more broadly used for other purposes, legitimate purposes, of the Federal Government?

I take the position that it is very, very important that we maintain the highest standards of taxpayer privacy. I commend the IRS

for being vigilant about making certain its system is responsive to the very deep concerns of the taxpayers of this country, and that their taxpaying information submitted to the Federal Government is strictly private, strictly for the revenue purposes, and not more broadly used as some kind of national identification number, national surveillance purposes, or anything of the sort. There is a bit of debate in this new period we are in relative to the threats on our National security in terms of whether we should continue to treat these numbers in this strictly private and confidential fashion. We will have some discussion of that this morning. It is a very important issue, and I really regret that I have a preexisting conflict that will perhaps keep me from participating in the discussions on the second panel that will bring this more to the fore.

I think that those that would urge a more broad application of these taxpayer private numbers, in my book, have a very large burden of proof to carry in terms of whether there is some compelling national interest that would justify a more broad application of these numbers, because obviously the privacy interest of the taxpayer is clearly understood by us. That is a preeminent interest and needs to be protected. I thank the Chairman for calling this hearing.

[The opening statement of Mr. Pomeroy follows:]

**Opening Statement of The Honorable Earl Pomeroy, a Representative in  
Congress from the State of North Dakota**

The Oversight Subcommittee, jointly with the Social Security Subcommittee, is holding a hearing today to review various issues involving the use and misuse of Social Security numbers (SSNs) and Individual Taxpayer Identification numbers (ITINs).

The scope of our hearing is quite broad. It is my hope that the testimony we receive today—from the Internal Revenue Service (IRS), the Social Security Administration (SSA), the IRS Taxpayer Advocate, the U.S. Department of Treasury, Social Security Inspector General, and the U.S. General Accounting Office—will help us better understand the challenges the IRS and the SSA face in administering our tax and Social Security benefit systems and their respective use of unique identifying numbers.

Late in 2003, the IRS instituted new procedures governing the issuance of ITINs. Under the new rules, applicants may apply for a new ITIN only concurrent with filing a return, rather than applying independently of filing.

I look forward to our discussion of IRS's new ITIN regulations. I hope we will discuss: (1) Any problems the IRS has identified in the use of ITINs; (2) The IRS's intent and goals that led to the changes in the application process; (3) The IRS's projected impact for the new rules on tax compliance; and (4) The IRS's outlook of how these changes will reduce the inappropriate use of ITINs as a personal identifier for non-tax purposes.

I want to thank Chairmen Houghton and Shaw for scheduling this joint hearing. As we proceed, I am confident that we will continue to work together to protect the confidentiality of taxpayer information which serves as the basis for our voluntary tax system.

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Chairman HOUGHTON. Thanks very much, Mr. Pomeroy. Now, I would like to introduce the Chairman, Subcommittee on Social Security, Mr. Clay Shaw.

Chairman SHAW. Thank you, Mr. Chairman. This morning, all of the Ways and Means Subcommittee Members on Social Security and the Subcommittee on Oversight join together in exploring the purpose and vulnerabilities involved with the issuance and use of SSNs and ITINs. The Federal Government created and required

the use of SSNs and Taxpayer Identification numbers to track earnings and improve tax compliance. However, their use has grown far beyond their intended purposes. The SSN has become our personal identifier, the key that unlocks the door to our personal and financial information. Criminals who get hold of this key can take advantage of weaknesses in our law, and proceed to carry out whatever bad acts their unscrupulous minds can conceive.

Since its creation in 1996, the ITINs are increasingly filling the gap as personal identifiers for individuals who do not qualify for SSNs. Though never intended as a personal identifier, its use beyond tax administration has proliferated during its short existence. In response to rapidly growing use and reliance on these numbers, the SSA and the IRS have both taken steps to strengthen the documentation requirements for issuing these numbers. In addition, the IRS has taken steps to warn about dangers of using the ITINs as proof of identification, including sending letters to State departments of motor vehicles warning against such practices. The SSA, the IRS, and the DHS all have responsibility with respect to the use of these numbers. With such overlapping responsibilities, effective coordination across Federal agencies is critical to protecting law-abiding individuals and our Nation by preventing the SSN and Tax Identification number's misuse committed by identity thieves, or even terrorists.

To prevent misuse of SSNs and the ITINs, we must achieve an appropriate balance between voluntary cooperation and our tax laws, which rely upon the confidence that personal information will remain private, and immigration and other law enforcement. Our witnesses today will help explore how best to achieve such balance. I look forward to hearing their testimony and thank them in advance for sharing with us their experience and their recommendations. Mr. Chairman, I now yield to the acting Ranking Member on the Democrat side, Mr. Becerra.

[The opening statement of Chairman Shaw follows:]

**Opening Statement of The Honorable E. Clay Shaw, Jr., Chairman, Subcommittee on Social Security, and a Representative in Congress from the State of Florida**

This morning, the Ways and Means Subcommittees on Social Security and Oversight join together in exploring the purpose and vulnerabilities involved with issuance and use of Social Security numbers (SSNs) and Individual Tax Identification numbers (ITINs).

The Federal Government created and required the use of SSNs and ITINs to track earnings and improve tax compliance. However, their use has grown far beyond their intended purposes.

The Social Security number has become our personal identifier, the key that unlocks the door to our personal and financial information. Criminals who get hold of this key can take advantage of weaknesses in our laws and procedures to carry out whatever bad acts their unscrupulous minds can conceive.

Since its creation in 1996, ITINs are increasingly filling the gap as a personal identifier for individuals who do not qualify for a SSN. Though never intended as a personal identifier, its use beyond tax administration has proliferated during its short existence.

In response to rapidly growing use and reliance on these numbers, the Social Security Administration and the Internal Revenue Service have both taken steps to strengthen the documentation requirements for issuing these numbers. In addition, the IRS has taken steps to warn about the dangers of using ITINs as proof of identity, including sending letters to State Departments of Motor Vehicles warning against such practices.

The Social Security Administration, the Internal Revenue Service, and the Department of Homeland Security all have responsibilities with respect to use of these numbers.

With such overlapping responsibilities, effective coordination across Federal agencies is critical to protecting law-abiding individuals and our nation by preventing SSN and ITIN misuse committed by identity thieves, or even terrorists.

To prevent misuse of SSNs and ITINs we must achieve an appropriate balance between voluntary cooperation with our tax laws—which relies upon confidence that personal information will remain private—and immigration and other law enforcement.

Our witnesses today will help us explore how best to achieve such balance. I look forward to hearing their testimony, and thank them in advance for sharing with us their experiences and their recommendations.

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Mr. BECERRA. Thank you, Chairman Shaw and Chairman Houghton, for this hearing. We are pleased that we have an opportunity to speak to and focus upon the U.S. Department of the Treasury and the IRS to help us with this particular problem. I want to thank in advance all those who will be testifying on behalf of Ranking Member Matsui, and all those Members on the Democratic side of the Subcommittee, as well.

The SSNs and the ITIN have become crucial numbers to Americans throughout this country for any number of reasons. Principally, we are here to try to do what we can to make sure that we are protecting the privacy rights of all Americans, and assuring that the balance that must exist between the various agencies that utilize these numbers is there. We have to make sure that we permit our agencies to fulfill their obligations under the law to make use of the information provided through the SSA and the U.S. Department of Treasury so that we can all make sure that the laws are abided by all Americans. I know that there is a delicate balance that must be considered here, and we are hoping to hear testimony that will shed some light on how best to continue to move forward, not only in terms of tax collection but certainly, of course, in making sure that the SSA can administer the laws to provide the benefits to those who have paid into the SSA. So, we are very pleased to have all the witnesses present and, Mr. Chairman, we look forward to the testimony.

[The opening statement of Mr. Becerra follows:]

**Opening Statement of The Honorable Xavier Becerra, a Representative in Congress from the State of California**

Chairman Houghton, Chairman Shaw, thank you for calling this hearing to review issues surrounding the use and misuse of taxpayer numbers, including the Social Security Number—the “SSN”—and the Individual Taxpayer Identification Number—the “ITIN”.

The ITIN is a useful and necessary tool in tax processing. Some concerns have been raised about Internal Revenue Service (IRS) procedures for issuing these numbers, and I understand that IRS has recently tightened up that process. I look forward to learning more about those changes and what more may need to be done.

The hearing will also look at how employers use the SSN to report the wages of their employees to SSA. It is vitally important that this information be correct, since it is used by SSA to determine whether a worker is eligible for benefits, and to calculate the proper amount.

The ITIN and the SSN are the key to efficient tax processing and Social Security benefit administration. At the same time, having a unique 9-digit personal identifier has become so important to our way of life that these numbers are also used in the crime of identity theft. We need to make sure that Congress and the Administration

are doing all they can to reduce the potential for these numbers to be used to commit identity fraud.

Finally, as we are all aware, a variety of agencies—IRS, the Social Security Administration, and potentially the Department of Homeland Security—have an interest in taxpayer identification numbers such as the SSN and the ITIN. Each agency, however, has a separate mission to pursue and different laws to enforce. And sometimes these missions can appear to be in conflict.

The question before us today is how to assure the most appropriate balance—that is, how to accomplish the priorities of each agency without unduly harming the ability of the others to fulfill their own missions. This requires thoughtful consideration of sometimes-competing priorities in order to assure the most appropriate balance.

Thank you again for calling this hearing. I look forward to the testimony of our distinguished witnesses.

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Chairman HOUGHTON. Thanks very much. Does any other Member wish to make an opening statement? I think we will go right into our opening statements of the first panel, the Honorable Mark Everson, the Commissioner of the IRS, and James Lockhart, Deputy Commissioner of the SSA. We probably have about 7 minutes now, if you want to rush through your statements, that would be great. If not, we will take them as they come. We are going to have to go for a vote here in about 7 or 8 minutes. Thank you very much. Mr. Everson, it is great to have you here.

**STATEMENT OF THE HONORABLE MARK W. EVERSON,  
COMMISSIONER, INTERNAL REVENUE SERVICE**

Mr. EVERSON. Thank you, Chairman Houghton, Chairman Shaw, Ranking Member Becerra, Members of the Subcommittees. I am pleased to be here to testify on the IRS's use of ITINs, and ITIN–Social Security mismatches. I have established a working equation at the IRS for my tenure: Service plus enforcement equals compliance. This means that the IRS must continue to build on the service improvements to taxpayers it has achieved since the RRA 1998. Just as importantly, the IRS must demonstrate an enforcement presence that assures the honest taxpayer that he or she is not being foolish by paying what he or she owes while others do not. The IRS must carry out its enforcement mission fairly and based on an underlying foundation of respect for taxpayer rights. The IRS utilizes ITINs to help it track the tax identity, tax history, and the compliance of individuals who do not have SSNs. The ITINs are useful to the Service because each number is unique and permanent, allowing the Service to track the ITIN holder's tax record, and administer the tax laws with respect to the holder.

The ITINs were never intended by the IRS to be used outside our tax system. They were created solely for purposes of administering our Federal tax laws. Unfortunately, ITINs can be and are used for non-tax purposes. The most visible of these uses is their acceptance in some States as proof of identity for a driver's license. While we estimate that a relatively small proportion of ITINs have been issued and never used for tax administration purposes, it is about one-quarter, the IRS made changes to its administration of ITINs this past December in order to tighten up the process and improve tax administration. Foremost among these is a requirement put in place for the current filing season that all ITIN applicants demonstrate a tax need for their ITIN. In the case of immigrants work-

ing in the United States, this means filing a tax return with their ITIN application.

There is no question that the implications of ITIN mismatches and ITIN misuse with respect to tax administration, the SSA, immigration, and national security each merit the Congress's scrutiny and consideration. I am personally quite aware of the issues associated with immigration, both legal and illegal, having served as the Deputy Commissioner of the then Immigration and Naturalization Service close to two decades ago. I might add that my three children are all immigrants, and with me today is our daughter Amrong, and her daughter, my granddaughter, Erica. Nevertheless, despite the multiplicity of these issues and their obvious importance, my responsibility as Commissioner of the IRS is to administer our tax laws and run our system of tax administration. My comments are thus directed to the implications of ITINs, and their misuse on our system of tax administration.

First, there are undoubtedly points of conflict and points of tension between our tax laws and our immigration laws. What may be beneficial from the perspective of immigration law or policy, may not be beneficial from the perspective of tax law and tax administration. Second, our tax laws make no distinction, either in the tax payment and reporting obligations of taxpayers or the tax collection and tax administration obligations of the IRS, between immigrants who are legally employed in this country, and those who are not. The Service must necessarily continue to fulfill its obligations to administer the tax laws to taxpayers who are not legally employed in our country, but who owe taxes because they, in fact, earned income here. Third, the Service must, and will continue to solicit the participation of such taxpayers in our system, as it does with other taxpayer groups. The IRS desires to facilitate these individuals' entry and continuing participation in our tax system, and to lessening impediments to their participation. Fourth, the Service continues to be bound and guided in its sharing of taxpayer information by the provisions of Internal Revenue Code section 6103. The provisions of section 6103 protect the confidentiality of taxpayer information, and broadly restrict the sharing of taxpayer information by the IRS with employers or with other government agencies, except under narrow circumstances. I would urge Congress to carefully balance the competing public interest at stake before deciding to make any changes to this provision of the tax law. Again, I appreciate the opportunity to testify before you on these important questions, and I look forward to taking your questions.

Chairman HOUGHTON. Thank very much, Mr. Commissioner.

[The prepared statement of Mr. Everson follows:]

**Statement of The Honorable Mark W. Everson, Commissioner, Internal Revenue Service**

**Introduction**

Chairman Houghton, Chairman Shaw, Ranking Member Pomeroy, Ranking Member Matsui, and honorable Members of the respective subcommittees, thank you for the opportunity to appear before you today concerning the Internal Revenue Service's use of Individual Taxpayer Identification Numbers and Social Security Number mismatches.

### **Individual Taxpayer Identification Numbers**

First, I want to discuss the challenges the IRS has faced in trying to foster voluntary compliance among non-resident and resident aliens with a United States income tax obligation. The ITIN program has been successful in bringing millions of these taxpayers, ineligible for Social Security Numbers, into the tax system. However, we are concerned that the ITIN has become an acceptable form of identification similar to the Social Security Number.

Let me begin by providing some background information on ITINs. An ITIN is a unique identifying number assigned by the Internal Revenue Service to an individual who is required to pay tax to the United States, or who has a reporting requirement to the IRS, but who is ineligible to receive a Social Security Number (SSN) issued by the Social Security Administration (SSA). The Service issues ITINs solely for purposes of tax administration; the appearance of the ITIN is similar to that of an SSN, but all ITINs begin with the number "9" and show a fourth digit as either a "7" or an "8", *e.g.*, 9xx-7x-xxxx. Since the inception of the ITIN program, the Service has issued more than 7,300,000 ITINs.

The Internal Revenue Service began issuing ITINs in July 1996. By law, all taxpayers must have an identifying number (a Taxpayer Identifying Number) for themselves, spouses, and dependents required to be listed on any return, statement, or other document that they must file under the Internal Revenue Code. Any taxpayer eligible for an SSN must provide an SSN as this identifying number, however not all taxpayers who have a U.S. tax or reporting obligation qualify for an SSN.

The Code also requires that any person with U.S.-source income equal to, or in excess of, the exemption amount pay tax on that income to the Federal Government. Some individuals falling into this category are ineligible for an SSN, such as foreign investors and persons working in the United States without authorization. Furthermore, while the Code differentiates between resident and non-resident aliens, it offers no distinction based upon whether a resident alien is "legally" present in the United States. Thus, some individuals who must pay tax to the United States require an alternate to the SSN for use as an identifying number on returns, statements, and other documents related to that obligation.

The use of the ITIN provides benefits to tax administration accruing both to taxpayers and to the Service. Prior to the ITIN program, returns filed by taxpayers without SSNs were assigned a temporary identification number called an IRSN. Each IRSN generally was valid only for the tax year in which it was assigned. The random assignment and short life of the IRSN complicated attempts to track taxpayers and documents related to them from one tax year to the next. Use of the ITIN remedies both of these difficult aspects of IRSNs. The Service assigns ITINs from a single center and a single database, thus each is a unique identifier in the tax system. Moreover, the ITIN remains a valid number for tax administration beyond the year the Service assigns it. This allows taxpayers to use and reuse their ITIN when filing any return, statement, or other document with the Service.

The ITIN program has benefited tax administration but has not been without its drawbacks. Most significantly, the ITIN is a number issued by the IRS for tax administration purposes only, and all forms and guidance disseminated by the Service clearly state this. In August 2003, the IRS sent a letter to all states and the District of Columbia stating that ITINs are not valid identification outside the tax system. Despite our efforts to limit the use of the number to its tax administration purpose, a number of states currently accept it as an identifying number outside the tax system, and other states are considering proposals to do so as well. While the Service does not have the authority to prevent other agencies from using ITINs for non-tax purposes, we will continue to inform other agencies of the unsuitability of using ITINs outside of the tax system.

### **Record Program Enhancements**

In order to address these and other concerns, the Service on December 17, 2003, instituted changes to the ITIN application procedure and to the issuance of the numbers themselves. The actions we have taken reflect the results of an extended period of study during which we critically examined the ITIN program. However, we continue to monitor the program and have not precluded further alterations.

The ITIN application procedure has been improved to ensure that the ITIN assigned is used for its proper tax administration purpose. In most cases, an applicant is now required to file the ITIN application, Form W-7, attached to a completed tax return for which he or she needs the ITIN. Associating the issuance of the ITIN with the filing of a tax return ensures that the number is properly used for tax administration; an ITIN will no longer be issued solely based upon the statement that an applicant requires an ITIN in order to file a return, without proof that the individual in fact needs the number to do so.

Another enhancement to the application process concerns the documentation the Service will accept from an applicant in order to establish identity and foreign status. We have decreased the number of acceptable types of documents, which will allow the IRS to provide better, more consistent, and faster service to ITIN applicants. Because the number is intended for tax purposes only, we accept these documents at face value without validating their authenticity with issuing agencies or conducting applicant background investigations.

In response to concerns about confusion between ITIN cards and Social Security cards, we have put a further change into place. We no longer issue the ITIN on a card, as the Social Security Administration does when it assigns an SSN. Instead, we send letters to taxpayers that provide them their number. This will minimize or eliminate confusion between ITINs and SSNs that might arise based on similar appearances.

The application procedures will not change for certain individuals who are not required to attach a tax return to their ITIN applications. Such individuals include those who claim benefits under a tax treaty and those who have established an account with a financial institution. These individuals may file an application at any time throughout the year, provided that the necessary documentation supporting the tax need is supplied.

We believe that these steps will not pose an undue burden on those who legitimately require an ITIN in order to comply with their tax obligations, while at the same time strengthening controls over issuance to help ensure that the ITIN is used for its intended tax administration purpose. Although we announced the enhancements to the ITIN application procedures in December 2003, taxpayers required to file a 2003 return with an application could not apply until after the beginning of the filing season.

#### **Considerations**

As noted above, the Service implemented changes to the ITIN program on December 17, 2003, following extensive evaluation and analysis of our experience with the use of ITINs as identifying numbers. The conclusions we have made, as embodied in the program enhancements described above, represent the actions we are able to take in light of the Service's charge to administer and enforce the revenue laws of the United States. The Service has no legal authority with respect to the enforcement of immigration and social security administration laws.

Many considerations informed our determination to pursue these changes.

Upon review of the number of ITINs that appear on tax returns, as either a primary or secondary number, or for identification of a dependent, we have concluded that a substantial majority of ITIN holders is compliant with Federal tax laws. This is reflected both in the number of ITINs used in tax filings and in the repetition and frequency of tax filings by ITIN holders.

Notwithstanding that many ITIN holders may not be authorized to work in the United States, we are broadly restricted under Section 6103 of the Code from sharing taxpayer information with third parties, including other government agencies, except in very limited circumstances. This taxpayer information includes the possibility that the applicant is not working legally in the United States or is using an SSN that does not belong to him or her. As noted above, though, we have no legal authority with respect to the enforcement of immigration and social security administration laws.

We must also weigh the potential benefits of any changes to the ITIN program against the cost of those changes to the tax system, including both direct economic costs and the indirect costs that arise from discouraging participation in the tax system. As an example, the Service believes at this time that any sharing of confidential taxpayer information, directly or indirectly, with immigration authorities would have a chilling effect on efforts to bring ITIN holders, and potential ITIN holders, into the U.S. tax system. Such an initiative would deprive the Federal Government of tax revenue by discouraging illegal workers in the U.S. from participating in the tax system, when the Code requires them to pay tax on their U.S. earnings.

Finally, we believe that a number of the ITINs that have been issued have subsequently not been used for tax reporting and payment. It is widely believed that some ITINs are procured for the purpose of creating an identity other than for tax purposes, such as for the procurement of a driver's license. We are fully sensitive to the possible dangers that can arise from the misuse of ITINs for the purpose of creating an identity, including the possible threat to national security. Regardless of undesirable behaviors actually or potentially associated with ITINs, the Service remains legally responsible for enforcement of the nation's Federal tax laws with respect to ITIN holders, including the responsibility to assess and impose tax on ITIN holders irrespective of the circumstances of their employment or the possibility



that ITIN applicants may be solely or collaterally seeking the procurement of an ITIN to establish an identity for non-tax purposes.

#### **Conclusion on ITNs**

The inherent challenges posed by tax laws, immigration statutes, and the social security law, and their interaction and application to ITIN holders illegally employed in the United States, require a studied approach. We believe that, after such a studied approach, we have acted consistent with our role as the nation's tax administrator. As noted above, though, we understand that we will need to continue to evaluate on an ongoing basis our response to the challenges posed by ITINs.

#### **SOCIAL SECURITY NUMBER MATCHING**

Let me now turn to Social Security number matching. The IRS agrees with the importance of accurate W-2 form and Social Security number reporting. We are committed to improving the accuracy of SSN reporting and have worked with the Social Security Administration to explore options and initiatives that might improve accuracy.

I would like to discuss the matching of Social Security numbers submitted to employers by employees. As you know, a portion of the numbers does not match Social Security Administration records. In the case of a mismatch, the SSA cannot give the worker credit for his or her earnings. In addition, employers can be assessed penalties by the IRS for not providing accurate numbers.

#### **Obligation of Employers Administering Social Security Numbers—Due Diligence is Required**

Let me briefly explain the responsibilities of an employer in verifying an employee's Social Security number. Employers are required to exercise "due diligence" in collecting the numbers. The employer has an obligation to obtain information from an employee on Form W-4, Employee's Withholding Allowance Certificate. The employer may rely in good faith on the number provided and use it in filling out the employer's Form W-2, Wage and Tax Statement.

In addition to securing a signed form W-4 from a new employee, employers can, but are not required to, ask for proof of the SSN, remind employees to report name changes due to marriage or divorce to the SSA and payroll department, and validate the SSN using the SSA Employee Verification Service prior to issuing Forms W-2. (Although employers may ask the employee to show his/her SSN card, employees are not required to show the card if it is not available.)

Each year, after an employer submits the Form W-3, Transmittal of Wage and Tax Statements, and the Forms W-2 to SSA, SSA will validate the SSNs. If there are mismatches (which could be marital name changes or typographical errors), and certain thresholds are met, SSA notifies the employer and requests the employer to correct the SSN and amend their Form W-3 and Forms W-2, as appropriate.

If the IRS subsequently notifies the employer of a mismatch and proposes a penalty for inaccuracies, any employer who has retained the Form W-4 in its records will be able to document an initial solicitation of an SSN and thus that they acted in a responsible manner. For purposes of establishing reasonable cause in connection with the Form W-2 penalty provisions in the tax code and applicable regulations, it is the solicitation of the employee's Social Security number that is important, not the response. An employer who establishes that it made the proper solicitations will meet the reasonable cause requirements regardless of whether the employee returned a corrected Form W-4.

If the IRS notifies an employer that an SSN is incorrect and if the employer's records contain the incorrect SSN, the employer is required under the regulations to make an annual solicitation for the correct SSN. The solicitation for the correct SSN must be made by December 31 of the year in which the penalty notice was received, and may be made by mail, telephone or in person.

A second annual solicitation is required if the employer receives an IRS notice of an incorrect SSN for the employee in any subsequent year. The employer is required by the regulations to make only two annual solicitations. If the employer receives an IRS notice of an incorrect SSN after having made two annual solicitations and reporting the number provided by the employee, the employer would not be required to make further solicitations. The employer's initial and two annual solicitations will demonstrate that the employer has acted in a responsible manner before and after the failure and will establish reasonable cause for the waiver of a penalty.

#### **Obligation of IRS and SSN in Ensuring Accuracy of Information on Form W-2**

The Internal Revenue Service and the Social Security Administration (SSA) each have roles in using and ensuring the accuracy of information provided on Forms W-

2. SSA is required by law to maintain records of wages employers pay to employees. But SSA is given no authority to enforce the requirement of reporting correctly.

As for the IRS role, Form W-2 is subject to Internal Revenue Code (IRC) Section 6721 information reporting penalties. The IRS may assess employers a \$50 penalty for each invalid SSN on the Form W-2, up to a maximum \$250,000. It is important to realize that employers with "mismatch" problems are, for the most part, trying to comply with the intent of the tax laws by reporting the wages paid to their workers. An ideal enforcement program would ensure compliance with both tax laws and immigration laws. However, the impact of significantly raising "due diligence" requirements could have a negative impact on the participation of employers and employees in the tax system.

#### **Compliance Checks on Employers With Large Number of Mismatches**

To assess appropriate steps the IRS might take to improve SSN reporting accuracy, we have undertaken a number of initiatives.

We have worked with the SSA to determine the best approach to the SSN mismatch problem. For example, the IRS secured a list of the employers with the highest volume and/or highest percentage of mismatched W-2s. Many of America's largest employers are on the list of those with high numbers of W-2 mismatches yet their accuracy percentage rate is very high. The 50 largest companies in the United States have an average mismatch rate of only 1.5 percent.

We also examined a list of the employers with the highest mismatch error rates. These employers on this list were much smaller than the companies with high accuracy rates. The businesses generally issued less than 1,000 Forms W-2 but had error rates of 93 percent and above.

IRS conducted compliance checks on 78 employers on these two lists. Despite the appearance of a high number of errors, we found that the employers acted with due diligence required by the law.

- The 50 large businesses on whom we conducted compliance checks all had programs and processes for securing the Forms W-4 and using the information in preparing Forms W-2. Also, they had in place a process for re-soliciting the required information upon receipt of a mismatch letter. No penalty potential was identified.
- The compliance checks on 28 of the smaller businesses identified that these employers frequently use day labor and have high turnover in employees. However, they all knew to obtain Forms W-4 and to use the information in the preparation of the Form W-2. To date no penalty potential has been identified. In addition, they had processes or procedures in place to resolicit the SSN information when a mismatch notice was received and the employee was still employed.

#### **Consideration Concerning Changes to Current Penalty Regime**

The current penalty regime is not an effective means to address the problem of SSN mismatches. We would, of course, work to execute any changes Congress determines to bring into effect. We would point out, however, that any potential changes would need to address two issues in particular. First, any significant change to the current regime could only be implemented following amendment to section 6103 of the Code to allow for further information sharing, either interagency or with employers, beyond that which is currently permitted by law.

Second, any requirement to increase our compliance activities in this area, including assessing penalties, would involve an increased demand on our resources. These activities would require a significant rededication of IRS resources to increase compliance in an area that is already, in general, compliant. Absent added funding for such activities, this would likely come at the expense of other compliance activities and with the attendant risk of a decrease in tax revenue from those other compliance activities.

Thank you for inviting me to testify this morning. I would be happy to take any questions you might have.

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Chairman HOUGHTON. Mr. Lockhart, you have got about 5 minutes here. Can you do it?

Mr. LOCKHART. Yes, sir.

Chairman HOUGHTON. All right. Let's go.

**STATEMENT OF JAMES B. LOCKHART, III, DEPUTY  
COMMISSIONER, SOCIAL SECURITY ADMINISTRATION**

Mr. LOCKHART. Mr. Chairman and Members of the Committee, I welcome this opportunity to discuss the strong steps Social Security has taken on two of our key strategic objectives, strengthening the integrity of the SSN, and increasing the accuracy of earnings records. As you know, the SSN was created in 1936 to assure that Social Security kept accurate records to ensure accurate benefit payments. However, the simplicity and efficiency of using a unique number encouraged widespread use of the SSN. It has become the identifying number in many records systems. It is also prized by criminals who are intent on stealing another person's identity.

The terrorist attacks of 9/11 reinforced the need for a concerted long-term effort to address SSN misuse and identity theft. We formed a high-level team to develop recommendations to strengthen the process of issuing SSNs, which we call enumeration. Some of the recommendations implemented include verifying all immigration documents with the DHS; verifying all U.S. birth records for applicants age 1 and older; establishing enumeration at entry; piloting a card center; and limiting non-work numbers. Non-work numbers are issued to individuals that need a number for Federal benefits or State public assistance programs and, until last October, for drivers' licenses. We only issued 20,000 non-work numbers last year, which is down 96 percent from the peak in the mid-nineties. Still, about 570,000 non-work numbers had earnings reported in 2002.

Now, turning to the reporting of wages, this is a core business process for our agency. Each year, we process over 240 million W-2s from about 6.5 million employers representing about 145 million workers. I am pleased to report during the last 5 years that we have automated this process significantly, and 53 percent of W-2s are now submitted electronically, up from less than 10 percent in 1999. About 10 percent of the W-2s we receive have invalid names and SSN combinations. In our processing, we use computer systems, which reduces those mismatches by about 60 percent, and we do further processing that can reduce it further. The mismatches are put together in what we call the suspense file. That file has about 244 million W-2s in it, which represent about 1 percent of the total reported earnings since the beginning of the system. Less than two-tenths of 1 percent of that file is represented by ITINs.

Social Security has taken a number of steps to reduce the suspense file's growth. For example, employers with a significant number of mismatches are sent "no match" letters, 126,000 last year. We also notify employers and employees if we can't process their W-2s. Last year, we sent 9.5 million letters to employers and employees. Also, beginning last year, we implemented new technologies using earnings records patterns to match earnings. We estimate, out of this process, to remove at least 30 million W-2s from the suspense file. The important thing is to help prevent such mismatches from occurring in the first place. Social Security is helping employers make sure that they have the information, and can match names and SSNs. We provide employers with several options to verify names and numbers. They can call a toll-free

number. They can submit paper listings, walk into a field office, or send reports via magnetic media.

In addition, we are piloting a more efficient Internet option known as the SSN Verification System. To date, we have processed over 4.5 million verifications for the 85 participating employers. I would like to conclude by emphasizing that we are committed to strengthening the integrity of the enumeration process. Recent improvements have made it more difficult for individuals to obtain SSNs through fraudulent means. We are also committed to improving the accuracy of our earnings records, and working with both the DHS and the IRS to do so. I want to thank you, Mr. Chairman and Members of the Committee, and we look forward to working with you on this.

Chairman HOUGHTON. Thank you, Mr. Lockhart and thank you, Mr. Everson.

[The prepared statement of Mr. Lockhart follows:]

**Statement of The Honorable James B. Lockhart, III, Deputy Commissioner,  
Social Security Administration**

Thank you for asking me to be here today to discuss the steps SSA has taken to improve and strengthen our wage reporting and enumeration processes, as well as our efforts to reduce the size of the suspense file. We have taken positive action in all these areas. Enumeration, which is the issuance of Social Security numbers (SSNs), and wage reporting are core Agency functions. Commissioner Barnhart's Five Year Strategic Plan has nine strategic objectives, of which two are: "Strengthen the integrity of the Social Security number" and "Increase the accuracy of the earnings record."

**History of the Social Security Number and Card**

First, I would like to describe the history and the original purpose of the SSN and the Social Security card. Following the enactment of the Social Security Act in 1935, the SSN was developed to keep track of the earnings of people who worked in jobs covered under the new Social Security program. The rules regarding the assignment of SSNs to workers were first published in Treasury regulations in 1936.

The Social Security card reflects the number that has been assigned to each individual who applies for an SSN. The card, when shown to an employer, assists the employer in assuring that earnings are reported properly. Public information documents issued early in the administration of the program advised workers to share their SSNs only with their employers. Initially, the only purpose of the SSN was to assure that SSA kept accurate records of earnings under Social Security so that we could pay benefits based on those earnings.

**Use of the SSN Expands Over Time**

Although the purpose of the SSN was narrowly drawn from the outset of the program, use of the SSN as a convenient means of identifying people in large systems of records has increased over the years. In 1943, Executive Order 9397 required Federal agencies to use the SSN in any new record systems for the purpose of identifying individuals. This use proved to be an early reflection of what has become an enduring trend to expand the use of the SSN. The simplicity and efficiency of using a unique number that most people already possessed encouraged widespread use of the SSN by both government agencies and private enterprises, especially as they adapted their record-keeping and business systems to automated data processing.

In 1961, the Federal Civil Service Commission established a numerical identification system for all Federal employees using the SSN as the identification number. The next year, the Internal Revenue Service (IRS) decided to begin using the SSN as its taxpayer identification number (TIN) for individuals. In 1967, the Defense Department adopted the SSN as the service number for military personnel. At the same time, use of the SSN for computer and other accounting systems spread throughout State and local governments, to banks, credit bureaus, hospitals, educational institutions and other parts of the private sector. During this time, there were no legislative restrictions on the use of the SSN.

### **Statutory Provision Relating to the Public Sector**

The first explicit statutory authority to issue SSNs was not enacted until 1972, when Congress required that SSA assign SSNs to all noncitizens authorized to work in this country and take affirmative steps to assign SSNs to children and anyone receiving or applying for a federally funded benefit. Subsequent Congresses have enacted legislation which requires an SSN in order to receive Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Medicaid, and food stamps. Additional legislation authorized States to use the SSN in the administration of tax, general public assistance, driver's license, or motor vehicle registration laws within its jurisdiction.

The Privacy Act was enacted in 1974 partly in response to concern about the widespread use of the SSN. It provided that, except when required by Federal statute or regulation adopted prior to January 1975, no Federal, State, or government agency could withhold benefits from a person simply because the person refused to furnish his or her SSN.

In the 1980s and 1990s, new legislation provided for additional uses of the SSN, including employment eligibility verification, military draft registration, and for operators of stores that redeem food stamps. Legislation was also enacted that required taxpayers to provide the SSN for dependents.

A major expansion of SSN usage was provided in welfare reform legislation enacted in 1996. Under welfare reform, to improve child support enforcement, the SSN was required to be recorded in a broad array of records, including applications for professional licenses, marriage licenses, divorce decrees, support orders, and paternity determinations.

### **Use of the SSN by the Private Sector**

Currently, there are no restrictions in Federal law on the use of the SSN by the private sector. Businesses may ask for a customer's SSN for such things as renting a video, applying for credit cards, obtaining medical services, and applying for public utilities. Customers may refuse to provide the number, however, the business may, in turn, decline to furnish the product or service. Continuing advances in computer technology, the ready availability of computerized data, and rapidly increasing use of the internet have encouraged the growth of information brokers who amass and sell large volumes of personal information, including SSNs collected by businesses. When possible, information brokers store and retrieve information about an individual by that individual's SSN because it is more likely than any other identifier to maintain unique records for each specific individual.

### **Contemporary Challenges Regarding the SSN**

As you can see, use of the SSN is widespread in our society. This usage is the product of numerous decisions made over the years. The cumulative effect is to make the SSN an important element in establishing and maintaining an individual's identity in various record systems, and the ability of individuals to function in our society and economy. As a result, the SSN is prized by criminals who are intent on stealing another person's identity, or creating a false identity.

Accomplished identity thieves use a variety of methods to gain access to personal data. We at the Social Security Administration want to do whatever we can to help prevent identity theft and assist in the apprehension and conviction of those who engage in this crime.

### **Social Security Cards Issuance**

The vast majority of new cards are issued to U.S. citizens or to non-citizens who have been permanently authorized to work in the U.S. These cards show only the name and SSN of the individual. In 2003 we issued approximately 5.4 million new cards. Of these 4.2 million were issued to U.S. citizens, nearly 90 percent of these were issued through our Enumeration at Birth process, which successfully expedites SSN issuance for newborns and facilitates their parents' tax return filings. In addition we issued almost 400,000 new cards to non citizens who were lawfully admitted for permanent residence.

Non-citizens who are not authorized to work, or who are only temporarily authorized to work will receive a card bearing one of two legends. We issued approximately 800,000 of these cards.

We have been issuing cards with the legend "Valid for Work Only With INS Authorization" since 1992 in cases where non-citizens come to the U.S. with temporary authorization to work. In 2003 about 771,000 of these cards were issued.

We started issuing cards with the legend "Not Valid for Employment" in 1982 to inform employers that the individual is not eligible for work. In 2003 we issued less

than 20,000 of these cards. Due to changes we have made, we have had a significant decline in the number of “non-work” SSNs we issue, from a peak level of over half a million in the mid-90s.

### **Strengthening the Enumeration Process**

In connection with this effort, I'd like to discuss what SSA has done to strengthen the processes associated with assigning Social Security Numbers. The terrorist attacks of September 11, 2001 reinforced the need for a concerted long-term effort to address SSN misuse and identity theft. SSA formed a high-level response team meeting regularly to develop recommendations on enumeration policy and procedure. Implementation of many of the team's recommendations has strengthened our capability of preventing those with criminal intent from obtaining and using SSNs and SSN cards.

For example, effective October 27, 2003, SSA does not assign an SSN to noncitizens who are not authorized to work when the only reason for needing a number is to comply with a state statute requiring an SSN for the issuance of a driver's license.

SSA changed procedures in February 2002 for verifying a person's SSN so that additional private information on SSA's records (NUMIDENT) would not be included on the document that verifies the SSN.

Beginning June 1, 2002, SSA began verifying birth records with the issuing agency for all U.S. born SSN applicants age one or older. (Under former rules, we only verified birth records for applicants age 18 and older.)

SSA no longer assigns SSNs to non-citizens who are authorized to work without first verifying the authenticity of their immigration documents with United States Citizenship and Immigration Services (USCIS).

As of mid-December, 2001, new audit trails were put in place for SSN applications, making the quality checks used under SSA's SSN verification processes consistent and more robust.

Our online SSN verification system (SSNVS) pilot for employers has expanded from the original 9 employers to 85. This system holds great promise, but, we are proceeding carefully to ensure that the system is secure as well as user friendly.

We have been successful in establishing a process, administered jointly by SSA and the Department of State, which allows SSA to assign SSNs and issue SSN cards to non-citizens who choose to apply for an SSN as part of the process that allows them to enter the country as permanent residents. (Thus, this process is not available to students or tourists.) Under this process, known as Enumeration at Entry (EAE), the data required to assign an SSN, including verification of the individual's immigration and work authorization status, are provided to SSA by the Department of State (DOS) and the Department of Homeland Security, (DHS), (formerly INS). SSA electronically receives the information needed to enumerate the individual from the INS with no need for further document review and verification.

SSA has reserved a block of Social Security numbers specifically for assignment under the EAE process. Therefore, all non-citizens choosing to use this process to request their SSN receive a number from this special series. All US consular sites now have the software necessary to allow non-citizens applying for permanent residence in the U.S. to participate in EAE.

We also continue to look for other ways to make the enumeration process more efficient and secure. A pilot Social Security Card Center opened in Brooklyn, New York in November, 2002. The Center represents a joint effort of SSA, SSA's Office of the Inspector General and the Immigration and Naturalization Service (now USCIS). The collaboration of the parties is intended to strengthen SSN application procedures, ensuring that applications are processed with a high degree of integrity, efficiency and expertise.

As of February 2004, the Center has successfully served over 170,000 visitors. While we are waiting to see the final results from the review of the pilot, initial feedback has been extremely positive. After considering the final results, we hope to open at least one additional Card Center this year. We will move slowly and judiciously in deciding when and where to open it.

### **The Wage Reporting Process**

I would now like to discuss the process of reporting and crediting wages. SSA's role in the wage reporting process ensuring that all workers receive credit for the work on which they and their employers paid FICA taxes is one of SSA's core business processes, and it ensures that a worker and his or her family receive benefits that accurately reflect all of the worker's earnings.

Accurate earnings information is important because a worker's earnings record is the basis for computing retirement, survivors, and disability benefits. If a worker's earnings are not properly recorded, he or she may not qualify for benefits, or the benefit amount may be too low or too high.

Employers report wages to the Social Security Administration on Forms W-2. Each year, SSA processes about 240 million W-2s from about 6.5 million employers, that are sent to the Social Security Administration (SSA) either on electronic media or on paper. These W-2s represent the wages earned by about 145 million workers annually. While some employers continue to send paper reports, we encourage electronic filing. We work with the employer community to educate them on the advantages of this method, and its use continues to grow as technology improves. I am pleased to report in 2003 over 53% of W-2s were filed electronically up from less than 10% in 1999.

When a person files for benefits, the SSA employee reviews the earnings record with the worker and assists the worker to establish any earnings that are not shown or are not correctly posted. However, because it may be difficult to accurately recall past earnings or to obtain evidence of them, it is better to establish and maintain accurate records at the time the wages are paid.

As you know, SSA mails Social Security Statements to all workers over age 25 each year. Among other benefit information on the Statement, it shows the worker's annual earnings for past years. This gives the worker the opportunity to verify the earnings on SSA's records and to determine if any earnings are missing. Corrections can be made on a more timely basis by reviewing the Statement, instead of waiting until the point that an actual claim is filed.

In addition to using earnings for Social Security benefit purposes, SSA sends the same data to the IRS, which has the responsibility of collecting the income taxes due.

The earnings suspense file is an electronic holding file for W-2s that cannot be matched to the earnings records of individual workers. This happens when the name and SSN on the W-2s do not match SSA's records. The suspense file is maintained so that if SSA later obtains the correct name and/or SSN for a worker, the wages can then be credited to that person's record. As I mentioned, the suspense file contains about 244 million W-2s (data through TY 2001—the most recent year for which complete data is available).

In order for wages to be credited to the correct worker, the worker's name and SSN on the W-2 must match the name and SSN recorded on the "Numident" file—the master record of SSNs issued. We receive 240 million W-2 reports annually. About 10 percent of the W-2s received by SSA have invalid name/SSN combinations when they first come to us. In our initial processing, the computer system manipulates the name and SSN to try to find a match on our records. A number of separate processes address discrepancies between the name reported on the W-2 and the name on SSA records. For example, compound surnames sometimes cause a "no match". Other processes assume that the reported name is correct but that some mistake has been made with the SSN. The reported SSN is adjusted for a variety of prescribed common mistakes, such as transposing digits, in an effort to obtain a match. For TY 2001, we were able to post 6 percent of all W-2s received to the correct SSN through these computer routines—i.e., 60 percent of the 10 percent of all W-2s received with invalid name/SSN combinations. The balance, 4 percent of W-2s received for TY 2001, remains in the suspense file. This represents approximately 9.6 million W-2s representing \$56.1 billion in wages and \$7.0 billion in social security payroll taxes.

Subsequent processing reduces this percentage further. W-2s are removed from the suspense file on an ongoing basis and reinstated to the correct worker's record. These reinstatements can occur for various reasons for example, because the worker raises a question about his or her earnings when they receive their Social Security Statement, or during the benefit application process, or as a result of internal processing where SSA can subsequently match the W-2 to the correct worker. As a result of this subsequent processing, over time, there is a decline in the percentage of W-2s for a given year or period of years that remain in the suspense file. For example, for tax years beginning in 1978, when SSA began processing W-2s, through TY 2001, about 2 percent of all W-2s remain in the suspense file.

#### **Individual Tax Identification Numbers**

Some W-2s received by SSA have an Individual Tax Identification Number (ITIN) in the SSN field on the form, instead of a valid SSN. An ITIN is a 9-digit number issued by IRS to non-citizens who need tax identification numbers for tax purposes and who otherwise do not meet the requirements for being assigned an SSN. When

employers show an ITIN on the W-2, this results in the W-2 being posted to the suspense file because an ITIN is not a valid SSN.

IRS began assigning ITINs effective July 1, 1996. Subject to a 1997 Memorandum of Understanding between SSA and IRS, IRS agreed that ITINs will be nine digits beginning with the number "9" and initially will have either "7" or "8" in the 4th position.

A one-time review of our records indicated that for the period 1996 (the first year ITINs were issued) through 2002, approximately 342,000 W-2s have been reported under ITINs and remain in the suspense file. This represents less than two-tenths of 1 percent of the W-2s in the suspense file since its beginning through the time of the review.

#### **Removing W-2 Items from the Suspense File**

SSA is committed to significantly reducing the suspense file's rate of growth as well as to reducing its current size. This commitment reflects SSA's concern that, when earnings are not posted to an individual's earnings record, the individual will not receive proper credit, a concern that I discussed earlier. As part of this effort, SSA employees carry out a number of activities to assure that W-2s are credited to the correct individuals' earnings record.

One activity that SSA has instituted is to notify employers with a significant number of mismatches of all name and SSN errors on the W-2s that they reported. SSA also requests corrected W-2s, so that employers will avoid the same mistakes in future years. These letters are often called employer "no-match" letters, and in 2003, SSA sent 126,250 of these letters to employers with substantial numbers of mismatched name/SSN combinations.

We also notify employees that we could not process their W-2s due to errors on the W-2 and ask them to work with us to resolve the problem. These notices are often referred to as employee "no-match" letters. In 2003, we sent 9.5 million such letters to employees, of which 1.9 million went to their employers because we did not have a good address for the employee.

Last year, for TY 2002, the letters were modified to make them easier to understand and to emphasize the cautionary language that an employer should not take adverse action against the employee. This version of the notice was used again for the most recent year.

For those who did not respond to the employee no-match letters, SSA compares the name and address with the name and address on the IRS' master file. If there is a match, the person's wages can be credited on the basis of the SSN reported to the IRS on the person's tax form.

On a cyclical basis, SSA runs an electronic operation to review all the W-2s in the suspense file in light of improvements that have been made to the electronic processes I mentioned before. This operation, known as "SWEEP," is run every year for the suspense file back to 1978 and every two years for the entire suspense file (back to 1937). While the SWEEP program is most successful in crediting earnings from recent years, it does identify earnings that can be associated with a correct SSN for all years. For the 2002 processing year, the SWEEP operation removed 468,000 W-2s from the suspense file and properly reinstated them to correct individual's records. This operation included reinstatements for all past years back to 1937.

Beginning in April 2003, SSA implemented a new process that will electronically find millions of additional matches of W-2s in the suspense file and post those W-2s to the earnings records of the correct individuals. While the previous processes to match the name and SSN used only the Numident, the new process also uses the worker's detailed earnings record (that includes employer information) and the master beneficiary record, for those who are receiving benefits, to identify the missing earnings with the correct worker. This new process also employs new techniques with earnings record patterns to match the earnings to the correct individual.

As a result of this new process, in FY 2003, 2.4 million W-2s were removed from the suspense file and posted to the correct earnings records. It is estimated that a total of 30 million W-2s will be removed from suspense and credited to the records of individual workers through these new efforts.

#### **Helping Individuals and Employers Find Missing Earnings**

As I have mentioned, an individual may contact us at any time in the event that earnings are missing from his or her earnings record or not correctly posted. SSA makes a concerted effort to fully resolve any discrepancy. We review the individual's record, item-by-item, including all earnings and employers, in order to assist the individual in identifying the earnings that are in question. We request that the indi-



vidual provide SSA with as much evidence of the earnings (Forms W-2, pay stubs, etc.) as may be available. With the individual's permission, we contact any employers and request that the employer check all records for possible evidence of earnings.

In addition, we check the suspense file both by the worker's SSN and by employer identification number in an attempt to locate the earnings in question. If SSA is satisfied that the earnings in the suspense file belong to the worker based on the evidence that has been provided by the worker, the worker's earnings record is credited with the earnings.

In addition to these processing activities, SSA assists employers to make sure that the name and SSN provided to them by new employees match the information on our records.

SSA has successfully provided SSN verification services to the employer community for many years. In the beginning, this was a manual process which was highly labor intensive. SSA's verification workloads have increased as the use of the number has expanded. Now, SSA provides SSN verification for employers through a special employer 800 number. In addition, SSA verifies SSNs for employers via the Employer Verification System (EVS). As of January 2004, approximately 13,500 employers have registered for EVS. In addition, in FY 2003 we responded to nearly 1.1 million telephone calls at our employer reporting service center.

EVS is a free, convenient way for employers to verify employee SSNs. EVS provides several options to employers depending on the number of SSNs to be verified. For up to five SSNs, employers can call SSA's toll-free number for employers—1-800-772-6270—weekdays from 7:00 a.m. to 7:00 p.m. Employers may also use this number to get answers to any questions they have about EVS, or to request assistance.

Employers also have the option to submit a paper listing to the local Social Security Office to verify up to 50 names and SSNs. In addition, they may use a simple registration process to verify requests of more than 50 names and SSNs or requests submitted on magnetic media (regardless of how many items are being verified). All these requests, whether made via phone, paper, or magnetic media, are handled through the EVS system. However, from an efficiency and accuracy standpoint we plan to encourage electronic verification via the internet, and hope to continue rolling out SSNVS, which is being piloted.

The Social Security Number Verification Service (SSNVS), is an internet option to verify the accuracy of employees' names and SSNs by matching the employee-provided information with SSA's records. To date, we have processed over 4.5 million verifications for the 85 employers who are participating in the pilot. SSNVS provides a quicker and more efficient alternative for employers to obtain verifications than some of the other methods I have described to verify information. Beginning in January 2004, we added death file information to the responses received by participating employers. We are considering modifications of other automated routines to include death file information. When we review the pilot results, we will be in the best position to determine what our next steps should be.

Because correct names and Social Security numbers (SSNs) on W-2 wage reports are the keys to successful processing of employer submitted annual wage reports, each of our regional offices have Employer Service Liaison Officers (ESLOs) who work with employers to prevent and overcome reporting problems. Employers can also visit SSA's website—[www.ssa.gov/employer](http://www.ssa.gov/employer)—for more information.

### **Report on Non-Work SSNs**

Section 414 of Public Law 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, requires SSA to report to Congress the number of SSNs assigned to non-citizens who are not authorized to work in the United States for whom we receive W-2s. We issued the most recent report for 2003. In it, we stated that SSA credited earnings to 571,193 SSNs which were assigned to non-citizens who did not have authority to work in the United States when they got their SSN.

SSA also sends an annual report to DHS about earnings reported to SSA on a social security number issued to a non-citizen not authorized to work in the U.S. The information includes the name and address of the non-citizen, the name and address of the person reporting the earnings, and the amount of earnings reported.

I need to point out, however, that since non-citizens are not required to report changes in their work authorization status to SSA, SSA does not routinely learn of changes in their authority to work in the U.S. Therefore, an earnings report under a nonwork SSN does not necessarily mean that unauthorized work was performed.

Given the steps we have taken to limit the assignment of non-work SSNs, we are confident that the problem of earnings being posted to non-work numbers will diminish.

#### **Cooperation with DHS and IRS**

We have formed an executive level steering committee, together with DHS, to oversee and direct cooperative activities. The first issues we will discuss will be 1) tightening the assignment of Social Security numbers to promote homeland security, and 2) identifying potential data sharing activities consistent with rules governing the use of SSA's data that would best assist each organization in carrying out its mission. The group has already met once and we believe it will be a successful and productive effort.

SSA also supports the Department of Homeland Security (DHS) in an ongoing joint initiative, known as the Basic Pilot. The pilot is designed to assist participating employers in confirming employment eligibility for newly hired employees. Participating employers use an automated DHS system to verify SSNs and alien registration numbers through verification checks of SSA and DHS databases. As of January 1, 2004, there were over 13,000 individual employer sites using the Basic Pilot. SSA receives over 45,000 Basic Pilot requests each month.

We have established an interagency effort with IRS to work on issues of mutual concern. This is a high level group that will work to resolve issues and cooperate on efforts that cross agency lines. We had our first meeting on March 5, and we anticipate this interagency coordination will be useful and productive for each agency.

#### **Conclusion**

I would like to conclude by emphasizing that we at the Social Security Administration are committed to strengthening the integrity of the processes that we use to assign SSNs. We believe the recent improvements we have implemented have made it more difficult for individuals to obtain SSNs from us through fraudulent means.

The difficult challenge we face is to balance SSA's commitment to assigning numbers quickly and accurately to individuals who qualify for them and need them to work, with the equally important need to maintain the integrity of the enumeration system to prevent SSN fraud and misuse.

We are also continuing to explore ways to improve the accuracy of our earnings report records and to limit the growth of the suspense file.

I want to thank the Chairmen and members of both subcommittees for inviting me here today and I look forward to working with you to continue to improve SSA's processes. I will be happy to answer any questions you might have.

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Chairman HOUGHTON. We are going to suspend the work of the Committee now for between 20 minutes and half an hour. We have one 15-minute vote, and have only about 3 minutes left. After that we have got two 5-minute votes. We will be right back as soon as we can. Thanks very much.

[Recess.]

Chairman HOUGHTON. Let us continue the hearing. What I would like to do is to start with questions from Mr. J.D. Hayworth.

Mr. HAYWORTH. Mr. Chairman, I thank you and Chairman Shaw of the Subcommittee on Social Security for offering us this chance to visit today in this joint hearing with our friends from IRS and the SSA. Commissioner Everson, Deputy Commissioner Lockhart, thank you gentlemen for your attendance and your testimony. Commissioner Everson, if an illegal immigrant is working under a false SSN, when that worker goes to pay his taxes using the ITIN, how does the IRS verify that the W-2 he submits with his taxes is really his? In other words, what keeps him from using someone else's W-2 to save on his tax liability?

Mr. EVERSON. Congressman, what happens is that we match through computer data files. We enter all the information, and we

will see that if you or I, for instance, was using Jim's SSN. All of a sudden down the road, sometimes what happens is some of these people will be filing very early in the filing season because they are a sole wage earner with one job, they will file their return over time, and we actually receive Jim's statement from his employer, we find that there are two employees, one maybe in California and one in Virginia, and that are both earning income with the same number. Many times we can see what the problem is and who has got the right income, but this does pollute the recordkeeping from our point of view.

Mr. HAYWORTH. Thank you, sir. Deputy Commissioner Lockhart, does the SSA have the statistics of how many workers are using non-matching SSNs, and how many of those are estimated to be false, not misprinted, but false numbers?

Mr. LOCKHART. We certainly have numbers in our suspense file about non-matches. Every year, there are about 9 million non-matches of names and SSNs. A lot of those can be just because people change their names because they transposed their middle name, or they used the wrong digit. We do not have data to say how many of them are made up of SSNs.

Mr. HAYWORTH. Presumably, you could take a look at that data and give us those numbers, could you not?

Mr. LOCKHART. Well, it would take a significant amount of effort, an investigatory effort, to try to figure out that. Certainly what we do, and I think it is the most important thing, is we try to do as much matching as we can. We give the employers all the information that they need to do the matching before they send the W-2s in, and we also work with them on a regular basis.

Mr. HAYWORTH. I understand the man hours involved, but as a matter of public policy to understand just the extent of the challenge we are facing, it might be good to quantify that, and I'd appreciate your answer, and would offer that suggestion in the spirit of sound public policy. Commissioner Everson, does the IRS have the authority to make employers follow more extensive checking of current SSNs beyond the current, quote, "due diligence," that is required of them?

Mr. EVERSON. No, sir, we really do not. This gets to the issue of penalties and the assessment of penalties. We will send notices to employers when there are these mismatches that we just spoke of. If we assess a penalty, and the employer can demonstrate that they proceeded in good faith, then the penalty will not be sustained. The only answer here really is to require an employer to check against our database or against the Social Security database at the time of the hiring. That is not what the I-9 process is now. That is not how it works. To do that would require a change in the statute because of these confidentiality provisions. I would just add, I am concerned that if we take that step, the real issue here is trying to get people into the tax system and pay their taxes. Many of these people, the immigrants for example, are coming from countries which may not have the same respect for paying taxes, or they have U.S. citizen children who have the ITINs also. We want to get them into the system, so that would be a big change.

Mr. HAYWORTH. Commissioner Everson, let me just make sure I understand. Under 1990 legislation, the IRS was given the au-

thority to fine employers \$50 per non-matching SSN, up to \$250,000 in a year. To your knowledge, were any of those fines levied last year?

Mr. EVERSON. Some fines have been levied, it is my understanding, but they have not been sustained when appealed if the employer shows reasonable cause. What that means is they say, look, I went through the I-9 process, I went through the W-4 process, and this is what was represented to me by the employee. That gets them off the hook, if you will.

Mr. HAYWORTH. I thank you very much. Mr. Chairman, I appreciate your indulgence. Let me again thank the witnesses, and let me just inform my colleagues, my friend from North Dakota spoke of a conundrum and we certainly have one here now in the challenge of making sure that folks are following the law, paying their taxes, not abusing the system, and we may have to take a look at some legislation. Again, thanks to the witnesses, and thank you, Mr. Chairman.

Chairman HOUGHTON. Thanks very much, Mr. Hayworth.

Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. Again, thank you for your testimony. Let me ask a question, Commissioner Everson, about the changes that you made to the ITIN. My understanding is that, and I think you mentioned that you can only receive an ITIN at the time of filing your tax return, that you can no longer get that ITIN in advance, which used to be the case.

Mr. EVERSON. Well, some people clean up their records. They haven't filed returns. If you are filing multiple years during the course of the year and you are catching up, getting into the system, if you will, of course we would accept an application at that time. When we studied the data on this, we found that something like 70 or 80 percent of the ITINs that were processed that ultimately were used for legitimate purposes were actually applied for during the filing season anyway because people wanted to get the ITIN so they could get into the system and get their refund. Most people get refunds.

Mr. BECERRA. I see. You are now issuing a letter, not a wallet-size card, is that the case?

Mr. EVERSON. That is correct. We wanted to stop this confusion between the card that Social Security issues and what we are doing. As was indicated, we have had outreach to States that are using the ITIN to get drivers' licenses. We think that is wrong, and we want to do everything we can to try and get the controls in there so that it at least doesn't look the same.

Mr. BECERRA. My understanding is that you are now accepting fewer types of identification for the purpose of applying for the ITIN?

Mr. EVERSON. That is correct. There were something about 40-odd pieces of identification that could contribute to a favorable reading on an application. We have limited it down to about a dozen. I think it is actually thirteen.

Mr. BECERRA. Are the dozen or so that you have got it down to in terms of identification, or forms of identification that can help you get the ITIN, are we looking at the types of identification or documents of identification that we would typically think of? There

are 12. Among those twelve, give us a sense of what kind of documents.

Mr. EVERSON. They would tend to be official documents from the country of origin, like a passport would be a real indicator, or a birth certificate, that sort of paperwork. I saw one birth certificate recently when I was inspecting this process in Philadelphia, and it had a child's drawing on the back of it. It was pretty authentic, it looked like to me.

[Laughter.]

Mr. BECERRA. Now, I understand that the GAO may testify that they think you still need to do a few more things when it comes to tightening up the process for the ITIN. I don't know if you have had a chance to review the GAO's testimony on that.

Mr. EVERSON. I think we made some pretty significant steps here. We are going to address those on an ongoing basis. I think, as indicated in the testimony, we are working with Social Security. The GAO's input is always important to us. So, I think we have moved this issue considerably, but that doesn't mean we are done. We are going to tweak it. We are gaining experience now with the new process. We have to do a lot of outreach. We had a little bit of a bumpy start, where some people—you know how word passes through these communities about what new requirements are. It passes quickly, but it is not in a uniform process. We are already seeing changes and better documentation coming in, from what we are seeing now. We are going to continue to work with this.

Mr. BECERRA. One final question for the two of you in this case. My understanding is that—well, I think everybody knows that you all are processing millions of documents and you are providing valuable information—some wouldn't say the IRS is providing valuable information, but in terms of Social Security, some would say that. I think both of you are providing valuable information for the country when it comes to being able to pay your taxes and get taxes back if you paid more than you should have, and in terms of preparing yourself for retirement, when you get your Social Security benefits.

If we now are going to ask you to be more aggressive when it comes to the enforcement and protection of the SSN and the ITIN number, are you going to be able to do that with the resources you currently have, to try to manage all of the different obligations you have, along with increased enforcement and oversight? Obviously, we want you to do that, but I am trying to figure out, do you have the budget in place to be even more aggressive than what you already are now?

Mr. LOCKHART. Well, certainly from a Social Security standpoint, I think we have been pretty aggressive since 9/11 on issuing Social Security cards and numbers, and we have taken a whole series of steps to tighten that up and we have done that within our resource constraints. As you know, the President has asked for, I think a 6.8-percent increase in the 2005 budget, and that will certainly help us in both our service and stewardship obligations.

Mr. EVERSON. Beyond what we have done right now, if we were to significantly step up the enforcement, to do it effectively and to really get a grip on this whole issue, would require a major resource reallocation. The reason being that I believe that your effect

would be there are a lot of these businesses out there that are complying, trying to comply with verification requirements. They are doing their best to work within the system and withhold the taxes. If you make it more burdensome on employers or take actions that will, in fact, discourage some of the people who are working illegally but paying their taxes and participating in the system, this will go more underground from where it is today. If we want to get at that and capture the tax revenues which the government is owed, it will take a very significant resource infusion.

Mr. BECERRA. Thank you. Thank you for your testimony. Thank you, Mr. Chairman.

Chairman HOUGHTON. Mr. Shaw?

Chairman SHAW. Thank you, Mr. Chairman. Mr. Everson, we discussed in Mr. Houghton's office some weeks ago the effect of people who pay into Social Security as undocumented workers, and then later when they became legal, go back and try to claim those payments. Can either of you gentlemen or Mr. Lockhart, whomever would be best to aim this toward, give us some idea of what type of dollars that we are talking about? It would seem to me that if the work was done illegally, the payment was done illegally, that people should not have an ability to go back and claim retirement that was paid in illegally, and usually from a counterfeit number, which in itself is a crime.

Mr. LOCKHART. Well, certainly from a Social Security standpoint, we do collect a lot of Federal Insurance Contributions Act (FICA) taxes every year based on W-2s where the name and SSN do not match. We estimate that is about \$7 billion in payroll taxes a year at this point, and the total amount in the suspense file is about \$50 billion of payroll taxes that have been credited to the trust funds over the years that have not matched. As you know, recently, I think it was last week, the President signed your bill, H.R. 743, the "Social Security Protection Act of 2004," and one of the provisions will tighten up how we can pay benefits to people in the future, and as I understand that, it means that we can only pay benefits to people if they were issued a valid SSN prior to January 1, 2004, or a valid work-authorized SSN on or after January 1, 2004. We are looking at how to implement those provisions, but I think that will tighten that up significantly from where it was before.

Chairman SHAW. I would hope so. As a matter of fact, I think we ought to consider legislation that would actually just simply say that you don't get credit for what was paid in illegally. I would like to direct both of your attentions to a series of articles that was run in the Palm Beach Post. This is quite voluminous, but I would hope that your staff would review these and summarize them because it shows that modern day slavery actually exists in the United States, and it is centered around SSNs. This newspaper went to great lengths to track these workers all the way from Mexico, riding across the country with them, saw how they were put to work, saw how some of them were actually locked up at night, atrocities, things that just simply you wouldn't believe were existing in this country.

A lot of this evolved around the fake SSNs, because all of these workers have to come in, and they have got some kind of a handler

who seems to put some distance between the farmer and the illegal worker, so that the farmer can simply shrug his shoulders and say, "I didn't hire him. It is a contract thing." We ought to have a way to get through that so that that huge loophole is not there, that workers that come in and do perform a very valuable resource to this country in doing jobs, frankly, that you just can't get American citizens to do. They are very valuable to the agricultural industry. They are not so valuable that we should let these atrocities continue. I will make this available to you, and this isn't three copies. This is the series. This is one set. I think you will be somewhat shocked to see what is going on in the agricultural industry. This only deals with a Florida situation, so I am sure this same thing goes on all across the country.

Mr. LOCKHART. We will certainly look at the articles. I know our IG has been involved in that case and may be able to say more about it later, but it is certainly an issue that we will look at.

Chairman SHAW. We will let him have a copy, too.

[Laughter.]

Chairman SHAW. Getting back mainly to the proper identifier, all of us want to be sure that there is a certain amount of secrecy or confidentiality regarding our SSNs. We don't want them to be handed out willy nilly. When you find all the people that have access to it, whether you have to write it on the back of a check in an Army commissary, whether you are using it as identification for the soldier, which they use it for in the military. The marketing of the SSN is something that we are very concerned about in this Committee. The SSN obviously is a key to your treasure. Once your SSN gets in the wrong hands, we have found through hearings, that once you are a victim of identity theft, that it goes on and on and is a continuing problem that we really need to get at. This is the fastest growing form of crime in the United States and it is really getting just totally out of hand. We are finding so many ways that they get your credit card number and then get your SSN and your date of birth and they are off to the races. They actually become you. Would both you gentlemen comment as to what safeguards we should put in place?

Mr. EVERSON. I think I will mostly leave it to my colleague here, but we have tried to do things like take individual SSNs off instructions that we send to people. There used to be a lot more listing of the number on some of the things we would send to people, and we have removed the number just so that, even if inadvertently, things fall into the hands of others, we don't distribute it. Again, we work very carefully to protect taxpayer information as to even what vendors or others can use that information, whatever their role is, and I think we are trying to be as attentive as we can just for other reasons, but we are sensitive to this issue, as well.

Mr. LOCKHART. Certainly as to the issue of SSNs, we are very sensitive to the issue, and to identity theft. Internally, we have done the same thing. We have taken the SSN off the Social Security check. We have taken it off of other correspondence when we can. Then externally, one of the things that has been helpful is we do a lot of verifications for State and Federal agencies. We perform about 750 million matches a year for people that provide—whether it is employers, Federal agencies, or State agencies—to help them

identify these people to make sure that they are not committing welfare fraud, or other kinds of fraud. So, we are very actively involved, as is our IG, and we consider it a very serious issue.

Chairman SHAW. You are telling me what you do, but I would like to know what we should do to protect the confidentiality. What type of safeguards do you seek? I know that you don't form the policy, you just inform the policy. If we could get some idea as to what is workable, what is reasonable. I had in my office just last Friday a lady who was a private detective, and she was concerned that we were going to protect the secrecy of SSNs, which she relies on to trace people.

Mr. LOCKHART. There is definitely a tension that way, and it is difficult sometimes to walk down that line. From our standpoint, we are certainly doing everything we can do to protect it. When we see another government agency displaying an SSN where it shouldn't be, we talk to them. We actively work with other groups to try to discourage them from showing SSNs. It is a very difficult issue because it has become a national number, one way or another, and it was not meant to be when it was started out. We are now working through that issue, and trying to figure out how best to do it. There is really no easy answer. In this world of computers, everybody wants a number for people.

Chairman SHAW. Yes, they do. I know I tried over Christmas, they had a special, if you opened a charge account at Burdine's department store down in Florida that you got a big discount. I said, well, fine, I will open one. They started going through it and they said, SSN. I said, I don't give out my SSN. They said, well, you don't get a charge account.

Mr. LOCKHART. Yes.

[Laughter.]

Chairman SHAW. That was the end of that. I advised them that I was going to do everything I could to see that they couldn't ask that question.

[Laughter.]

Chairman SHAW. I thank you, and yield back.

Chairman HOUGHTON. Mr. Weller?

Mr. WELLER. Thank you, Mr. Chairman, Commissioner Everson, and Commissioner Lockhart. Thank you for joining us today to talk about issues of security to every American worker. I appreciate your time. Mr. Chairman, if I could take the liberty, I have a parochial question I would like to direct to Commissioner Everson. Commissioner, you and I have been in communication regarding an IRS central distribution facility in Bloomington, Illinois, a facility whose future is in question at the moment as you go through the competitive sourcing process, a process which has some benefits to taxpayers, but many of these workers—there are 524 workers—reside in the district that I represent, and I am very concerned about their jobs. You and I have discussed that.

As you know, Illinois is a very high unemployment State. The Bloomington facility is the largest of three facilities that handle the document distribution for the IRS, but it is also a facility which already has weekend hours and evening hours in which they serve taxpayers, compared to the other two. I have urged you to consolidate these three facilities into the Bloomington-Normal facility. Not



only are these good committed workers, but they have a Central Illinois work ethic. I was just wondering, can you bring us up to date on the status of this process, where we are and where you are on your decisions?

Mr. EVERSON. This is going through the established procedure for competitive sourcing, which, as you indicated, is designed to bring benefits to the taxpayer by improving business processes and driving down costs. The sourcing initiative takes a look at what are called non-inherently governmental functions, and in this case, it is not work for tax audits or criminal investigations, it is the support work to maintain the inventories of the forms and the instructions, and then to get them in the mail to people who called in and need the forms. So, we made a determination that the process and the government, the taxpayer, would benefit by looking at this according to the competitive sourcing standards. What happens in that process is that there is a competition and the government puts together a bid which looks at, in this case, all three of those operations and says, these operations are doing less volume of business and they try to project what is going to happen and they say, how would we configure it? What would we best do to make the process more efficient and improve it? The same thing happens when the private sector takes a look at it.

This is done independently of my office. It is evaluated independent of my office or my senior people, so that it is very neutral. Then, the government actually wins if there is a cost differential that is not considered significant. We are going through that process right now and the benefits of it will be, hopefully, improved service to taxpayers and lower costs. That is typically what happens if you go through the competition process. I honestly can't tell you where that will—who will win that competition, whether it will be the government or the private sector. More often than not, the government wins that competition and retains the work, but it might very well be a different model. It might be the model that you suggest. It might be a different model that would retain all three operations or consolidates it elsewhere. I am removed from that process for very valid reasons so as not to influence it.

Mr. WELLER. So, Commissioner, you confirm that two of the options, one being maintaining the status quo, or consolidating facilities. Those are two of the options?

Mr. EVERSON. Maintaining the status quo in the sense that the work would remain inside the government as opposed to a contractor taking over this forms distribution process. I would imagine that even if the government wins, that they will take decisions to retain the business because the benefit here again to the taxpayer is that they know they are up against an external bid, so they are going to look to make it as cost effective as they can.

Mr. WELLER. Commissioner, you learn things when you actually visit the facility.

Mr. EVERSON. Yes.

Mr. WELLER. You learn things when you meet with the workers, which I have done. An issue I want to raise with you, which I am concerned about from a fairness standpoint as we go through this process, obviously, the workers are concerned about the future of their employment. There are 524 families that are affected by

this decision that is waiting to be made out there, and you certainly know where I am on this. One of the things I learned is that the employees, the regular Federal employees who met certain standards, were offered the opportunity for a buyout, but the deadline to confirm their participation is 4 weeks prior to the decision on what the future of their job will be. Now, I would call into question the fairness of putting someone in a position to say, gee, I will take this offer, not knowing what the future of my job will be.

I have urged you to either extend the deadline past the decision-making point, once the workers know the future of their job, or to give them a second round of buyouts so they would have another opportunity to participate if their position is to be eliminated. To me, it is a fairness issue, and I would like to hear from you what your thoughts are about this, because, do you agree it is unfair for a worker to be told, you have to make a decision now whether or not to allow yourself to be bought out of your position prior to knowing the future of your position?

Mr. EVERSON. The buyouts, which are worked out according to standards that the Office of Personnel Management has and Office of Management and Budget, they are an important tool because they do help people plan for the future rather than being up against a short-term decision. We are working with the unions. This is a matter that has to be negotiated with the unions. We suggested to them some other considerations, some of them along the lines of what you are talking about, and that is a matter of open discussion. I think you raise some very valid questions. We want to treat anybody who would be impacted by this fairly, and give them the best possible deal.

Now, what you want to do is make sure that the work can continue, because frequently if people—if the private sector picks up the work, frequently individuals will transfer over, and it is important to the private sector provider of the service to have that expertise from the individual who was providing it before. So, you want to do this in a measured way where there is a maintenance of the expertise.

Mr. WELLER. Recognizing I am running out of time here, I think there are two things. I am a strong supporter of collective bargaining. The union has made the request for an extension of the buyout which you have not yet agreed to, and I would urge you to extend the deadline or offer a second round after a decision is made. I would also urge that if a private contractor is going to pick up this contract to supply these documents, that they give preference to existing employees at this IRS facility for employment under the new contract. Those are two things that I think have great concern for everyone who is involved.

Mr. EVERSON. Sure.

Mr. WELLER. Both the community on the outside as well as the workers.

Mr. EVERSON. I don't think, sir, that either one of those is at variance with where we are. My understanding is, the state of play with the unions is actually a little bit different, but I think we have indicated some flexibility on this issue, and I would say to you that it is a matter of interest usually to the provider of the services should the private sector win, to do just what you said, to work

with it, and I think that is a factor that can be considered in the bid, as well, because we are interested in people who have served the government well and efficiently to make sure they have that opportunity.

Mr. WELLER. Commissioner, this is of great concern to me. I have 524 families, so I hope to continue working with you, and I appreciate your attention to this.

Mr. EVERSON. Thank you.

Mr. WELLER. Thank you.

Mr. EVERSON. Mr. Dalrymple, my deputy, is going to be, I think, seeing you later this week.

Mr. WELLER. Yes.

Mr. EVERSON. To go over this in more detail. So, if there is any follow-up you need from me personally, we will make sure that happens.

Mr. WELLER. Thank you, Commissioner.

[Letter submitted from Mr. Weller to Mr. Everson follows:]

Washington, D.C. 20515  
March 5, 2004

Hon. Mark Everson  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue,  
N.W. Washington, DC 20224

Dear Mr. Commissioner:

My letter serves to update you on my findings after visiting the IRS service center in Bloomington, Illinois, and to seek your assistance for the center's employees. I am disturbed and disappointed to learn that employees have been told that employees must make decisions on buyouts before the future of the center has been decided.

It was brought to my attention that the employees at this facility were given a letter and a form on February 29, 2004 for a buyout package to return no later than March 20, 2004. While this option was taken advantage of by several employees who found it an attractive time to leave, there are many more who would rather remain employed at the facility, and would prefer to wait until the announcement has been made on what will happen to their jobs.

As the deadline to apply for buyout occurs approximately 1 month prior to the announcement regarding the fate of this facility and the people who work there, I ask you to extend the deadline to apply for buyout, or offer another buyout opportunity after the IRS makes its announcement. This will allow employees who have submitted buyout applications under some duress to rescind them, and reapply later should they ultimately decide they would like to be bought out. Additionally, for employees who prefer to wait, but are feeling pressured to make a decision, this will give them some time and peace of mind to make a more fully informed choice.

I hope you will agree with me that this is a fundamental issue of fairness. Please extend the deadline to submit an application for buyout, or offer another opportunity for buyout after the IRS announces its decision whether to keep the facility open.

I look forward to working with you to modernize and streamline the IRS while ensuring its employees are treated fairly.

Sincerely,

Jerry Weller  
Member of Congress

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Chairman HOUGHTON. Thank you. Ms. Tubbs Jones?  
Ms. TUBBS JONES. Thank you, Mr. Chairman. Commissioner, I have a question with regard to the obligations of employers to re-

port or to assure that the SSNs and the ITIN numbers that they receive from employees are accurate. What is their obligation?

Mr. EVERSON. Well, they have to make a good faith effort. It is in the I-9; there are really two steps here. There is the I-9 process, where someone demonstrates that they are eligible to work in this country, and they do that, maybe they have a U.S. passport or maybe they have a foreign passport but a Social Security card showing that they are eligible to work. That is one step. Then you have the W-4 process, where someone comes in, and the individual indicates how many exemptions they want. If an employer checks, and determines that based on the documentation that is provided to them that the individual is eligible to work, which would usually mean they wouldn't be showing an ITIN in the instances that demonstrate all the problems, they wouldn't mention their ITIN. They would say, I have XYZ SSN, then as long as they have shown reasonable documentation, the employer is okay. If we go back and try and assert a penalty, we are not going to be able to sustain it.

Ms. TUBBS JONES. When you say the employer checks, what does the employer check?

Mr. EVERSON. A false Social Security card, perhaps, might satisfy the employer that the person was eligible to work, but the employer would not necessarily know that that is a false card.

Ms. TUBBS JONES. How many people do you know that walk around with actually a Social Security card when they walk into some employer? I am not sure that that is something—what I am trying to understand is, other than a good faith effort, there is no obligation on an employer to check for the accuracy of a SSN?

Mr. EVERSON. Well, right now, they don't have to—the only way you could check it, to get the accuracy, you would have to put the employer in direct contact with either the SSA or the IRS, and that is not done. That would be at variance with the law as to the protection of taxpayer information, as to anybody checking with us.

Ms. TUBBS JONES. So, then you are saying that in terms of due diligence for an employer, if due diligence would cause him to be in variance with the law because the law won't allow him or her to check the SSN of an employee.

Mr. EVERSON. No, it wouldn't cause them to be at variance with the law. It would cause me to be at variance with the law because we can't give out the information.

Chairman SHAW. Would the gentle lady yield?

Ms. TUBBS JONES. Yes, I will.

Chairman SHAW. I have a case in point which would probably be of great interest to you. If you have a mismatch, and the SSA advises you that you have a mismatch, they will also advise you cannot fire that employee because of it, which really puts you in a catch-22. What do you do?

Ms. TUBBS JONES. So, I guess my question to you is, since there is a low burden and there is a catch-22 situation, what do we do about it? Do we just keep moving forward, or do you have any suggestions on how we handle this dilemma?

Mr. EVERSON. Let me just sort of state the dilemma from my point of view, administering the tax system. You could ask to make that check with our database, and you could change the Internal Revenue Code provision. My concern there would be that we are

trying to get these people into the tax system. Many of them come from countries where there is not the same respect for the rule of law that is part of our culture, and we are trying to get them to participate. My worry is that many of these businesses that are making decisions to try to participate, if we go back to them and say, you are going to be penalized if you don't do this or you don't make this check, some of them will just end up operating illegally, and they will get to where Congressman Shaw talked about. It will further abuses on the one hand, and on the second hand, it will actually collect fewer dollars into the Treasury.

Ms. TUBBS JONES. Let me be clear that I am not on one side or the other of this. I am just trying to put on the table the dilemma that this whole situation presents. Have we ever even penalized an employer for failing to exercise due diligence with regard to SSNs?

Mr. EVERSON. We do have penalties, but when challenged, the penalties have not been sustained because inevitably the employer says, well, I made this reasonable effort. Even if, as the Congressman indicated, we will send letters to employers saying there is a mismatch, they can go out and check again, but if the employee says the same thing, "I showed you my I-9 process. I am legally working here and this is what my number is," then the employer is okay.

Ms. TUBBS JONES. Mr. Chairman, just one more question if you would allow me, please. Is there any industry in which we find greater challenges to address this particular situation than in other industries?

Mr. LOCKHART. If you would look at our suspense file, which is really the mismatches between SSNs and names, and as I said earlier, we have about 9 million a year. The two top industries are agriculture and service, and then bars, and restaurants are the third. So, it is basically transient workers that have the most mismatches, and it is also the States with the largest immigration populations, as well.

Ms. TUBBS JONES. We are careful to use the term "mismatch," and not fraudulent use of an SSN or ITIN. Is that purposeful? That is my last question, Mr. Chairman.

Mr. LOCKHART. Some may be fraudulent, but all are mismatches, so I am using the larger term, if you will, because some may be names reversed or one digit missing in an SSN. So, we can't tell necessarily. Now, we are trying to figure that out. First of all, I would like to agree with Mark that it is very important not to have unintended consequences of driving people underground, because I think that would be bad for both the IRS and Social Security. We do offer various opportunities for employers to match Social Security names and numbers, both through the I-9 process and through the Social Security process.

Ms. TUBBS JONES. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you. Mr. Hulshof?

Mr. HULSHOF. Thanks, Mr. Chairman. Commissioner Everson, Deputy Commissioner Lockhart, welcome. Let me continue along this path of asking some hard questions because these are questions that a number of us get back in our respective districts. Actually, I want to, Deputy Commissioner Lockhart, follow along what

Chairman Shaw asked you, and I want to restate it, and that is as I understand current law, wages subject to the FICA tax, the Social Security tax, are credited toward benefits even if the worker, the immigrant, has overstayed a visa, has purposely evaded our immigration law, but basically these wages are credited, and I think you said that we collect—you collect—the government collects—\$7 billion a year in FICA taxes from these unauthorized immigrants. Is that true?

Mr. LOCKHART. What I said is in our suspense file, there are approximately \$7 billion a year of payroll taxes, if you will, that we treat as payroll taxes, as if they came from a legitimate person. Now, the point is that most of those will never be matched to anybody, at least a major portion of them, and so they will never be used to pay a benefit from the system.

Mr. HULSHOF. That is the great follow-up question then. Do either of you have, because obviously these workers can file tax returns and receive refunds, what amount of money goes out per annum, if you know, maybe through the IG, to benefits to undocumented or unauthorized workers?

Mr. LOCKHART. From the Social Security standpoint, first of all, a person has to be lawfully present in the United States when they come in to collect the benefits. So, at that point, they are legal. Second, with the recent change in law, it means that the person has to have had a legal work authorized SSN sometime in his career to collect benefits. Historically, we have had a relatively minor number, and I don't really have the numbers on it, of people who do come in and present all their W-2s, all their monthly payroll stubs, and get some benefits. Again, they had to be legally in the United States at the time they were presenting that information to us.

Mr. HULSHOF. Here is the question the Chairman stopped short of asking that I want to ask. You have referenced the law that President Bush signed, very bipartisan actually as it went through the legislative process. This is a policy question, and I don't want to make you squirm on purpose.

[Laughter.]

What would be the tradeoffs if we decided as a nation that we were going to stop paying Social Security benefits, or stop paying tax refunds based on unauthorized work?

Mr. LOCKHART. Well, I will talk from the Social Security standpoint, and then let Mark talk from the IRS standpoint. First of all, the key thing is the administrative complexity of trying to recreate records. Trying to figure out when a person was legally working, when a person was not legally working, if they had a temporary visa, they were legally working for a while, then a period they weren't legally working, would be a very cumbersome process because, as I understand it, the Immigration and Naturalization Services or DHS does not keep records going back that way, and we certainly don't have them at Social Security. So, there would be an administrative complexity of some detail.

From a policy standpoint, to answer that, I think there definitely is the issue of the potential of driving people further underground. Instead of having these payroll taxes being paid, they would just

stop paying them, and there would be less chance that these people would be integrated into the American society.

Mr. HULSHOF. Commissioner Everson, would you like a crack at that question?

Mr. EVERSON. Sure. I believe that the consequences would be negative in terms of the amount of money coming into the government if you look at it from a revenue generation point of view, and also damaging to the long-term health of our tax administration system. I say that because already we have many people who are working in an undocumented manner. They aren't in the system at all. I think that, as Jim just indicated about some of the industries that this involves and some of the parts of the country where this is more prevalent, you would tend to augment the number of those folks who aren't participating. They aren't filing at all. Their taxes are not being withheld. They are in a cash economy. So, they are not—this problem would get worse. It is true, you wouldn't pay out some small amount of refunds, but I think you would have a very discouraging effect on bringing people into the system, which is our objective, of course.

Mr. HULSHOF. As just a final comment, since the Chair has been very gracious with all of us when the red light has come on, I would just simply say, first of all, a small thing. It is good that each of you refers to each other on a first name basis for this reason. There are witnesses coming behind that really encourage data sharing and other information sharing between the IRS and the SSA. I would encourage you guys to have a weekly coffee or whatever, and I say that tongue-in-cheek because there are a lot of challenges, and I recognize the difficulty and the administrative nightmare, but the ability for the IRS and the SSA to share some of this information—we have talked about mismatches, we talked about all these challenges. It is critical, and I respect that there are different missions that the IRS has and the SSA has, but unless, and until, we adopt some of these recommendations that the IG or the Taxpayer Advocate have suggested, I think we are going to continue to meet here every year, and we are going to pound the podium and say, oh, here we are again, and we are not going to make much progress. Thank you.

Chairman HOUGHTON. Thanks very much. Mr. Brady?

Mr. BRADY. Thank you, Mr. Chairman. Clearly, the mismatch problem is frustrating for everyone in this room. Clearly, the way it is being approached isn't working well. The number of letters sent out, the response to it, the enforcement, issues like that aren't making much of a dent. Shifting to—could we be more effective by preventing the problem in the first place? I know we have taken steps to make it easier for employers to verify the SSNs up front, which is, I think, where we all want to be, and when I am in Washington, I hear we have really made great strides that way. When I am back home and talking to employers in Texas, they feel like it is a cumbersome process, and I can't recall if it is whether they need one verified, or if they need a dozen in a day where it gets to be a problem. My question is, what are we doing to make the SSN Verification Service (SSNVS) more user friendly, more immediate in response? Obviously, if we can match them up correctly at the beginning, it is going to save us a bunch on the back end.

Frankly, employers have the responsibility to match these numbers. We have the responsibility to make it, in this day and age of technology, by sharing information and making it secure, we ought to be able to do a good job of that. Would you care, Commissioner Lockhart, to answer?

Mr. LOCKHART. I would be happy to. I think that is a very important issue, and we have a lot of activities going on. We do have our ongoing employee verification system that allows employers the opportunity to call in to a special 800 number with 5 SSNs, and get them verified then. Also, people can walk into our field offices with up to fifty SSNs and names, and we will say whether that is a match or not. That is all we will say. We won't say if that is the real person or anything, but we will say it is a match. They can also send magnetic data tapes for their whole payroll, if they want.

I am very excited about where we are going. It is this new system called SSNVS. This new system is in the final stage of piloting, and has been very successful. We now have 85 employers, including some of the largest employers in this country, using it. It is an Internet system that you can get, in real time, 10 numbers identified, and overnight, virtually as many as you want. That system, as we roll it out, and again, we have to finish the evaluation of the pilot, but I can tell you that we have satisfaction surveys from the users, and something like 93 percent are very satisfied. So, I think that is the way we are going.

Mr. BRADY. How do we accelerate a program like that? How many employers today use—earlier, you talked about how you can get five by the phone. You can get more than that if you come into the office. How many employers, to put it in perspective, are using what you have already today?

Mr. LOCKHART. It varies. Not as many as we would like. We are still probably less than 1,000 in some of the various aspects of the SSNVS, and we are trying to make it known to people that it is available, and certainly we are sending out now, I think quarterly newsletters to 6.5 million employers, which is virtually every American employer. At this point, they are not using it as actively.

Mr. BRADY. So, put that in perspective. Ten percent are using it?

Mr. LOCKHART. Probably much less than that.

Mr. BRADY. On the new program, what would you think would be an acceptable goal for us to set, both Congress and Social Security, to match these accurately up front?

Mr. LOCKHART. That is a difficult question, and it may be part of evaluating our pilot to set those kinds of goals. At this point, I think it is a little premature. We have seen some of the 85 participating employers use it extremely actively, and we have seen others just use it occasionally. As part of the evaluation, we are looking to see why some are using it much more than others, and I think that will help us set those kinds of goals.

Mr. BRADY. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you very much. I am not going to ask any questions, but I do look out over the next hill and ask where we are going here. What are the options? What are we doing? There is a mismatch. There is confusion here. You realize it. You have got to make sure that people don't go underground.



Maybe what you could do is to send a one-pager or a one-paragraph or something to us outlining some of the specific things you think we ought to be aware of as you are moving ahead here and trying to make this system work. So, thank you very much, gentlemen. I appreciate your participation, and we will go to the second panel.

Chairman HOUGHTON. The second panel is Michael Brostek, the Director of Tax Issues, GAO; Pamela Gardiner, Acting IG for Tax Administration, Treasury; Nina Olson, National Taxpayer Advocate, IRS; and Patrick O'Carroll, Acting IG, SSA. I am going to try to move this thing along so that we can get through maybe in one-half hour. Would that be all right with you? So, gentlemen and ladies, if you could shorten your testimony as much as possible so that we can get some questions from the panel, I would appreciate it very much. When you are ready, Mr. Brostek, you can begin. Please commence, Mr. Brostek. Thank you very much, everyone, for being here.

**STATEMENT OF MICHAEL BROSTEK, DIRECTOR, TAX ISSUES,  
U.S. GENERAL ACCOUNTING OFFICE**

Mr. BROSTEK. Chairman Houghton, Shaw, and Members of the Committee, thank you for the opportunity to testify today on issues related to the Taxpayer Identification number, known by its acronym as "ITIN." In my summary, I will focus on the IRS' controls over ITIN issuance, a limited test we did of those controls, and on some concerns of employers and Federal agencies that arise when ITINs are issued to illegal resident aliens. The IRS' controls over the issuance of ITINs are intended to help ensure that applicants are, in fact, who they claim to be, and have a tax-related need for an ITIN. Although the IRS made changes to approve these controls in December, 2003 and earlier, the IRS remains limited in its ability to thwart improper claims for ITINs. The IRS issues at least 70 percent of ITINs without seeing the applicant, thus impeding its ability to verify the applicant's identity. The IRS also does not verify documents supplied by the applicants with third parties, and has limited capability to translate documents.

We tested the IRS' ITIN issuance process and the graphic over here shows our results. Before changes in issuance controls were made, we were able to obtain an ITIN using a counterfeit driver's license and a matricular card. A matricular card is a photo identification issued by Mexico. We then used the ITIN card that we received from the IRS to open a bank account and obtain an ATM card. We also counterfeited an ITIN card itself, and used that to obtain a voter registration card in one State. This limited test shows that ITINs could be obtained under false pretenses, and then used to help blend into society. Although the IRS has made changes since we did our test, in our opinion, the weaknesses that we exploited were not fully addressed.

The IRS has concluded that most resident aliens who have ITINs and earn wage income are not legally employed in the United States. When ITINs are used by individuals who cannot be legally employed, a number of issues arise. One is how such issues contribute to the SSA's earnings suspense file. Using 2002 data from the SSA, we roughly estimated that about 119,000 ITINs have shown up in the suspense file from 1996 through 2000, the period

we looked at. During that period, there were 38 million records added to the suspense file.

However, ITIN recipients often provide their employers, as we have heard earlier, an SSN instead of the ITIN number that they receive from the IRS. According to information provided by the Treasury IG for Tax Administration, for tax year 2000, about 265,000 ITIN recipients had W-2s attached to their returns with SSNs that had not been assigned to the ITIN holder. Thus, in that year alone, the use of SSNs by ITIN recipients likely accounted for more of the growth in the suspense file than the ITINs themselves have for the entire time they have been in creation. Employers have responsibilities to the SSA, the IRS, and the DHS related to identifying employees, those employers have raised concerns that the DHS—the U.S. DHS—and the IRS might penalize them. In general, however, based on the IRS' reply to these employers and our understanding of the IRS' regulations, if employers do only what they are required to do, those employers appear to bear fairly little likelihood of being penalized. Under the IRS' guidance, employers have no direct responsibility to consider whether the numbers that are provided to them are valid.

From Federal agencies' perspective, because tax returns for ITIN holders provide many details about where they live and are employed, data the IRS possesses has potential to assist the DHS in enforcing immigration laws. Taxpayer data might help the DHS identify up to hundreds of thousands of individuals who appear to be illegally employed. These data are not shared, as we have heard earlier, for several reasons, including the legal restrictions on the sharing of taxpayer data, and the potential that such sharing might cause individuals to move into the underground economy. In summary, in creating the ITIN, the IRS had a valid tax administration purpose, but that also opened another avenue for individuals to use to establish an identity and blend into society. The IRS' controls over the issuance of ITINs have been limited, and consequently we had little difficulty obtaining an ITIN with bogus documents. The IRS' recent efforts to improve its controls have helped somewhat, but we believe that some weaknesses remain, the weaknesses that we exploited in part.

A significant number of ITIN holders are illegal resident aliens. Cooperation among these agencies might help them in carrying out their missions. However, given considerations such as the legal and policy issues that are attendant to that increased cooperation, the agencies have been somewhat restrained in doing that. This hearing is one opportunity for Congress to consider whether to provide new guidance to the agencies on how they should proceed.

Chairman HOUGHTON. Thank you very much, Mr. Brostek.  
[The prepared statement of Mr. Brostek follows:]

**Statement of Michael Brostek, Director, Tax Issues, U.S. General Accounting Office**

Messrs. Chairmen and Members of the Subcommittees:

I am pleased to participate in the hearing today on various issues related to the Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service (IRS). As you requested, my statement today describes why IRS created the ITIN, the processes and controls IRS has in place for issuing ITINs, the results of our limited test of the controls over issuing an ITIN, and certain concerns and prob-

lems for employers and government agencies that ensue when ITINs are issued to illegal resident aliens.<sup>1</sup>

IRS issues ITINs to individuals who are required to have a United States taxpayer identification number (TIN) but who are not eligible to obtain a social security number (SSN) from the Social Security Administration (SSA). An ITIN has nine digits formatted like an SSN (NNN–NN–NNNN) but beginning with the number “9”.<sup>2</sup> IRS issues ITINs for tax processing purposes only. Having an ITIN does not affect a holder’s immigration status, or authorize the holder to work or receive Social Security benefits.

In requesting this testimony, you sought a better understanding of the vulnerabilities in the ITIN issuance process, including whether weaknesses allow ITINs to be issued and used for illegal purposes and possible security breaches. You also expressed interest in the extent to which employers may be confused by their responsibilities vis-à-vis IRS, SSA, and the Department of Homeland Security (DHS) in ensuring the identity of their employees, and whether federal agencies are sharing information to deal with illegal resident aliens who may be issued ITINs.

Today’s statement is based on interviews, reviews of agency documents and various publications, and limited tests of the ITIN issuance controls. Specifically, to address the four areas, we interviewed officials from IRS including the Taxpayer Advocate Service, SSA, and the Departments of the Treasury, Homeland Security, and Labor. We reviewed documents from these agencies as well as other literature. In addition, our Office of Special Investigations (OSI) did limited testing of IRS’s controls to determine whether it could fraudulently obtain an ITIN by mailing or presenting bogus identity documents to IRS. OSI used an IRS-issued ITIN and a fake ITIN it generated for nontax purposes. We did our work in Washington, D.C. from September 2003 through February 2004 in accordance with generally accepted government auditing standards and we performed our investigative work in accordance with standards prescribed by the President’s Council on Integrity and Efficiency.

Our results in these four areas showed that:

- IRS created the ITIN in 1996 to improve tax administration. IRS needed a better way to identify and track the tax reporting of noncitizens that could not obtain an SSN for use when filing tax returns. Beyond the filing of tax returns, ITINs have other legitimate tax uses, such as for filing documents other than tax returns and for claiming benefits related to a tax treaty. According to IRS, most ITINs have been used at least once on a tax return and ITINs also have been used for other legitimate tax purposes.
- IRS made changes to improve its processes for issuing ITINs in December 2003, but continues to have limited controls to verify the identity of ITIN applicants. For example, the majority of ITIN applicants apply by mail and IRS cannot be sure the applicant is the same individual described by the documentation submitted. IRS also does not verify with third parties the validity of the documents submitted with the ITIN applications.
- Before IRS changed its procedures in December, we obtained an ITIN by applying with bogus documents through the mail. We also created a bogus ITIN without applying to IRS. Using the IRS-issued ITIN, we opened a bank account and obtained an ATM card. We used the bogus ITIN to obtain a voter registration card. While very limited, this test illustrates weaknesses in IRS’s ITIN controls, which have not been completely addressed by the changes made in December, and shows that ITINs can be used for nontax purposes, such as blending into society under a false identity. Resolving the continuing limitations in IRS’s ITIN issuance controls would be challenging.
- Although precise data are not available, hundreds of thousands of ITINs are issued to aliens who subsequently earn wage income. IRS and the Treasury Inspector General for Tax Administration (TIGTA) have concluded that these individuals are illegal resident aliens. Given this context, employers have raised concerns about potentially conflicting obligations to IRS, SSA, and DHS when they identify employees and their work eligibility. These concerns appear to be largely unfounded if employers do what is specifically required. Sharing IRS data with DHS may provide enhanced information to target enforcement of im-

<sup>1</sup> In this testimony, we use the term alien to mean a foreign-born individual who has not been naturalized and is still a subject or citizen of a foreign country. A resident alien is someone meeting this definition but also considered a resident of the United States for tax purposes, as described later in this testimony. A nonresident alien does not reside in the United States, but may have a need to interact with IRS. For this testimony, we defined an illegal resident alien as a resident alien who is not legally in the United States and also may refer to them as illegal aliens, undocumented workers, or unauthorized resident aliens.

<sup>2</sup> SSA officials said that they also receive other identification numbers that start with “9”.

migration laws, but to differing degrees, officials cited such factors as legal restrictions and the potential for employment to be hidden from tax administrators as affecting their decisions about whether and how to share data.

## BACKGROUND

IRS requires a unique TIN to process any tax return or tax-related document, and associate the return or document with a taxpayer's history. A TIN allows IRS to better manage a host of tax administration functions—such as crediting tax payments, and verifying compliance in filing returns, reporting income, and paying taxes. IRS also needs it to process information returns filed by employers and financial institutions to report certain types of payments (e.g., wages or interest) made to individuals.

One type of TIN is the SSN, which SSA is authorized to issue to United States citizens, aliens allowed to work in the United States, or others, in limited cases, for nonwork purposes. For example, according to SSA, if an applicant only needs an SSN to obtain certain government benefits as specified in SSA regulations, SSA must issue an SSN and social security card but the card specifically states that it is not valid for work purposes. Individuals must use an SSN when filing a required tax return, unless they cannot legally obtain an SSN.

For those who cannot obtain an SSN but need a TIN for tax purposes, IRS created the ITIN. IRS's 2003 training manual on ITINs identifies such individuals, as shown below.

- An alien who does not reside in the United States and who is filing a U.S. tax return to (1) claim a tax treaty benefit, (2) claim a tax refund, or (3) file a joint tax return with a spouse who is a U.S. citizen or resident.
- An alien who lives in the United States and who is filing a U.S. tax return.
- Individuals claimed on a U.S. tax return as a (1) dependent, or (2) spouse.

An alien is a resident for tax purposes if the individual (1) is a lawful permanent resident (green card test<sup>3</sup>) in the United States for any time during the year, (2) is present in the United States for 31 or more calendar days during the current year and for a substantial time—183 or more weighted days—during a 3-year period weighted toward the current year (substantial presence test), or (3) elects to be treated as a U.S. resident (first-year election test).<sup>4</sup>

IRS does not believe that it has the legal authority to distinguish between legal and illegal resident aliens for tax purposes. Individuals who meet the definition of a resident alien are generally taxed in the same manner as U.S. citizens and holders of green cards, meaning that they are taxed on their worldwide income. One exception is that resident aliens who have ITINs are ineligible to claim the refundable earned income tax credit, which requires a valid SSN issued for work purposes. A nonresident alien is subject to tax on income from U.S. sources but generally not on foreign source income.

## IRS CREATED THE ITIN TO IMPROVE TAX ADMINISTRATION

IRS created the ITIN in July 1996 to improve tax administration for individuals who were ineligible to obtain an SSN. IRS needed a better way to identify and track tax filing and reporting by these individuals and by employers and financial institutions that file other tax documents related to the individual's income.

Each individual taxpayer is to use a unique and permanent TIN, which allows IRS to associate their filed tax returns with their tax records and with information returns on payments made to them, and to more effectively use programs to enforce tax filing and reporting compliance. For individuals who lacked an SSN, IRS did not have a permanent TIN to use in tracking their tax obligations and history prior to the ITIN.

Prior to July 1996, IRS used a system of temporary TINs when a taxpayer did not have an SSN to facilitate one-time processing of a tax return. The temporary TIN was assigned to a return filed without an SSN rather than to a taxpayer. However, IRS had to post returns with temporary TINs to the invalid segment of IRS's masterfile because these returns could not be associated with a valid taxpayer account.<sup>5</sup> Posting to the invalid segment created problems for IRS enforcement programs, such as negating income verification through document matching. Because the temporary TINs were unique to IRS, IRS could not easily match the amounts

<sup>3</sup>A green card is an identity document issued to lawful permanent residents by DHS that attests to the permanent residence status of an individual in the United States.

<sup>4</sup>26 U.S.C. § 7701(b)(1)(A).

<sup>5</sup>The masterfile is a record of transactions in a taxpayer's account. If a taxpayer has a TIN, IRS posts account information to the valid segment of the masterfile. Otherwise, IRS posts the information to the invalid segment.

of income and withheld taxes reported on these tax returns against information returns submitted by third parties to report such amounts.

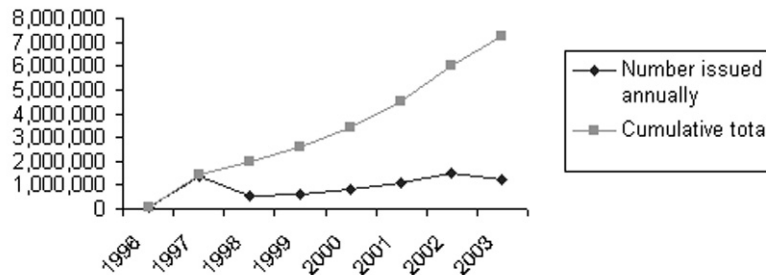
In 1995, we reported that accounts in the invalid segment had more than doubled the growth rate compared to those in the valid segment from 1986 through 1994. We also reported that IRS refunded \$1.4 billion for tax year 1993 returns posted to the invalid segment.<sup>6</sup> Although no one knows how much of this \$1.4 billion may have been erroneously refunded, the risk was higher because IRS had less certainty about these filers' identities absent a valid TIN and about the accuracy of their returns absent the ability to match a filed return with third-party data.

Also, prior to December 1996, SSA was issuing "nonwork" SSNs to individuals who had tax obligations but were not authorized to work or were not otherwise part of the social security system. With the growth in the earnings suspense file—SSA records that could not be associated with a wage earner, SSA decided to reduce the number of nonwork SSNs. Starting in December 1996, SSA tightened restrictions on who could apply for a nonwork SSN.

In response to these events and the needs of tax administration, IRS created the ITIN as a permanent TIN assigned to individuals who needed to file a tax return but were ineligible to obtain an SSN. Among other things, IRS was concerned that information returns could not be matched with a tax return. Such returns report third-party payments made to those such as nonresident aliens who invested in companies or real estate in the United States, or received rent and royalty payments.

IRS issued its first ITINs in July 1996. Figure 1 shows that IRS has issued over 7.2 million ITINs through December 2003 and over 1 million ITINs annually in more recent years.<sup>7</sup>

**Figure 1: Number of ITINs Issued Annually and Cumulative Totals, Calendar Years 1996 to 2003**



Source: GAO analysis of IRS data.

Note: 1996 does not cover a full calendar year because the ITIN program began in July 1996.

According to IRS, most of the ITINs issued have been used for legitimate tax purposes such as on tax returns and other tax-related documents. IRS analysis in 2003 showed that about 75 percent of the ITINs issued since its inception through September 2003 have been used at least once on filed tax returns as a required identification number. The actual portion of ITINs used for tax purposes would be higher than 75 percent if IRS had computed the frequency of uses beyond return filing such as to: (1) obtain treaty benefits or exemptions from withheld tax, and (2) file infor-

<sup>6</sup> United States General Accounting Office, *Tax Administration: IRS Could Do More To Verify Taxpayer Identities*, GAO/GGD-95-148 (Washington, D.C.: Aug. 30, 1995).

<sup>7</sup> IRS issued 60,682 ITINs in 1996; 1,363,071 in 1997; 566,745 in 1998; 615,413 in 1999; 818,392 in 2000; 1,088,837 in 2001; 1,493,284 in 2002; 1,229,097 in 2003; and 77,759 through Feb. 13, 2004.

mation returns on payments made, such as Forms W-2 (Wage and Tax Statement) for wage income. IRS does not track the frequency of these other uses.

**IRS PROVIDES MULTIPLE WAYS TO OBTAIN AN ITIN BUT ITS CONTROLS TO VERIFY THE CORRECTNESS OF ISSUANCE AND USE ARE LIMITED**

IRS provides multiple avenues to apply for an ITIN, all of which result in IRS reviewing the applications and documents to establish an individual's identity. However, IRS's controls over the issuance and use of ITINs are limited. IRS made changes to improve its controls in December 2003, but the changes did not fully address the control limitations. Among other limitations, IRS does not see most applicants, documents are not verified with third parties, and few staff can translate or verify foreign language documents.

**ITIN Application Process**

Individuals apply for ITINs by filing a Form W-7 (Application for IRS Individual Taxpayer Identification Number) with IRS. As of December 17, 2003, applicants must provide the tax return for which an ITIN is needed, and documentation and a photograph to verify their identity and foreign status, such as a passport, driver's license, or identity card.

The ITIN application can be mailed to IRS, submitted at an IRS walk-in, taxpayer assistance center, or submitted through an acceptance agent. Each way has slightly different procedures and requirements.

- An applicant can mail Form W-7 and supporting documents to the Philadelphia Service Center (campus). The documents must be originals or notarized copies. Under IRS procedures, the documents are to be examined by an ITIN unit employee and originals are to be returned to the applicant while IRS is to retain notarized copies. According to IRS, this mail option historically accounts for about 70 percent of the applications.
- An applicant can apply at an IRS taxpayer assistance center that provides walk-in assistance. An IRS employee is to review the application and documents submitted. If the employee deems the documented proof to be satisfactory, the employee is to make an appropriate notation on Form W-7, copy the documents, and return them to the applicant. The employee is to transmit Form W-7 and the copied documents to Philadelphia for final review and issuance of the ITIN. If the employee deems the documents to be suspect or unsatisfactory, the employee is to return them to the applicant. According to IRS, about 20 percent of applicants use this walk-in option.
- An applicant can use the services of an IRS-approved acceptance agent.<sup>8</sup> Agents include colleges, financial institutions, and accounting firms, and can be located outside of the United States. Acceptance agents help prepare a Form W-7 and must submit this form and related documentation to IRS. Certified acceptance agents are authorized to also certify whether the documented proof is adequate. They are required to keep copies of the documents for 3 years after making an appropriate notation on the Form W-7 and forwarding it to IRS. Less than 5 percent of applicants use an acceptance agent—whether or not certified.

**Limited Controls Over ITIN Issuance**

IRS has limited controls to verify ITIN applicants' identities. Among the key limitations in the issuance process are that IRS employees do not have to see the applicant in most cases to verify their identity, applicants' documents are not verified with third parties, and IRS has few staff able to translate or verify foreign language documents.

IRS's ability to establish the applicant's identity is hindered when IRS employees do not see the applicant as they review identifying information and photographs submitted. This is the case for applications that are sent through the mail, which account for 70 percent of applications. A similar problem can arise for "walk in" applications because third parties can submit a Form W-7 for ITIN applicants. As long as the Form W-7 is signed and documentation is provided, IRS does not require applicants to appear.

IRS employees may have difficulty in determining the validity of an unfamiliar document submitted with a Form W-7 to verify identity. An IRS letter to state motor vehicle departments in August 2003 indicated that IRS generally accepts documents submitted with a Form W-7 at face value without validating their authen-

<sup>8</sup>A list of acceptance agents that are available to the general public is available on the IRS Web site ([www.irs.gov](http://www.irs.gov)).

ticity with issuing agencies, or, as discussed above, requiring applicants to appear in person. As of December 17, 2003, IRS listed 13 types of documents that could be used, such as a passport, foreign voter registration card, visa, or U.S. or a foreign driver's license.<sup>9</sup> Prior to that, IRS had listed 40 types of documents. IRS reduced the list, in part, because of the difficulty for IRS employees who see low volumes of Forms W-7 to know all types of documents.]

Even with this reduction in the number of acceptable types of documents, IRS employees still can encounter many variations to consider for each type of document. For example, an IRS research study completed in October 2003 indicated that 17 countries accounted for 85 percent to 87 percent of the ITIN applicants during 1999 through 2001. In each of these years, Mexican citizens accounted for 54 percent to 57 percent of the ITIN applications submitted to IRS. The remaining ITIN applicants can come from many other countries. Each country could have unique formats for each type of acceptable document, which may be unfamiliar to IRS employees.

IRS employees have limited capability to interpret documents submitted in a foreign language. IRS does not track how many documents are submitted in a foreign language but as noted above, ITIN applicants can come from many countries. As of October 2003, 10 of the 230 employees at the ITIN Philadelphia site were bilingual—6 in Spanish, 1 in Chinese, 1 in Korean, 1 in Japanese, and 1 in Ukrainian/Polish, according to IRS.

Nor does IRS generally require ITIN applicants to provide translated copies of documents submitted in a foreign language. According to the Form W-7 instructions, the applicant may be required to provide a certified translation of the foreign language document to obtain an ITIN. IRS states that it will attempt to translate any foreign documents provided. If IRS cannot translate it, IRS's procedure is to ask the applicant for the required translation.

Even if documents can be read, some IRS employees do not have much experience in judging whether the documents are genuine. According to IRS officials, much of this knowledge comes from on-the-job experience—employees that see more documents are more likely to be able to spot an invalid or bogus document. Each IRS employee that provides taxpayer assistance receives the standard 8-hour IRS training on ITIN, including document identification and validation, given to all employees when hired—whether the employee handles ITIN applications in Philadelphia or at a walk-in site.

#### IRS Is Attempting to Improve ITIN Issuance Controls

Knowing of weaknesses in its ITIN processes and controls, IRS has made some changes to improve its controls and is considering other improvements. IRS's concern about the large number of ITINs issued prompted creation of a task force in 2002 to conduct an in-depth review of ITINs. The task force identified many problems and recommendations in its September 2002 final report. IRS designated 22 recommendations as high priority, and created an ITIN office to study their feasibility and oversee any implementation.

We did not have time to review the implementation status of all 22 recommendations but know that action has been taken on some of the recommendations. For example, IRS has started a campaign to educate states, employers, financial institutions, and other government agencies on the appropriate use of ITINs. To this end, IRS sent letters in August 2003 to the directors of all state motor vehicle departments asking them to not accept ITINs for drivers' license purposes. IRS also has considered legislative proposals to make ITIN use illegal for nontax purposes, and to assess information return penalties for improper Form W-7 filings.

IRS announced three other recommendations that took effect on December 17, 2003. First, to help eliminate the nontax use of ITINs, the applicant will have to show a federal tax purpose for seeking the ITIN. A Form W-7 application without proof that an ITIN is needed for federal tax purposes is to be rejected. IRS is requiring taxpayers to attach the tax return for which an ITIN is needed to a Form W-7.<sup>10</sup> Nonresident aliens who need an ITIN for tax purposes other than filing a tax return, such as to obtain tax treaty benefits, will need to prove ownership of the asset that is eligible for a benefit when they file the Form W-7. Second, as mentioned earlier, IRS reduced to 13 from 40 the number of documents that it will accept as proof of identity to obtain an ITIN. Third, IRS will no longer issue an ITIN card, reasoning that the card could be mistaken for an SSN card. Rather, it will

<sup>9</sup> Other documents include an identification card issued by U.S. or foreign military agencies, a state, or a national government; a DHS photo identification; birth certificate; and medical or school records for dependents.

<sup>10</sup> Applicants who are not authorized to work but report wage income on the tax return could still qualify for an ITIN, as discussed elsewhere in this testimony.

issue an authorization letter. Although these changes appear to have the potential to better ensure that ITINs are issued for valid tax-related purposes, we do not know how much these changes may improve IRS's controls over issuance.

#### Weaknesses in ITIN Controls Can Contribute to Tax Fraud

Weak controls over the issuance of ITINs can contribute to tax fraud by individuals seeking to obtain a tax refund that is not truly owed to them. For example, if an individual uses bogus documentation to obtain an ITIN under a false identity, that individual could use that ITIN to file fraudulent tax returns that claim tax refunds. In such situations, the individual could attach a bogus Form W-2 to the tax return to create support for any wages claimed on the fraudulent return, even though ITIN holders generally are not authorized to have SSNs and earn wages in the United States.<sup>11</sup>

IRS has not measured how often such tax fraud schemes related to ITINs have been used but has some anecdotal data. IRS has found that ITINs have been used in schemes that resulted in millions of dollars in fraudulent tax refunds. For 1999 through 2003, IRS found 12,241 tax returns, that used an ITIN with bogus Form W-2s attached that claimed refunds in excess of \$22.1 million. IRS was able to stop \$18 million of these refunds. One scheme in California over these four years accounted for 9,664 of these false returns.

#### **IRS's ITIN CONTROLS CAN BE CIRCUMVENTED TO OBTAIN ITINS AND USE THEM FOR NON-TAX PURPOSES**

Before IRS instituted the changes during December 2003, we did a limited test to assess the security of the ITIN program controls. We attempted to improperly obtain and use ITINs for nontax purposes during September through November 2003. We were able to obtain an ITIN from IRS using fake identity documentation and use this ITIN as well as a bogus ITIN we created for nontax purposes. Although IRS changed its procedures after we obtained and used the ITINs, the changes made do not fully address the weaknesses we exploited, such as IRS's limited ability to verify the validity of documents. Overcoming these weaknesses would be challenging.

We applied for an ITIN using two methods. First, we mailed an ITIN application to IRS's Philadelphia Service Center using a bogus foreign birth certificate as proof of identity. Second, we submitted bogus foreign documentation as proof of identity at an IRS taxpayer assistance site. After we obtained an ITIN through the mailed application, we used it to open a bank account and obtain an ATM card. We did not receive the ITIN from the application submitted at the walk-in site because we already received an ITIN for that individual through the mailed application; IRS apparently followed its procedure to not issue multiple ITINs to the same individual.

We also created a bogus ITIN displayed on a fake ITIN card. We used the bogus ITIN in lieu of a required SSN to obtain a Virginia voter registration card. Virginia requires an SSN to register to vote but presumably voter registration officials did not verify the number we put on the application.<sup>12</sup> Only U.S. citizens are eligible to obtain a voter registration card. We were twice unsuccessful in using the bogus ITIN to open a bank account in the District of Columbia. Officials at both banks told our staff that they could not validate this ITIN based on their access to a credit reporting agency database.

Our test of IRS's ITIN issuance controls and whether an individual can use an ITIN for nontax purposes was too limited to show the extent to which ITIN issuance controls prevent improperly-issued ITINs. Nor does the test show the magnitude of any abuse, in either receiving ITINs under false pretenses or using them for nontax purposes. Rather, the test indicates that IRS's ITIN process and controls could be circumvented, and that a person who obtains an ITIN using bogus documentation may have little difficulty in using the ITIN for certain nontax purposes.

Although IRS revised its procedures for issuing ITINs subsequent to our test, the changes made do not completely address the control weaknesses we exploited. On one hand, IRS staff will need to review fewer types of documents and will be further trained in 2004 on document validation and document inspection equipment to help identify questionable documents. Also, because IRS switched to a letter from an

<sup>11</sup>By analyzing a sample of tax returns filed in tax years 1999 and 2000 with an ITIN for the primary filer, IRS estimated that more than 90 percent of the returns also reported wage income.

<sup>12</sup>Given the limited time to do our work, our test only included Virginia. We do not know whether other states also would have issued us a voter registration card in this manner. Since we did our test, Virginia has announced changes to strengthen its checks of identification documentation such as for a driver's license.



SSN-like card to help clarify that the issued ITIN is not an SSN, using an ITIN to obtain other documents may be more difficult. On the other hand, IRS will neither require applicants to appear in person nor verify documents with third parties such as the country issuing them. Thus, IRS remains limited in its ability to ensure that the documents submitted with an ITIN application are valid and that the applicant is the same individual described by those documents.

IRS officials said that requiring ITIN applicants to apply in-person and verifying documents with third parties would pose challenges, such as significantly delaying the issuance of ITINs and processing of returns that are now to be attached to ITIN applications. According to IRS, requiring in-person appearances would significantly burden IRS and applicants for various reasons. First, IRS locations that accept applications do not have the capacity, space or staffing to handle the increased ITIN traffic. Second, not all ITIN applicants live near such IRS locations and those in foreign countries would have virtually no place to go. Third, assistance to customers with other tax issues would be diminished, particularly when the ITIN workload now only represents about 7 percent of the customers assisted. IRS also noted that verifying identification documents would be burdensome on customers and costly for IRS, particularly when a significant proportion of the documents come from foreign sources.

#### **DIFFICULT ISSUES ARISE WHEN ILLEGAL RESIDENT ALIENS RECEIVE ITINS, BECOME EMPLOYED, AND RECEIVE WAGE INCOME**

Because many ITINs are provided to aliens who are not authorized to work but who nevertheless do, employers and government agencies face many difficult issues. Often, these issues center on what role employers and agencies have, or should have, in furthering the federal policy that immigrants should only be in the United States legally.

Employees who are illegal resident aliens likely provide employers inaccurate TINs, which could be either SSNs or ITINs. In this context, employers' concerns that they might be penalized if they provide inaccurate wage reports to IRS and SSA appear largely unfounded if they do what they are required to do. Employers also appear to have been concerned about what they are expected to do under the government's broader policies on illegal immigration. However, if employers do what is required in verifying the identity and work eligibility of employees, they appear to limit the likelihood of needing to take additional actions under DHS guidance related to possible illegal resident aliens.

When illegal resident aliens obtain employment and earn wages, IRS has data that could provide DHS enhanced information to use in targeting its enforcement efforts. However, to differing degrees, officials cite limited resources, other data sources available to them, legal restrictions, and potential impact on voluntary compliance as factors affecting their decisions about whether and how to share data.

#### *Tax Returns Using ITINs Often Involve Illegal Resident Aliens and Their Associated Wage Statements Likely Show Up in SSA's Earnings Suspense File*

IRS and TIGTA have concluded that many of the taxpayers who file tax returns with ITINs are illegal resident aliens. Although estimates are not precise, according to TIGTA, hundreds of thousands of the tax returns filed with ITINs each year likely involve employed illegal resident aliens. Because a substantial portion of these returns have forms W-2 attached with SSNs as the identifying number, they likely lead to hundreds of thousands of new records being added annually to SSA's earnings suspense file—a large and growing file of wage earnings for which SSA cannot identify the owner.

In a December 2003 letter that responded to a TIGTA report,<sup>13</sup> IRS concluded that most resident aliens who have ITINs and also report wage income were not legally employed in the United States because they used an ITIN instead of a valid SSN on their tax returns. If these individuals had qualified for an SSN, they would not need to file with an ITIN. Further, IRS said that it believes that most ITIN holders whose wages are reported on Forms W-2 are using stolen or fabricated SSNs.

In this report, TIGTA had estimated for tax year 2000 that 353,000 resident aliens who were not authorized to work in the United States filed a tax return with an ITIN and also reported wages. TIGTA concluded that these individuals likely were unauthorized resident aliens (i.e., illegal resident aliens) since they did not use

<sup>13</sup>Internal Revenue Service's Individual Taxpayer Identification Number Creates Significant Challenges for Tax Administration, Treasury Inspector General for Tax Administration, Jan. 2004, Reference Number 2004-30-023.

an SSN as their identifying number on the tax return. TIGTA estimated that at least 265,000 of these returns had Forms W-2 attached that did not use valid SSNs.

These illegal resident aliens can contribute to the size of SSA's earnings suspense file when they work and provide their employers an incorrect identification number and/or name. New employees are supposed to fill out an IRS Form W-4 (Employee's Withholding Allowance Certificate) when they begin employment to identify how many, if any, exemptions to claim for income tax withholding, and must provide their name and SSN. The employer uses the W-4 information to help complete a Form W-2 to report wages the employee earned and the amount withheld for income tax purposes for the calendar year. The Form W-2 is sent to SSA, which uses the form to record the employee's earnings for use in determining future benefits. After recording the wages, SSA forwards the Form W-2 information to IRS so that IRS can match the wages reported on the W-2 to those reported by the taxpayer on a tax return.

If an illegal resident alien provides an ITIN or an SSN (someone else's or an SSN-like number that was made up) on the W-4 and the employer records the name and number on a W-2 form, those numbers will show up as "mismatches" when SSA attempts to validate that the employee's name and number match those in SSA's records. In these cases, SSA posts a record of the wage earnings into its suspense file.

Although it is difficult to compute their precise impact, ITIN mismatches represent a very small portion of the postings to the earnings suspense file since it was created and since the ITIN was created. Based on a preliminary analysis in 2002 of SSA data for 1996 (when the ITIN was created) through 2000 (the most recent year of available data then), the suspense file contained roughly 119,000 numbers that looked like ITINs<sup>14</sup> and wages of about \$936 million. The entire file contained over 230 million postings and more than \$365 billion in uncredited wages through 2000. For those same years (1996 through 2000), about 38 million additional postings (with about \$166 billion in wages) entered the suspense file.<sup>15</sup> Thus, the initial computation of about 119,000 numbers with wages reported under likely ITINs represented about 0.3 percent of new postings and about 0.6 percent of new wages added to the suspense file between 1996 and 2000.

Illegal resident aliens' use of SSNs that are not valid for employment purposes likely accounts for more of the growth in SSA's suspense file than does their use of ITINs. We did not attempt to compute the growth in the suspense file that may be due to illegal resident aliens improperly using an SSN. However, as discussed earlier, for tax year 2000, TIGTA estimated that at least 265,000 tax returns<sup>16</sup> had W-2s attached that used invalid SSNs, which is higher than the 119,000 likely ITINs in the suspense file since 1996.

*If Employers Do What Is Required, They Appear to Face Little Likelihood of Being Penalized*

Employers' concerns about potentially being penalized by IRS if they submit inaccurate wage reports—which can occur when illegal resident aliens provide them ITINs or SSNs upon obtaining employment—appear to be largely unfounded if employers do what is required. Further, if employers do what is required of them, they also appear to minimize their responsibilities to take additional actions under DHS regulations related to possible illegal resident aliens.

Employers have responsibilities to IRS, SSA, and DHS when they hire employees. In addition to the Forms W-4 and W-2 responsibilities, employers are responsible under DHS regulations for verifying employees' identity and employment eligibility. Employers must ensure that employees fill out a DHS Form I-9 (Employment Eligibility Verification Form) when they start work. Employers must review documents provided by employees establishing their identity and eligibility to work and retain the Form I-9 for 3 years after a person begins work or 1 year after a person's employment is terminated.

<sup>14</sup> We did not confirm that each Form W-2 actually reported an ITIN because we did not cross match the SSA records with an IRS file of issued ITINs. Rather, we counted all numbers in the suspense file that appeared to be an ITIN due to their ITIN-like format.

<sup>15</sup> For a number of reasons, the number of suspense file accounts fluctuates daily, making a precise count difficult. While new accounts enter the suspense file, others are withdrawn. SSA has the ability to resolve certain types of identification problems for some of the accounts. Also, individuals come to SSA to report errors in their earnings records. These numbers on the accounts in the suspense file cover through tax year 2000, as of November 2003.

<sup>16</sup> In its report, TIGTA stated that computed the margin of error for this estimate was plus or minus 17,732.

Pursuant to your interest, we contacted two groups that represent employers to better understand what concerns, if any, they may have about their responsibilities to these agencies. Officials from those groups did not provide us any examples where the guidance of IRS, SSA, and DHS were directly in conflict.

However, based on our review of two IRS letters,<sup>17</sup> it appeared that some employers may have believed that (1) they had greater responsibilities than they actually do under IRS guidance and those perceived responsibilities might lead to penalties, and (2) following one agency's advice may put them at risk with another agency. Representatives of one of the employer groups we spoke with said that IRS's responses, as partially described below, allayed their concerns by clarifying actions employers are required to undertake.

The Information Reporting Program Advisory Committee (IRPAC), which represents those (such as employers) who have interests in IRS's information returns programs, asked IRS about any advantage or disadvantage to using IRS's TIN matching program or SSA's SSN verification systems<sup>18</sup> for purposes of information reporting accuracy penalties.<sup>19</sup> The inference from this question appeared to be that some employers believed they were required or expected to use these systems to verify that the SSN provided by an employee was correct. IRS's response clarified that (1) the TIN-matching program was not available to employers for this purpose due to statutory restrictions and (2) employers only have to ask an employee fill out a Form W-4 and then can rely on the SSN as provided on that form. IRS clarified that under its rules employers have no responsibility to verify the accuracy of the SSN provided by the employee.

In general, IRS informed employers that they must solicit an SSN from the employee when the employee is hired by having the employee fill out a Form W-4. The employer should retain the Form W-4 in its records and use the SSN provided on the Form W-4 when completing a W-2 to report wages paid to the employee. If IRS subsequently notifies the employer that the SSN is invalid, the employer may need to solicit an SSN from the employee once or twice more. The employer may rely on the SSN provided by the employee with no further verification.

The employers' questions to IRS also implied that they were concerned that fulfilling their responsibilities to IRS might create the need to take action to comply with DHS requirements. In its letter to IRS, IRPAC noted that federal immigration representatives had told some employers that if an employer used SSA's SSN verification system or IRS's TIN matching program, a mismatch notice would constitute constructive notice of a possible work authorization issue. In general, if questions arise about an employee's work authorization, DHS guidance provides that an employer might need to take certain actions, such as providing the employee another opportunity to provide proper Form I-9 documentation. We did not verify whether a mismatch could be constructive notice of a work authorization issue. However, because employers cannot use the TIN matching program for this purpose and are not required to use SSA's SSN verification system, employers can avoid possibly having constructive notice of a work authorization issue by simply not verifying an employee's identity.

*Greater Data Sharing Regarding ITIN Taxpayers Might Help DHS Identify Illegal Immigrants, But Several Issues Affect Any Decision to Increase Data Sharing*

Enhanced sharing of IRS data might help DHS in addressing illegal immigration, but whether and how to share data is a complex policy issue. Such data sharing could provide DHS additional information to use in targeting its enforcement efforts. However, to differing degrees, officials cite limited resources, other data sources available to them, legal restrictions, and potential impact on voluntary compliance as factors affecting their decisions about whether and how to share data.

Among IRS's principal responsibilities, IRS is to ensure that all taxpayers meet their tax obligations, including illegal resident aliens who are not authorized to work in the United States but who have a tax obligation. Among SSA's responsibilities is ensuring that individuals who have paid social security taxes on their cov-

<sup>17</sup> On July 24, 2002, the American Society for Payroll Management sent a letter and IRS responded to their concerns on January 13, 2003. A set of follow-up questions produced another IRS response on September 23, 2003.

<sup>18</sup> TIN Matching is an IRS program that allows payers who submit certain information returns subject to backup withholding taxes when the payee does not provide a TIN to match payee TIN and name combinations against IRS records prior to submitting information returns. SSA's verification system is a system that employers may choose to use in an effort to verify that an SSN matches a given individual's name.

<sup>19</sup> 26 U.S.C. § 6721 provides for a penalty for failure to file a complete and accurate information return, including a failure to include the correct TIN (or SSN). The penalty is \$50 per return up to \$250,000 per year.

ered earnings receive credit. Such credit is important so that workers will receive the benefits to which they are entitled based on their work, even persons with such earnings from unauthorized work. In addition to other responsibilities, DHS is responsible for enforcing the nation's immigration laws, including deterring illegal immigration and locating and deporting illegal resident aliens.

As discussed earlier, IRS data may identify hundreds of thousands of individuals who are likely to be illegal resident aliens. Individuals who obtain ITINs and report wage income on a tax return may be illegal resident aliens. IRS has data that could be used to identify illegal resident aliens and/or their employers. The data would include such specifics as an individual's name, address, and place(s) of employment in the last calendar year.

Although DHS officials we spoke with said that IRS data might be useful in carrying out their responsibilities, they noted that they have other sources of data on illegal immigrants and have limited resources to pursue all potential leads on illegal immigration. Further, they recognized that current statutory restrictions on sharing tax data would need to be modified to permit sharing of IRS data with them.<sup>20</sup>

IRS officials similarly noted a number of issues that relate to increasing data sharing among the agencies. IRS officials said that they cannot share these data with DHS under current statutory restrictions on the sharing of tax data. IRS officials also said that any consideration of additional sharing of tax data with federal agencies requires substantial justification and should be considered in rare circumstances because the confidentiality of tax data is considered to be fundamental to taxpayers' willingness to voluntarily and accurately report their tax obligations. Finally, IRS officials also noted a potential adverse effect of increased data sharing. To the extent that illegal resident aliens become aware of greater sharing of information by IRS with other agencies, some of the individuals may move into "underground" jobs and avoid their tax obligations. Thus, IRS faces a fundamental tension in considering steps that might further other agencies' achievement of their missions but that potentially undercut IRS's ability to ensure that all taxpayers, regardless of their legal immigration status, meet their tax obligations.

#### **CONCLUDING OBSERVATIONS**

IRS's creation of the ITIN helped it resolve several tax administration challenges. However, in creating the ITIN, IRS opened an avenue for individuals to use to establish an identity and to blend into society. IRS's controls over the issuance of ITINs have been limited and consequently, we had little difficulty obtaining an ITIN with bogus documents and then using that ITIN, as well as a completely made up ITIN, to take additional steps to blend into society. IRS's recent efforts to improve its ITIN issuance process—which changed the application procedures from those we tested—might make it somewhat more difficult to obtain an ITIN with bogus information but do not fully address the weaknesses we exploited.

Because a significant but not precisely known number of ITIN holders are illegal resident aliens, tax return data that IRS receives could potentially assist DHS in carrying out enforcement of immigration laws. However, agency officials have not aggressively sought to enhance data sharing, citing limited resources, legal restrictions, and possible voluntary compliance impacts. Changing the current statutory provisions that limit the sharing of tax-related data with agencies or emphasizing enhanced efforts by IRS, SSA, and DHS to address the presence of illegal resident aliens are difficult policy issues. For instance, to what extent would increased data sharing undermine the willingness of taxpayers to voluntarily and accurately report information IRS needs to administer tax laws? What priority should these agencies place on addressing illegal resident aliens versus their other responsibilities? Given the legal, budgetary, and policy issues attendant to increased data sharing, this hearing is one opportunity for Congress to consider whether to provide new guidance to the agencies on how to proceed.

Messrs. Chairman, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittees may have at this time.

For further information on this testimony, please contact Michael Brostek at (202) 512-9110 or. Individuals making key contributions to this testimony include George Guttman, Jay Pelkofer, and Tom Short.

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<sup>20</sup> Section 6103 of the Internal Revenue Code allows IRS to disclose taxpayer information to federal agencies and authorized employees of those agencies, but only under specific conditions. Section 6103 does not currently authorize data sharing between IRS and DHS specifically for immigration enforcement.

Chairman HOUGHTON. Ms. Gardiner.

**STATEMENT OF PAMELA J. GARDINER, ACTING INSPECTOR  
GENERAL FOR TAX ADMINISTRATION, U.S. DEPARTMENT OF  
THE TREASURY**

Ms. GARDINER. Chairman Houghton, Chairman Shaw, I appreciate the opportunity to appear before you today to discuss issues related to individuals who file tax returns using the ITIN, and its impact on tax administration. The vast majority of the individual tax returns are filed using an SSN as identification. However, there are instances where alien individuals have a need to file a U.S. tax return. For example, a professional golfer who is a citizen of another country but tours in the United States would need to report taxes on tournament winnings. To enable these individuals to file, Treasury regulations were issued in 1996 to provide them with ITINs. The number of ITINs issued in the last few years has increased dramatically, climbing from 1.1 million in 2001 to 1.5 million in 2002, a 1-year increase of about 36 percent.

Normally, ITINs would be used to file a 1040-NR, U.S. non-resident alien income tax return. However, many ITINs are used to file Forms 1040, which creates challenges for tax administration. Our analysis of Forms 1040 filed in tax year 2001 with ITINs, found that approximately 530,000 Forms 1040 were filed with ITINs as the primary number by aliens who resided in the United States, but who were not authorized to work and, in general, to reside in the United States. These returns reported adjusted gross income of \$10.7 billion. After tax deductions and credits, these tax returns reported a total liability of \$184 million. Tax returns filed with ITINs present two significant challenges for IRS' administration of the tax system. First, resident aliens filing tax returns with ITINs do so because they typically are not eligible for a valid SSN for employment purposes. As a result, the tax returns filed by these individuals and the corresponding Forms W-2 often have two different identification numbers. We estimate that 309,000 tax year 2000 Forms 1040 filed with ITINs included W-2s with SSNs that did not belong to the individuals who filed the tax returns. Instead, many of the SSNs were assigned to other individuals.

Second, individuals filing returns with ITINs often fail to fully report income from wages and employee compensation. For tax year 2000, we estimate that one in four individuals filing with ITINs failed to report wages and employee compensation totalling \$324 million. However, the mismatches between the ITINs and the SSNs limits the IRS' ability to identify this particular type of under-reporting. Beyond the tax administration challenges, other government agencies are affected by ITIN usage because the tax law generally prohibits the disclosure of tax information to other Federal Government agencies. For example, immigration law contemplates an unrestricted exchange of information regarding immigration status between Immigration and Customs Enforcement, and other government entities and officials. However, there is no current exception within the Internal Revenue Code that would permit this. In addition, identity theft is the fastest growing finan-

cial crime in the country. The SSA has expressed ongoing concerns about the significant problems caused by the misuse and sometimes fraudulent use of the SSN. As I indicated earlier, tax returns with ITINs have often included W-2s with SSNs assigned to other individuals.

In December 2000, the IRS announced that it was taking a number of steps to enhance the ITIN program, as outlined in Commissioner Everson's testimony. This ITIN initiative is a laudable effort and may reduce the number of ITINs issued for non-tax purposes. However, it does not address the issues resulting from individuals with ITINs and their employers using erroneous or improper SSNs for wage reporting. It is also unlikely that it would deter an individual with criminal intent, and it might be an impediment to those who seek to voluntarily comply with the tax laws. We will monitor the impact these initiatives have on the integrity of the ITIN program. I would like to close by responding to press reports suggesting that Treasury Inspector General for Tax Administration has compiled a list of people who we suspect are illegal aliens, and that we intend to prosecute them. I can assure you that this is completely false. We do not have any such list, initiative, or program designed to identify persons who are not authorized to work in the United States, and I would be happy to answer any questions.

Chairman HOUGHTON. Thank you very much, Ms. Gardiner.  
[The prepared statement of Ms. Gardiner follows:]

**Statement of Pamela J. Gardiner, Acting Inspector General for Tax Administration, U.S. Department of the Treasury**

Chairman Houghton, Chairman Shaw, Ranking Member Pomeroy, Ranking Member Matsui, and distinguished Members of the subcommittees, I appreciate the opportunity to appear before you today to discuss issues related to individuals who file tax returns using an Individual Taxpayer Identification Number (ITIN), and its impact on tax administration.

The vast majority of individual tax returns are filed using a Social Security Number (SSN) as identification. However, there are instances where alien individuals have a need to file a U.S. tax return. For example, a professional golfer who is a citizen of another country but tours in the U.S. would need to report taxes on tournament winnings. To enable these individuals to file, Treasury Regulations were issued in 1996 to provide them with ITINs. An ITIN is intended for tax purposes only and creates no inference regarding an alien individual's right to live in the U.S. or be legally employed here.

The number of ITINs issued in the last few years has increased dramatically, climbing from 1.1 million in 2001 to 1.5 million in 2002—a one-year increase of about 36 percent. Normally, ITINs would be used to file a Form 1040NR—U.S. Non-resident Alien Income Tax Return. However, many ITINs are used to file Forms 1040, which creates challenges for tax administration. Our analysis of Forms 1040 filed in Tax Year 2001 with ITINs found that approximately 530,000 Forms 1040 were filed with ITINs as the primary number by aliens who resided in the U.S., but who were not authorized to work and, in general, to reside in the U.S.

- These returns reported adjusted gross income of \$10.7 billion. After tax deductions and credits, these tax returns reported a total liability of \$184 million.
- Over half of the tax returns reported no tax liability, and \$522 million in tax refunds were claimed on these returns.

Tax returns filed with ITINs present two significant challenges for IRS' administration of the tax system. First, resident aliens filing tax returns with ITINs do so because they typically are not eligible for a valid SSN for employment purposes. As a result, the tax returns filed by these individuals and the corresponding Forms W-2 often have two different identification numbers. We estimate that 309,000 Tax Year 2000 Forms 1040 filed with ITINs included W-2s with SSNs that did not be-

long to the individuals who filed the tax returns. Instead, many of the SSNs were assigned to other individuals. Second, individuals filing returns with ITINs often fail to fully report income from wages and nonemployee compensation. For Tax Year 2000, we estimate that one in four individuals filing with an ITIN failed to report on their tax returns wages and nonemployee compensation totaling \$324 million. However, the mismatches between the ITINs and the SSNs limit the IRS' ability to identify this underreporting.

Beyond the tax administration challenges, other government agencies are affected by ITIN usage because the tax law generally prohibits the disclosure of tax information to other Federal Government agencies. For example, immigration law<sup>1</sup> contemplates an unrestricted exchange of information regarding immigration status between Immigration and Customs Enforcement and other government entities and officials. However, there is no current exception within the Internal Revenue Code that would permit this. In addition, identity theft is the fastest growing financial crime in the country. The Social Security Administration has expressed ongoing concerns about the significant problems caused by the misuse and sometimes fraudulent use of the SSN. As I indicated earlier, tax returns with ITINs have often included W-2s with SSNs assigned to other individuals.

In December 2003, the IRS announced that it was taking a number of steps to enhance the ITIN program, including the following:

- An applicant is now required to show a federal tax purpose for obtaining an ITIN, and typically must attach a completed tax return to the ITIN application.
- The number of acceptable documents to establish proof of identity to obtain an ITIN has been reduced from 40 to 13.
- The appearance of the ITIN has been changed from a card to a letter.

This ITIN initiative is a laudable effort and may reduce the number of ITINs issued for non-tax purposes; however, it does not address the issues resulting from individuals with ITINs and their employers using erroneous or improper SSNs for wage reporting. It is also unlikely that it will deter an individual with criminal intent, and it might be an impediment to those who seek to voluntarily comply with the tax laws. We will monitor the impact these initiatives have on the integrity of the ITIN program.

I would like to close by responding to press reports suggesting that TIGTA has compiled a list of people whom we suspect are illegal aliens and that we intended to prosecute them. I can assure you that this is completely false. We do not have any such list, initiative, or program designed to identify persons who are not authorized to work in the United States.

I would be happy to answer any question you may have at this time.

TIGTA's audit report on ITINs is available at: <http://www.treas.gov/tigta/2004reports/200430023fr-redacted.pdf>

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Chairman HOUGHTON. Ms. Olson, nice to have you back with us.

**STATEMENT OF NINA E. OLSON, NATIONAL TAXPAYER  
ADVOCATE, INTERNAL REVENUE SERVICE**

Ms. OLSON. Thank you, sir. Mr. Chairman, Ranking Members, and Members of the Subcommittees, thank you for inviting me here today to discuss ITINs, and what some view as a conflict between the laws and procedures governing the U.S. tax, Social Security, and immigration systems. Although the IRS ITIN administration is not without its problems, I believe that the current law and policies of these three systems reflect a delicate balance between them that enables each to meet its unique requirements effectively without harming the mission of the others. It is true that tax law defines the term "resident alien" differently from immigration law. In 1984, Congress explicitly determined that providing a bright line objective test of resident alien for tax purposes based on actual

<sup>1</sup>8 U.S.C. 1373 (2003).

presence in the United States, regardless of immigration status, outweighed other considerations. Both non-resident and resident U.S. aliens need some sort of number in order to file and report income and pay tax. In 1996, the IRS created ITINs for just this purpose. The ITINs, then, are an important tool for increased tax compliance.

The IRS ITIN data demonstrates a strong tendency for compliance among ITIN holders. Nearly 75 percent of the 3.1 million ITINs issued in calendar years 1998 through 2001 have appeared on a tax return. Individuals who work in the United States without immigration authorization, undocumented workers, also have a strong incentive to comply with the tax laws because to adjust their immigration status, they must show good moral character by paying and filing their taxes. If an undocumented worker works for a legitimate business, one that is not part of the underground cash economy, the worker must have an SSN. He will steal, borrow, or fabricate an SSN and obtain false identification documents. Employers use this number on the employee's W-2 forms. This identity theft and income reporting results in an innocent taxpayer, the identity theft victim, being audited and potentially collected against for income and tax that are not his. It can take years for the victim to get this mess straightened out.

Let me be very clear here. Identity theft is a crime that has lasting effects on its victims. It also causes problems for the government. Filing a tax return with an ITIN on the return and an SSN on the W-2 form is not a crime in and of itself. In fact, these returns enable the IRS to protect identity theft victims from needless audits and tax collection. They tell us who actually earned the income. Moreover, the ITIN return fulfills the taxpayer's legal duty to file. Any proposal that addresses misuse of SSNs or immigration issues must demonstrate that it enhances tax compliance and protects identity theft victims better than the IRS' current procedures. The most frequently discussed reform proposals, including authorizing the IRS to disclose tax information to Social Security and DHS about ITIN holders with earnings, do not stop identity theft or prevent undocumented workers from working in the United States. These proposals will instead drive the undocumented worker underground, where he will continue to use the stolen SSN. They will also drive the undocumented worker out of compliance with the tax laws.

Instead, I suggest maintaining status quo plus. Let us build upon the IRS' recent improvements to the ITIN process that address national security concerns. Let us bring these taxpayers into the system through education and outreach, working with low-income taxpayer clinics and Volunteer Income Tax Assistance sites. Let us accept ITIN-SSN mismatch returns electronically and assist these taxpayers at the IRS walk-in sites, and let us protect identity theft victims from unwarranted compliance actions by fencing off the income that is reported under a stolen or fabricated SSN on our tax systems. This proposal actually improves tax administration while remaining neutral to the administration of Social Security and immigration laws. It acknowledges that taxpayers filing SSN-ITIN mismatch returns are generally trying to comply with the tax laws, even at risk of having their immigration status detected. It imple-



ments Congress’s definition of resident alien for tax purposes. It permits the disclosure of tax information to Federal agencies only as currently authorized by the Tax Code, and does not weaken the important privacy protections that are a foundation of our voluntary tax system. It helps identity theft victims, and it maintains the delicate balancing act between the interests of tax administration and the interests of taxpayers without harming government’s other legitimate interests. In short, it defuses the problem. Thank you.

[The prepared statement of Ms. Olson follows:]

**Statement of Nina E. Olson, National Taxpayer Advocate,  
Internal Revenue Service**

Chairman Houghton, Chairman Shaw, Ranking Member Pomeroy, Ranking Member Matsui, and Members of the respective subcommittees, thank you for inviting me to appear before you today to discuss Individual Taxpayer Identification Numbers and their impact on tax administration. In announcing this hearing, Chairmen Houghton and Shaw noted that the Social Security Administration, the Internal Revenue Service, and the U.S. Department of Homeland Security all have responsibilities with respect to Social Security Numbers and Individual Taxpayer Identification Numbers, and that “each agency’s policies are designed to promote its individual goals.” This hearing today is intended, in part, to help them determine whether “better coordination across agency boundaries is needed to promote enforcement of laws and regulations.”

Some parties—both inside and outside government—believe that an apparent conflict between the laws governing the U.S. tax, social security, and immigration systems hampers the effective administration of these programs. I intend to show in my testimony that there is, in fact, no actual conflict between these systems but instead a delicate balance between these three systems that enables each to fulfill its individual mission effectively without harming the mission of the others. I will also discuss why certain proposed solutions to this perceived conflict will have a serious impact on tax administration without resolving the problems for the other agencies.

**Tax Administration Considerations**

Since its earliest incarnation in 1862, the Internal Revenue Service (IRS) has been charged with administering and enforcing this nation’s internal revenue laws. As part of its mission, the IRS must create systems that enable taxpayers who wish to comply with the tax laws to do so with minimal burden or obstacles. It must also ensure that taxpayers who do not wish to fully comply with the tax laws, or who actively attempt to evade or undermine these laws, face the appropriate level of enforcement actions, including prosecution where necessary. The IRS’s systems—on both the customer service and compliance/enforcement sides of the house—must incorporate protections of fundamental taxpayer rights. Accordingly, and perhaps most importantly, the IRS must zealously protect the confidentiality of the tax information required for making the determination of the correct amount of tax that each U.S. taxpayer should pay.<sup>1</sup>

These four essential elements—confidentiality, customer service, enforcement, and taxpayer rights—are all implicated as the IRS attempts to fulfill its mission with respect to a particular group of taxpayers—those who are not eligible for SSNs and thus must obtain an ITIN to meet their tax obligations—and a subset population within that group, namely, taxpayers who are working inside the United States without legal authorization to do so. It is particularly challenging to reconcile these elements when faced with problems such as identity theft and domestic and international terrorism, which clearly create innocent victims. But reconcile them we must.

**Treatment of Aliens for Tax Purposes**

In general, alien persons (that is, individuals who are not U.S. citizens) are classified as either nonresident aliens or resident aliens. Prior to 1984, the Internal Revenue Code (IRC) did not provide a definition for the terms “resident alien” or “non-resident alien.” Treasury regulations under IRC § 871 generally required the IRS to

<sup>1</sup>IRC § 6103(b)(1) and (2) refer to this information as “return” and “return information.”

apply a subjective, facts-and-circumstances test that turned, in part, on the alien's intentions as to the length and nature of his stay in the United States.<sup>2</sup>

The regulations defined a "nonresident alien individual" as one "whose residence is not within the United States and who is not a citizen of the United States."<sup>3</sup> On the other hand, an individual was considered a U.S. resident for tax purposes if he (1) had intent to make residence in the United States and (2) was physically present in the United States. Physical presence alone, however, was not sufficient to obtain resident status. The regulations provided that an alien's residence depended on whether he was "a mere transient or sojourner" in the United States.<sup>4</sup> Thus, an alien could be a resident for tax purposes despite his not being a resident for immigration purposes or present in the United States for half the tax year.<sup>5</sup>

The regulations also created an "evidentiary" presumption that an alien was presumed to be a nonresident alien, regardless of presence (legal or illegal) in the United States. This presumption could be rebutted by evidence that the alien had made a declaration of intent to become a U.S. citizen<sup>6</sup> or by proof of the alien's definite intent to obtain U.S. residence, or by evidence that the length and nature of the alien's stay in the U.S. made him a resident.<sup>7</sup> This regulatory presumption created some confusion in application.<sup>8</sup>

It was this subjective and confusing state of the law that led Congress in 1984 to distinguish more clearly between resident and nonresident aliens in the Internal Revenue Code.<sup>9</sup> The Joint Committee on Taxation described the rationale for the changes as follows:

Congress believed that the tax law should provide a more objective definition of residence for income tax purposes. Congress believed that prior law did not provide adequate guidance with respect to residence status. Congress understood that an objective definition might allow some aliens who should be taxable as residents to avoid resident status, and would impose resident status on some aliens who are not residents under the current rules. On balance, however, Congress found that the certainty provided by the Act's objective definition outweighed other considerations.<sup>10</sup>

Thus, Congress enacted IRC § 7701(b), which defines the terms "resident alien" and "nonresident alien." An alien individual is considered a resident alien if he or she satisfies either the "lawful permanent resident" (or "green card") test<sup>11</sup> or the "substantial presence" test.<sup>12</sup> A nonresident alien is an alien individual who is neither a citizen of the United States nor a resident of the United States, as defined above.<sup>13</sup>

Nonresident aliens are generally subject to U.S. income taxation on their U.S.-source income and on certain foreign-source income that is effectively connected with the conduct of a trade or business within the United States.<sup>14</sup> Resident aliens,

<sup>2</sup>Staff of Joint Committee on Taxation, 98th Cong., 2d Sess., General Explanation of H.R. 4170 at 463 (Dec. 31, 1984)(hereinafter, "JCT"). See Treas. Reg. §§ 1.871-2 to -5 (as amended by T.D. 6500, 25 Fed. Reg. 11910 (Nov. 26, 1960)).

<sup>3</sup>Treas. Reg. § 1.871-2(a) (as amended by T.D. 6500, 25 Fed. Reg. 11910 (Nov. 26, 1960)).

<sup>4</sup>Treas. Reg. § 1.871-2(b); JCT, *supra* note 2.

<sup>5</sup>JCT, *supra* note 2 (citing *Tongsun Park v. Comm'r*, 79 T.C. 252, *aff'd without published opinion*, 755 F.2d 181 (D.C. Cir. 1985)). For a detailed discussion of pre-1984 law, see Joel D. Kuntz & Robert J. Peroni, U.S. International Taxation ¶B1.02[2][β] (2002).

<sup>6</sup>Treas. Reg. § 1.871-4(c)(2).

<sup>7</sup>*Id.*

<sup>8</sup>See Kuntz & Peroni, *supra* note 5, at B1-B25.

<sup>9</sup>Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 138.

<sup>10</sup>JCT, *supra* note 2, at 463-464.

<sup>11</sup>IRC § 7701(b)(1)(A)(i). "A lawful permanent resident is an individual who has been lawfully granted the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws." Treas. Reg. § 301.7701(b)-1(b)(1).

<sup>12</sup>IRC § 7701(b)(1)(A)(ii). An individual meets the substantial presence test if he or she has been present in the United States on at least 183 days during a 3-year period including the current year. The 183-day period is computed as follows:

Current Year: Each day of presence counts as a full day. First Preceding Year: Each day of presence counts as 1/3 of a day. Second Preceding Year: Each day of presence counts as 1/6 of a day.

IRC § 7701(b)(3). See also Treas. Reg. § 301.7701(b)-1(c).

<sup>13</sup>IRC § 7701(b)(1)(B).

<sup>14</sup>IRC § 864(c)(1)-(4). A flat 30 percent tax rate (or lower treaty rate) is imposed on a nonresident alien's gross U.S. income that is not effectively connected with a U.S. trade or business. U.S. source net income that is effectively connected with a U.S. trade or business is subject to income taxation under the same rules that apply to U.S. residents. However, certain treaty exceptions may apply and thereby limit taxation or prevent double taxation. See IRC § 871.

on the other hand, are subject to U.S. taxation on their worldwide income under the same rules as U.S. citizens.<sup>15</sup>

In creating this statutory scheme, Congress acknowledged that it was creating an imperfect system but that it had struck the right balance between the goals of tax administration and the issues of alienage and immigration status. That is, Congress essentially decided that U.S. immigration status was not solely determinative of a taxpayer's status as a resident alien or nonresident alien for tax purposes. In order to distribute the tax burden fairly, Congress consciously deviated from the immigration classification system.<sup>16</sup> The Joint Committee on Taxation provided the following explanation:

Congress believed that aliens who have entered the United States as permanent residents and who have not officially lost or surrendered the right to permanent U.S. residence should be taxable as U.S. residents. These persons have rights in the United States that are similar to those afforded U.S. citizens . . . equity demands that they contribute to the cost of running the government on the same basis as citizens.

Congress similarly decided that it was appropriate to treat as residents individuals who spend significant time in the United States. Recognizing that there is no single system that is perfect, Congress believed that a regime that depends on length of stay meets the criteria of objectivity and establishing nexus with the United States and is appropriate.<sup>17</sup>

#### **Individual Taxpayer Identification Number (ITINs)**

Individual Taxpayer Identification Numbers (ITINs) were created to improve the administration of the tax system with respect to individuals who are unable to obtain Social Security Numbers (SSNs) but have some nexus with the United States tax system. These individuals are a diverse group, including nonresident alien investors in U.S. financial instruments, nonresident alien sellers of U.S. real property, nonresident alien persons claiming benefits under a tax treaty, and resident aliens who are working in the United States without legal authorization under U.S. immigration laws ("undocumented workers"<sup>18</sup>). ITINs are available to resident and nonresident aliens, their spouses, and their dependents who are not eligible to receive SSNs and who have a need for a number for tax administration purposes.

An ITIN does not authorize an alien to work in the United States, grant an immigration status, or qualify the alien for benefits, such as the Earned Income Tax Credit (EITC) or Social Security. To receive an ITIN, individuals must complete Form W-7, Application for IRS Individual Taxpayer Identification Number, and attach documentation validating his or her identity and foreign alien status.<sup>19</sup> Form W-7 applications are processed at the IRS's Philadelphia campus.

From a purely tax administration perspective, ITINs are a process improvement. They enable taxpayers who have an obligation to report income or pay taxes under the United States tax system to comply with that requirement. ITINs also enable the IRS to track taxpayer compliance with those requirements and take appropriate enforcement actions where compliance is lax or lacking.<sup>20</sup>

The creation of ITINs, then, is a positive step in tax administration—a system improvement. ITINs are, however, associated with problems, including some that impact tax administration. These problems arise from the legitimate application of U.S. immigration and Social Security laws as well as our legitimate concerns about international and national terrorism.

<sup>15</sup>Treas. Reg. 1.1-1(b).

<sup>16</sup>There are recent examples where Congress chose to disregard immigration status as a matter of tax policy and effective tax administration. In 1998, Congress enacted IRC §7526, which creates a grant program for funding Low Income Taxpayer Clinics that provide, in part, outreach and education to taxpayers who speak English as a Second Language. This legislation makes no distinction as to the immigration status of these taxpayers. The program was enacted after testimony before the National Commission on Restructuring the Internal Revenue Service and both houses of Congress that ESL taxpayers, including undocumented workers, needed assistance in complying with the tax laws.

<sup>17</sup>JCT, *supra* note 2, at 464.

<sup>18</sup>For purposes of this testimony, the term "undocumented workers" includes (1) workers who legally reside in the U.S. but do not have authorization to work in the U.S. and (2) workers who reside in the U.S. without authorization to either work or reside in the U.S.

<sup>19</sup>Internal Revenue Service, Understanding Your IRS Individual Taxpayer Identification Number, Publication 1915 (Rev. 02/2004), at 2.

<sup>20</sup>I have commented extensively, elsewhere, on the problems with the IRS's implementation of the ITIN application process. See National Taxpayer Advocate, 2003 Annual Report to Congress, Publication 2104 (Rev. 12/2003), at 60-86.

### Problems Associated with ITINs

As discussed above, Congress determined in 1984 that alien individuals who meet either the green card test or the substantial presence test under the Code are considered resident aliens for U.S. tax purposes. Although the green card test keys off U.S. immigration status, the substantial presence test, by definition, acknowledges that a resident for tax purposes may not be a resident for immigration purposes. It is this divergence from immigration law that places the IRS and taxpayers alike in a difficult position. It is this divergence that creates enormous, and in most instances undue, pressure on the IRS to share data with agencies that will, in fact, impair tax administration. And it is this divergence that creates obstacles for taxpayers who have strong incentives to comply with the tax laws and leads to instances of identity theft within the tax system.

#### *Undocumented Workers and the Tax System*

There are approximately 9.3 million individuals whose presence in the United States is not authorized by U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS). About 6 million of this group are working in the United States, including virtually all undocumented males (96 percent) and 60 percent of undocumented females.<sup>21</sup> Approximately, 130 million individual income tax returns are now filed each year. Therefore, the approximately 6 million undocumented workers constitute a significant portion of persons with a potential income tax obligation.

While more than 4 million undocumented immigrants have resided in the United States for less than 5 years, many have been here for a long time. Approximately 4 million undocumented immigrants arrived in the United States prior to 1995.<sup>22</sup> More than 4 million adults are in approximately 2 million undocumented families. These families include more than 1.5 million children who are undocumented immigrants and another 3 million children who are citizens by virtue of being born in the United States.<sup>23</sup>

Taxpayers who are undocumented workers have a strong incentive to comply with the federal tax laws. Recently, for the first time in decades, the number of naturalized immigrants has grown, from 6.5 million in 1990 to over 11 million in 2002.<sup>24</sup> U.S. immigration procedures require applicants for visa status adjustment and naturalization to provide tax information and demonstrate tax compliance as an indicator of the applicant's ethical conduct and his or her willingness and ability to meet legal obligations.<sup>25</sup>

IRS ITIN data demonstrates this strong tendency for compliance among ITIN holders.<sup>26</sup> Nearly 75 percent of the 3.1 million ITINs issued in calendar years 1998–2001 have appeared on a tax return. Of those ITINs, about two-thirds of the ITINs were issued to residents and their spouses or dependents, nearly 25 percent were issued to nonresident aliens with a tax administration need, and the remaining 8 percent were issued to people with other needs.<sup>27</sup> As noted above, there are approxi-

<sup>21</sup>This estimate of the number of undocumented workers is derived by subtracting legal foreign-born residents from the total foreign-born population based on the March 2002 Current Population Survey (CPS) with an allowance for immigrants not included in the CPS. Data provided by Department of Homeland Security and other government agencies are used to estimate the number of legal residents. See Urban Institute Immigration Studies Program Paper: Undocumented Immigrants: Facts and Figures (Jan. 12, 2004).

<sup>22</sup>Urban Institute, *Crossing Borders: Impact of Immigration* (Feb. 3, 2004), at 3.

<sup>23</sup>*Id.*

<sup>24</sup>Urban Institute, *Trends in Naturalization* (Sept. 2003), at 2.

<sup>25</sup>Robert C. Divine, *Immigration Practice*, 59–61 (3rd ed. 1998). It is not necessary for the applicant to have paid his or her tax in full; the applicant may demonstrate that he or she has entered into an installment agreement or made other arrangements to pay federal taxes owing.

<sup>26</sup>In a recent report, the Treasury Inspector General for Tax Administration (TIGTA) stated that almost 25 percent of individual taxpayers who filed a Tax Year 2000 Form 1040 with an ITIN underreported an estimated \$324 million in income. TIGTA noted in a footnote that the margin of error for this estimate is +/- \$122 million, or +/- 37.6%. See TIGTA, *The Internal Revenue Service's Individual Taxpayer Identification Number Creates Significant Challenges for Tax Administration* (2004–30–023, Jan. 2004), at 4.

Leaving aside the difficulty of basing tax policy and tax administration decisions on data with this large a margin of error, there are many explanations for this unreported income. Undocumented workers are often transient workers, following various harvests; they often work for short periods—sometimes only one day with one employer; they share mail boxes and rely on others to forward mail. Each of these reasons alone could result in missing W-2 forms and inadvertent noncompliance.

<sup>27</sup>Individual Master File, Returns Transaction File, analysis conducted by MITS, Information Technical Services, Business Systems Development, Business Systems and Extracts, Calendar Years 1998–2001. Since data is unavailable to validate 1996 and 1997, and ITINs obtained in

mately 6 million undocumented workers in the United States. The Treasury Inspector General for Tax Administration (TIGTA) recently identified 353,000 Tax Year 2000 Forms 1040 filed with a primary ITIN and reporting wages.<sup>28</sup> As the IRS and stakeholders, including Low Income Taxpayer Clinics, continue to conduct outreach and education to these taxpayers about their rights and responsibilities, we can expect the number of ITIN returns reporting wages to increase. The increase in filings of such returns is not a problem, in and of itself. The problems arise from ancillary issues such as identity theft.

*Undocumented Workers and Identity Theft: Impact on Tax Administration*

All individuals must demonstrate to their potential employers that they have legal authorization to work in the United States.<sup>29</sup> A new employee must complete both IRS Form W-4, Employee's Withholding Allowance Certificate, supplying a Social Security number that is valid for work purposes, and a USCIS Form I-9, (Immigration) Employment Eligibility Verification, providing the employer with documentary evidence of his or her identity and citizenship, resident, or alien status.

Undocumented workers, of course, have no such documentation. They are not authorized to work in the United States, and they cannot obtain Social Security numbers. These workers either steal, "borrow," or fabricate Social Security numbers and obtain false identification documents using these numbers.<sup>30</sup> Employers then use these erroneous numbers on their annual Forms W-2, Wage and Tax Statement, reporting wages, earnings, and withheld taxes to the Social Security Administration and the IRS.

When an undocumented worker receives his Form W-2 with an erroneous SSN, he must decide whether and how he will file his returns. If the taxpayer decides to file his tax returns, he must next decide whether he should continue to use another person's SSN on his return, or whether he will file his return reporting the income under his ITIN. If he chooses the latter course, the attachment of a W-2 with an erroneous SSN to an ITIN return is a clear admission that he has earned wages without authorization to work. If he instead continues to use the erroneous SSN on the tax return, he will be perpetuating his violation of the Internal Revenue laws.

If a taxpayer seeks tax advice from a legitimate and principled return preparer or representative, he should be advised to use his ITIN on the return and attach the Form W-2 with the SSN. Doing so, however, creates several procedural and processing consequences. First, according to the IRS, it cannot process the return electronically because the taxpayer identification number (TIN) on the W-2 does not match the TIN on the return. Thus, the taxpayer must file a paper return and cannot obtain tax preparation assistance from the IRS Taxpayer Assistance Centers (formerly known as "walk-in offices").<sup>31</sup> Second, if the taxpayer does not already have an ITIN, he must complete a Form W-7, Application for IRS Individual Taxpayer Identification Number, and attach it, along with the required documentation, to the return. Once the mismatched return is filed, the IRS processes it under the ITIN, assesses the tax liability, and issues a refund or a notice of assessment and demand for payment of tax, as appropriate.

The story does not end there, however. The employer has reported wages earned by the taxpayer under a Social Security number that belongs to another person. In most instances, the Social Security Administration will not be able to post earnings to that SSN holder's account because the name associated with the SSN does not

2003 may take several years to show up on a tax return, we will report information on ITIN usage for 1998-2001. Of approximately 2.2 million distinctive ITINs that were included on tax returns for Tax Years 1998-2001, about 40 percent were used by a primary filer, 25 percent were used by a secondary filer, and about 33 percent were used to identify dependents.

<sup>28</sup>TIGTA Report, *supra* note 26, at 16. The total number of individual income tax returns with a primary and/or secondary ITIN exceeded one million in TY 2001.

<sup>29</sup>Section 274A(a)(1)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1324A (1992), makes it unlawful for an employer to hire an individual without complying with the specific employment verification requirements established under the provision.

<sup>30</sup>IRC § 6723 imposes a penalty on the failure to comply with specified information reporting requirements. Treas. Reg. § 301.6723-1(a)(4)(ii)(A) defines "specified information reporting requirement" to include the provision of a taxpayer identification number on a tax return, statement or document. A few workers attempt to provide their employers with an ITIN for W-4 and I-9 purposes, but this practice should virtually cease with the IRS's substitution of a letter for an ITIN card, and with its implementation of a more effective education and outreach program to employers about identifying an ITIN.

<sup>31</sup>The IRS has adopted the policy that it will only prepare electronically filed returns at the Taxpayer Assistance Centers (TACs). The IRS could develop a process that would enable W-2/ITIN mismatch returns to be electronically filed and thereby assist these taxpayers with return preparation.

match the name on the Form W-2. Therefore these earnings will be posted to the Social Security Administration's suspense file, where they will sit unless and until something happens that enables SSA to reallocate the earnings to the appropriate worker.<sup>32</sup>

The IRS, on the other hand, has a wage document that tells it that the SSN holder has earned income that is not reported on his or her return. Thus, when the IRS conducts a computer match of information documents, this taxpayer is likely to receive a notice of unreported income from the IRS. (This initiative is called the Automated Underreporter Program, or "AUR.") If the taxpayer calls the IRS to discuss the notice, the taxpayer will have to provide an acceptable explanation as to why the income is not properly attributable to him or her. For the IRS, this involves, in most instances, a lengthy, time-consuming, and manually-driven process of validating the taxpayer's explanation, decreasing the proposed amount of additional tax from the notice, and working with the Social Security Administration to delete the wages paid under this SSN from the SSN holder's earnings account. In many instances, the SSN holders either do not receive the proposed AUR assessment notice or do not understand it and are afraid to call the IRS. As a result, the tax attributable to these additional earnings will be assessed against the SSN holder.

This resolution process can take over a year to complete. If the issue is not resolved by the following filing season and the IRS's system still shows that there is an outstanding assessment, the SSN-holder may have his subsequent year's refund either frozen or offset. Because this process is worked on a yearly matching basis and the current IRS systems do not have a reliable identity fraud alert indicator on a taxpayer's account, the taxpayer must repeat this process each year in which the identity theft occurs.<sup>33</sup>

#### **Proposed Solutions and Their Impact on Tax Administration**

It is clear from the above discussion that the use of ITINs in conjunction with SSNs poses problems for taxpayers (both the victims of identity theft and the ITIN holders), the IRS and the Social Security Administration. Because ITIN holders who are undocumented workers are violating the immigration laws, they also pose problems for the Department of Homeland Security.

These problems have led the IRS, the Treasury Inspector General for Tax Administration, and others to propose changes in ITIN administration as well as routine sharing of tax information between the IRS, Social Security Administration, and Federal immigration authorities. Let us examine some of these proposals.

*Authorize the use of ITINs on Forms W-4 and W-2.* We might address the Social Security Administration's concerns about its increasing "suspense file" of unidentified earnings by changing the Treasury regulations to permit the use of an ITIN on Forms W-4 and W-2. Employers would not be subject to penalty for putting ITINs on these documents. This approach, however, would require a change in the Social Security Act to enable SSA to create a record of earnings under an ITIN. Further, and fatally, it would fly directly in the face of immigration law that requires workers to be authorized to work in the United States.

This proposal would force employers to acknowledge that they are hiring an undocumented worker. An undocumented worker seeking a job therefore would be unlikely to put an ITIN on a Form W-4 because it would shine a bright light on his immigration status. Instead, the worker would continue to place an SSN on the form. Thus, this proposal would merely exacerbate the tension between tax and immigration law without eliminating identity theft or tidying up SSA's suspense files.

*Authorize the IRS to disclose to employers a match or mismatch of employees' names and identifying numbers.* We might address the problem of mismatched or unmatched SSNs by amending the Code to require employers to submit all Forms W-4 to the IRS upon hiring new employees and amending IRC § 6103 to permit the IRS to inform employers when there is a mismatch. This approach, of course, does not resolve the problem of complete identity theft—that is, where the taxpayer has assumed not only the SSN but also the name of the SSN holder. Indeed, complete

<sup>32</sup>Some ITIN holders use the name of the SSN holder as well as the SSN for employment purposes. In these instances, the SSN holder has earnings attributed to his account incorrectly, thereby becoming eligible for benefits on earnings that he did not earn. When an employer reports earnings to SSA under an ITIN, the earnings will go into the SSA suspense file because SSA does not have a valid SSN under which to record the earnings. If the taxpayer later becomes eligible for an SSN, he can ask SSA to reallocate the ITIN earnings to his SSN account.

<sup>33</sup>I have personally represented taxpayers who were caught up in the IRS AUR program for years, trying to prove that they did not earn wages attributable to someone else's using their SSNs. From October 1, 2003, to February 29, 2004, the Taxpayer Advocate Service (TAS) received 87 cases involving earnings arising from stolen or fabricated SSNs. TAS received 133 such cases in FY 2003.

identity theft likely would increase precisely because it would enable undocumented workers to slip through, and complete identity theft creates far more serious problems for the victim. Further, as the Commissioner has noted in his testimony, this approach would impose an extra burden on employers without necessarily clearing up mismatches (that is, the employer could comply with his due diligence requirements and still not have resolved the mismatch).

Finally, this proposal would not stop identity theft. Let us assume an undocumented worker provides his true name and a fabricated SSN to his new employer. Under the proposal, the employer would submit this information to the IRS and would immediately be notified that there was a mismatch. The employer would contact the worker and ask him to resolve the mismatch. With this level of scrutiny, the undocumented worker, in all likelihood, would either move on to another employer, or worse, work for cash in the “underground economy.” He would continue to use the fabricated or stolen SSN. All we would accomplish, through this proposal, is force the undocumented worker underground and out of compliance with the tax system.

*Authorize the IRS to disclose tax information to SSA and USCIS pertaining to undocumented workers.* In its recent report on ITINs, TIGTA recommended that the IRS Deputy Commissioner for Services and Enforcement:

Coordinate with the BCIS [now USCIS] and the SSA to assess the benefits to these agencies of seeking legislation to broaden the IRS’s authority to share information with them regarding unauthorized resident aliens and seek legislation as warranted.<sup>34</sup>

For almost thirty years, since the enactment of the Tax Reform Act of 1976, Congress, the IRS, and taxpayers have had an understanding that tax returns and tax return information are, in general, confidential. All exceptions to this general rule of confidentiality must be specifically set forth in IRC § 6103. Recently, taxpayers’ confidence in the confidentiality of their tax information has been shaken by their awareness that this information is available to the Treasury Inspector General for Tax Administration.<sup>35</sup>

Congress has specifically authorized the IRS to disclose tax information for law enforcement purposes in two sections relevant to our discussion here today:

*Disclosures for tax administration purposes:* IRC § 6103(h)(2) provides that in matters involving tax administration, tax information shall be open to inspection by Department of Justice employees and officers who are “personally and directly engaged in, and solely for their use in”, a Federal grand jury proceeding or preparation for any proceeding before a Federal grand jury or any Federal or State court (or investigation that may lead to such a proceeding). Congress placed limits on this authority, including requiring that the taxpayer be a party (or potential party) to the proceeding or that the proceeding involve the determination of civil or criminal liability under the Code or the collection of tax imposed under the Code.

*Disclosure to agencies for non-tax criminal cases:* IRC § 6103(i)(1) provides that during the course of Federal nontax criminal investigations, Federal agencies must obtain an ex parte order from a Federal district judge or magistrate in order to gain access to tax returns and tax information provided by the taxpayer or the taxpayer’s representative.<sup>36</sup> Return information that is reported by third parties may be disclosed if the head of the Federal agency (or other specified official) submits a written request.<sup>37</sup> Further, the Secretary (or his delegate) may disclose, on his own initiative, to the appropriate head of agency, evidence of a Federal nontax crime where

<sup>34</sup> TIGTA Report, *supra* note 26, at 32.

<sup>35</sup> IRC § 6103(h)(1) authorizes inspection and disclosure of tax returns and return information to Treasury officials and employees “whose official duties require such inspection or disclosure for tax administration purposes.” The Treasury Inspector General for Tax Administration is authorized “to conduct and supervise audits and investigations relating to the programs and operations of” the Internal Revenue Service in order “(A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in”, the programs and operations of the Internal Revenue Service. Inspector General Act of 1978, 5 U.S.C. § 2 Appendix 3 (1998). TIGTA employees are subject to the restrictions of IRC § 6103(h) and (i). TIGTA employees cannot use their authority to audit and inspect aspects of tax administration as a means to discover and indirectly “refer” potential nontax criminal acts that would otherwise be prohibited under IRC § 6103. In the context of undocumented workers who are trying to comply with the tax laws, such actions on the part of TIGTA employees can actively undermine tax administration.

<sup>36</sup> IRC § 6103(i)(1).

<sup>37</sup> IRC § 6103(i)(2).

such evidence is not on a tax return and is not tax information provided by the taxpayer or the taxpayer's representative.<sup>38</sup>

These provisions are narrowly tailored to insure that tax information, which is the cornerstone to our voluntary-compliance tax system, is only disclosed after much consideration has been given to the impact such disclosure would have on tax administration. Within these provisions, however, there is ample maneuvering room for Federal law enforcement agencies to obtain tax information when they can demonstrate the requisite compelling need.

Thus, notwithstanding our concern about persons who steal and use Social Security numbers to create identities for unlawful purposes, including terrorism, the answer to these problems does not lie in expanding the disclosure of tax information beyond the limits currently permitted under IRC § 6103. Such proposals would, in practice, have the effect of increasing the damage done to the innocent victims of identity theft and also undermine the IRS's obligation to provide customer service to taxpayers who are attempting to comply with the tax laws.

In fact, we want these mismatch taxpayers to be part of the tax system and file their returns. That way, the IRS should be able to identify the stolen SSN and the correct ITIN. We could "fence off" the wages or other income reported under the stolen SSN, thereby protecting the identity theft victim from unnecessary IRS audits and collection actions. We could notify SSA of the correct number (the ITIN) to which to attribute earnings, and prevent overpayment of benefits to the SSN holder. And if USCIS or another Federal agency is investigating the ITIN holder, we would be able to provide tax information to that agency to the extent permissible under IRC § 6103.<sup>39</sup>

#### **A Modest Proposal: The Status Quo Plus**

The proposals discussed above do not solve but instead perpetuate (and possibly exacerbate) the problem of identity theft, increase tax noncompliance, and do not help enforce the immigration laws (because undocumented workers will move to the underground economy). Any solution must both protect national security and not undermine three important tax administration objectives—compliance by taxpayers with the tax laws, the provision of customer service to those taxpayers, and the elimination of undue burden on taxpayers (and employers) trying to comply with the tax laws. The solution must also protect taxpayers from misuse of their tax data by third parties (identity theft for tax purposes).

In light of IRS data that clearly indicate that the majority of ITIN holders attempt to file and comply with the tax laws, the IRS should continue to encourage undocumented workers to obtain ITINs and assist all ITIN holders, including those who have Forms W-2 showing SSNs, to file returns under their ITINs. ITINs are the entry point for these taxpayers into the tax system. Any effort to restrict access to obtaining ITINs must be carefully scrutinized to determine whether the purpose for the restriction outweighs the tax administrator's core and fundamental mission of helping taxpayers to meet their tax obligations.

Thus, I propose the following approach to the ITIN "problem":

- To ensure accurate preparation of ITIN applications, IRS should continue to make improvements to the revised ITIN program, including improving the timeliness of processing applications and its outreach to taxpayers, and their advocates and representatives.
- To increase the accuracy of return preparation, IRS should develop a system to electronically file SSN/ITIN mismatch returns so that these taxpayers can be assisted at IRS Taxpayer Assistance Centers.
- To protect victims of identity theft from unwarranted, intrusive, and repetitive audits and/or collection activity attributable to the misreported income, IRS should develop a system to "fence off" the income misreported under a stolen or fabricated SSN.

<sup>38</sup> IRC § 6103(i)(3)(A).

<sup>39</sup> When I was a director of a Low Income Taxpayer Clinic, here is how I would explain the ITIN rules to clients or audiences in outreach sessions to allay fears expressed by undocumented workers about the risks of filing their tax returns. In general, for the Department of Justice or another Federal agency to obtain tax returns or tax return information for purposes of a non-tax administration criminal investigation or proceeding, it must obtain an order from a Federal judge. Thus, in general, the client should be concerned that his tax information could be shared with another Federal agency (for example, immigration) if he were already or were likely to be placed under investigation for some nontax violation of law. For many undocumented taxpayers, this risk is outweighed by the strong incentive for and benefits of being compliant with the tax laws—that is, the ability to prove good moral character for immigration purposes by filing tax returns.



The advantage of this proposal is that it actually improves tax administration while remaining neutral to the administration of Social Security and immigration laws. It acknowledges that taxpayers filing SSN/ITIN mismatch returns are generally trying to comply with the tax laws, even at risk of having their immigration status detected. The proposal implements Congress' explicit determination that the definition of resident alien for tax purposes should extend beyond its definition under immigration law. It permits the disclosure of tax information to other Federal agencies as currently authorized by IRC § 6103. And it helps identity theft victims. Fundamentally, the proposal maintains the delicate balancing act between the interests of tax administration and the interests of taxpayers without harming government's other legitimate interests. In short, it defuses the "problem."

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Chairman HOUGHTON. Thank you very much, Ms. Olson. Mr. O'Carroll?

**STATEMENT OF PATRICK P. O'CARROLL, ACTING INSPECTOR  
GENERAL, SOCIAL SECURITY ADMINISTRATION**

Mr. O'CARROLL. Good afternoon, Chairman Houghton. Good afternoon, Chairman Shaw and Members of the Subcommittee. It is a pleasure to have my first hearing before these Subcommittees on the important topic of SSN and ITIN mismatches and misuse. The growth and misuse of ITINs pose considerable challenges for the SSA, and for SSN integrity. My testimony today will provide an overview of our work to address challenges in three areas. First, the ITIN's impact on the SSA's earning process. Second, its impact on SSN misuse and identity theft. Last, our most serious concern, the impact of the ITIN or SSN misuse on homeland security. I will conclude my remarks with our recommendations to improve these processes.

The SSA is mandated to maintain records of wages employers pay to individuals. The SSA has no role in assigning ITINs. Many ITINs so closely resemble the nine-digit SSN, many employers assume it is an SSN. When employers use ITINs to report wages rather than an SSN, the SSA cannot post these earnings to the wage earner's record. The SSA's record of wage reports where names and SSNs failed to match has grown to about \$421 billion in wages, representing \$244 million in incorrect wage items. The ITIN also impacts SSN misuse and identity theft. The SSA has made significant progress to strengthen SSN integrity. The SSA now independently verifies all non-citizen immigration documents prior to issuing an SSN, and we encourage the IRS to take similar measures. The SSA recently restricted the issuance of non-work SSNs to non-citizens except under very limited circumstances. However, this new policy may increase ITIN use because non-citizens without work authorization may now try to obtain an ITIN for work purposes.

The ITIN's impact on SSN misuse poses a serious potential threat to homeland security. We believe ITIN misuse could undermine our ability to provide reliable investigative data to the law enforcement community. For example, we recently participated in Operation Swipe Out, a large-scale anti-terrorism initiative concerning a group of foreigners that defrauded numerous credit card companies of about \$5 million. Many of the subjects received lengthy prison sentences and were ordered to pay over \$1 million in restitution for the SSN misuse. As part of our homeland security

initiatives, we investigated airport employees who used ITINs on identification badge applications for access to critical areas. The ITIN has also facilitated fraud where ITINs are falsely submitted as if it were an SSN. We have also found educational institutions advertising on websites that they will issue, quote, “temporary SSNs” to students. These numbers are not issued by the SSA, but closely resemble SSNs or ITINs using a nine-digit numbering system.

We need improved coordination and sharing of data, and data reliability and the use of shared data. For example, the IRS is barred from disclosing tax information to other Federal, State, or local agencies. However, we believe expanded coordination should be explored to allow for joint pilots or non-investigative reviews to identify areas where formal disclosure agreements could be used. For example, the SSA shares data with the IRS to help assess penalties against employers for reporting mismatched names and SSNs. The SSA also sends DHS information on over 500,000 individuals who are not authorized to work in the United States but still show wages in the SSA’s systems. We believe legislation is needed to require a reoccurring cross-verification of identification data between governmental, financial, and commercial holders of records and the SSA. Cross-verification would be an important step to help prevent the spread of SSN misuse, identity theft, and improve our homeland security.

I congratulate Congress and especially Chairman Shaw and Ranking Member Matsui on the enactment of H.R. 743, the “Social Security Protection Act of 2003,” which provides new safeguards for Social Security programs and beneficiaries. Thank you for your continued commitment to these critical areas.

[The prepared statement of Mr. O’Carroll follows:]

**Statement of Patrick P. O’Carroll, Assistant Inspector General for Investigations, Social Security Administration, Baltimore, Maryland**

Good morning, it is a pleasure to be here today for this important hearing on the issues of Social Security number (SSN) and Individual Tax Identification Number (ITIN) mismatches and misuse. Today’s discussion will provide valuable insight into the impact and implications that ITINs have across the Federal government. Today, I would like to focus my comments on the ITIN’s impact on the Social Security Administration’s (SSA) programs and operations.

SSA’s Office of the Inspector General (OIG) has worked very hard with the Agency in recent years and made significant progress to strengthen the defenses of the SSN. These activities included close cooperation with other law enforcement agencies and with the Internal Revenue Service (IRS) to strengthen the integrity of SSA’s data and those who rely upon it.

Over the past few years, we have testified on numerous occasions before Congress on the topics of SSN misuse, document fraud, and identity theft. The most important aspect of our mission to combat fraud, waste and abuse is the protection and oversight of the SSN. Today, the SSN is the single most widely used identifier for Federal and State governments, as well as for the private sector. As a result, we continuously seek new and innovative ways to prevent SSN misuse and work collaboratively with other Federal, State, and local entities. Although we have made notable progress, the public’s reliance on the SSN as a national identifier has made it an increasingly valuable commodity for lawbreakers trying to take advantage of SSA’s programs and operations.

Similarly, the growth and misuse of ITINs pose considerable challenges for SSA. Today, I will highlight three areas and provide an overview of our work to address these challenges. First, I will discuss the ITIN’s impact on SSA’s earnings process. Second, I will summarize the ITIN’s impact on SSN misuse and identity theft. Third, I will outline our most serious concern, how misuse of the ITIN or SSN could impact Homeland Security. I will conclude my remarks with a brief summary of rec-

ommendations to improve these processes and outline opportunities to open a broader dialogue on these issues.

#### **The ITIN's Impact on SSA's Earnings Process**

As mandated by Title II of the Social Security Act, SSA maintains records of wage amounts employers pay to individuals. Each year, employers and self-employed individuals report earnings information to SSA using a unique nine-digit number, the SSN. This information is used to determine (1) whether an individual is eligible for retirement or disability benefits and (2) the size of the benefit payment. Accordingly, it is critical that SSA protect the integrity of the SSN and properly post wages reported through the Agency's earnings process.

SSA has no role in assigning ITINs. This function is the sole responsibility of the IRS. Nevertheless, IRS use of these numbers may negatively impact SSA's ability to accurately record employee wage information. Because the nine-digit ITIN so closely resembles an SSN, many employers assume it is an SSN. Yet when employers report wages earned by an individual to SSA using the IRS ITIN rather than the individual's SSN, SSA is unable to post these earnings to the wage earner's record.

When SSA is unable to post earnings to an individuals' record, the earnings are captured in SSA's Earnings Suspense File (ESF), the Agency's record of wage reports for which wage earner names and SSNs fail to match SSA's records. Although SSA is able to post about 96.4 percent of all reported earnings to individuals' earnings records, those earnings that cannot be matched continue to accumulate in the ESF. Between 1937 and 2003, the ESF grew to about \$421 billion in wages, representing about 244 million wage items that could not be posted correctly.

Removal of wage items and their associated dollar value from the ESF occurs only when the wages can be matched and posted to an individual's master earnings file. Since the Agency does not enumerate the owners of ITINs, its ability to match these wages correctly will be even more difficult because SSA has incomplete information on the ITIN holder.

Still, while SSA has limited control over the factors that cause the volume of erroneous wage reports submitted each year, the Agency does have some ability to improve the wage reporting process. SSA can work with employers to resolve wage reporting issues, encourage greater use of SSN verification programs, and improve coordination with other Federal agencies such as the IRS that have separate yet related mandates, to foster better sharing of information.

Additionally, we believe increased coordination between SSA, IRS and DHS could be used to detect trends, identify problems in the employer community and to propose legislative remedies. For example, cooperation between IRS and SSA on the ITIN process could minimize the volume of incorrect wages posted to the ESF.

#### **The ITIN's Impact on SSN Misuse and Identity Theft**

It is no longer realistic to believe that the SSN is simply a number for tracking workers' earnings and the payment of social insurance benefits. Recognizing the importance of the SSN throughout society, SSA has taken significant steps to strengthen controls over the issuance of SSNs in recent years. We applaud SSA's efforts, but we are concerned that increased misuse of ITINs may undermine some Agency initiatives.

In FY 2001, SSA established a task force to address SSN integrity concerns, and took a number of important steps. For example, in September 2002, SSA started independently verifying all non-citizen immigration documents prior to issuing an SSN. We are currently assessing the Agency's compliance with these new procedures. However, we do not know whether IRS takes similar measures when issuing ITINs to non-citizens.

SSA also recently restricted the issuance of non-work SSNs to non-citizens except under very limited circumstances. Under this policy, non-citizens should only be issued a non-work SSN because:

- Federal statute or regulation requires that the non-citizen provide his or her SSN to get the particular benefit or service, or
- State or local law requires that the non-citizen provide an SSN to get general assistance benefits to which the non-citizen has established entitlement.

As a result of SSA's new policy regarding non-work SSNs, the use of ITINs for work purposes may increase. Non-citizens in the United States without work authorization who were previously able to use non-work SSNs for tax purposes may now obtain an ITIN and present it to a prospective employer as an SSN and use it instead for wage reporting.

Currently, there are several provisions of the law that address SSN misuse, such as:

- Social Security Act provisions that make it a felony to deliberately represent another person's SSN as your own.
- Identity Theft and Assumption Deterrence Act provisions that make it a criminal offense to knowingly use another person's means of identification with the intent to commit a violation of Federal law. This would include using another individual's personal identifying information, such as an SSN, or providing that SSN to obtain a tax refund.

We applaud the recent announcement by IRS that it will discontinue its practice of issuing ITINs in the form of cards, and instead will notify ITIN applicants by letter. However, we fully expect that the growing confusion between ITINs and SSNs will exacerbate problems with wage reporting. Additionally, the ease with which one obtains an ITIN may negate the robust screening processes used to deter fraudulent applications.

For example, we have found that the ITIN has been used to facilitate fraud in cases where an ITIN is submitted as if it were an SSN. In one such case, a woman using an ITIN as her SSN obtained loans and lines of credit of approximately \$300,000. Furthermore, she was able to secure a mortgage of nearly \$140,000 by furnishing bogus W-2 forms bearing the ITIN.

#### **ITIN/SSN Misuse Impact on Homeland Security**

Still, while financial crimes involving SSNs are more numerous than terrorism-related crimes involving misuse of the SSN, the potential threat SSN misuse poses to homeland security is also of real concern.

The information SSA stores on each of us is personal, and is entitled to all of the protections we can afford. However, I have learned during my role leading OIG's investigative effort, that there are times when an individual's privacy must be balanced against the need of law enforcement agencies for information to protect our country. For example, following September 11th, and again during the sniper attacks in the Washington, D.C. area, it became necessary to share information stored by SSA with appropriate law enforcement authorities to permit those authorities to conduct their investigations and, more importantly, prevent additional lives from being lost.

On both occasions, we asked to use the ad hoc authority vested in the Commissioner by SSA regulations to permit the sharing of SSA information with our law enforcement partners. However, we believe in instances like this the Inspector General of Social Security should have the ability to disclose such information without prior approval. When lives are at stake, every minute is critical, and we need to be able to provide this information as expeditiously as possible.

Those connected with terrorism will at some point either take advantage of security gaps across the Federal government or try to obtain SSNs or ITINs. They may seek SSNs or ITINs through:

- The use of counterfeit or stolen documents purchased on the Internet or created through readily available computer processing equipment and software.
- Fraudulent application for genuine documents issued by government agencies.

Therefore, we must remain vigilant to ensure that there are adequate safeguards to prevent the misuse of SSNs and ITINs.

We believe the misuse of ITINs could undermine SSA's programs and our investigative ability to provide reliable data to the law enforcement community. ITINs could be used to facilitate an underground network to undermine homeland security and perpetrate fraud against our economy and its citizens. It is incumbent upon us to resolve these issues now, before another crisis emerges and data is needed quickly.

Nationally, OIG has been an active participant on Joint Terrorism Task Forces. We have provided round-the-clock support to the national criminal investigation of potential terrorist activities. Our special agents and attorneys have helped identify, detain, indict, and convict individuals who may have a relationship with terrorist activities. For example, we have investigated airport employees during our homeland security operations who used ITINs on applications to obtain Secure Identification Display Area badges.

Additionally, our Electronic Crime Team rendered assistance to the FBI, while our computer specialists wrote programs to more specifically query SSA's databases for FBI-requested information. Many of our investigators continue to perform substantial work on terrorism investigations and respond to allegations of SSN misuse.

Many of our agents participated in Operation Swipe Out, a large-scale, anti-terrorism, white collar crime initiative. The investigation focused on the fraudulent activities of a Pakistani group involved in credit card, Social Security, immigration, bank and mortgage fraud. Starting in January 2003, 30 criminal complaints/arrest warrants and two search warrants were issued. *The suspects defrauded numerous credit card companies of approximately \$5 million, sending some of their proceeds to banks in Pakistan and Canada. For the 30 criminal cases, 17 of the subjects pleaded guilty, receiving sentences ranging from 2 years probation to 57 months of incarceration, and being ordered to pay \$1,137,224 restitution. Two subjects' cases were dismissed; the remaining 11 subjects are fugitives. Seven were charged with SSN misuse.*

In other situations, criminals “shop” for State and local governments that do not mandate an SSN, and consequently accept an ITIN. One of our investigations detected an SSA employee furnishing SSNs to a co-conspirator who supplied them to illegal aliens for obtaining driver’s licenses. After the employee was arrested and no longer able to provide SSNs, the co-conspirator simply moved his operation to North Carolina, which allowed the use of ITINs for driver’s licenses.

In a 2002 audit, we discussed our concerns regarding SSA’s risk of exposure to improper enumeration of foreign students. We found SSA did not have a reliable system for determining whether a foreign student is actually enrolled at an educational institution and required an SSN to perform authorized work. Some schools provided work authorization letters to students for on-campus employment when the school had not actually extended an employment offer to the student. As a result of our recommendation, the Agency proposed a regulatory requirement that evidence of actual employment be necessary for foreign students to receive SSNs.

In a draft report we recently issued to SSA, we reported that at least 22 colleges and universities across the country—9 of which represent those with the largest foreign student populations—advertise on their web sites that they will issue “temporary SSNs” to students. These numbers are not issued by SSA, but are generally nine-digit numbers that resemble an SSN or an ITIN. One university even provided the names of several banks where foreign students could open a bank account with one of these “temporary SSNs.” We are recommending that SSA contact these universities and discourage them from continuing this practice. We are also recommending that SSA work with national education committees and alliances to spread the word that this practice should be halted.

#### Areas for improved coordination

The areas that need improved coordination are:

- Sharing of data.
- Data reliability.
- Use of shared data.

SSA maintains two types of information in its databases; 1) SSA information received from individuals self-reporting on applications for SSNs or Social Security benefits, or from States and the private sector; and 2) IRS information received from employers in the form of W-2s and W-3s.

IRS maintains information in its databases generally from W-2s, W-3s and tax information. However, Section 6103 of the Internal Revenue Code restricts (with exceptions) the disclosure of this information to any other Federal, State, or local agency.

Currently, IRS already releases taxpayer data for statistical purposes to the Department of Commerce’s Bureau of Economic Analysis and similar organizations, indicating that such data can be released for legitimate governmental purposes. However, further opportunities for expansion of coordination should be explored to allow for joint pilots and/or non-investigative reviews to allow auditors to identify areas where formal disclosure agreements could be later negotiated if warranted.

For example, SSA shared data with IRS on the 100 employers having the most wage items in suspense. This information could assist IRS to assess penalties against these employers for reporting mismatched names and SSNs on W-2 forms. SSA is also cooperating with DHS on unauthorized workers in the U.S. economy. Each year SSA sends DHS information on over 500,000 individuals who are not authorized to work in the U.S. economy, but who nonetheless show wages in SSA’s system. A recent report we issued, “Profile of the Social Security Administration’s Non-work Alien File,” found DHS is neither using this information to take action against these individuals nor advising SSA when they are authorized to work in the U.S. economy.

It is imperative that SSA and IRS have consistent and reliable information to improve efficiency and effectiveness, and to reduce fraud, waste and abuse. While SSA is already actively sharing its own data with other agencies, there are a number of one-way restrictions and boundaries by law that limit the sharing of data between IRS and SSA. We are working with IRS to improve data reliability. Despite the restrictions I have outlined, we stand ready to work with IRS and DHS to develop strategies to improve our collective ability to use existing information to ensure the integrity of the SSN and strengthen homeland security.

For example, we believe the following combined efforts would enable both agencies to make significant strides in addressing the ITIN/SSN misuse issue.

- Improved Employee Verification
- Cross-Verification of Data

#### Improved Employee Verification

Coordination with IRS on employee verification would assist employers with one-stop verification of employee data. SSA already assists employers with its Employee Verification Service (EVS) for registered employers.

SSA is also piloting an online Social Security Number Verification Service (SSNVS), which allows employers and third parties to verify employees' names and SSNs via the Internet with information in SSA's records for wage reporting purposes. As with EVS, SSNVS also provides a death indicator where SSA records indicate that the employee is deceased. Employers have two online options to use SSNVS:

- Key in up to 10 names and SSNs at a time and the results are returned in seconds.
- Submit a file containing up to 250,000 names and SSNs per file and the results are returned the next business day.

SSNVS is beneficial because it:

- Helps employers use correct names and SSNs on wage reports.
- Reduces the number of submission errors.
- Offers an additional method of requesting verification services.
- Reduces the number of telephone calls required for employers to verify names and SSNs.

#### Cross-Verification of Data

Cross-verification would improve the process without requiring major expenditures of money or the creation of new offices or agencies. We believe legislation is needed to require mandatory cross-verification of identification data between governmental, financial and commercial holders of records and the SSA on a recurring basis. Much of the data already exists and could be drawn from information the Federal, State and local governments and the financial sector already have.

All options should be explored to make the cost of providing this service budget neutral. The technology is already in place to allow these data matches and verifications to take place. Coupled with steps underway by SSA to strengthen the integrity of its enumeration business process, cross-verification would be an important step to help prevent the spread of SSN misuse and identity theft, and to improve homeland security.

Some possibilities for cross-verification are:

- Mandatory SSN verifications for employees in critical or sensitive positions, such as defense, energy, chemicals, transportation, and national security.
- SSN verification for banks, credit reporting agencies and other financial lending institutions.
- The ability to verify SSN data for all law-enforcement entities.

Another positive aspect of cross-verification for SSA is the ability to correct errors on a more timely basis—errors that might otherwise keep workers from receiving full credit for years of labor and credit that can be nullified by simple typographical errors in submitting their data.

#### Conclusion

I want to congratulate Congress, and especially Chairman Shaw and Ranking Member Matsui, on the recent enactment of H.R.743, the Social Security Protection Act of 2003. This milestone bill, the work of three Congresses, provides new safeguards for Social Security and Supplemental Security Income (SSI) beneficiaries who have representative payees, and will enhance other program protections. It will

also provide significant new authority to our office to protect the SSN, SSA employees, and the Social Security Trust Funds.

The challenge for Congress and SSA is to balance the SSN's privacy against public and private needs to have limited access to this data. In the spirit of H.R. 2971, Chairman Shaw's pending SSN legislation, we believe the following steps need to be taken to meet this challenge:

- Limit the SSN's public availability to the greatest extent practicable, without unduly limiting commerce.
- Prohibit the sale of SSNs, prohibit their display on public records, and limit their use to valid transactions.
- Enact strong enforcement mechanisms and stiff penalties to further discourage SSN misuse.
- Cross-verify all legitimate databases that use the SSN as a key data element.

We are cognizant of the legal restrictions regarding the sharing of data, and respect the right to protect individual privacy concerns, however, we believe greater coordination and controlled sharing of data will improve the integrity of the SSN and SSA's programs.

I thank you for your continuing commitment to these critical issues, and would be happy to answer any questions.

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Chairman HOUGHTON. Thanks very much, Mr. Shaw?

Chairman SHAW. Mr. O'Carroll, I would first of all like to say I understand last night, you were named as the Acting IG. I would like to congratulate you for that particular position.

Mr. O'CARROLL. Thank you, Chairman.

Chairman SHAW. I think I have reason to believe that you have been involved somewhat in the study that I made reference to earlier regarding the Palm Beach Post and what has gone on there. Could you give us an update as to what has happened in that particular case? It is headlined, they call it "Modern Day Slavery," and I think that is probably a very good choice of words based upon the content of the articles.

Mr. O'CARROLL. As you notice, in one of those articles in there, it describes how my office did an investigation on two SSA employees who were selling for about \$1,500, genuine SSNs that were used by this ring. Since then, we have been working with the U.S. Attorney's office down there. It is an ongoing investigation. I can't go into much detail on it.

Chairman SHAW. Thank you very much. If you would keep me advised as to the progress.

Mr. O'CARROLL. We will give you the updates.

Chairman SHAW. I don't want to go down there and have a hearing and jump in the middle of an ongoing investigation, but some people have to answer to this, and I assume that your people are also talking to the folks at the Palm Beach Post to get what information they can. I don't think there is any privileged information, so I would think they would be very forthcoming in assisting us in this investigation.

Mr. O'CARROLL. Yes, sir.

Chairman SHAW. I have no further questions. Thank you.

Chairman HOUGHTON. Mr. Becerra?

Mr. BECERRA. Thank you, Mr. Chairman. Mr. Brostek, let me ask you a couple of quick questions. The information you provided in your testimony points out some of the issues with the ITIN, as have the other witnesses. Give me a sense, now. I know that most of your comments were made prior to the IRS' efforts to try to

tighten things up within the ITIN process. Give me a sense, now that you have seen what the IRS has done, what your comments would be as a result of the changes that they have made to tighten up the process.

Mr. BROSTEK. I do believe that the changes that were made appear to be improvements in the system, reducing the number of documents that are going to be allowed for supporting the ITIN from 40 to about a dozen or so, the additional training that is going to be provided to the IRS personnel when they review those documents, the requirement for some evidence of a tax need. I think those are all positive steps. Our ability to have gotten an ITIN using false documents wouldn't necessarily be addressed by those changes, in part due to a couple of primary weaknesses. One, the individual who is applying is not necessarily seen, in fact, is often not seen by anyone. You are just submitting paperwork, so the IRS doesn't know whether the individual applying is really the one whose documents are being reviewed. In addition, the IRS is not checking the validity of the document with a third party. That is not an easy thing to do, and it certainly would also be a very large imposition of workload on the IRS were they to actually see each individual. More than a million apply every year for an ITIN.

Mr. BECERRA. If I could stop you there, would you recommend that the IRS move forward to try to do some type of checking to confirm the identity, in which case you are talking about additional resources?

Mr. BROSTEK. I think it would be useful for the IRS to try to figure out additional cost effective ways of improving the verification process. We didn't do enough research to have any suggestions on exactly what that might be, but these are weaknesses that do enable someone to get a card with less assurance that they are the person they say they are than, for instance, if they are applying for an SSN, where people are interviewed and where there is at least some third-party verification of documents.

Mr. BECERRA. I was actually very surprised to see that one of the documents that was obtained as a result of using the ITIN was a voter registration, and somehow, someone was able to register to vote based on an ITIN. The ITIN doesn't even indicate on the ITIN card itself where you reside, so I could live in California, in Los Angeles where I live, go to New York, and if you have someone in the county voter registration office, as apparently you must have had in this case, go to this person and say I have got an ITIN that is supposedly valid and I can apply to be a registered voter in the State of New York, or Alabama, or North Dakota. It sounds like what we need to do, as well, is try to approach the different agencies and private sector individuals who have the authority to authorize subsequent documents or identification vehicles and train them, as well, on what you can and can't do with particular types of Federal documents.

Mr. BROSTEK. Yes, I think that is a good point, and the IRS has started a campaign, as they refer to it, to try to better educate businesses and governments about the proper use of the ITIN. It is kind of curious in the case that you are citing here where we got the voting registration card. The number that we gave was never apparently questioned, but when we first applied, we just used a



post office box as opposed to a residential address and that was questioned, so we did have to provide further evidence of living in the jurisdiction.

Mr. BECERRA. That one just really seems so strange, to see someone apply for a voter registration card through use of an ITIN. Last question. I want to probe this a bit more because I know that the responsibilities that the IRS and the SSA have are tremendous because they have to deal with the benefits and services and taxes of millions and millions of Americans. I want to make sure that if we are going to propose something, we actually give the agencies the power to do the work without straining other obligations that they have. If we were to go to some form of third party verification, which would give us more of a sense of security that the individual applying for the ITIN really is eligible to get it, we would either have to move, shift people who are currently doing other types of investigative work at the IRS to do this, or bring on more personnel, is that true?

Mr. BROSTEK. Well, certainly to the extent that it would increase the amount of work that the IRS has to do, and I think by definition it would, there would be a resource requirement that would go with that. We don't know what the more cost effective ways would be to try to address this problem, so we don't have a sense of how much more the resources would be required.

Mr. BECERRA. One final question, if I may, Mr. Chairman. I don't know if any of the panel recall the number off the top of their head, I know it is a large number, the amount of uncollected taxes. It is somewhere in the several hundred billion dollars, I believe.

Mr. BROSTEK. It depends on whether you are referring to the tax gap, the annual difference between what is collected and what should have been collected?

Mr. BECERRA. Correct.

Mr. BROSTEK. I think the most recent estimate is a little over \$300 billion. Of that, after some voluntary payments occur, that comes down to the \$250 billion range.

Mr. BECERRA. So, \$250 billion, that is on an annual basis?

Mr. BROSTEK. Yes.

Mr. BECERRA. That we don't collect from people who owe it, and we don't have the resources to figure out the best way to try to collect a quarter of a trillion dollars. So, I am assuming that to try to do third-party verification means that we are probably going to do an even worse job at collecting some of the \$250 billion annually unless we figure out a way to get either more productive or more novel ways to try to complete all these obligations that the IRS has.

Mr. BROSTEK. One of the biggest sources of noncompliance in that \$250 billion are individuals for whom we don't have third-party reports of their income—self-employed individuals, independent contractors who don't have information reports that go to the IRS that report how much they receive in income. So, this is a key issue for tax administration as a whole.

Mr. BECERRA. Thank you very much. Mr. Chairman, thank you very much.

Chairman HOUGHTON. Thank you. Mr. Hulshof?

Mr. HULSHOF. Thank you, Mr. Chairman. Mr. O'Carroll, just a quick comment. I appreciate very much the recommendations that you have made on, for instance, cross-verification of data between the IRS and the SSA. I think this additional data sharing and increased coordination generally would help detect some trends, identify problems, maybe identify some administrative remedies, and ultimately possibly some legislative remedies. So, I make that quick comment. Ms. Gardiner, a question. Ms. Olson, sitting next to you, your fellow panelist, recommended some things that the IRS do to develop a system to electronically file SSN-ITIN mismatch returns—right now, they are done on paper—so that people that show up at the IRS taxpayer assistance offices might get some help. The other thing I would like you to comment on briefly is this idea, really a fascinating idea, to fence off income that is under a reported or a fabricated SSN. Generally, your reaction to the recommendations by the Taxpayer Advocate?

Ms. GARDINER. Well, first, I would like to make a distinction between the mismatches, because in some cases on these ITIN tax returns, the attached W-2 will have the name of the person who filed the ITIN return but a different SSN. That is what I made reference to in my remarks. Then you also have a very large number, in the thousands, of ITIN returns that are filed, with W-2s that have both the name and the SSN that belong to someone else. In those cases, they truly are victims because they get notices from the IRS. I believe it is that part of it, in particular, that Ms. Olson is referring to. So, victims whose both very name and SSN was misused wouldn't get a notice from the IRS saying, where is the rest of our taxes? You have this additional income. So, we think that would be a good idea. It doesn't solve the problem as much with the mismatches where the person does use their correct name and that other individual's SSN. That information just isn't really used now.

Mr. HULSHOF. The fencing off provision?

Ms. GARDINER. It only works really for both the name and number situations.

Mr. HULSHOF. Ms. Olson, any comment on that comment?

Ms. OLSON. Well, I am the person who has to solve taxpayer problems, and I see people with W-2s where someone has used—the ITIN holder has used their own name and given the victim's SSN, and the victim is getting, in fact, our underreported notices. So, my thinking was that the fencing off would be something that would protect many victims, and if the SSA wanted that information, that could be something that we would be notifying them. I would like to make some comments, if I might, because I think you would be interested in this, about the third-party verification and my idea of people coming into the walk-in sites. Right now, the IRS' policy is that whereas in the walk-in sites people can deliver their documentation and their ITIN applications, the documents are not really verified there, and that is the opportunity for the IRS to see an applicant face-to-face.

We changed our procedure saying, send in an application with your tax return attach the application to the tax return, and the idea of that was to say, we know you have got a tax administration purpose. You are not getting the ITIN for a driver's license. It

means we are holding refunds until we can verify. So, if we were to really do the processing of the application and the verifying of the documents while the taxpayer is right there before us in the walk-in sites, we might have better results than shipping them off somewhere, delaying refunds.

Mr. HULSHOF. My time is really short and I want to be sensitive to Ms. Tubbs Jones giving questions, so if any of you want to chime in on this, again, the same question I proposed to the previous panel. Under current law, wages subject to the Social Security tax are credited toward benefits even if it is an unauthorized immigrant who is doing the work. What are the tradeoffs? Some of you referenced this, I think, in your testimony, but if anybody wants to quickly answer, what would be the tradeoffs if we were to stop paying Social Security benefits and tax refunds based on unauthorized work?

Ms. OLSON. Sir, if I could talk about the refunds briefly.

Mr. HULSHOF. Okay.

Ms. OLSON. Because refunds are under the taxpayer's control, they will just simply stop doing extra withholding and using the IRS as a bank. It won't stop them from using the ITIN.

Mr. HULSHOF. Maybe from the SSA's position, Mr. O'Carroll, as IG?

Mr. O'CARROLL. From our standpoint on it, what we are looking at is—as Mr. Lockhart said, it is a confusing point right now. We have some jurisdictions now under the new law that Chairman Shaw has done, H.R. 743, that is going to make people have to be a citizen working under a genuine SSN to get benefits, which we agree with and applaud. However, as Mr. Lockhart said, the retrospective ones are kind of confusing and there is a lot of data matches that have to be done between the SSA and the DHS in terms of finding out when non-work SSNs because authorized for work, and that is an area that I think we all agree on, is that we should be doing much better data matching with the DHS on that type of issue.

Chairman HOUGHTON. Thank you. Judge?

Ms. TUBBS JONES. Thank you very much. You can tell old friends when they call you judge, go back to your old careers.

[Laughter.]

Ms. TUBBS JONES. Mr. Brostek, help me out. You were going through a process of being able to get various genuine documents with counterfeit instruments, counterfeit documents. Number three on the ITIN card, you said you had someone take the ITIN card and they did what?

Mr. BROSTEK. They used the ITIN card—they filled out the application for a voter registration card, and as I understand it, we submitted that application and a copy of the ITIN card to the registering official.

Ms. TUBBS JONES. They were able to get a voter registration card?

Mr. BROSTEK. Yes.

Ms. TUBBS JONES. With no other identification, they were able to do that? The ITIN card doesn't have an address on it, right?

Mr. BROSTEK. Correct, and that is what I pointed out. On the application, the first application, rather than putting a residential

address, we put a post office box, and that was questioned and we had to submit a revised application with a residential address.

Ms. TUBBS JONES. When you submitted a revised application with a residential address, you did not have to show any other evidence of that address?

Mr. BROSTEK. That is my understanding. I wasn't the individual doing this, but that is my understanding.

[The information follows:]

U.S. General Accounting Office  
Washington, D.C. 20548  
March 26, 2004

The Honorable Stephanie Tubbs Jones  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Ms. Tubbs Jones:

During our testimony on ITIN (ITINs), before the House Committee on Ways and Means' Subcommittees on Oversight and Social Security on March 10, 2004, you asked how we were able to obtain a voter's registration card using an ITIN that we created. The steps we took follow:

- During October 2003, we mailed a voter registration application to a local county in the State of Virginia. We entered the fictitious ITIN in lieu of the requested SSN on the application, and also entered an undercover name, and an undercover post office box as the return mailing address.
- During November 2003 (about 5 weeks after we mailed the application), we received a letter from the county along with our application. That letter denied our request for a voter registration card because we used a business address (post office box) instead of a residential address in the county.
- Using the undercover name, one of our staff members called a voter registration official in the county shortly after we received the rejected application. That official said to cross out the post office box address, write-in an actual county residential address, and re-mail the application. We did so but we also added the words "in care of" in front of this residential address.
- When we did not receive the voter's registration card within 2 weeks, our staff member called the official again. That official said that a voter has to live at the county residential address listed in the application. Our staff member asked this official to cross out "in care of" from the address. That official agreed to do so and to process the application.
- About a month later in late December 2003, we received the voter registration card—issued on December 19, 2003—for that fictitious person at the residential address that we listed on the application.

Since we did our work, certain actions, if successfully implemented by the States, may limit the opportunities to misuse an ITIN to obtain a voter registration card. Federal law<sup>1</sup> requires States to have implemented, by January 2004, procedures under which voter registration applicants must provide certain identification documents (e.g., bank statement, paycheck, or government document) when they register to vote, or the first time they vote in a Federal election. States are also required to check voter registration applications for accuracy by routinely requiring and verifying the applicant's driver's license or Social Security identification number (last four digits)<sup>2</sup> When the verification indicates that a registrant is not eligible, has provided inaccurate or fraudulent information, or information that cannot be verified, then the voter registration card application must be denied, according to executive correspondence from the Department of Justice. Had these provisions been in place when we sought a card with fraudulent documentation, we may not have been successful.

Sincerely yours,

Michael Brostek  
*Director, Tax Issues Strategic Issues Team*

<sup>1</sup>See Department of Justice documents on the Help America Vote Act of 2002 at <http://usdoj.gov/crt/voting/hava/hava.html>

<sup>2</sup>Most States, including the State from which we obtained the voter registration, have applied for a waiver to this requirement until January 2006.

Ms. TUBBS JONES. I don't want to beat a dead horse or anything. I think, though, we ought to have an understanding of what happened in order to get a voter registration card because you are representing something with this chart, okay? I appreciate it. Let me go to Ms. Olson. Ms. Olson, how long have you been the Taxpayer Advocate?

Ms. OLSON. Three years.

Ms. TUBBS JONES. Three years? What do you think should be the major issue that this Subcommittee should consider to ensure fair treatment and confidentiality for average Joe Taxpayer with regard to the issues we presented today?

Ms. OLSON. For ITIN taxpayers, I think there are a couple of issues. We have talked about ITIN taxpayers using SSNs. I think that low-income taxpayer clinics, outreach and education to these taxpayers about their rights and responsibilities, is perhaps the best thing for that particular taxpayer. Not having the government agencies delivering the information, but stakeholders that they can trust. On the other hand, for the employers of the average Joe Taxpayer, the ITIN taxpayer, the IRS has done a study that shows when they went out and interviewed employers that many of them didn't recognize the ITIN number as an ITIN number. They thought it was an SSN. So, when you get into the entry point of the system where someone might say, I don't want to hire you because you are giving me a suspect number, we don't have a lot of what you would call branding issue recognition, and the IRS really needs to do something about that, and I think this Committee really needs to watch over the IRS to make sure it does that.

As far as confidentiality, I think my position is really clear. I believe that the current 6103, the section of the Code, protects taxpayer information, which is a vital part of the bargain. That we get taxpayers to file because they know their information is going to be held confidential. I think there are ample authorities under the law that if immigration, or Social Security, or some other agency is looking at a taxpayer for a violation of some other law, that they can get that data from us. They just can't do fishing expeditions, and I think that is the right thing for taxpayers to expect from their tax administrator.

Ms. TUBBS JONES. That is a perfect segue for my question for Mr. O'Carroll, since I am running out of time. Ms. Gardiner, it is not that I don't want to ask you anything. I just don't have enough time. Your testimony, Mr. O'Carroll, suggests that the IRS and other Federal agencies work together to develop additional ways to share data. Are you suggesting that Congress needs to change the disclosure rules in section 6103 of the Tax Code?

Mr. O'CARROLL. Yes, Congresswoman. That would take legislation to do that type of sharing, but an example of it is that in our earnings suspense file, we have about 350,000 mismatched wages that start with a 9 as the beginning of the digit of the 9-digit code, which is—ITINs are usually in the 900 series. If we were to be able to share information with the IRS, we would be able to determine whether those are false numbers, whether they are ITIN numbers, or they are other types of numbers so that we could be able to work

on the earnings suspense file, and that, at the moment, we are unable to share with the IRS.

Ms. TUBBS JONES. What do you think about that, Ms. Olson? Then I am done, Mr. Chairman.

Ms. OLSON. I think that my understanding is that the ITIN numbers, the 900 numbers, don't make up a large portion of the earnings suspense file, and so in order to erode 6103 in order to deal with a small portion of that issue, it does not meet my balancing test for protecting tax administration and confidentiality in tax administration.

Ms. TUBBS JONES. In other words, it is almost like passing a constitutional amendment to stay away from big things like that, when the issues aren't of that level.

Ms. OLSON. Section 6103 is fundamental to the administration of the tax system.

Ms. TUBBS JONES. Thank you, Ms. Olson. Thank you, Mr. Chairman.

Chairman HOUGHTON. Thank you very much. I am going to let you go here because we are way over time, but I want to ask one question. Ms. Olson, the last page of your testimony, I thought was very helpful as far as I was concerned because it specifically says certain things ought to be done. I have got a question. You expressed concern that the proposals to advance Social Security and immigration policies through the Tax Code could undermine the whole administration of the tax system. Do you want to break that down a little bit?

Ms. OLSON. I think that the more that you ask the IRS to administer different laws and different policies other than just pure tax policy, you make it harder for us to bring people into the system and comply with the system. We keep saying, taxes are the life blood of government. So, sometimes there are reasons for the tax administrator to essentially adopt a "don't ask, don't tell" policy so that taxpayers do come in and the government does collect the funds. I think that looking to us to carry the water for other programs makes it very difficult for us to do our core job.

Chairman HOUGHTON. Isn't it possible to create a system of discipline and yet have an underlying bed of trust, because that is the whole point of our tax system? Another thing is, what happens 20 years from now? Are we going to be talking about the same issues? Is it going to be the same sort of knife-edged type of situation?

Ms. OLSON. I think that we can do a better job. I talked about the educating of the employers. We can certainly get them to identify the numbers and not employ people who have these questionable numbers. I think that the new system that Social Security has talked about, where employers can verify numbers on the internet, and that is appropriate for Social Security to do that because they are the caretakers of those SSNs. We certainly can do a better job, look at verifying information. I have made some proposals about the walk-in centers and things like that, where when we are seeing the ITIN applicants, we are essentially doing what Social Security does with their SSNs. I think that if you take those kind of approaches, you are taking a balanced approach. You are protecting

the tax system and yet you are not ignoring the issue. You are addressing the serious issue.

Chairman HOUGHTON. Well, thank you, and thank you very much for bearing with us. Thank you for your excellent testimony. The meeting is adjourned.

[Whereupon, at 12:30 p.m., the hearing was adjourned.]

[Questions submitted from Chairman Shaw to Mr. Lockhart, Mr. Everson, Mr. Tom Ridge, and Ms. Gardiner, and their responses follow:]

**Questions from Chairman E. Clay Shaw, Jr. to Hon. James B. Lockhart, III**

**Question: You stated in your testimony that the Social Security Administration (SSA), Internal Revenue Service (IRS), and Department of Homeland Security (DHS) have formed an executive level steering Committee. What are your plans for increased agency coordination?**

Answer: As stated in our testimony, SSA has formed an executive level steering Committee with DHS to oversee and direct cooperative activities. The first areas of discussion will be strengthening the integrity of SSNs to promote homeland security and identifying potential data sharing activities that would best assist each organization in carrying out its mission. We believe it will be a successful and productive effort.

Even more recently, we established another high-level interagency group with the IRS to work on issues of mutual concern and efforts that cross agency lines. We held our first meeting on March 5th to discuss logistics. We anticipate that this interagency coordination will be useful and productive for each agency.

**Question: The SSA and IRS match data on earnings, to ensure accurate wage reports. Are there any authorizations for sharing information between your two agencies in current law that are not being utilized, or are under-utilized?**

Answer: We are not aware of any authorizations for sharing information between SSA and IRS that are not being utilized or are under-utilized.

**Question: In his testimony, the SSA Acting Inspector General suggests exploring additional data-sharing opportunities. Do you have any recommendations for changes in data-sharing authority that would enable both agencies to better do their jobs?**

Answer: With respect to data sharing opportunities, SSA and the IRS are exploring expanded online access to employer report and adjustment information. This provides wage information processed for a particular employer in a given tax year (TY). This includes original as well as any adjustments to the employer report. This data is the online equivalent to the employer report and adjustment information data files that are currently released to IRS on a weekly basis for integration into the IRS database. SSA and IRS currently have an online pilot in one IRS location and are working to expand access to other sites.

**Question: The National Taxpayer Advocate recommends IRS continue to encourage unauthorized workers to file tax returns, so that the IRS could identify stolen SSNs and the correct ITINs. She recommends IRS notify the SSA of the ITIN to which wages should be attributed when an unauthorized immigrant works using a false or stolen SSN. Do you agree with this recommendation, and is it feasible?**

Answer: When someone works under an incorrect SSN—possibly a false or stolen SSN—the wages are recorded in SSA's earnings suspense file. Even if an ITIN is subsequently assigned to the taxpayer by IRS, SSA cannot remove the wages from the suspense file, because an ITIN is not a valid number for crediting wages. Thus, the additional work involved would yield little or no benefit to SSA and would not be an optimal use of our resources.

**Question: The SSA Acting Inspector General said that 22 colleges and universities will issue "temporary" SSNs to students, which are not SSNs at all but rather 9-digit numbers that look like SSNs. How is the agency addressing this issue and what is being done to deter educational institutions from creating these misleading numbers?**

We instructed our regional offices to contact the colleges and universities identified by the Inspector General to ask them to remove all references to "temporary SSNs" from their websites and informational materials, and they did so. The colleges and universities were advised of the purpose and use of the SSN and the potential risks associated with issuing "temporary SSNs."

We also have an on-going relationship and dialog with several of the national educational associations. For example, SSA staff provided information about the potential risks of referring to student identification numbers as “temporary SSNs” in a May 25, 2004 national meeting with NAFSA, the association of international educators.

**Question: The SSA offers SSN verification to employers on a voluntary basis. Are all employers able to verify SSNs of their new hires if they so choose? If an employer needs to verify dozens SSNs per day, how quickly will the SSA provide a reply? Is the SSA taking steps to make the SSNVS more user friendly?**

Answer: The SSA has provided SSNVS to the employer community for many years. Employers may contact SSA to verify SSNs via several methods.

The Employer Verification System (EVS) provides several options at no cost to employers. For up to 5 SSNs, employers can call SSA’s toll-free number for employers—1-800-772-6270—weekdays from 7:00 a.m. to 7:00 p.m. Verification is provided immediately for requests submitted through the employer 800 number. Employers may also use this number to get answers to any questions they have about EVS or to request assistance concerning wage reporting.

Employers also have the option to submit a paper listing to the local Social Security Office to verify up to 50 names and SSNs. In addition, they may submit verifications on magnetic media. A simple registration process is required to use the magnetic media option. Paper and magnetic media EVS requests can be submitted at any time and generally take about 30 days to process.

SSA also has a pilot in place that allows participating employers to use a secure Internet site to verify names and SSNs. Currently, 85 employers are participating in this pilot. This pilot is referred to as the Social Security Number Verification Service (SSNVS). SSNVS provides a quicker and more efficient alternative for employers to obtain verifications. This pilot offers the participating employers two options to verify SSNs. Employers can receive instant feedback for up to 10 names and SSNs, or the employer may upload a file with up to 250,000 names and SSNs. The response is ready for the employer on the next business day.

We are pleased with the feedback we have received from employers using SSNVS. The SSA surveyed pilot participants, and 93 percent of the respondents rated this service very good or excellent.

**Question: In March 2003 the SSA Inspector General (SSA IG) found that though the IRS is sending the SSA information on wages reported under an identity theft victim’s name (thus resulting in overreported wages on that worker’s record), the SSA is not processing this workload in a timely fashion. As a result, the SSA IG estimated there was a backlog of 80,000 unprocessed referrals. What is the SSA doing to resolve this backlog?**

Answer: By the end of December 2003, the SSA had processed to resolution the entire backlog of overstated wage referrals that SSA’s Office of Inspector General reported on in March 2003. Currently, there is no backlog of referrals; SSA continues to process current IRS referrals as they are received. In order to address the accumulated and future referrals, SSA has developed and documented updated standard processing procedures. To facilitate the possibility of more efficient processing, SSA has elicited IRS support to develop an automated application to process this workload. SSA and IRS are continuing to meet to discuss how to develop an automated process.

**Question: Since 1997, the SSA has sent information to the DHS on wages reported under SSNs issued for non-work purposes. However, the DHS has said the information is in an electronic format it cannot use. Are you working with the DHS to resolve these problems? Also, are you working with the DHS to obtain more up-to-date information on the work authorization status of SSN holders?**

Answer: Yes. We are working with DHS to resolve the problems that have been brought to our attention with regard to this file. For example, in addition to the information sent as required by law, DHS recently requested the data in a different electronic format. We provided a prototype file of the new electronic format to DHS in early April 2004 for testing purposes. However, there are inherent difficulties resulting from the fact that each agency maintains unique data to support its mission. Our information is indexed under the individual’s SSN; however, DHS records do not usually contain an SSN. DHS uses immigration numbers as its index; SSA records do not presently contain the immigration numbers. However, SSA is exploring capturing those numbers as part of a future long-term enhancement to its system for assigning SSNs, which would be helpful in our efforts to obtain more up-to-date information on work authorization status.



**Question: Your agency's letter to employers notifying them of mismatched names and SSNs on their wage reports states that employers should not use the letter to take any adverse action against an employee and that doing so could violate State or Federal law and subject them to legal consequences. Did you consult with the DHS on this language? Is it also the DHS's policy that employers should not take adverse action based on the letter?**

Answer: The SSA discussed the "No Match" letter language developed in 2002 with the Office of Special Counsel at the Department of Justice, which had jurisdiction over the Immigration and Naturalization Service (INS). As you know, most of the functions of the INS were subsumed under DHS. We would defer to the DHS to address questions concerning their policies.

**Question: Could you provide an estimate of the number of clearly invalid SSNs (e.g., all zeros, sequential numbers, alphanumeric, ITINs, and so forth.)? What much in wages is attributed to these numbers?**

Answer: There are currently about 244 million items in the suspense file. (Items refer to quarterly employer reports for individual workers for years prior to 1978 and to W-2s for years after 1977.)

- About 91.6 million of these items have an SSN that is 000-00-0000, reflecting approximately \$34.9 billion in wages. The percentage of wage items with all zero SSNs has declined significantly since 1990. For TY 1990, 17 percent of W-2s received were all zeros; for TY 2002, 2.5 percent of W-2s received were all zeros. The use of all zeros for the SSN is consistent with instructions issued by SSA and IRS for certain situations that employers may encounter until they can obtain a valid SSN. For example, where the employer files his/her wage reports with SSA electronically and cannot supply a worker's SSN—for example, the employer hires a person who does not have an SSN by the time the W-2 report is due and who may no longer work for the employer—the employer is instructed to complete the SSN field by entering all zeros. The use of all zeros allows SSA to record the wages in the earnings suspense file and facilitates the payment of taxes on these wages. (Once the employee receives his/her SSN, the employer should complete and submit a form W-2c to provide the correct SSN.)
- Another 30.1 million of the suspense items have an SSN that could not have been assigned by SSA, reflecting \$102.9 billion in wages. This includes the 800 and 900-series that have not been assigned by SSA. Since 1996, the 900-series has been reserved for use by IRS to issue ITINs. The ITIN is a 9-digit number issued to non-citizens who need ITINs for tax purposes and who otherwise do not meet the requirements for being assigned an SSN.
- There are approximately 1.5 million items in the suspense file reported to 900-series SSNs. Of these, about 342,000 appear to be valid ITINs. The total earnings amount associated with these "apparent ITINs" is \$2.8 billion, representing 0.7 percent of all wages in the earnings suspense file.

These three groups account for 50 percent of the items in the suspense file—about 122 million out of 244 million items.

The remaining 50 percent of the items in the suspense file represent situations such as individuals not reporting name changes, clerical errors, and individuals using another's person's SSN.

The SSA has developed, and is currently implementing, a new process for examining items in the suspense file by considering additional data in an effort to move items from the suspense file to the records of individual workers. As this implementation continues, we also continue to evaluate the results to ensure that earnings are accurately posted to the earnings record.

**Question: Could you provide an estimate of the amount of benefits received, versus payroll taxes paid, based on unauthorized wages that have been removed from the Earnings Suspense File and allocated to the correct worker?**

Answer: We are unable to provide this information based on our records. SSA has no way of determining whether or not earnings in the earnings suspense file (ESF) are from unauthorized work. SSA's source of information about earnings is the Form W-2, and there is no indication on the W-2 as to an employee's citizenship or immigration status. By definition, if reported earnings are in the ESF, we are unable to attribute that record to any specific individual. Thus, SSA has no way of determining from our records whether earnings removed from the suspense file are from unauthorized work.

**Question: The Commissioner of the IRS testified that, while they have levied fines on employers who submitted wage reports with mismatched names and SSNs, none of these fines have been upheld on appeal because**

**the employers complied with IRS and DHS documentation requirements regarding collection of information on an individual's name, SSN, and work authorization. Similarly, the SSA has previously stated their ability to prevent wages from being reported under erroneous names and SSNs is limited, because they must rely on the IRS to penalize employers and the DHS to enforce immigration laws. Given that the ability of both the SSA and IRS to maintain accurate records and enforce laws over which they have jurisdiction rely substantially upon DHS documentation requirements and immigration enforcement, please provide a joint SSA, IRS, DHS response with recommendations to prevent erroneous reporting of wage information to the IRS and SSA, including any planned changes to employer instructions, other procedures or regulations, along with any recommendations for needed change in law.**

Answer: By statute, the SSA, IRS, and DHS each fulfill separate roles within the Federal Government. The SSA advances the economic security of U.S. citizens through retirement and disability programs. The IRS administers and enforces the nation's revenue laws. The DHS leads efforts to ensure the security of the United States homeland and its citizens, including protection of the nation's borders. Despite these separate roles, the three agencies interact with each other, as necessary, to fulfill their respective roles and as authorized by law.

The subject of the March 10, 2004, hearing was SSN and ITIN misuses and mismatches. The hearing testimony mainly addressed issues arising from the use of SSNs stolen or fabricated by unauthorized workers in the United States; the potential problems this caused with regard to the SSA's Earnings Suspense File and IRS's collection of revenue; and the IRS's attempts to fine employers for submitting information returns to the IRS with invalid employee name/SSN combinations, which were not upheld on appeal. The hearing also addressed the IRS's issuance and use of ITINs in order to facilitate participation in the United States tax system by individuals required to pay tax to the United States, but who are ineligible for an SSN.

The issues explored at the hearing focused mainly on the interaction between the SSA and IRS. Employers report their employees' earnings and withholdings of income and Federal Insurance Contributions Act (FICA) tax on IRS Form W-2. These earnings and taxes are tracked through the use of the employee's SSN, for which all U.S. citizens are eligible. SSA also will issue SSNs to certain non-citizens authorized to work in the United States, and to certain non-citizens who qualify for Federal or State benefits. DHS determines whether these individuals are eligible to work, and the SSA's issuance of an SSN to an immigrant is based on this determination.

Occasionally, an employer will submit a W-2 that contains an invalid name/SSN combination, often because of a simple reporting error. Generally, such minor errors can be remedied and the wages and FICA taxes credited to the proper account at SSA and IRS. There are, however, circumstances under which the name/SSN combination cannot be matched to any record.

To decrease the number of invalid name/SSN combinations reported to the SSA, the SSA has implemented a name/SSN verification system, called the Employer Verification Service (EVS). The EVS matches employees' names and SSNs with SSA's records. The EVS is offered to employers and third party submitters (e.g., accountants and service bureaus). The SSA believes that providing employers with the opportunity to verify names and SSNs is an important step in accurate wage reporting. Consequently, the SSA provides three options—through paper listings, magnetic media, or telephone—for employers to verify names and SSNs. The SSA received over 1.1 million phone calls from employers in 2003 to verify the accuracy of their employees' reported names and SSNs.

The SSA is currently piloting an Internet-based application that allows employers and third-party submitters to check their employees' names/SSNs against SSA's records. The pilot is called the Social Security Number Verification Service (SSNVS). The pilot began with six participating employers. As of June 20, 2004, SSA has expanded the pilot to include 86 employers. Of those, 74 employers have used this service over 44,000 times to verify over 8.7 million names and SSNs. The SSA is now evaluating the SSNVS pilot.

Under the SSA's privacy regulations, based on the Privacy Act, an employer may not verify a name and SSN prior to hiring. This information can be verified only after the employee is hired. Thus, even if an employer learns that an employee's name and SSN do not match, the employer is still required to send a Form W-2 (wage report) with a name and SSN mismatch in cases in which the employee had left employment with that employer.

As a further initiative, the SSA has established a process, administered jointly by SSA and the U.S. Department of State (DOS), that allows the SSA to assign SSNs and issue SSN cards to non-citizens who choose to apply for an SSN as part of the process that allows them to enter the country as permanent residents. This process is known as Enumeration at Entry. The data required to assign an SSN, including verification of the individual's immigration and work authorization status, are provided by the DOS and DHS to the SSA. The SSA believes this process is an important step to ensuring the integrity of the SSN, and ultimately improving the accuracy of wage reporting.

Moreover, the DHS and the SSA have instituted a pilot program, known as the Basic Pilot, to facilitate verification of information that employees provide to employers to determine whether it matches government databases and whether the employee is authorized to work in the United States. By volunteering to participate in the Basic Pilot, employers may verify the information provided by all newly hired employees. This pilot will be available to employers in all States by December 2004. Thus, employers participating in this pilot are able to ascertain that the SSN information they have been provided matches the SSA's records and that the person hired is authorized to work in the United States.

In contrast with the SSA's and DHS's ability to verify information, the IRS is prohibited from doing so under most circumstances. This prohibition extends to an individual's name/SSN combination, because such information is considered taxpayer information when held by the IRS. The Internal Revenue Code currently prohibits the IRS from disclosing such information, before or after an employer hires an individual, except under very limited circumstances. Section 413 of the Tax Administration Good Government Act of 2003, which was passed by the Senate on May 19, 2004, would permit the IRS to verify taxpayer identifying numbers, including the SSN, to requesters who are required to provide such information to the IRS for tax administration purposes.

Even though the IRS is prohibited from prospectively verifying name/SSN combinations, the Internal Revenue Code does provide authority for the IRS to fine employers that file information returns with invalid name/SSN combinations. Through use of information returns, the IRS has placed certain reasonable responsibilities on employers with respect to reporting wages and withheld taxes for their employees. Regulations require a level of diligence on the part of the employer in meeting these responsibilities. The IRS forms, such as the Form W-2, provide sufficient clear guidance to employers, and are a tax administration tool for employers to report wage information to the IRS and the SSA. The IRS relies on these forms to administer and enforce the revenue laws of the United States. Most information provided on such forms is accurate, and the IRS attempts to correct erroneous information whenever possible.

When information returns contain invalid name/SSN combinations, the IRS can impose a fine unless the employer qualifies for a "reasonable cause" waiver. The reasonable cause waiver prevents employers from being held as guarantors of the accuracy of information for which they serve as mere transmitter. To qualify for a waiver, an employer must show due diligence in attempting to solicit an accurate SSN and soliciting again upon learning that the SSN provided is inaccurate. The IRS believes that this standard is reasonable to encourage employers to collect and report the proper tax on income earned in the United States, regardless of the immigration status of the taxpayer.

Forms W-2 that contain invalid name/SSN combinations that cannot be matched might be attached to tax forms filed by individuals under an ITIN. The IRS created the ITIN for those individuals ineligible for an SSN, but who are required by the Internal Revenue Code to pay tax to the Federal Government because, *for example*, they have U.S.-source income greater than the exemption amount. The IRS bases its determination whether to issue an ITIN on information provided by the taxpayer on the Form W-7.

Even though ITIN holders who file returns and attach Forms W-2 showing an SSN may not be legally present in the United States, the IRS is prohibited by Section 6103 of the Internal Revenue Code from sharing that information with the DHS or any other government agency except in very limited situations. For example, IRS had been permitted to share return information, including taxpayer identity, with Federal law enforcement agencies, when that information is related to a terrorist incident, threat, or activity, under an amendment to Section 6103 passed after the terrorist attacks of September 11, 2001. This authority expired December 31, 2003, but section 416 of H.R. 4250, the "American Jobs Creation Act of 2004," which was passed by the House of Representatives on June 17, 2004, would re-enact the authority. Regardless of potential changes, the protections provided by section 6103 are fundamental to encouraging voluntary compliance with the tax laws. Therefore,

the IRS strongly believes that any changes thereto should be made only after very careful consideration.

The information provided to employers by individuals on the principal DHS form used for employment eligibility verification, the Form I-9, is also restricted as to its uses. By statute, neither the form nor the information contained therein may be used for any governmental purpose other than enforcement of the Immigration and Nationality Act and several specific criminal provisions of Title 18, United States Code. *See* 8 U.S.C. § 1324a(b)(5).

In light of the foregoing discussion, we would disagree with one premise of the question, namely, that the ability of the SSA and IRS to enforce laws within their respective jurisdictions relies substantially on DHS enforcement and documentation requirements. Each agency works to prevent document fraud and enforce the laws within its jurisdiction. No agency can be held responsible for enforcing laws within another agency's jurisdiction. However, each agency, if authorized, may share information to further the others' missions. Any changes to the current system, which might potentially lead to more accurate information reporting, also may have a negative effect, particularly on tax administration. They must, therefore, be very carefully considered.

**Questions from Chairman E. Clay Shaw, Jr. to Hon. Mark W. Everson**

**Question: The Social Security Administration (SSA) and the Internal Revenue Service (IRS) match data on earnings, to ensure accurate wage reports. Are there any authorizations for sharing information between your two agencies in current law that are not being utilized, or are under-utilized?**

Answer: We believe we are using all available statutory authority to share information. IRS and SSA meet regularly to explore additional data sharing opportunities and methods to increase ease of data exchange and ease of use. To solidify our data sharing commitments, a Memorandum of Understanding (MOU) was prepared. In drafting the MOU, we ensured that both agency needs and goals would be met to improve wage reporting and reconciliation and the means to resolve name/SSN problems.

**Question: In his testimony, the SSA Acting Inspector General suggests exploring additional data-sharing opportunities. Do you have any recommendations for changes in data-sharing authority that would enable IRS and SSA to better do their jobs?**

Answer: In an effort to increase the sharing of information between our agencies and enhance our efforts in the area of matching and verifying wage reporting data, the two agencies have agreed that IRS will be provided access to the SSA Employer Report Query (ERQY) command code. The ERQY command code will allow IRS online access to employer report and adjustment information maintained on the SSA Employer Control Database (ECDB). The ECDB contains the wages, tips and Medicare wage information reported on Forms W-3 and W-2 from the employer community for the years 1937 to the present.

IRS currently has access to the ECDB information that is available on microfilm to IRS employees from the Wage Information Retrieval System (WIRS) at one location. IRS and SSA also have an on-line pilot site in Philadelphia and are working together to expand access to other sites. On-line access to this database will facilitate expanded use of the information by providing immediate viewing of W-3/W-2 information via electronic means. In addition, it will enhance the Service's ability to match and verify wage document filings and information reported by employers while decreasing the time it takes to determine compliance with wage reporting requirements.

**Question: The National Taxpayer Advocate recommends IRS continue to encourage unauthorized workers to file tax returns, so that the IRS can identify stolen SSNs and the correct ITIN. She recommends IRS notify SSA of the ITIN to which wages should be attributed when an unauthorized immigrant works using a false or stolen SSN. Do you agree with this recommendation?**

Answer: The IRS will continue to encourage unauthorized workers who owe tax to the Federal Government to file tax returns, as they are required to do so by law. The National Taxpayer Advocate's testimony states that the IRS "could notify SSA of the correct number (the ITIN) to which to attribute earnings." However, we are prohibited from sharing such information with SSA under section 6103 of the Internal Revenue Code, which prohibits the IRS from sharing information concerning taxpayers, except under the limited circumstances specifically identified in the statute.

**Question: You say that sharing confidential taxpayer information with immigration authorities would discourage illegal workers from participating in the tax system and deprive the Federal Government of tax revenue. Why should illegal workers participate in our tax system, and how much tax revenue do they provide to our government?**

Answer: The Internal Revenue Code requires illegal workers to participate in the tax system. Any person, regardless of immigration status, who has U.S.-source income greater than the exemption amount is required to file a tax return and pay any tax due to the Federal Government.

There is no method to accurately calculate the amount of tax revenue illegal workers contribute to the Federal Government. Any attempt to arrive at an amount would need to consider a number of factors, including that there is no reliable measure of the number of illegal workers present in the United States. In addition, illegal workers contribute to the Federal Government through excise taxes (such as gasoline tax and tax on alcoholic beverages), too, which are inherently immeasurable based on identified taxpayer groupings. Specific to income tax, it is clear that illegal workers are filing income tax returns with the Service. However, at this time we have no program in place to separately measure the amount of income tax revenue paid into the Federal Government by ITIN taxpayers. We will do a special extract from our Master File system to measure the total income tax liability reported by ITIN taxpayers on Forms 1040 (line 60) for the past five tax years, and provide you with the results once they are available.

**Question: Why does IRS process returns and issue refunds to taxpayers when there is an ITIN/SSN mismatch issue that might indicate the misuse of an SSN?**

Answer: The IRS issues refunds based upon demonstration that the filer of the return earned the income reported, and that, based upon that income, tax was withheld greater than tax owed to the Federal Government. The IRS is required by section 6402 of the Internal Revenue Code to refund such overpayments.

**Question: On the employee's withholding allowance certificate (Form W-4), the employee signs under penalty of perjury that he/she is entitled to the number of withholding allowances claimed. However, the employee is not stating under penalty of perjury that the name and SSN are correct. Why don't employees have to attest to the accuracy of their names and SSNs under penalty of perjury on the Form W-4?**

Answer: The purpose of the Form W-4, Employee's Withholding Allowance Certificate, is to ensure that the proper amount of tax is withheld from an employee's income. The Code mandates that no employee claim more withholding exemptions than the number to which the employee is entitled. *See* I.R.C. § 3402(f)(2)(A). By signing the W-4, employees certify that they are not claiming more exemptions than they are allowed to claim, and the purpose of the statute, and by extension the form, is fulfilled. The statute provides a remedy as well: an employer is required to withhold tax at a higher rate on an employee whom it suspects has filed an invalid W-4 or who has failed to file a W-4.

Furthermore, if an employer does not use one of SSA's SSN verification options to verify employees' SSNs, the employer may only learn that a SSN is invalid after submitting Forms W-2 after close of the tax year. This is due, in part, to the fact that very few W-4s are sent to the IRS. A completed W-4 remains on file with the employer unless the employee claims more than ten exemption allowances, or claims to be exempt from withholding but earns more than \$200 per week. There is no requirement in law that an employer validate TINs with the Service. Currently, the confidentiality provisions of the Code prohibit us from disclosing whether the TIN-name combination provided by an employee matches the TIN-name combination on file with the Service, although legislation recently passed by the Senate, the Tax Administration Good Government Act of 2003 (S. 882), would provide the necessary authorization.

Finally, we would anticipate that compliance by non-ITIN taxpayers would be negatively impacted, and participation in the tax system by ITIN taxpayers discouraged, if a perjury statement were added to the W-4. A portion of our resources dedicated to combating noncompliance would need to be shifted from other noncompliance issues in order to administer the new requirement, diminishing our ability to address other, more flagrant, areas of noncompliance.

**Question: Under current law, a worker is not eligible for the earned income tax credit based on a Social Security number that was issued for non-work purposes. Are workers eligible for the earned income tax credit if they use a SSN issued based on temporary work authorization, if that work authorization has expired? Does the IRS match data with the SSA or the**

**Department of Homeland Security to determine whether a SSN is based on authorization to work?**

Answer: During the processing of income tax returns, the IRS verifies the name and SSN of taxpayers, spouses, and dependents against records provided to us by the SSA in its NUMIDENT file. The NUMIDENT file indicates whether the SSN was assigned for work or for non-work purposes. SSA assigns non-work SSNs to non-citizens legally in the U.S. who meet all requirements to be paid a state public assistance benefit, other than having an SSN. The tax law allows a taxpayer to claim EITC when a non-work SSN was assigned for state benefit purposes. However, SSA also assigns non-work SSNs to non-citizens when a Federal statute or regulation requires the non-citizen to have an SSN in order to receive a federally funded benefit to which the non-citizen has already established entitlement, such as a Social Security benefit. A non-citizen assigned an SSN for this reason does not qualify for EITC. At this time, SSA does not identify the specific non-work reason for which the SSN was assigned, and thus IRS cannot determine from SSA records which taxpayers qualify for EITC. Therefore, IRS does allow a taxpayer to claim EITC based on a non-work assigned SSN. IRS has suggested a technical correction to the tax law that would eliminate the distinction between an SSN assigned for state benefit purposes and one assigned for other non-work reasons. The IRS does not match data directly with the Department of Homeland Security (DHS). Instead, information about a non-citizen's authority to work in the U.S. that is provided to us by SSA would be based on information SSA received from DHS. It is this information that SSA uses to determine whether to assign an SSN and whether the card issued will be for work or for non-work purposes.

**Question: The Commissioner of the IRS testified that, while they have levied fines on employers who submitted wage reports with mismatched names and SSNs, none of these fines have been upheld on appeal because the employers complied with IRS and DHS documentation requirements regarding collection of information on an individual's name, SSN, and work authorization. Similarly, the SSA has previously stated their ability to prevent wages from being reported under erroneous names and SSNs is limited, because they must rely on the IRS to penalize employers and the DHS to enforce immigration laws. Given that the ability of both the SSA and IRS to maintain accurate records and enforce laws over which they have jurisdiction rely substantially upon DHS documentation requirements and immigration enforcement, please provide a joint SSA, IRS, DHS response with recommendations to prevent erroneous reporting of wage information to the IRS and SSA, including any planned changes to employer instructions, other procedures or regulations, along with any recommendations for needed change in law.**

Answer: By statute, the SSA, IRS, and DHS each fulfill separate roles within the Federal Government. The SSA advances the economic security of U.S. citizens through retirement and disability programs. The IRS administers and enforces the nation's revenue laws. The DHS leads efforts to ensure the security of the United States homeland and its citizens, including protection of the nation's borders. Despite these separate roles, the three agencies interact with each other, as necessary, to fulfill their respective roles and as authorized by law.

The subject of the March 10, 2004, hearing was SSN and ITIN misuses and mismatches. The hearing testimony mainly addressed issues arising from the use of SSNs stolen or fabricated by unauthorized workers in the United States; the potential problems this caused with regard to the SSA's Earnings Suspense File and IRS's collection of revenue; and the IRS's attempts to fine employers for submitting information returns to the IRS with invalid employee name/SSN combinations, which were not upheld on appeal. The hearing also addressed the IRS's issuance and use of ITINs in order to facilitate participation in the United States tax system by individuals required to pay tax to the United States, but who are ineligible for an SSN.

The issues explored at the hearing focused mainly on the interaction between the SSA and IRS. Employers report their employees' earnings and withholdings of income and Federal Insurance Contributions Act (FICA) tax on IRS Form W-2. These earnings and taxes are tracked through the use of the employee's SSN, for which all U.S. citizens are eligible. SSA also will issue SSNs to certain non-citizens authorized to work in the United States, and to certain non-citizens who qualify for Federal or State benefits. DHS determines whether these individuals are eligible to work, and the SSA's issuance of an SSN to an immigrant is based on this determination.

Occasionally, an employer will submit a W-2 that contains an invalid name/SSN combination, often because of a simple reporting error. Generally, such minor errors

can be remedied and the wages and FICA taxes credited to the proper account at SSA and IRS. There are, however, circumstances under which the name/SSN combination cannot be matched to any record.

To decrease the number of invalid name/SSN combinations reported to the SSA, the SSA has implemented a name/SSN verification system, called the Employer Verification Service (EVS). The EVS matches employees' names and SSNs with SSA's records. The EVS is offered to employers and third party submitters (*e.g.*, accountants and service bureaus). The SSA believes that providing employers with the opportunity to verify names and SSNs is an important step in accurate wage reporting. Consequently, the SSA provides three options—through paper listings, magnetic media, or telephone—for employers to verify names and SSNs. The SSA received over 1.1 million phone calls from employers in 2003 to verify the accuracy of their employees' reported names and SSNs.

The SSA is currently piloting an Internet-based application that allows employers and third-party submitters to check their employees' names/SSNs against SSA's records. The pilot is called the Social Security Number Verification Service (SSNVS). The pilot began with six participating employers. As of June 20, 2004, SSA has expanded the pilot to include 86 employers. Of those, 74 employers have used this service over 44,000 times to verify over 8.7 million names and SSNs. The SSA is now evaluating the SSNVS pilot.

Under the SSA's privacy regulations, based on the Privacy Act, an employer may not verify a name and SSN prior to hiring. This information can be verified only after the employee is hired. Thus, even if an employer learns that an employee's name and SSN do not match, the employer is still required to send a Form W-2 (wage report) with a name and SSN mismatch in cases in which the employee had left employment with that employer.

As a further initiative, the SSA has established a process, administered jointly by SSA and the U.S. Department of State (DOS), that allows the SSA to assign SSNs and issue SSN cards to non-citizens who choose to apply for an SSN as part of the process that allows them to enter the country as permanent residents. This process is known as Enumeration at Entry. The data required to assign an SSN, including verification of the individual's immigration and work authorization status, are provided by the DOS and DHS to the SSA. The SSA believes this process is an important step to ensuring the integrity of the SSN, and ultimately improving the accuracy of wage reporting.

Moreover, the DHS and the SSA have instituted a pilot program, known as the Basic Pilot, to facilitate verification of information that employees provide to employers to determine whether it matches government databases and whether the employee is authorized to work in the United States. By volunteering to participate in the Basic Pilot, employers may verify the information provided by all newly hired employees. This pilot will be available to employers in all States by December 2004. Thus, employers participating in this pilot are able to ascertain that the SSN information they have been provided matches the SSA's records and that the person hired is authorized to work in the United States.

In contrast with the SSA's and DHS's ability to verify information, the IRS is prohibited from doing so under most circumstances. This prohibition extends to an individual's name/SSN combination, because such information is considered taxpayer information when held by the IRS. The Internal Revenue Code currently prohibits the IRS from disclosing such information, before or after an employer hires an individual, except under very limited circumstances. Section 413 of the Tax Administration Good Government Act of 2003, which was passed by the Senate on May 19, 2004, would permit the IRS to verify taxpayer identifying numbers, including the SSN, to requesters who are required to provide such information to the IRS for tax administration purposes.

Even though the IRS is prohibited from prospectively verifying name/SSN combinations, the Internal Revenue Code does provide authority for the IRS to fine employers that file information returns with invalid name/SSN combinations. Through use of information returns, the IRS has placed certain reasonable responsibilities on employers with respect to reporting wages and withheld taxes for their employees. Regulations require a level of diligence on the part of the employer in meeting these responsibilities. The IRS forms, such as the Form W-2, provide sufficient clear guidance to employers, and are a tax administration tool for employers to report wage information to the IRS and the SSA. The IRS relies on these forms to administer and enforce the revenue laws of the United States. Most information provided on such forms is accurate, and the IRS attempts to correct erroneous information whenever possible.

When information returns contain invalid name/SSN combinations, the IRS can impose a fine unless the employer qualifies for a "reasonable cause" waiver. The

reasonable cause waiver prevents employers from being held as guarantors of the accuracy of information for which they serve as mere transmitter. To qualify for a waiver, an employer must show due diligence in attempting to solicit an accurate SSN and soliciting again upon learning that the SSN provided is inaccurate. The IRS believes that this standard is reasonable to encourage employers to collect and report the proper tax on income earned in the United States, regardless of the immigration status of the taxpayer.

Forms W-2 that contain invalid name/SSN combinations that cannot be matched might be attached to tax forms filed by individuals under an ITIN. The IRS created the ITIN for those individuals ineligible for an SSN, but who are required by the Internal Revenue Code to pay tax to the Federal Government because, *for example*, they have U.S.-source income greater than the exemption amount. The IRS bases its determination whether to issue an ITIN on information provided by the taxpayer on the Form W-7.

Even though ITIN holders who file returns and attach Forms W-2 showing an SSN may not be legally present in the United States, the IRS is prohibited by Section 6103 of the Internal Revenue Code from sharing that information with the DHS or any other government agency except in very limited situations. For example, IRS had been permitted to share return information, including taxpayer identity, with Federal law enforcement agencies, when that information is related to a terrorist incident, threat, or activity, under an amendment to Section 6103 passed after the terrorist attacks of September 11, 2001. This authority expired December 31, 2003, but section 416 of H.R. 4250, the "American Jobs Creation Act of 2004," which was passed by the House of Representatives on June 17, 2004, would re-enact the authority. Regardless of potential changes, the protections provided by section 6103 are fundamental to encouraging voluntary compliance with the tax laws. Therefore, the IRS strongly believes that any changes thereto should be made only after very careful consideration.

The information provided to employers by individuals on the principal DHS form used for employment eligibility verification, the Form I-9, is also restricted as to its uses. By statute, neither the form nor the information contained therein may be used for any governmental purpose other than enforcement of the Immigration and Nationality Act and several specific criminal provisions of Title 18, United States Code. *See* 8 U.S.C. § 1324a(b)(5).

In light of the foregoing discussion, we would disagree with one premise of the question, namely, that the ability of the SSA and IRS to enforce laws within their respective jurisdictions relies substantially on DHS enforcement and documentation requirements. Each agency works to prevent document fraud and enforce the laws within its jurisdiction. No agency can be held responsible for enforcing laws within another agency's jurisdiction. However, each agency, if authorized, may share information to further the others' missions. Any changes to the current system, which might potentially lead to more accurate information reporting, also may have a negative effect, particularly on tax administration. They must, therefore, be very carefully considered.

**Questions from Chairman E. Clay Shaw, Jr. to Hon. Tom Ridge, Secretary,  
U.S. Department of Homeland Security**

**Question: The Deputy Commissioner for the Social Security Administration (SSA) stated in his testimony that the SSA, Internal Revenue Service (IRS), and Department of Homeland Security (DHS) have formed an executive level steering committee. What are your plans for increased agency coordination?**

**Question: The Commissioner of the IRS testified that, while they have levied fines on employers who submitted wage reports with mismatched names and SSNs, none of these fines have been upheld on appeal because the employers complied with IRS and DHS documentation requirements regarding collection of information on an individual's name, SSN, and work authorization. Similarly, the SSA has previously stated their ability to prevent wages from being reported under erroneous names and SSNs is limited, because they must rely on the IRS to penalize employers and the DHS to enforce immigration laws. Given that the ability of both the SSA and IRS to maintain accurate records and enforce laws over which they have jurisdiction rely substantially upon DHS documentation requirements and immigration enforcement, please provide a joint SSA, IRS, DHS response with recommendations to prevent erroneous reporting of wage information to the IRS and SSA, including any planned changes to employer instructions,**



other procedures or regulations, along with any recommendations for needed change in law.

**Question:** In his testimony, the SSA Acting Inspector General suggests exploring additional data-sharing opportunities. Do you have any recommendations for changes in data-sharing authority that would enable the SSA and DHS to better do their jobs?

**Question:** Since 1997, the SSA sent information to the Immigration and Naturalization Service (INS), and now to the DHS, on wages reported under SSNs issued for non-work purposes.

**Question:** However, we have been informed by DHS that the information is in an electronic format your agency cannot use. Are you working with the SSA to resolve these problems? Do you have any plans to utilize this information for enforcement purposes? Also, are you working with the SSA to provide more up-to-date information on the work authorization status of SSN holders?

**Question:** The SSA sends letters to employers notifying them when they submit wage reports with names and SSNs that do not match the SSA's records. While in some cases this results from a simple clerical error, in other cases it results from false information provided to the employer by an individual working in the United States without authorization. Has DHS consulted with SSA regarding the instructions to employers contained in these letters? What does the DHS instruct employers to do if they receive such a letter from the SSA? Are employers required to ask for additional documentation for the *Employment Eligibility Verification* form I-9? If so, what documentation is required? If the employee fails to provide the documentation, what further actions must the employer take? What penalties does the employer face if he/she does not take the required actions? Have these penalties been enforced? If so, please provide data on penalties issued in recent years.

**Question:** Legislation has been introduced in the 108th Congress to prohibit payment of Social Security benefits based on wages earned while an individual lacked authorization to work in the United States. Does the DHS have historical information on an individual's work authorization status at a point in time? How far back do the DHS records on an individual's work authorization status go?

[At the time of publishing, a response had not been received.]

#### Questions from Chairman Houghton for Ms. Pamela Gardiner

**Question:** TIGTA Report 2004-30023 finds that 25% of tax filings by ITIN holders involve significant fraud in non-reported wage income. This finding seems to constitute a major crisis in the ITIN program and warrant immediate corrective action. What is your response to the fact that the management leadership at the Treasury Department has accepted only five of the twelve Recommendations made in Report 2004-30023?

**Answer:** Our statistical sample showed that approximately 23 percent of returns filed by unauthorized resident aliens appear to have not reported all income from wages and non employee compensation. While 23 percent is significant, the total number of Forms 1040 using an ITIN as the primary identifier (for Tax Year 2001—530,000) is proportionately small compared to the total volume of Forms 1040 filed (for Fiscal Year 2002—over 110 million).

This underreporting can be identified by the Internal Revenue Service's (IRS) Automated Underreporter program and by examinations of tax returns. However, as we reported, neither method is fully effective for finding and taxing income not reported by unauthorized resident aliens.

Only 1 of the 12 recommendations in the report addressed this issue (recommendation #6). TIGTA is disappointed that IRS management did not take immediate action on this recommendation. Instead, they stated that they would have to perform a cost-benefit analysis of implementing our recommendation. Management stated that they will continue to study whether the actions we recommended might become feasible in the future.

In commenting on management's response, TIGTA stated that the corrective action would involve only an estimated 444,000 of the 89 million paper filed Tax Year 2001 Forms 1040, or about one-half of 1 percent. The processing cost would be approximately \$435,000, a small portion of the Fiscal Year 2003 IRS budget approaching \$10 billion.

Substantial information relating to this audit finding and TIGTA's recommendation is sensitive and was redacted from both the audit report and this response. If requested, TIGTA would be pleased to brief the Committee on that information.

**Question: Does the TIGTA have the resources to fully and adequately investigate the widespread fraud that has been documented by TIGTA Report 2004-30023? If not, what additional resources are needed?**

Answer: The ITIN fraud referenced in the TIGTA Audit Report involves substantive tax violations that are IRS program responsibilities.

**Question: In your opinion, does Treasury Department management fully support the vigorous investigation and prosecution of ITIN fraud?**

Answer: In December 2003, the IRS made a number of significant changes to the ITIN program designed largely to prevent problems from occurring. These changes included such things as requiring applicants for ITINs to show a Federal tax purpose for requesting them, and changing the document issued from a card to a letter to avoid confusion with Social Security cards. Further, it is TIGTA's understanding that the IRS' Criminal Investigation function evaluates potential ITIN fraud cases in the same manner that it evaluates other criminal cases—using case selection criteria.

**Question: Has the agency made any determination or set any policy with the goal or aim of curtailing or deemphasizing investigation or prosecutions of ITIN fraud where the perpetrators appear to be illegal aliens?**

Answer: As previously noted, ITIN fraud is a substantive tax violation. IRS has program responsibility for investigating these violations and for referring cases to the Department of Justice (DOJ) for DOJ's prosecutive determinations. We are unaware of any IRS decision to initiate or forego investigations based on an individual's immigration status.

**Question: Has the Treasury Department, the White House, or any agency outside TIGTA pressured or advised you or your staff to slow down, deemphasize, or curtail investigation of ITIN fraud in cases where the perpetrator appears to be an illegal alien?**

Answer: No.

**Question: Does the TIGTA endorse and support amendments to Section 6103 of the Internal Revenue Code to permit the sharing of information among SSA, IRS, BICE and other Federal agencies to facilitate investigations and enforcement of Federal law?**

Answer: During the course of TIGTA's audit activity, TIGTA identified what appeared to be conflicting obligations in the confidentiality provisions of the Internal Revenue Code (I.R.C. § 6103) and provisions in Title 8 concerning immigration law enforcement. We noted the apparent conflict and suggested IRS confer with the Social Security Administration (SSA) and Bureau of Citizenship and Immigration Services (BCIS) to determine whether the provisions' effect prevented sharing of information that might be helpful in non-tax Federal law enforcement. If so, the entities could determine whether to recommend to their agency officials to pursue legislative changes to facilitate information sharing.

**Question: Did an employee of your agency, Michael Delgado, make a telephone call to the U.S. Attorney for the Western District of Kentucky, telling him that TIGTA would not support two recently filed criminal complaints against two ITIN filers (N. Silva Pina and Carlos D. Sanchez, complaint numbers 3:03MJ-405 and 3:03MJ-404, respectively) and suggesting that the cases be dismissed?**

Answer: Deputy Assistant Inspector General for Investigations (DAIGI) Michael Delgado contacted the United States Attorney's office for the Western District of Kentucky and advised an Assistant United States Attorney (AUSA) of TIGTA's concerns relating to potential operational issues regarding TIGTA's referral of several cases for prosecution determination and of TIGTA's internal inquiry to determine whether TIGTA policy and procedures were followed. DAIGI Michael Delgado requested that the AUSA discuss these concerns with the AUSA's supervisors and consider dismissing the criminal complaints.

**Question: Is it true that TIGTA investigative agents were told verbally in January through official channels to halt and not proceed with investigations of ITIN fraud where the case involves illegal aliens?**

Answer: Following allegations that TIGTA improperly investigated and referred investigative results to the Department of Justice and targeted undocumented aliens, TIGTA temporarily suspended all investigations involving non-IRS employees to permit an inventory review. TIGTA conducted this inventory review to ensure that all applicable policies and procedures were being followed.

[Submissions for the record follow:]

**Statement of Linda R. Lewis, American Association of Motor Vehicle Administrators, Arlington, Virginia**

Thank you for providing the American Association of Motor Vehicle Administrators (AAMVA) the opportunity to provide a written statement for the printed record regarding mismatches and misuse of the Social Security Number (SSN) and Individual Taxpayer Identification Numbers (ITIN).

AAMVA is a state-based, non-profit association representing motor vehicle agency administrators and senior law enforcement officials in the United States and Canada. Our members are the recognized experts who administer the laws governing motor vehicle operation, driver credentialing, and highway safety enforcement.

The driver's license is now the identification document of choice throughout North America. With a photo, signature, and physical description, the driver's license assumes a role beyond its original purpose of identifying a licensed driver. The license is now readily accepted as an official identification document for both licensed drivers, and, in most jurisdictions, for non-drivers. The motor vehicle agencies (MVAs) accept various breeder documents<sup>1</sup> as proof of identity to obtain a driver's license or identification card. MVAs are also under increasing pressure to verify the identity of individuals to whom they issue a driver's license or identification card. All motor vehicle agencies are required to collect the SSN for child support purposes while others require the SSN to satisfy legal presence requirements. AAMVA recently released *A Package of Decisions Based on Best Practices, Standards, Specifications and Recommendations to Enhance Driver's License Administration and Identification Security* which included a list of acceptable documents that jurisdictions should use when issuing driver's licenses or identification cards. We also recommended that MVAs verify the validity of breeder documents with issuing agencies like the Social Security Administration (SSA) to reduce identity fraud.

The AAMVA has developed an online system called Social Security Number Online Verification (SSOLV) with SSA to help motor vehicle agencies verify an individual's SSN during the driver's license issuance or renewal process, while an applicant **is still at the counter**. However, states can use the batch method to which SSA usually responds within 24 to 48 hours. Currently, 30 states are electronically verifying SSNs with the Social Security Administration through the online method.<sup>2</sup> But that verification process needs improvement.<sup>3</sup> Too frequently SSA's automated system indicates that a number does not match, when in reality, after manual investigation, it is a match. This is happening due to data updates not being applied to the file that DMVs are allowed to access. This situation is deterring other states from using the Social Security Administration system. Congress must direct the Social Security Administration to improve their system so that this unnecessary, labor-intensive process can be eliminated. Each check of the system should also reference SSA's death records to ensure that a state does not issue a driver's license or identification card to an individual presenting personal information of a deceased person. Improvement in the Social Security Administration's system will help reduce motor vehicle agencies' vulnerability to identity theft and fraud.

The AAMVA is uneasy about states using the Individual Taxpayer Identification Number for driver's licensing purposes. AAMVA shared the Internal Revenue Service's (IRS) letter advising states not to use the ITIN to determine the identity of applicants for driver's licenses. However, MVAs are under pressure from state legislatures to serve the driving population in their states since the SSA will no longer issue Social Security Numbers for driver licensing purposes. Currently, seven states accept the Taxpayer Identification Number in lieu of a SSN and legislation is pending in several states to require motor vehicle agencies to accept the ITIN as a substitute for a Social Security Number. If state legislators are going to require MVAs to accept the Individual Taxpayer Identification Number, MVAs need a system to verify the number with the IRS.

The AAMVA is pleased that the Internal Revenue Service has strengthened the ITIN issuance process by reducing the number of acceptable documents as proof of

<sup>1</sup> Breeder documents are defined as those documents used to confirm identity such as birth certificates, Social Security cards or immigration documents.

<sup>2</sup> Alabama, Arizona, California, District of Columbia, Florida, Georgia, Idaho, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wyoming

<sup>3</sup> General Accounting Office, *Social Security Numbers: Improved SSN verification and Exchange of States' Driver Records Would Enhance Identity Verifications*, GAO-03-920, September 2003.

identity, as well as verification of documents. With the new acceptable list of documents developed by AAMVA, the Individual Tax Identification Number was not included as an acceptable document. The IRS and AAMVA must work together to curtail the use of the ITIN.

The AAMVA strongly supports efforts on the part of Congress, the Department of Transportation (DOT), and the Internal Revenue Service to curb evasion of the Heavy Vehicle Use Tax (HVUT). We understand that this evasion is widespread and damaging to the highway fund. We are convinced that the cooperation of all agencies is necessary for effective long-term enforcement of the HVUT.

For many years—in fact ever since the states have been required by federal law to verify the payment of the Heavy Vehicle Use Tax before registering a heavy commercial vehicle—state motor vehicle administrators have desired an electronic means of doing this. Motor carrier credentialing systems cannot be fully effective and efficient until HVUT verification can be automated. State progress in the DOT-funded and sponsored Commercial Vehicle Information Systems and Networks (CVISN) Project has been held up by this administrative bottleneck.

Section 1307 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003 (SAFETEA) proposes an IRS electronic Heavy Vehicle Use Tax Payment Data Base. However, information from the completed database could only be shared with “appropriate State and Federal revenue, tax, and law enforcement authorities, subject to Section 6103 of the Internal Revenue Code of 1986.” This appears to preclude providing the data to motor vehicle registration officials.

Even if the IRS were permitted to share notice-of-payment from an HVUT Payment Data Base with motor vehicle agencies, it will be of no use to state motor vehicle agencies unless it is in a form they can use. It is our understanding that IRS does not currently capture vehicle identification numbers (VINs) when it processes the Form 2290 excise tax returns, but relies instead on Social Security and federal tax identification numbers (FEINs). Motor vehicle agencies rely very heavily on VINs to identify individual motor vehicles, for which SSNs and FEINs are not suited. In other words, even if motor vehicle administrators can receive information from the projected HVUT Payment Data Base, it will be of no use to them in Heavy Vehicle Use Tax enforcement if that system is not appropriately designed.

Since state motor vehicle registration officials will continue to be primarily responsible for the verification of the payment of the HVUT through examination of a paper IRS Form 2290 presented by the registrant taxpayer, AAMVA recommends that Congress amend the Internal Revenue Code to give the IRS consent to disclose to MVAs electronically whether or not the Heavy Vehicle Use Tax has been paid for each individual heavy commercial vehicle. This would not require access to tax records, but a simple “yes” or “no” upon query.

We think adoption of these recommendations will facilitate the common goals of DOT, IRS and the states: HVUT enforcement must be improved and the process should be automated. State motor vehicle agencies are IRS’ and DOT’s partners in reaching these goals.

In conclusion, Congress must ensure motor vehicle agencies have the ability, preferably electronically, to verify the validity of source documents with issuing agencies, such as the SSA, IRS, Immigration and Naturalization Services, vital records agencies and other MVAs. Without the ability to exchange and share information, states face a greater risk for fraud in motor vehicle administration.

For more information, please contact Tom Wolfsohn, AAMVA’s Senior Vice President of Government Affairs at (703) 522-4200.

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#### **Statement of Raul Yzaguirre, National Council of La Raza**

My name is Raul Yzaguirre, and I am President of the National Council of La Raza (NCLR). NCLR is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for the nation’s Hispanics. NCLR is the largest national Hispanic constituency-based organization, serving all Hispanic nationality groups in all regions of the country through a network of more than 300 affiliate community-based groups. I appreciate the opportunity to submit comments on the issues of the Social Security Administration’s (SSA) no-match letters and ITINs.

The two issues before the Committee have had a disproportionate impact on the Latino immigrant community. While we share the Committee’s concerns about homeland security, we do not believe that targeting hardworking, low-income, tax-paying immigrants enhances national security. In fact, efforts to keep immigrants underground and dependent on a cash economy hinders efforts to identify persons

residing in the U.S. Furthermore, SSA no-match letters and efforts to undermine the ITIN program will only result in poor compliance among immigrants with regard to filing taxes; make immigrants more dependent on the black market for fraudulent or fraudulently-obtained documents; lead to an increase in the Suspense File; and continue to have other harmful effects on the Latino community

#### **Individual Taxpayer Identification Number (ITINs)**

The Internal Revenue Service (IRS) created the ITIN on July 1, 1996, for foreign-born individuals who are required to file tax returns. The ITIN, a nine-digit number similarly formatted like a Social Security Number (SSN), is issued only to individuals who are not eligible for an SSN. Since the inception of the program, the IRS has issued nearly 6.9 million ITINs—70% to Latino immigrants. Over a million taxpayers reported wages of almost \$7 billion and paid more than \$305 million to the IRS in 2001 using the ITIN as their identifier. More importantly, three-quarters of all ITINs issued were reflected in tax returns prompting Nina Olson, the Taxpayer Advocate, to refer to the ITIN population as a “very compliant sector of the U.S. taxpayer population.”

Contrary to common perception, ITINs are not solely for undocumented immigrants; the ITIN is available to a range of foreign-born persons. Use of an ITIN does *not* therefore create an inference regarding a person’s immigration status. Those eligible for the ITIN include nonresident students; professors or researchers; authors who earn royalties for their writings or who are paid an honorarium for speaking engagements at a university; individuals who have interest-bearing accounts in a bank, or who receive dividends from money invested in stocks but are not eligible for an SSN; and many immigrants whose immigration cases are in process but who do not yet have employment authorization. Immigrants and U.S. citizens may also apply for an ITIN for their spouse or dependents in order to claim them as dependents on their tax returns.

It is important to distinguish between the ITIN as an “identifier” and that of proof of identity. An ITIN alone cannot and should not be used to prove identity. Just like the Social Security Number, the ITIN is issued so that a taxpayer has a unique identifier that is associated with his or her tax return. Since other forms of identifiers can either be frequently changed (address) or be shared by many people (names and birth dates), the IRS assigns to each individual taxpayer a unique number that will not be assigned to any other taxpayer.

The ITIN is a unique identifier provided to individuals who can prove their identity and foreign-born status. An individual cannot get more than one ITIN assigned to him or her. All applications are submitted and approved at a single processing center in the United States located in Pennsylvania. The IRS ensures that the W-7, the application for an ITIN, is properly filled out and that all of the requisite documents have been submitted. The IRS then authenticates the documents through a number of validation methods such as the use of inspection equipment (Black Lights, Jewelers’ Loupe, etc.). All documents must be current and either originals, copies certified by the issuing agency, copies certified by the U.S. Department of State, copies certified or notarized by a military Judge Advocate General (JAG) office, or copies notarized in the United States. Documents notarized in a foreign country are not acceptable unless they meet certain criteria. Documents establishing identity must bear the applicant’s name and photograph. The only document that is sufficient by itself to establish both identity and foreign-born status is an unexpired passport. All other documents, including the “matricula” (the identification issued by Mexican consulates) and voter registration card, must be accompanied by a second document in order for the applicant to corroborate his or her identity.

Although tax return filing is clearly the primary purpose for using an ITIN, ITINs have also been used to open interest-bearing accounts at financial institutions. Linking immigrants to mainstream financial services deters crimes and predatory schemes against immigrants, who are more vulnerable not only because they are more likely to have a lot of cash on hand to pay for daily needs, but because they are the least likely of residents to report crimes to local police. Four out of five (82%) unbanked individuals use check-cashing outlets and, therefore, must often carry large sums of cash making them easier targets for crime—especially theft or robbery. Because of these safety concerns, police departments across the country support efforts to link immigrant workers to mainstream financial institutions as a means of reducing crime and violence in neighborhoods and communities and as a means of promoting good community policing. Therefore, ITINs facilitate, not harm, public safety, crime prevention and investigation, and national security efforts.

### SSA No-Match Letters

Sent by the Social Security Administration to certain employers, no-match letters have had a devastating impact on immigrant worker communities throughout the country. For the last several years, advocates have been expressing deep concern about the continued use of these no-match letters by employers to discourage immigrant workers from asserting their workplace rights. Advocates have also been working hard to educate employers who, due to the confusion caused by these letters, feel pressured to take some action against employees listed in the no-match letters.

In an effort to update its database, SSA sends no-match letters to employers when the names or Social Security Numbers listed on an employer's W-2 forms do not agree with SSA records. Attached to each no-match letter is a list of employees for whom the SSA database could not find a match. The no-match letter is intended to be an educational correspondence that informs companies that their employees' wages are not being properly credited to their Social Security accounts. SSA aims to correct its records so that employees' earnings are accurately tracked and can be used to calculate benefit levels when applications for retirement or disability benefits are made with SSA. Correcting the SSA database is certainly a commendable goal. However, the effectiveness of these no-match letters is unproven, and the resulting consequences on immigrant worker communities have been devastating.

Despite hundreds of thousands of no-match letters that have been sent in the past several years, the Earnings Suspense Fund (ESF) has not decreased. In fact, cumulative earnings in the ESF covering 1937-2001 total over \$420 billion. However, the system's ineffectiveness is not its gravest consequence. The impact of the no-match letters on the immigrant community has been profound and widespread. The failure of the no-match letters to safeguard workers effectively against unfair and illegal practices on the part of employers has had devastating effects on the workers and their families.

As the SSA admits, there are many reasons for computer no-matches, and the no-match letters themselves do not prove any wrongdoing by either employer or employee. For example, a large proportion of the names on the no-match letters are Latino, Asian, or other names frequently misspelled by employers resulting in computer no-matches. These honest data-entry mistakes disproportionately affect immigrant workers. However, employer misuse of the no-match letters has caused great harm to workers nationwide. While the letter explicitly warns employers not to take adverse action against workers listed on the letter, layoffs, suspensions, firings, retaliations, and discrimination against these workers are widespread and well-documented. Some employers have simply fired all workers on the list; others have incorrectly reverified the work authorization of workers on the list. In many cases, only Latino or other "immigrant" workers, or workers involved in union organizing campaigns, have been fired or harassed (*See Aaron Nathans, UW and Janitors Settle; Tentative Deal: \$24,000 for Latinos, Capital Times, Dec. 8, 2001 at A1*). And since a disproportionate number of names on the no-match lists are "foreign-sounding" names, many employers fear that they will face sanctions if they hire additional workers who look or sound "foreign," resulting in increased citizenship or national origin discrimination in the hiring process.

Low-wage immigrant workers are the most likely to be affected by all of these illegal practices. In fact, Latino communities have reported widespread abuse of the SSA no-match letters, resulting in greatly increased anxiety within the immigrant community. Many legal permanent residents and even U.S. citizens have been affected, and the undocumented worker community has been pushed even further underground. Because many immigrants live in mixed-status families and close-knit communities, when one worker is fired entire families, including U.S. citizen children, suffer.

Thus the SSA's no-match letter policy has not resulted in reducing the suspense file, has not eliminated computer no-matches, and has not diminished unfair hiring practices. In fact, the consequences have been quite the contrary. Particularly in this time of heightened security, we must foster an environment that that will encourage individuals to emerge from the shadows and participate as productive members of our society in order to separate them from those who are here to do us harm. Rather than pour the SSA's resources and energies into an ineffective and harmful policy, we must be prepared to step back and look at the larger picture.

### Conclusion

The problems highlighted during this hearing clearly demonstrate the need for comprehensive immigration reform. The SSA suspense file shows that immigrant workers, regardless of their immigration status, are paying Social Security taxes and are not receiving the benefits of those taxes. The evidence presented also dem-

onstrates that immigrant workers are essential to the U.S. economy and that U.S. employers have knowingly and unknowingly hired many undocumented workers needed to fill jobs in key sectors of the economy. These hardworking, taxpaying immigrants should be rewarded for their contributions by earning the opportunity to legalize their immigration status and obtain permanent residence in the U.S. Future immigrant workers must come through lawful channels. Only in this way can these workers come out from the shadows, be known to U.S. authorities, properly pay all of their taxes, and be compensated appropriately. Reforming our nation's immigration system and making all immigration lawful would also greatly reduce document fraud by virtually eliminating the market for falsified Social Security Numbers and other identifying documents, and the Social Security Administration and Internal Revenue Service could continue their primary missions of administering the Social Security program and collecting taxes.

We urge you to reflect upon the ineffectiveness of the no-match letter policy and work toward effective and comprehensive solutions to the problems associated with unauthorized labor in the U.S. We look forward to working with you in the future.

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**Statement of Linton Joaquin and Marielena Hincapié, National  
Immigration Law Center, Los Angeles, California**

We, Linton Joaquin and Marielena Hincapié, submit these comments to the House Committee on Ways and Means Subcommittee on Oversight Subcommittee on Social Security on behalf of the National Immigration Law Center (NILC).

NILC is a national legal nonprofit organization whose sole mission is to protect and promote the rights and opportunities of low-income immigrants and their family members. NILC's diverse staff specializes in the complex intersection of immigration law and the employment and public benefits rights of low-income immigrants. We conduct policy analysis and advocacy, and impact litigation on these issues as well as providing training, publications, and technical assistance for a broad range of organizations including immigrant rights coalitions, legal aid programs, community and faith based groups, worker advocates, labor unions, government agencies, policymakers, and the media.

Each year, NILC responds to an average of 600 requests for assistance with Individual Taxpayer Identification Numbers (ITIN) and the Social Security Administration's (SSA) no-match letters, as well as other employment-related issues. We appreciate the opportunity to submit comments based on the experience we have accumulated over the years on these issues that are so critical to low-income immigrant workers.

**Background**

The changing demographics of our nation and the increasingly vital role immigrants play in this society through their contributions in building and helping maintain a strong economy, require policy makers to prudently balance the mandates of each of the federal agencies involved—Internal Revenue Service (IRS), SSA, and the Department of Homeland Security (DHS)—with the unintended consequences that may flow from any of the legislative or regulatory changes to the ITIN or SSA no-match program currently under consideration.

In order to analyze the impact of any proposed measures, it is important to recognize the role immigrants are playing in the U.S. society. Immigrant workers now comprise 11 percent of the total U.S. population,<sup>1</sup> nearly 15 percent of the nation's labor force<sup>2</sup> and head 20 percent of low-income households in the U.S.<sup>3</sup> One out of every five low-wage workers in the U.S. is an immigrant worker.<sup>4</sup> One out of every

<sup>1</sup> Capps, Fix, Passel, et al., *A Profile of the Low-Wage Immigrant Work Force* (Urban Institute, 2003).

<sup>2</sup> Sum, Khatiwada, Harrington, et al., *New Immigrants in the Labor Force and the Number of Employed New Immigrants in the U.S. from 2000 through 2003: Continued Growth Amidst Declining Employment Among Native Born Population* (Center for Labor Market Studies, Northeastern University, December 2003).

<sup>3</sup> Capps, Fix, Passel, et al., *A Profile of the Low-Wage Immigrant Work Force* (Urban Institute, 2003).

<sup>4</sup> Passel, Capps, and Fix. *Undocumented Immigrants: Facts and Figures* (Urban Institute, January 2004).

two new labor force participants between 1990 and 2000 was a new immigrant;<sup>5</sup> and nearly two-thirds of the growth in the male labor force was due to male immigrant workers.<sup>6</sup>

Despite high participation rates in the labor force, immigrant workers are disproportionately represented in dangerous jobs such as in the construction, manufacturing and agriculture sectors, and in hazardous occupations within those industries.<sup>7</sup> Immigrants are also most vulnerable to workplace exploitation such as non-payment of wages, sexual harassment, and other forms of discrimination. Notwithstanding the widespread exploitation suffered by immigrants, the output of goods and services in the U.S. would be at least \$1 trillion smaller than it is today without the contribution of immigrant labor,<sup>8</sup> and the civilian labor force would have only grown 5 percent (versus 11.5 percent) between 1990 to 2001.<sup>9</sup> The total net benefit to the Social Security system if immigration levels remain constant will be nearly \$500 billion for the 1998–2022 period and nearly \$2 trillion through 2072.<sup>10</sup>

It is for these reasons that a “delicate balance” must be struck between the U.S. tax, social security and immigration systems, as National Taxpayer Advocate, Nina Olson, stated in her comments before this Committee. Low-wage immigrant workers, who are hard working and taxpaying individuals, are the most impacted by the ITIN and SSA no-match issues. Finally, Congress and the respective federal agencies must ensure that any policy changes are in fact addressing the underlying problem leading to the growing Earnings Suspense File (ESF).

#### **Individual Taxpayer Identification Numbers (ITIN)**

As the Committee is aware, the IRS created the ITIN in 1996 to facilitate the tax compliance of those individuals who have earned income in the U.S. and are required to report that tax or have some other reporting requirement to the IRS but who are not eligible for a Social Security Number. The ITIN can be issued to both resident and nonresident aliens as long as they meet the eligibility requirements for an ITIN. The Internal Revenue Code distinguishes between resident and non-resident taxpayers. These categories are tax definitions of who is required to pay what level of taxes based on their physical presence in the U.S., and not whether the taxpayer is lawfully present in the U.S. under our immigration laws. The ITIN is for tax purposes only and does not create any inference into a person’s immigration status since there are many categories of foreign-born individuals who are eligible for the ITIN. Additionally, the ITIN does not authorize a person to work in the U.S., nor does it confer any benefits to people such as the Earned Income Tax Credit (EITC) or Social Security benefits.

According to Pamela J. Gardiner, Acting Inspector General with the Treasury Inspector General for Tax Administration (TIGTA), there has been a dramatic increase in the number of ITINs issued with a 36 percent increase between 2001 and 2002 alone. Ms. Gardiner appears concerned that for Tax Year (TY) 2001 approximately 530,000 1040 forms were filed with the ITIN. She notes, “Normally, ITINS would be used to file a Form 1040NR—U.S. Nonresident Alien Income Tax Return.” However, she does not explain what this assumption is based on since both resident and nonresident aliens are eligible for ITINs. Indeed, the IRS data regarding ITINs indicate that 75 percent of the 3.1 million ITINs issued for calendar years 1998–2001 were in fact used for tax purposes indicating that by and large ITIN holders are complying with their tax requirements.

There are many reasons why the other 25 percent of ITIN holders may not have filed tax returns including the fact that many immigrant workers earn such low-wages that they may have fallen outside the requirement to report their income. In 2000, nearly half of all immigrant workers earned less than 200 percent of the min-

<sup>5</sup> Sum, Fogg, Harrington, et al., *Immigrant Workers and the Great American Job Machine: The Contributions of New Foreign Immigration to National and Regional Labor Force Growth in the 1990s* (National Business Roundtable, August 2002).

<sup>6</sup> Sum, Khatiwada, Harrington, et al., *New Immigrants in the Labor Force and the Number of Employed New Immigrants in the U.S. from 2000 through 2003: Continued Growth Amidst Declining Employment Among Native Born Population* (Center for Labor Market Studies, Northeastern University, December 2003).

<sup>7</sup> *Improving Health and Safety Conditions for California’s Immigrant Workers*. (The Working Immigrant Safety and Health Coalition, November 2002).

<sup>8</sup> Employment Policy Foundation, *Policy Background*, (June 11, 2001).

See [www.epf.org/research/newsletters/2001/pb20010608.pdf](http://www.epf.org/research/newsletters/2001/pb20010608.pdf).

<sup>9</sup> Sum, Fogg, Harrington, et al., *Immigrant Workers and the Great American Job Machine: The Contributions of New Foreign Immigration to National and Regional Labor Force Growth in the 1990s* (National Business Roundtable, August 2002).

<sup>10</sup> *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (National Academy of Sciences, 1997).



imum wage, compared with 32 percent of native workers.<sup>11</sup> Additionally, many workers find themselves in the precarious situation of not getting W-2s from their employers and are afraid to ask for this information for fear of being fired.

TIGTA estimates that “for TY 2000 one in four individuals filing with an ITIN failed to report on their tax returns wages and nonemployee compensation totaling \$324 million.” However, it is unclear how TIGTA came up with this figure, especially considering National Taxpayer Advocate Olson’s statement that TIGTA noted “that the margin of error for this estimate is +/- \$122 million, or +/- 37.6%.”<sup>12</sup> In her testimony, Acting Inspector General Gardiner states, “the mismatches between the ITINs and the SSNs limits the IRS’ ability to identify this under-reporting.” Similarly, the testimony provided by Patrick P. O’Carroll, Assistant Inspector General for Investigations, Office of Inspector General, Social Security Administration, claims that the unlawful use of ITINs for employment purposes will continue to rise and that it will exacerbate the wage reporting problems.

However, it important to remember that the primary reason for the mismatch between ITINs and SSNs is the unintended consequence of the growth in the black market of false documents and false SSNs that resulted after the Immigration Reform and Control Act of 1986 (IRCA) was enacted. It is critical to recognize that the mismatch will continue to exist until there is a change in this nation’s immigration laws so that hardworking and taxpaying immigrants do not have to resort to using false SSNs as a means of survival. Immigrant workers are not terrorists but instead core members of the U.S. society who are integral to our economy and who are paying taxes. In fact, one of the incentives immigrants have to comply with the U.S. tax laws is that by doing so they establish their “good moral character” which is also a requirement under immigration laws in order for them to adjust their immigration status.

The creation of the ITIN should be applauded as a systems improvement which allows an agency such as the IRS to enforce the laws under its jurisdiction by helping the many hardworking immigrants who want to comply with the tax laws to actually do so independent of their immigration status. We support the IRS’s efforts to strengthen the document validation requirements in issuing the ITIN, as well as efforts to standardize the application process and train the Acceptance Agents. With the recent changes adopted in December 2003, the IRS has already begun taking important steps such as requiring that a tax return or supporting documents for an interest-bearing banking account be filed along with the ITIN application.

The testimony provided by both the TIGTA and SSA Inspector General Offices call for greater information sharing, stronger enforcement mechanisms and penalties, and legislative changes that would in essence use SSA and IRS resources to enforce our broken immigration system. Any steps toward greater information sharing with the DHS or increased enforcement targeting undocumented workers who are simply trying to comply with their tax obligations will backfire and deter immigrants from coming out of the shadows and paying their share of taxes. The recent disturbing incidents out of Louisville, Kentucky involving the collaboration of IRS and TIGTA agents to file federal felony charges against hardworking immigrants and to place them in deportation proceedings sent a chilling wave throughout immigrant communities across the country.

Ill-conceived policies or enforcement actions such as the Louisville cases do not address the underlying issue of undocumented workers in the U.S., and they have the negative consequence of scaring immigrants further into the underground for fear of prosecution and deportation for simply by trying to meet their tax obligations. We strongly believe that the Treasury Department and the IRS should focus their efforts on enhancing the integrity of the ITIN. These efforts must be done without unfairly exaggerating the threat of ITIN tax filers to national security. The Louisville strategies are flawed and ineffective means of combating terrorism and regulating our nation’s immigration policies. As IRS Commissioner Everson stated, “any sharing of confidential taxpayer information, directly or indirectly, with immigration authorities—would deprive the Federal Government of tax revenue by discouraging illegal workers in the U.S. from participating in the tax system, when the Code requires them to pay tax on their U.S. earnings.”

<sup>11</sup> Capps, Fix, Passel, et al., *A Profile of the Low-Wage Immigrant Work Force* (Urban Institute, 2003).

<sup>12</sup> See, Olson testimony, n. 26, citing to TIGTA, *The Internal Revenue Service’s Individual Taxpayer Identification Number Creates Significant Challenges for Tax Administration* (2004-30-023, Jan. 2004), at 4.

### SSA No-Match Letters and the Earnings Suspense File (ESF)

Since approximately 1997, NILC has been at the forefront of the issues created by SSA no-match letters and the growing ESF. NILC has taken the lead at the national level to provide training on the rights and obligations of both employees and employers, drafting publications explaining the ESF and the SSA no-match letters, providing technical assistance to worker advocates (and sometimes employers) regarding the appropriate steps an employer is to take upon receipt of an SSA no-match letter. Perhaps most importantly, NILC serves as a liaison to the SSA regarding the impact the SSA no-match letters have on the low-wage immigrant worker community.

Throughout the years, NILC has worked closely with representatives of the business and labor community to work with SSA in improving the text of the no-match letter given that it often leads employers to mistakenly believe the letter means the workers who are listed are undocumented. SSA admits there are many reasons for a mismatch including typographical mistakes, name changes based on marriage, compound names that are so common among immigrants, as well as the use of false SSNs. After the employer files its Wage and Tax Statement (Form W-2), if SSA cannot match the employee's name or SSN, their earnings go into the ESF and the worker does not get credit for those wages until the discrepancy is corrected. According to the SSA's Assistant Inspector General for Investigations O'Carroll's testimony, the ESF grew to approximately \$421 billion in wages representing 244 million wage items that could not be posted correctly between 1937 and 2003.

SSA sends two types of letters in an attempt to address the discrepancy: one directly to workers at their home address listed on the W-2, and the other sent to employers listing a group of workers. It is this latter letter which has become known as the SSA no-match letter that has gotten quite a bit of media attention. In 2002, SSA sent no-match letters to approximately 950,000 employers who had at least one employee with information that did not match SSA's records. This created great confusion and chaos for both employers and employees who were unaware of each other's responsibilities and how to respond to the no-match letters. The result was that tens of thousands of workers, mainly low-wage immigrant workers—lost their jobs, and many employers also lost hardworking employees they had trained and invested time and resources into. In December 2002, SSA decided to change its policy for the no-match letters for 2003. This policy change came about after SSA realized that despite the large numbers of letters sent to employers much of the new information provided by employers still contained incorrect information.

SSA's new policy for 2003 as well as for 2004 is to send no-match letters out to employers who reported a no-match for at least 10 employees, or who reported no-matches for at least ½ of one percent of the total number of items the employer reports on the W-2s. According to SSA, it sent no-match letters to approximately 126,250 employers in 2003 representing 7.5 million incorrect W-2s, in comparison with 9.5 million letters sent directly to employees. It is still unclear how effective the no-match letters sent to employers in 2003 were at correcting the discrepancies and reducing the ESF. However, we do know from previous audit reports by the SSA's Office of Inspector General that the employer no-match letters accounted for at most two percent of corrections, in comparison to 8 percent of corrections resulting from the letters sent directly to employees and other internal SSA processes such as the Single Select process which accounts for 61 percent of corrections.<sup>13</sup> In this latter process, the worker's name is presumed to be correct and the SSN incorrect. SSA then compares the name against its Numident database, which contains all valid SSNs, and if only one SSN matches the name, then SSA corrects the SSN and posts the worker's earnings correctly.

Additionally, we clearly know that while the SSA no-match letters are not leading to reducing the ESF, they are leading to increased exploitation of workers and misuse by employers. NILC has worked with SSA to strengthen the language of the letter advising employers that it is unlawful for them to take any adverse action against a worker solely because they are listed on a no-match letter. Although the language of the no-match letter has been strengthened as much as possible, both documented and undocumented workers are often caught up in the confusion caused by these letters and end up losing their jobs. NILC has provided expert testimony and declarations in at least three labor arbitration cases where workers have been wrongfully terminated as a result of the SSA no-match letters. Finally, employers keen on hiring and exploiting undocumented workers are not deterred by these let-

<sup>13</sup> Social Security Administration, Office of Inspector General, *Congressional Response Report: Status of the Social Security Administration's Earnings Suspense File (A-03-03-23038)* November 2002.

ters and instead use them as a retaliatory tool against workers trying to assert their workplace rights.

In collaboration with the University of Illinois at Chicago's Center for Urban Economic Development (UIC-CUED) and other organizations throughout the country, NILC conducted a sampling of worker surveys to begin documenting the impact of the no-match letters. The survey findings are compiled in a report issued by UIC-CUED in November 2003.<sup>14</sup> The major findings of the study are that:

- The SSA no-match letters have been ineffective at reducing the ESF;
- The letters have inadvertently encouraged employers to fire workers with mismatched SSNs;
- The no-match letter program has encouraged some employers to take advantage of workers with discrepancies in their name or SSN; and
- The no-match letters are ill-suited as an immigration enforcement tool.

Most recently, and at the core of this Committee's March 10, 2004 hearing, has been the mismatch that exists when a worker files their taxes using an ITIN while their W-2 contains an SSN. The earnings reported under this SSN will also result in the ESF since it will not match SSA's records for that person. Another scenario is when a W-2 contains an ITIN instead of a valid SSN, which means the worker presented the ITIN to the employer at the time of hire. This too will result in earnings being posted to the ESF. While O'Carroll's testimony seems to equate this type of ITIN use with identity theft in general, fraud on a grand scale, and a threat to our national security, the reality is that many workers who are presenting an ITIN to an employer do so out of the naive idea that it is best to present a government-issued number (in this case by the IRS) to an employer rather than using a false SSN. Moreover, according to SSA's Deputy Commissioner Lockhart, a one-time review of W-2s where ITINs were reported in lieu of an SSN during the period of 1996 through 2002 resulted in approximately 342,000 W-2s for which the earnings were posted into the ESF. This represents a negligible less than two-tenths of 1 percent of the W-2s contained in the ESF.

Accordingly, it is critical that Congress and the respective federal agencies not resort to legislative changes such as those proposed by O'Carroll, and instead look towards policy solutions that will indeed address the underlying problems. It is clear from NILC's ample experience with the SSA no-match letters that it is an ineffective and inefficient program that has failed at its intended purpose of ensuring that workers' earnings are properly credited, and instead has resulted in greater workplace exploitation.

We strongly urge SSA to stop wasting its resources in sending the employer no-match letters out. Instead the agency should focus on developing new systems aimed at more efficiently reducing the ESF such as that mentioned by Deputy Commissioner Lockhart in which SSA had began implementing a new process in April 2003 to electronically find millions of additional matches of W-2s by using the worker's detailed earnings record and the master beneficiary record, rather than just the information in the Numident. In FY 2003, SSA states that 2.4 million W-2s were removed from the ESF and posted to the correct earnings records—a process which seems much more promising and efficient than the SSA no-match letters sent to employers.

### **Conclusion**

The complexity of the interplay between the tax, social security, and immigration laws and policies demand a cautious and measured approach at dealing with cross-cutting issues such as the ITIN and SSA mismatch. NILC shares the concern over such an exorbitant ESF, which means that millions of workers who have labored arduously for years are not getting credit for their earnings. We urge this Committee not to fall prey to fears over national security in addressing the ITIN and SSA no-match issues, and instead to recognize that these are hardworking tax-paying immigrants caught in a web of complicated and often contradictory laws.

We urge you to follow the proposals set forth by National Taxpayer Advocate Olson in safeguarding the integrity of the ITIN while ensuring that immigrant taxpayers are able to continue participating in the tax and financial systems. We strongly believe that any other legislative, regulatory, or administrative changes aimed at greater immigration enforcement or further sharing of information between agencies will have a negative impact on the tax and financial systems as well

<sup>14</sup>The full report is available online at [http://www.nilc.org/immsemplymnt/SSA\\_no-match\\_survey\\_final\\_report\\_11-20-03.pdf](http://www.nilc.org/immsemplymnt/SSA_no-match_survey_final_report_11-20-03.pdf) and the Executive Summary is included as an attachment to these comments.

as the economy. Similarly, any increased enforcement or penalties associated with the SSA no-match program will result in greater unfair employment practices, while any sharing of information will simply push undocumented workers further underground into the informal cash economy or it will force them to purchase more false documents as a means of surviving.

It is for these reasons that we highlight the need to address the problem of the ESF at its core. It will be only through comprehensive immigration reform allowing immigrant workers to truly come out of the shadows and amend their earnings records that the ESF will be decreased. Additionally, many of the documented workers who are currently showing up on the SSA no-match lists were once undocumented and are still working with their old false SSN for fear of being fired from their job. After IRCA, workers were allowed to come forward to correct their records without the fear of losing their jobs since employers. It is critical that a similar provision be enacted again so that both employers and workers correctly report earnings, and therefore not unnecessarily add to the growth of the ESF.

Finally, in order to address the issue of undocumented workers in the U.S., Congress and the federal agencies must focus their efforts on increasing and improving the enforcement of this nation's labor laws. It is the ability to hire and recruit undocumented workers to toil in substandard and inhumane working conditions without any fear of penalties that serves as the incentive for employers to lure undocumented workers into their employ. One step towards addressing this is for Congress to enact legislation that overturns the U.S. Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, denying backpay to undocumented worker under the National Labor Relations Act.<sup>15</sup>

The *Hoffman* decision established a loophole permitting companies to evade basic worker protection laws with relative impunity if they hire undocumented workers. This has created perverse incentives that undermine both labor and immigration law. The decision undermines immigration law by making undocumented workers more attractive to employers than they were pre-*Hoffman* because such workers carry reduced liability for labor law violations. The decision weakens the position of authorized workers confronting abuse or exploitation because their undocumented coworkers have fewer legal avenues for redress of labor violations, including unlawful retaliation, and therefore they have far less incentive to participate in efforts to improve conditions. Businesses that take advantage of this situation can cut legal corners and thereby gain a competitive advantage over law-abiding employers.

Congress should repeal the *Hoffman Plastic* decision. The result in *Hoffman* was based on statutory interpretation, not constitutional considerations, and the Supreme Court specifically noted that Congress has the authority to change the law if it is unhappy with the results. Repealing the decision would restore the pre-*Hoffman* environment under which the remedy for violating U.S. labor laws was determined by the conduct of the employer who violated the law rather than the status of the victim. Unscrupulous employers should not be allowed to shield themselves behind immigration laws to circumvent their legal responsibilities.

It is the need for measures such as enacting comprehensive immigration reform and repealing the *Hoffman* decision that will address the underlying problems creating the ITIN and SSN mismatches. The ESF and the administrative problems created for the IRS and SSA are simply symptoms of the real problem, which lies in broken employment and labor law and immigration systems.

We thank you once again for the opportunity to submit these comments on such an important issue affecting low-income immigrants. Please feel free to contact us if we could be of any further assistance on this matter. We look forward to working with you in the future.

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#### **Statement of Patriot Tax International, LLC**

Patriot Tax International, LLC ("Patriot Tax") is a Kentucky Limited Liability Company in the business of filing tax returns for United States taxpayers. Patriot Tax is enrolled in the Internal Revenue Service's ("IRS") Individual Taxpayer Identification Number ("ITIN") program as an ITIN Acceptance/Certifying Agent as well as the IRS Electronic Return Originator program. Patriot Tax has five (5) offices located in three (3) different states in the United States. Our clients are almost all Spanish-speaking taxpayers. The majority of our clients are undocumented workers. The purpose of this statement is to present several concerns about the ITIN program and offer appreciation for the IRS's efforts to develop the ITIN program. We

<sup>15</sup> 122 S.Ct. 1275 (2002).

have a contract with the IRS to certify and submit W-7 applications. We have a duty to stay abreast of current policies that may impact our ability to fulfill our contractual obligations to the IRS and our ethical obligations to our clients.

#### 1. Testimony before the Committee

We applaud the efforts of the witnesses who testified on behalf of the IRS, Social Security Administration (“SSA”), and Treasury Inspector General for Tax Administration (“TIGTA”). Prior to the March 10, 2004 hearing (“hearing”), there were widespread rumors that the IRS and/or TIGTA would unilaterally disclose taxpayer information to other agencies if the information contained on a taxpayer return indicated violation of immigration laws, and that taxpayers who filed a taxpayer return with an ITIN number would be investigated by IRS or TIGTA for a non-tax related crime.

The testimony of the representatives confirmed the IRS’s continued efforts to maintain the confidentiality provisions found in Internal Revenue Code (“IRC”) § 6103.<sup>1</sup> Mark Everson, Acting Commissioner IRS, stated that the confidentiality provisions contained in IRC § 6103 are necessary to the administration of our tax system. He also stated that maintaining the strength of these provisions is necessary to encourage new immigrants to file taxes.

Likewise, Nina Olson, National Taxpayer Advocate, promoted the creation of policies and procedures that make it easier for undocumented aliens to report income. Her written statement presents a clear explanation of undocumented worker reporting scenarios, problems relating to returns filed with ITIN’s, as well as outlining the foundation for the taxpayer confidentiality provisions contained in the IRC. She stated:

In light of IRS data that clearly indicates the majority of ITIN holder attempt to file and comply with tax laws, the IRS should continue to encourage undocumented workers to obtain to obtain ITIN’s and assist all ITIN holders, including those who have Forms W-2 showing SSN’s, to file returns under their ITIN’s. Any effort to restrict access to obtaining ITIN’s must be carefully scrutinized to determine whether the purpose for the restriction outweighs the tax administration’s core and fundamental mission of helping taxpayers to meet their tax obligations.<sup>2</sup>

We applaud the efforts of Pamela Gardiner, Acting Inspector General, TIGTA, to dispel rumors and press reports that individuals who file a tax return with an ITIN are being identified for investigation or are at risk of prosecution by TIGTA simply because they filed a tax return with an ITIN number. In her written statement submitted to the committee, she states:

I would like to close by responding to press reports suggesting that TIGTA has compiled a list of people whom we suspect are illegal aliens and that we intend to prosecute them. I assure you that this is completely false. We do not have any such list, initiative, or program designed to identify persons who are not authorized to work in the United States.<sup>3</sup>

Finally, we appreciate the IRS’s efforts to try to evolve the ITIN program in a manner that protects the integrity of the ITIN.

#### 2. Marketing Tax Compliance to Undocumented Aliens

Only a small percentage of the entire population of undocumented workers in the United States are attempting to comply with their tax obligations through the ITIN program. In contrast, the data indicates a high probability that ITIN holders will

<sup>1</sup>IRC 6103(i)(3) allows the Treasury Department, including the IRS and TIGTA, to release taxpayer information obtained from tax returns that may constitute evidence of a violation of a non-tax Federal laws to the extent necessary to apprise the appropriate agency of the violation of the law under very specific circumstances. IRC 6103(i)(3)(A)(ii) provides that a taxpayer’s identity can only be disclosed if the information contained in the return indicates a Federal crime, and under circumstances where: 1) the violation involves an imminent danger of death or physical injury to any individual; or 2) the circumstances involve a significant risk of flight from Federal prosecution. Justifiably, the IRS, TIGTA, and Treasury have greater latitude to release taxpayer information when it believes that the information contained on a return indicates terrorist activity.

<sup>2</sup>Hearing before the House of Representatives Committee on Ways and Means, Subcommittee on Oversight, Subcommittee On Social Security, March 10, 2004, at 11 (written Statement of Nina E. Olson, Taxpayer Advocate).

<sup>3</sup>Hearing before the House of Representatives Committee on Ways and Means, Subcommittee on Oversight, Subcommittee On Social Security, March 10, 2004, at 5 (written Statement of Pamela J. Gardiner, Acting Inspector General, Treasury Inspector General for Tax Administration).

file their taxes.<sup>4</sup> The IRS estimates that there are 9 million undocumented workers in the United States. However, only 530,000 tax returns were filed in 2001 with ITIN numbers.<sup>5</sup> The overwhelming majority of undocumented aliens must use an ITIN number to file a tax return because they are not eligible to obtain a Social Security Number.<sup>6</sup> Testimony at the hearing indicated that the IRS estimates that it lost approximately 250 billion tax dollars due to unreported income. It is unclear what proportion of this 250 billion in tax dollars can be attributed to unreported income of undocumented workers.

The testimony at the hearing clearly establishes the intentions of the IRS and TIGTA to continue to promote tax compliance through the ITIN program. However, there is still significant fear within the immigrant community that information contained on tax returns will be unilaterally disclosed to other agencies if the information on a tax return indicates that the taxpayer provided his employer with a false social security number, or that the taxpayer will be prosecuted for filing a tax return that uses an ITIN as a taxpayer identification number. To date, neither the IRS nor TIGTA has issued a clear statement to dispel these concerns. We request both the IRS and TIGTA to publish independent statements that will dispel fears of taxpayers and tax professionals. The testimony at the hearing was clear. Most tax preparers and undocumented workers will not base their conclusions upon testimony at the hearing. Absent a clear statement from the IRS and TIGTA, the undocumented population will base their decision to file a tax return upon rumors and press reports that they will be prosecuted if they file a tax return with an ITIN.

### 3. Prospective Tax Compliance Initiatives

#### a. W-4

Many of our clients present wage statements with an inflated amount of exemptions. The IRS might consider printing this form in Spanish to enable workers, undocumented and documented, to properly claim tax exemptions with their employers.

#### b. Additional Child Tax Credit Worksheet

U.S. tax residents may be eligible to claim as dependents individuals residing in Mexico or Canada. IRC § 152(b)(3). However, Congress specifically limits the application of the Child Tax Credit to minor dependents who are Citizens or nationals of the US. The taxpayer cannot claim the Child Tax Credit for minor dependents residing in Mexico or Canada if the children are not U.S. Citizens or nationals. IRC § 24(c). We believe many taxpayers are claiming minor dependents living in Mexico or Canada, who do not otherwise qualify as U.S. Citizens or nationals, for purposes of the Child Tax Credit. Many tax preparers do not recognize that that most minor dependents living in Mexico or Canada will not qualify for the Child Tax Credit, even though they can be claimed as dependents. A worksheet similar to the Earned Income Credit Worksheet, form 8867, could enable tax preparers to more efficiently apply this provision of the tax code.

#### c. EITC Qualifications for New SSN Holders

We believe that Congress, the IRS, and the SSA should consider the repercussions of a scenario in which individuals retroactively claim and receive the Earned Income Credit in years when the person was not entitled to have a Social Security Number for employment. This situation arises when an undocumented alien becomes eligible to "adjust status" after years of working unlawfully in the United States. This issue will become more prevalent as undocumented workers become lawful permanent residents pursuant to applications filed under Section 245(i) of the Immigration and Nationality Act in 2001 or if the United States passes significant immigration legislation for undocumented workers. Due to significant backlogs with the Department of Homeland Security, many of the applicants are now becoming legal. Furthermore, if Congress passes legalization for illegal workers, an estimated 9 million workers will be eligible to legalize and obtain Social Security Numbers. Essentially, undocumented aliens might apply for large tax refunds, mainly consisting of retroactive EITC credit.

This is an important financial cost that must be considered and documented in any discussions about large-scale immigration legislation that involves undocumented workers. In 2001, Congress required undocumented aliens to pay a \$1,000 penalty to adjust status under 245(i). However, the aliens could have recouped the

<sup>4</sup>Supra, Written Statement of Nina E. Olson, Taxpayer Advocate, at 6.

<sup>5</sup>Supra, Written Statement of Pamela J. Gardiner, Acting Inspector General, Treasury Inspector General for Tax Administration, at 3.

<sup>6</sup>Some undocumented workers use Social Security Numbers issued for non-work purposes or on expired visas to file a tax return.

EITC for all years that they were still eligible to file an amended return.<sup>7</sup> Thus they would pay a penalty to the Department of Homeland Security (formerly Immigration and Naturalization Service), but could claim a substantial return from the IRS.

#### 4. Address Louisville, Kentucky TIGTA Investigation

We request the IRS and TIGTA to specifically address the well publicized situation that occurred in Louisville, Kentucky, in which a TIGTA officer disclosed information contained on a tax return to the Justice Department and/or Department of Homeland Security.<sup>8</sup> The disclosure of the taxpayer information allegedly caused the taxpayers to be charged and arrested with non-tax crimes. This situation has caused many pro bono and private tax preparers to refuse to file tax returns for aliens who must use an ITIN to file a tax return. The continued spread of this story, if not appropriately addressed by TIGTA and IRS, will undermine IRS's policy to require tax compliance for all U.S. wage earners regardless of their immigration status. This situation has caused many leaders in the immigrant communities to advise undocumented aliens not to file taxes.

The December 17, 2003 changes to the ITIN program application process require all applicants for an ITIN to demonstrate a need for such number by providing a legitimate tax purpose. An application for an ITIN is made on IRS Form W-7. Ordinarily, the ITIN applicants include a tax return to establish their tax purpose with their W-7 application(s). The IRS will not prepare the W-7's for the aliens. The responsibility to prepare the W-7's and explain the policies and risks is shouldered by pro bono preparers or private entities. These entities are assisting undocumented workers to become tax compliant. It is imperative for the tax preparation industry to be absolutely certain that both TIGTA and the IRS are committed to the principles and rules of law contained in IRC §6103. Therefore, we request IRS and TIGTA to issue a statement that discloses the result of any internal investigation arising out of the Louisville TIGTA officer's alleged disclosure.

#### 5. Conclusion

Undocumented workers and tax professionals need a clear message about the disclosure policies of the IRS and TIGTA. We have a burgeoning undocumented population. As stated by Commissioner Everson, many of these individuals come from countries that do not have the same respect for their tax program as we have in the United States. The ITIN program may be the alien's first legitimate contact with the government of the United States. We must make sure that their experience creates a sense of trust and pride in the United States. As these aliens adjust status to lawful permanent residents or simply remain undocumented in the United States, we want them to develop respect for the laws of the United States. We appreciate the opportunity to present our position. Please contact us with any questions.

Respectfully Submitted,

Samuel C. Rock, Esq.<sup>9</sup>  
Nathan Brown<sup>10</sup>  
Michael Yonosko, C.P.A.<sup>11</sup>  
Juan Marcelo Juliano<sup>12</sup>

<sup>7</sup>IRS, Publication 596, pg. 5.

<sup>8</sup>TAX NOTES, January 23, 2004, 455-39; TAX NOTES, January 26, 2004, 955-97; TAX NOTES, March 1, 2004, 1058-62.

<sup>9</sup>Samuel C. Rock, Esq. is an owner of and serves as General Counsel for Patriot Tax International, LLC. He served as an Assistant Commonwealth Attorney for the 14th Judicial District, Commonwealth of Kentucky, between 1997 and 1999, where he prosecuted felony criminal cases. He currently practices immigration law and civil litigation, as well as counsel for Patriot Tax International, LLC. He is a member of the Kentucky Bar Association, American Trial Lawyers Association, and American Immigration Lawyers Association.

<sup>10</sup>Nathan S. Brown is a partner in Patriot Tax International, LLC. Mr. Brown holds a M.A. in Diplomacy and Management from the Patterson School of Diplomacy and International Commerce, University of Kentucky. He is member of the Migrant Network Coalition in Kentucky. Mr. Brown is a Certified Court Interpreter for the Administrative Office of the Courts in Kentucky, also practicing as an interpreter in Federal Court.

<sup>11</sup>Michael Yonosko is employed by Patriot Tax International, LLC., as a C.P.A and Area Developer. Mr. Yonosko holds a B.A. in Accounting from Asbury College. Mr. Yonosko was admitted to the Kentucky State Board of Accountancy in 2000. Michael was employed by Chilton and Medley, PLC from 1999-2000.

<sup>12</sup>Patriot Tax International, LLC employs Juan Marcelo Juliano, as an engineer and Technical Systems Manager. Mr. Juliano assists is compliance with the ITIN and ERO programs for the company. He holds a B.S. in Computer Engineering from Florida International University in Miami.

**Statement of Eric J. Oxfeld, Strategic Services on Unemployment and  
Workers' Compensation**

As the Subcommittees on Oversight and on Social Security consider how best to address Mismatches and Misuse of Social Security Numbers (SSN's) and Individual Taxpayer Identification Numbers (ITINs), we want to make you aware of how SSN's are used in the unemployment insurance (UI) system and urge that you preserve the ability of states and employers to continue using SSN's to track UI claims.

UWC is the only national organization exclusively devoted to providing legislative/regulatory representation for the business community in connection with unemployment insurance (UI) and workers' compensation (WC) programs. UWC's members include employers, national and state business associations, third party claims and tax administrators, accounting and law firms, and other service providers, all of whom advocate maintenance of sound, cost-effective UI and WC programs. UWC members, and their clients, policyholders and members, collectively represent a major share of the business community in the United States. UWC is intimately acquainted with unemployment insurance law and best practices. In addition to UWC's advocacy efforts on behalf of business, we manage the National Foundation for Unemployment Compensation & Workers' Compensation, which conducts educational activities such as the annual National UI Issues Conference, as well as reference materials on UI, including the annual Highlights of State Unemployment Compensation Laws book, the annual *RESEARCH BULLETIN: Fiscal Data for State Unemployment Insurance Systems*, and the EMPLOYER'S UNEMPLOYMENT COMPENSATION COST CONTROL HANDBOOK.

As the release announcing the hearings states, SSNs were created in 1936 to keep track of the earnings of people who worked in jobs subject to Social Security taxes, in order to assure proper payment of taxes and crediting of wages toward Social Security benefits. We want to be sure that Congress and federal and state officials understand that SSN's also serve the same purpose in the UI program by assuring the proper payment of taxes and crediting of wages toward UI benefits, as well as UI claim determinations and their dissemination to employers who are charged for these benefits. As you know, the UI system was originally established as a component of the Social Security system, and Titles III, IX, and XII of the Social Security Act govern the administration of UI benefits, the organization of the Unemployment Trust Fund, and advances to state UI benefit trust accounts, respectively.

SSN's are an integral part of the UI system. The UI system is financed out of federal and state payroll taxes *paid by employers*, and employers must use SSN's to keep their payroll records and to be sure they are accurately filing their UI taxes. Federal and state laws require employers to report all newly hired employees, including SSNs, to state "New Hire Directories," which helps child support enforcement dramatically and enables states to detect and prevent UI fraud. Federal law also requires employers to report all wages quarterly, using SSN's. SSN's are used by state UI administrative agencies to track UI benefit claims, which require a showing that the claimant had earnings sufficient to qualify for benefits (in most cases, states use information received from the quarterly wage reports for this purpose). States also typically use SSN's when they report claim determinations and decisions on appeals to the employer, as well as periodic benefit charge statements that each employer verifies (because its unemployment tax rate is based on its claims experience and tax contributions). As a practical matter, employers who receive a claim determination and statements of UI benefits charged to their account rely on the SSN to verify the identity of the employee to which the reports refer and the accuracy of the agency determination. Large employers commonly have many workers who have the same or similar names, as do even small and medium size employers. Further complicating the need to track UI claims by SSN is the fact that UI benefits may be charged in part to a former employer where qualifying wages were earned. And now that States take initial UI claims by telephone or over the internet, the importance of giving employers the information needed to verify claims is greater than ever.

Recently, employers and State UI agencies have become more aware of the importance of protecting payroll information from identity theft. For example, last year a UI fraud ring, using purloined payroll records, successfully filed phony claims costing the now bankrupt California UI trust fund \$53 million. Because UI is an



insurance system, these charges must be made up through higher taxes on employers.

The business community thus has a clear stake in both the efficiency of the UI system (including the reporting of wages, taxes, and claim determinations) as well as protecting against identity theft using SSN's.

The broader societal debate over protecting personal privacy, including the abuse of SSN's, has affected the UI system, as well. Several states have discontinued or are considering discontinuing the use of SSN's in reporting UI claims to employers. In January 2004, for example, the Utah UI agency stopped using SSN's on claim determinations reported to employers, but later resumed their use after businesses and UI advisory services voiced concern.

If some or all State UI programs discontinue using SSN's, the result will be a very chaotic system of tracking UI claims, especially for employers and service providers with multi-state operations, who may be subject to inefficient, inconsistent, and perhaps conflicting requirements. Employers and claims and payroll advisory organizations have substantial monetary investments in computerized systems that track payroll records for UI purposes. Changes in state or federal policy that require modification of these systems, especially on a piecemeal basis, should be discouraged because they will be disruptive and expensive. For this reason, UWC and the National Association of State Workforce Agencies have agreed to establish a joint task force to explore mutually acceptable ways of tracking workers and UI claims while providing appropriate privacy protections.

Because much of the impetus for States to discontinue use of SSN's for tracking UI claim determinations and appeals is the perception that such use may be inappropriate, we respectfully urge Congress to adopt a strong statement of policy acknowledging that the use of SSN's in the UI system, as described in these comments, is in fact legitimate and in no way constitutes a "misuse." We also urge that efforts to coordinate SSN protections among the Social Security Administration, Internal Revenue Service, and Department of Homeland Security also include representation from the UI system and an opportunity for employer input on policy decisions that may affect legitimate uses of SSN's to track UI claims.

We appreciate your inclusion of these comments in the hearings record. We would be pleased to answer any questions or provide additional information. Please feel free to contact me by telephone at 202-637-3463 or by email at [oxfelde@uwcstrategy.org](mailto:oxfelde@uwcstrategy.org).

Tustin, CA 92780  
March 24, 2004

Subcommittee on Oversight  
Room 1136  
Longworth House Office Building  
Washington, DC 20515

Dear Honorable Committee Members:

This email is in response to the March 3, 2004, request (release OV-11) for written comments due March 24, 2004, by the House Ways and Means Subcommittee on Oversight Subcommittee on Social Security concerning Social Security number (SSN) and Individual Taxpayer Identification Number (ITIN) mismatches and misuse.

The Committee's March 10, 2004, hearing focused on focus on the respective responsibilities of the Social Security Administration, (SSA) Internal Revenue Service, (IRS), and Department of Homeland Security (DHS) in ensuring accurate earnings reporting and tax payments. I would like to compliment the committee for its attention to this very important area and also bear witness to some of the issues raised in release OV-11.

My name is George Willis. I am an attorney and for the past five years have also been the program administrator of the Low Income Taxpayer Clinic at Chapman University School of Law in Orange, California. I am also a victim of identity theft.

I submit my comments to the committee as a person who has seen, first hand, both proper and improper use of SSNs and ITINs. .

There is no need to reiterate the scope of the issues raised by the Committee, especially the concerns with national security. It is sufficient to say that there is a mismatch and misuse problem.

I would like to outline three important considerations and my rationale for them. I respectfully submit these considerations for the committee to use, or if needed, to

redistribute to a Committee or agency more appropriate for each task being outlined.

I. *Forbid the use of Social Security Numbers as personal identifiers any reason that does not involve the extension of consumer credit.*

The Committee has already taken notice of the proliferation of the use of SSN's as a form of identification by private entities. This has been done as a matter of convenience by private entities, and must be stopped using the existing powers and purview of Congress.

I implore the Committee to ask "Why has it become necessary to provide a SSN in order to rent a video movie?" This is just one of hundreds of non-authorized uses of an SSN all done by private entities for convenience sake. The reason is obvious; it is cheaper and easier to use the government's *de-facto* identifier than to create ones own—especially in the area of negative credit reporting.

Unfortunately, this cheap and easy way to do business allows for the propagation of abuse of SSN's by rogue employees, mishandling of data, security breaches, etc. Currently, there are insufficient federal penalties for the misuse of SSN's by private entities.

Instead of creating a bureaucratic maze of regulations, I recommend that the clock simply be "reset" and that Congress (1) ban the *use* of SSN's by private entities as identifiers and (2) further ban the *collection* of SSN's in any situation where credit is not being extended to the consumer. (And credit needs to be defined to mean payment over time, not temporary credit as the case may be in the rental of a video!)

Business interests will certainly complain, and maybe even cry like Chicken Little that this will bankrupt them; however, Business has survived long before its unilateral and unauthorized adoption of the SSN as a universal identifier, and I suspect that after a period of detoxification, it will survive the separation of use. Of its own accord, Business is using SSN's in an unauthorized manner, and therefore can't complain when it is asked to cease this use.

In the alternative to an outright ban, severe fines must be imposed on private entities, who whether knowingly *or not*, allow misuse of SSN's through improper or negligent handling.

II. *Better enumerate, codify, and increase penalties for the crime of identification theft, even in cases where there is no actual "out-of-pocket" economic harm.*

When I became the victim of ID theft through the misuse of my federally issued social security number, I looked to federal law for a remedy. Because I was fortunate enough to catch the misuse in time, I had no "out-of-pocket" economic damages. Unfortunately, my good fortune left me with no viable federal remedy against the person who assumed my identity, nor the rogue corporate employee who initially stole my SSN. Additionally, any civil remedy would have culminated in a pyrrhic victory, at best. I spoke with federal Departments of Social Security and Treasury, including the Secret Service, whom all concurred.

I will provide an example below that better illustrates that there *is* harm to the economy of the nation even in situations where there is no out-of-pocket-harm to an individual.

The committee must recommend that the existing relevant federal laws be updated to reflect the problems of identity theft in the new millennium. Existing federal laws are archaic and provide hollow protection as well as ineffective remedies against this modern crime.

III. *Require that employers better screen and verify identification documents.*

I would like to shift my comments away from SSN's to ITIN. My personal example above pales in comparison to the level of identity theft that I see in dealing with low income taxpayers at Chapman University School of Law's tax law clinic.

In order to keep these comments brief, let me simply relate the most common problem that I encounter in this area, and recommend possible alternatives for the committee to consider.

The typical scenario is this:

A potential worker in State X is unable to obtain a valid SSN. An employer tells the worker that they must have a SSN in order to work. The employer proposes that the worker use a SSN or ITIN that the employer happens to "have available" or in the alternative directs the taxpayer to some place where, for a price, they can "get one." The worker uses this SSN or ITIN and may or may not file a tax return.

A year later, the valid SSN or ITIN holder in State Y is sent a bill by the Internal Revenue Service (IRS) for not reporting the wages earned in State X. The taxpayer in State Y comes to me, and we resolve the case over the course of one to two years.

The employer claims ignorance to the whole thing and does not cooperate with the valid SSN holder, nor our clinic's requests as there are no penalties for not cooperating.

At the end of the case:

The IRS and the SSA have not received monies owed to them. The valid SSN holder has negative marks on their credit report due to tax liens, etc. Our clinic expends hundreds of staff hours in this process. The invalid SSN holder continues to use the SSN and maybe even share it with others, and the cycle continues year after year for the valid SSN holder.

The illustration that I have provided certainly demonstrates that there is actual harm to the economy of the nation even in situations where there is no out-of-pocket-harm to the consumer.

Congress must be aggressive in requiring that employers obtain valid SSN's and right to work documents. As part of this, businesses must be provided with an easy method to validate the SSN's being provided to them by employees.

At the same time, draconian federal penalties must be imposed on those entities that refuse to comply with; or worse yet, actively promote, SSN misuse, theft, falsification or general abuse. This will have to be part of the cost of doing business, and is much less intrusive than many other already codified forms of federal regulation.

Respected Committee members, I could provide many more comments and specific examples, however, at this time, I hope that the three broad, macro considerations that I have outlined will serve to assist you in your goals to resolve the SSN and ITIN mismatch and misuse problem that this nation faces.

Sincerely,

GEORGE L. WILLIS, ESQ.

