

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE
WAYS AND MEANS COMMITTEE

SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II)

CHAired BY: REPRESENTATIVE JIM MCCrERY (R-LA)

WITNESSES PANEL I:

MARK W. EVERSON, COMMISSIONER, INTERNAL REVENUE SERVICE;
JAMES B. LOCKHART III, DEPUTY COMMISSIONER OF SOCIAL SECURITY,
SOCIAL SECURITY ADMINISTRATION;

STEWART A. BAKER, ASSISTANT SECRETARY FOR POLICY,
DEPARTMENT OF HOMELAND SECURITY;

PANEL II:

PATRICK P. O'CARROLL, INSPECTOR GENERAL, SOCIAL SECURITY
ADMINISTRATION;

BARBARA D. BOVBjERG, DIRECTOR, EDUCATION, WORKFORCE, AND
INCOME SECURITY ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE
LOCATION: 1100 LONGWORTH HOUSE OFFICE BUILDING, WASHINGTON,
D.C.

Federal News Service

February 16, 2006 Thursday

Copyright 2006 The Federal News Service, Inc.

Length: 17851 words

Body

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

REP. JIM McCRERY (R-LA): The hearing will come to order. Good morning, everyone, welcome to our joint Social Security Subcommittee and Oversight Subcommittee hearing on employer wage reporting. Today's hearing is the second in a series of hearings on high risk issues related to Social Security numbers, or SSNs.

Today we'll examine the longstanding and troubling issue of how some employers fail to report wages with accurate SSNs and the inadequate federal response. Wages that are reported under incorrect or false SSNs are logged into a database within the Social Security Administration called the earnings suspense file. This file has records of earnings that could not be linked to the correct worker.

Employee data was first entered into the suspense file in 1937, when wages became subject to Social Security taxes. Between 1937 and 2003, nearly 255 million wage records for about \$520 billion in earnings accumulated in the suspense file. The suspense file is not just an administrative headache or a bureaucratic wasteland, it is a symptom of more serious problems.

Research by the Social Security Administration's inspector general and the Government Accountability Office or GAO indicates evidence of SSN misuse and unauthorized work by foreign born workers. For example, according to a GAO study of SSNs frequently appearing in the suspense file, wages claimed by foreign born workers who had earnings before they were issued an SSN have grown over time, from an average of about 7 percent for years 1937 to 1985 to 47 percent for the year 2003.

Inaccurate SSN reporting has repercussions for workers' Social Security benefits, tax compliance and immigration law compliance. Three government agencies play a role when employer wage reports end up in the suspense file. The Social Security Administration is responsible for accurately keeping track of workers' earnings for benefit purposes.

The Internal Revenue Service is responsible for enforcing penalties to ensure employers report wages accurately for tax and benefit purposes. The Department of Homeland Security is responsible for ensuring unauthorized workers do not work using false information that results in their earnings records ending up in the suspense file.

Unfortunately, the problem of a growing suspense file has existed for decades. The responsible government agencies have been slow to work together toward a comprehensive solution. In addition, they have not adequately enforced the laws and regulations that would prevent inaccurate wage reporting.

Last December, the House of Representatives passed legislation, the Border Protection Antiterrorism and Illegal Immigration Control Act of 2005, which would take action where government agencies have not, by requiring employers to verify the SSNs and employment eligibility of their employees with the Social Security Administration and the Department of Homeland Security.

Today we need to hear about what actions federal agencies can and will take to address inaccurate wage reporting. We also want to examine options that Congress should consider to achieve a balanced and workable approach to improve the accuracy of wage reporting without unduly burdening employees, employers and our economy.

I want to thank all of our witnesses for coming today, and I look forward to your testimony. And now I'd like to ask my colleague, the ranking member, Mr. Levin, for any comments he may make.

REP. SANDER LEVIN (D-MI): Mr. Chairman, I have a statement, let me submit it for the record, and I take it without objection?

REP. McCRERY: Thank you.

REP. LEVIN: And I'll just quickly summarize it, because we want to get on with the testimony. And I'm really very glad that all three of the agencies are represented here today. We know the data regarding the lack of match in the reporting. We also, I believe, have some idea as to what each of the three agencies is supposed to be doing, what your primary function is.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

And so the question today I think in part is whether there's an adequate meshing of your responsibilities and of the information that you have. Whether a primary problem in terms of our immigration policies relates to the interaction among the three agencies. What impact there would be on each of your agencies if there were a further requirement of the sharing of information.

And so we look forward to it. This is not a new problem, and the immigration aspect of this is not a new issue. We've been dealing with this for years, and I hope we can approach this issue with both determination and also with some care. Thank you.

REP. McCRERY: Thank you, Mr. Levin.

Any member wishing to submit a statement for the record may do so without objection.

Mr. Ramstad, chairman of the Oversight Subcommittee.

REP. JIM RAMSTAD (R-MN): Thank you, Mr. Chairman.

As chairman of the subcommittee on oversight, I look forward to this second joint hearing in the last two years on the topic of employer wage reporting.

Thank you, Chairman McCrery, for your leadership in this area and for summarizing why we're here today and also summarizing the last hearing in 2004, when we heard there was a growing problem with the misuse of the Social Security number and a failure by employers to accurately report the names and Social Security numbers of employees.

As we all know, this was contributing to a growing account of mismatched wages at the Social Security Administration called the earnings suspense file. And the message of the hearing two years ago was that the three agencies involved in the process, who are represented very well here today and we appreciate your participation, the Social Security Administration, the IRS and the Department of Homeland Security, the message was that the three agencies needed to work better together to address the problem.

So we're here today to see in the area of information sharing if progress has been made. This is an important problem for a number of reasons. When wages are reported to incorrect Social Security numbers it can prevent individuals from receiving the Social Security benefits that are due them, can create a number of other problems for other government agencies as well, as I think we all understand.

I just want to highlight briefly a couple of my concerns at the outset and look forward to the responses during the testimony. First, why not more is being done to enforce the laws and regulations that require accurate wage reports from employers. It appears that we have laws on the books that are not being enforced.

In fact, it also appears that the IRS regulations make it virtually impossible to impose and collect penalties on employers who report inaccurate Social Security numbers for their employees. If this is so, we need to know what can be done to correct this problem, to remove this barrier to enforcement.

Second, I'd like to know if the three agencies, the Social Security Administration, the IRS and the Department of Homeland Security are satisfied with the current level of information sharing with respect to name and Social Security number mismatches. In other words, if progress is being made and if it's satisfactory progress in terms of the all critical information sharing.

And if not, I think this panel needs to know what additional information they would like to access and why. Finally, there have been proposals to require that employers do more to verify the eligibility of their employees for work. I look forward also, gentlemen, to your views on the impact of expanded verification.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

So let me again thank the witnesses for being here today. I look forward to hearing from you and working with you to address these important problems, and thank you again, Mr. Chairman, for your leadership.

REP. McCRERY: Thank you, Mr. Chairman.

And now we'll hear from the ranking member of the Subcommittee on Oversight, Mr. Lewis.

REP. JOHN LEWIS (D-GA): Thank you very much, Mr. Chairman.

The Oversight Subcommittee joined the Social Security Subcommittee on today's hearing to discuss issues involving Social Security numbers that do not match employees' names being submitted to the Social Security Administration and the Internal Revenue Service.

The Subcommittee held a similar hearing on this subject two years ago. Under current law, employers are required to obtain the name and Social Security number of each worker so that wage, income and tax withholding amounts can be sent to the IRS and SSA for tax and Social Security benefit purposes.

It is important that this information be correct for the processing of tax returns and recording of Social Security benefits. The IRS rejects tax returns and the SSA puts earning records in a suspense file when workers' names and Social Security numbers do not match.

Today I welcome back Commissioner Everson and Deputy Secretary Lockhart to discuss these issues again with us. In addition, I welcome assistant Secretary Baker from Homeland Security, Inspector General O'Carroll from Social Security and Barbara Bovbjerg from GAO.

Some proposed that the DHS have access to more SSA and IRS information to target employers involved in hiring illegal workers for immigration enforcement purposes and to mandate that employers verify that all individuals they employ are authorized work in the U.S.

Mr. Chairman, I look forward to the testimony of these witnesses and I thank them for being here. Thank you, Mr. Chairman. REP. McCRERY: Thank you, Mr. Lewis.

And now we'll welcome our first panel of the day.

The Honorable Mark W. Everson, commissioner, Internal Revenue Service. The Honorable James B. Lockhart III, deputy commissioner of Social Security. The Honorable Stewart A. Baker, assistant secretary for policy at the United States Department of Homeland Security.

Welcome, gentlemen. Thank you very much for appearing before us today, and if you would, your entire written testimony will be submitted for the record, but if you could summarize that in about five minutes we would appreciate that.

And we'll begin with Mr. Everson.

MR. MARK W. EVERSON: Thank you, Chairmen Ramstad and McCrery, Ranking Members Lewis and Levin.

Now, I mention the Oversight Committee first, sir, just because -- that's out of pure self interest. I appreciate the opportunity to appear before you today. I commend you for your continuing interest in Social Security number high risk issues. Simply stated, there are two important public policy interests at issue today.

As a former deputy commissioner of immigration, I know that a sound system of immigration is one which allows only those here legally to remain in our country. On the other hand, in my job as IRS commissioner we want our share of your money, whether or not you earned it legally or illegally.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

Two years ago, you convened a hearing where we talked about the ITIN program. Since that time, the improvements to that program which we spoke about have had the desired effect. ITINs are increasingly associated with the filing of tax returns, unless a source document for identity creation. That is good news for tax administration.

Nevertheless, while our actions have helped tax administration in the sense that individuals who might not otherwise do so are filing tax returns and participating in the tax system, they have not done anything to reduce Social Security number mismatches.

As both Commissioner Lockhart's written testimony and my own indicate, there are millions of mismatches each year. I would make two points about the mismatches. The first is that over 50 percent of the mismatches occur in just four states, California, Texas, Florida and Illinois. Almost 29 percent of the mismatches take place in California alone, whereas only 12 percent of 1040s are filed in that state.

Secondly, I would note that about 75 percent of the mismatched W-2s report wages of less than \$10,000. In fact, the average wage of all mismatches is only about \$6,700 annually. The current process for following up on mismatches lags well behind the date of hire for the employee in question.

Many of the employees generating a mismatch letter have long since terminated their employment. The system as it operates today is simply not timely. The IRS has been asked whether we could do a better job of issuing penalties for employers who fail to include accurate Social Security numbers or TINs on their employment returns.

Under the law, we may impose a penalty of \$50 on an employer for each W-2 or 1099 that omits the required information or includes an inaccurate Social Security number or TIN, unless the filer shows reasonable cause for the omission or inaccuracy. The law, however, places the burden on the employee or payee to provide the employer or payer with an accurate Social Security number or TIN.

This is an important distinction. GAO and others have suggested that we reexamine our due diligence or reasonable cause standards. I'm also aware that there are calls to increase information sharing amongst federal agencies. As members of Ways and Means well know, the standards of 6103 pertaining to the protection of taxpayer information are quite strict.

Any effort to improve employer verification through increased information sharing should take into account the implications to 6103 and taxpayer privacy.

Thank you.

REP. McCRERY: Mr. Lockhart.

MR. JAMES B. LOCKHART III: Chairman Ramstad, Ranking Members Levin and Lewis and members of the subcommittee, thank you all for asking me here today to discuss the steps that Social Security has taken to strengthen the wage reporting process. I will summarize my written statement with a focus on our efforts to reduce the earnings suspense file and on our cooperative efforts with other federal agencies.

The primary purpose for assigning a number and issuing a card is the same today as when we started doing that in 1936. It's to accurately report and record the earnings of people who work in jobs covered by Social Security. Earnings posted to an individual SSN are used to determine eligibility for and the amount of Social Security benefits for their workers and for their families.

In order for wages to be credited, the workers' name and Social Security number on the W-2 must match the name and number on our records. We process about 235 million W-2 reports annually, coming from about 6.6 million employers, and that represents a total wage amount of about \$4 trillion.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

To prevent mistakes, we encourage employers to use our employee verification system or our newer Social Security number verification system, and the latter system permits employers to verify via the internet the accuracy of employees' names and Social Security numbers. This service was expanded to all employers last June.

We estimate between these two systems and the basic pilot, which I'll talk about later, we've had 67 million verifications last year and about 1 million was from the basic pilot. After the W-2s are filed, we process them and we have about 10 percent invalid names and numbers at that point.

We have a whole series of computer routines to identify commonly occurring errors. Using these routines, we post more than half of the earnings to the correct SSN. The remainder is recorded in the earnings suspense file. For the latest year we have information, which is taxpayer year 2003, as of October 2005, we had about 8.8 million or 3.7 percent of the total W-2s remained in the suspense file.

They represent about \$58 million in wages and \$7.2 billion in payroll taxes. I hasten to add, those payroll taxes have been credited to the trust funds. We carry out a number of activities to further reduce the suspense file. For example, we notify all employees when we cannot process their W-2s due to mismatches and ask them to work with us to resolve the problems.

We also notify the employers with a significant number of mismatches. The intent of these no match letters is to improve the accuracy of wage reporting. We also request the employer to submit corrected W-2s so that the future earnings will be accurate.

Beginning in April 2003 we implemented a new process that we estimate will electronically find another \$30 million matches. Already this new process using innovative techniques and the workers' detailed earnings record, has matched 11 million missing earnings with the correct record.

But despite all these efforts, the file continues to grow. Our inspector general, Pat O'Carroll, who you'll hear from later, and many others believe that this growth is due to unauthorized work by non- citizens, and that stronger worksite enforcement is needed.

President Bush has called for comprehensive immigration reform, including stronger border security, strengthened worksite enforcement and a temporary worker program. Our ability to improve our employee wage reporting process depends on cooperation with other federal partners such as Homeland Security and the IRS, who are with us today, and the Department of State.

An important cooperative effort is the basic pilot, which is a nationwide system in which Social Security supports Homeland Security in insisting employers to confirm employment eligibility for newly hired workers. Participating employers register with DHS to use its automated system and to provide employee information to Social Security to verify the name, date of birth and Social Security number.

If we cannot also verify U.S. citizenship, DHS reviews whether the employee is a work-authorized non-citizen. In all cases, they notify the employer of the employee's current work status.

In conclusion, I want to thank you for inviting me here today, I look forward to working with you to continue to strengthen Social Security's employer wage reporting process and I will be happy to answer any questions.

REP. McCRERY: Thank you.

Mr. Baker.

MR. STEWART A. BAKER: Thank you, Chairman McCrery, Chairman Ramstad, Ranking Members Levin and Lewis. It's a pleasure to be here, I don't think I've testified here since the 1980s, when I was a private lawyer talking about the then new U.S. Canada Free Trade Agreement. It's great to be back.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

I'd like to talk -- begin by talking about the border, our Southwest border. I think we've all been shocked by the amount of violence that we have seen there recently. Assaults -- this is not just a newspaper phenomenon -- assaults on Border Patrol agents has doubled in the last year.

The reason we think that that has happened is that as our border control efforts have gotten stronger, we have begun to interfere with the livelihoods of the people who make their living smuggling human beings across the border, and they're fighting back. We can continue and we will continue to strengthen border controls, but that cannot ever be a complete solution to the problem of border incursions.

The reason that those coyotes are making a living smuggling people across the border is because once people get across the border they can get a very good job in the United States with a driver's license and a fake Social Security number. And that is in fact what many people do. And until we can address the problem that is drawing people across that border, we will always have difficulties at the border, we will always have people slipping across.

And then we will always have people living in our cities and in our countryside who are living outside the law, in the shadows, afraid to talk to law enforcement, afraid to talk to the authorities, afraid to complain when employers abuse them. We shouldn't allow people to live in our country under those conditions.

We need to move them into a temporary program where they can come out of the shadows, live in the light, have a temporary job in the United States, go home with a nest egg and begin a life there. They won't do that, however, until we can persuade people that it's not easy to get a job in the United States just by making up a Social Security number.

And that is why we're here today, because we believe that false Social Security numbers are a major part of the immigration fraud that enables people to work illegally in the United States.

We're very eager to get access to information that the Social Security Administration has about people whose names and birthdates do not match their Social Security numbers.

The Social Security Administration identifies eight, 9 million people in that state every year. The Social Security Administration does an enormous amount of work to try to clear up those mismatches, because it is in the interests of the individual to clear that up so that they can actually get their benefits. And yet a very small percentage of people actually clear that up, which suggests that for many of them it's not possible to clear it up because they have used a false Social Security number to get their job.

We think that it could be as high as 90 or 95 percent of those mismatches are people who have made up their Social Security numbers. That's based on our experience with the basic pilot initiative. Chairman Ramstad asked, are we satisfied with the amount of data sharing today? And while we've got very good cooperative relationships with the Internal Revenue Service and with the Social Security Administration, we're not fully satisfied, because current law Section 6103 makes it very difficult to share all of the information that we would like to have about the mismatches and other aspects of Social Security fraud that may also indicate immigration fraud.

The kinds of things that we could do with that information, according to the General Accounting Office, there are dozens of employers who have used the same Social Security number for 100 employees or more. I mean, that suggests that this is not just employees who are part of the problem but employers, some employers. A very limited number, but they should be at the top of our list for enforcement calls.

We don't know who they are, we can't know who they are under the current interpretations of the law that the Social Security and IRS have. And until there's a cure to that, I think that we will not be able to target employers who are probably part of the problem, we will not be able to do a completely effective job of identifying people who may be engaged in immigration fraud who are working in chemical plants where sabotage or even a mistake could kill thousands of Americans, or working in the baggage handling area of airports, working in nuclear power plants.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

Again, we would like to be able to target our enforcement in the places where the problems are, to be able to identify people, employers and workers, who ought to be at the top of our list for enforcement. I recognize that there are legitimate privacy and revenue collection concerns at stake here, but we face unprecedented levels of immigration as well, illegal immigration.

We've got to gain control of our borders or some day terrorists will use exactly the same kind of coyote service that economic migrants are using to get across that border. The only way to get control of that border is to get control of the workplace hiring so that it is not as easy as it is today to get a job illegally.

And having access to some of the information the Social Security Administration has today would move us a long way down that road.

Thank you very much.

REP. McCRERY: Thank you, Mr. Baker.

Mr. Baker, this may not be in our committee's jurisdiction, but has your department proposed any specific language to change Section 6103, which would allow greater sharing of information?

MR. BAKER: There is no formal proposal today, as I speak, but we are certainly working with the rest of the administration on ideas about how to solve that problem.

REP. McCRERY: So should we expect some offering from the administration relatively soon with respect to this problem?

MR. BAKER: I certainly hope so.

REP. McCRERY: Is there disagreement among the agencies in the executive branch about how to solve this sharing problem?

MR. BAKER: I think we all recognize the importance of the immigration problem and the value that this information could provide. We also recognize that there are privacy and revenue consequences to making this decision, so it's been a very collegial discussion thus far.

REP. McCRERY: Good.

MR. EVERSON: Could I comment on that, sir?

REP. McCRERY: Sure.

MR. EVERSON: I agree exactly with Secretary Baker's characterization of the discussions that have been held. I just do want to emphasize that in terms of tax administration, I view this as an important discussion, because of the fact that we have made progress in having people who are in the country illegally and working illegally pay their taxes.

And that is my principal concern as the tax administrator. There is, on the other hand, a very important concern very eloquently laid out by the secretary about having a legal system of immigration. So I don't understate, though, the impact of this on tax administration, should we share the information. But is a very important policy choice, is how I would phrase it.

REP. McCRERY: So in other words, you're saying that were we to loosen the current rules with regard to sharing information, lest we do it very carefully, it could result in lower compliance from a tax standpoint? Is that what you're saying?

MR. EVERSON: I think that I would be even a little sharper on that.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
 COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
 REPRES....

REP. McCRERY: Maybe.

MR. EVERSON: To say that right now, as an example, we process 2 million returns a year in our volunteer sites around the country. These are community-based organizations largely working with immigrant groups. There will certainly be a chilling effect on participation in the tax system if those volunteers say, look, this information will now be transmitted to Homeland. I am not saying don't do that, please get me right on this, I'm just saying if we do this, we all have to do it together with our eyes wide open.

REP. McCRERY: Well, that's why I asked the question, if all the agencies were cooperating on this and is there squabbling among the agencies and the executive branch about how to solve this? I probably should have put it more positively like you did and said you should all work together to make sure that we go in with our eyes wide open and try to avert any unforeseen or unintended consequences, I should say, of our changes.

Mr. Baker, you speak with some enthusiasm about getting to this problem and solving this problem. Yet worksite enforcement arrests by DHS have declined, as well as notices of intent to fine employers. Do you have reasons for this? And will your enthusiasm perhaps spread to the rest of the agency to correct this decline?

MR. BAKER: I hope so. I'm new to the area. Maybe that's why I speak with such enthusiasm. Yes, there's no doubt there have been difficulties mounting effective worksite enforcement programs. In many cases that that's because of the low fines and the very substantial administrative law judge procedures that have been necessary to follow and difficulty actually collecting the fines once they've been imposed.

Even people who have a pattern and practice of violation, the people who are the worst violators, I think the fine is \$10,000, it's the cost of doing business for the worst employers. So we do have to have a coherent, comprehensive approach to worksite enforcement that addresses those issues as well, but as we have begun to work on border enforcement we have seen time and again that we have got to do interior enforcement at the same time and also have a temporary worker program for the people who'll be displaced by our enforcement efforts.

REP. McCRERY: On another matter that could help you do your job, some time ago Congress required the Social Security Administration to provide what was then some other agencies but are now under DHS a data file called the non-work alien file. And DHS basically says this file is so messed up it's unusable, we can't use it, it's not good data.

What did DHS do to reach that conclusion? And why do you think you cannot use the information for immigration enforcement purposes?

MR. BAKER: I'm not prepared to say we can't use it, but there were a number of challenges there. We can start with the fact that the Social Security Administration of course has a Social Security number but DHS ordinarily does not have a Social Security number in its records because most of the time when we encounter an alien, even if we're going to be authorizing him to work, he may not have a Social Security number.

So our files are not matched up. So when we get the information from the Social Security Administration, our experience is about half of the people, we can't tell who they are, we can't match them, our records and theirs. In addition, the Social Security Administration data, when it comes to us, is pretty far out of date.

It's about a year, year and-a-half out of date. It's not their fault, because they get the information late, but that means that people have moved on. That makes it difficult to find people. Plus in that year and-a-half, or perhaps even earlier, a number of people who originally get a non-work Social Security number, they're here, they may marry a U.S. citizen, they become authorized to work by virtue of a change in their status.

We find that about 40 percent of the people on that list actually are legally entitled to work, they just are using an old Social Security number. That meant the data was not great for doing enforcement. There were other problems. We don't have any mainframes at DHS, but Social Security works off big mainframe computers with big tapes, and for years they sent over what they had, which was their tape, and we didn't know what to do with it.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

A lot of these problems have begun to recede. We are getting the information on a disk in Excel spreadsheet form which we can manipulate and we're expecting a new batch of data in the next couple of weeks. Our analysis of the most recent Excel spreadsheet data that we got is that there are things that we can do with it. Even though not everybody on there is unauthorized to work, the fact is that probably 60 percent of them are not authorized and yet they're making contributions.

And so we've begun to do analysis of, well, who are the employers have the largest number of non-work aliens working for them? Many of them will be authorized but many of them will not be. And so you begin to wonder whether some of these employers ought to be the first to get the visit from DHS.

And when we get the new data in a week or two, we hope to do a more sophisticated analysis of that information and begin to use it in prioritizing our investigations.

REP. McCRERY: Thank you. Perhaps when you forward to the legislative branch your recommendations for changes in the law to facilitate sharing of information, you could also tell us whether this particular exercise is still worth it. And if not, we'll junk it. And if so, perhaps you can explain how we might make it better between the two agencies, Social Security and DHS.

MR. BAKER: We'll gladly do that.

REP. McCRERY: Mr. Levin.

REP. LEVIN: Thank you, Mr. Chairman, and let me follow up with your salient questions.

First to ask you, Mr. Baker. You mentioned some of the problems with the present laws and regulations relating to employer responsibilities. Has DHS or its predecessors suggested amendments to the laws that would make it easier to enforce employer obligations?

MR. BAKER: This is part of the review that we're going through right now. As you know, there's legislation that has passed the -- some legislation on immigration reform has passed the House and there's a companion bill in the Senate being marked up I think in early March.

And we are, as an administration, looking for a way to engage in that process so that we can make suggestions for ways to improve worksite enforcement. And that is an ongoing discussion inside the administration, which I hope will result in action fairly soon.

REP. LEVIN: So you favor tightening the requirements and the enforceability of the employer obligations?

MR. BAKER: I certainly believe that if we do not deal with the fact that it is so easy to get a job in the United States with a minimum of fake documents that can be purchased for \$50 out in Adams Morgan today, that if we don't solve that problem we won't solve the border problem and won't stop the illegals.

REP. LEVIN: I understand that. But your position is there should be a tightening of the requirements of the employer?

MR. BAKER: I think the employer will have to take more responsibility for making sure that his employees are actually authorized to work in the United States, and we need to find a way to give employers tools to do that.

REP. LEVIN: When you say tools, you mean right now you think the main problem is that when employers hire people who are not legally here, that it's the lack of tools that leads them to hiring these people?

MR. BAKER: I think in fact that is in many cases --

REP. LEVIN: You think that's the main problem?

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

MR. BAKER: Yeah. In many cases the employers are -- have no interest in hiring illegal employees. They have a set of procedures that they follow that are required by current law but which are not adequate to actually screen out illegal immigrants. And I've had businesses complain about the large number of identification documents that they're required to accept as proof of identity.

So in some cases employers have said, oh, you've made it too easy for people to engage in fraud.

REP. LEVIN: All right. It will be interesting to pursue that. Let me -- you talk about the data being a year, two years old. The data that you're suggesting be obtained from SSA and IRS would remain that old, would it not?

MR. BAKER: It would. It would always be I think at least a year out of date.

REP. LEVIN: So when you say the reason you haven't used the data you now have is because it's too old, what does that mean for your request or your suggestion that you receive more old data?

MR. BAKER: Well, that was one of five significant problems. I left out one. One of the other problems was that I think the data included everybody who'd ever worked since this program began in the 1970s, even if they hadn't worked in 20 years. So what we're interested of course in seeing is data about people who were working last year.

It will not be perfect because of the lag, but we still believe that we can use it to find information that will allow us to prioritize our enforcement efforts.

REP. LEVIN: My time's expiring.

Let me just mention, Jim, you mentioned about the differences among the agencies and the commissioner -- IRS commissioner responded. I think you would agree that there are some competing, at least if not competing, different considerations here.

MR. : Absolutely.

REP. LEVIN: And so I don't think we should characterize this discussion of competing interests or needs as kind of -- I don't think any of us want to minimize them or suggest that it's not important for you to have a full scale intelligent discussion of how you mesh competing interests, competing needs.

The potential problem of there being less information received by IRS, if you were to disclose more information to other agencies. Not that that's the answer, but I think we need to be careful to not be -- not to minimize the importance of this kind of an intelligent interagency discussion which I hope you will share with us at some point when it's appropriate.

Thank you.

REP. McCRERY: It's an excellent point, Mr. Levin.

Chairman Ramstad.

REP. RAMSTAD: Thank you, Mr. Chairman.

Commissioner Everson, I just want to clarify a point. I know the IRS has the authority to impose penalties on employers who fail to file the correct wage information of their employees. Hasn't the IRS been imposing penalties and collecting money from employers who repeatedly submit mismatched W-2s?

MR. EVERSON: Not in any meaningful sense I would say, sir. What really happens here is that those penalties are very hard to sustain. It's not unlike what Secretary Baker was just talking about in terms of the hurdles you have to go through. The basic dilemma here is that the employer has to have accurate records but it is the employee

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
 COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
 REP. RAMSTAD

who is on the hook for providing the accurate information to the employer. So that if the employer has made a reasonable effort then those penalties are going to be evaded.

The second point I would make here is that if you look at what we're trying to address, and this committee is well aware of the tax gap, the \$345 billion a year, that is not paid in the employment tax area, that is about \$60 billion a year. We have something like 2,500 frontline auditors and collection officers who work on that piece of our business. And this is also, I would say, not a very profitable corner of our world to chase after those penalties.

That having been said, the final thing I would say is we have launched a study on some 300 employers who have a particularly egregious record here -- three-quarters of their employees seem to have mismatches and we've got a bunch of audits going on them, on employment taxes generally and this will -- if there are reasons to get some of these penalties we will certainly do so. But I don't want to mislead you to say that it would make sense from a tax administration point of view to suddenly ramp this up just to help Secretary Baker.

REP. RAMSTAD: Well, must to follow up on Secretary Baker's point made during his testimony, as I understand it, if that scenario unfolded of an employer hiring 100 employees on the same day and all 100 employees submit signed W-4s using the same Social Security Number, it seems to me it would be obvious to any employer that he or she was receiving inaccurate information. But as I understand the situation, under IRS regulations, the employer could not be held responsible for submitting inaccurate information to the IRS? Is that correct? I mean shouldn't the IRS have the ability to penalize, to go after employers for this kind of conduct?

MR. EVERSON: I think we have the ability, sir, but it's a question of what procedures they took and then what the employees would have presented to them. That's obviously a rather extreme instance and that's why we've done this study that we're working on to see what we can do on these most extreme cases. And so we are following up on that basket of the 300 -- I think it's 297 where we've seen that kind of a conduct. I'm hopeful that we will sustain some penalties in that area. But again, I don't think that's -- I would agree with Secretary Baker's characterization of this. That is at the fringe, that is not going to change the immigration problem in terms of interior enforcement. What he seeks to do, which I understand the benefit of and think is important, is to have a system potentially that would check everybody and then -- if that fellow's trying to break the law, the status or the behavior you're talking about, that's one thing, but the vast bulk of this is people who have been duped by false documents, let's say.

REP. RAMSTAD: So, pursuant to that study, it's conceivable that you'd recommend changing the IRS regulations so it could take action against employers who knowingly submit false information.

MR. EVERSON: Yes, sir, I think --

REP. RAMSTAD: You and/or the Social Security Administration.

MR. EVERSON: We've been encouraged to do that. This is a tricky area again because it's reasonable cause area so -- but I think we will learn something very real from the work we're doing.

REP. RAMSTAD: When do you expect the results of that and when can we learn about them?

MR. EVERSON: Assuming you don't do another hearing on this for a year I think we'll know quite a bit by then. I don't know where we are on each and every one of those audits.

REP. RAMSTAD: Well, let me just close -- my time has expired but let me just make a comment. I understand the tax gap and I think you're doing an excellent job overall, Commissioner. I understand the tax gap but I also understand the billions and billions of dollars that the American people are spending that we're appropriating for homeland security and border patrol. And I think closer cooperation, more stringent enforcement are appropriate. Yes, we might risk losing millions of dollars of tax revenues, but when you look at the billions of dollars and you look at the number one function of the federal government to keep people safe and now to keep people safe from terrorists and -- you know, it doesn't take a genius to figure out how to get into this country illegally and do us harm. And God knows how many al Qaeda sleeper cells are amongst us.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

We don't know, nor does the CIA or the FBI. But so anyway, I'd just like to make that point. I'm sure you don't disagree and I'm sure no member of this panel disagrees.

MR. EVERSON: Yes, sir, could I respond?

REP. RAMSTAD: Please.

MR. EVERSON: I agree with that entirely. I would also note that the kind of discussion we're having today about the routine sharing of information for this purpose, important as that policy objective would be, it does not run to the issue of terrorism and it is my understanding that in the context of the Patriot Act there was discussion about having more sharing of taxpayer information for antiterrorism purposes and that was knocked down. So I would ask that we consider revisiting that. If we're going to open up this issue for immigration purposes, I would hope that we would look at 6103 for the potentially more devastating issue, and I would be surprised if Secretary Baker is adverse to that.

MR. BAKER: I'd be delighted.

REP. RAMSTAD: Again, Commissioner, I think you make a very good point in conclusion and thank you again for the job you're doing. I appreciate your responses.

REP. McCRERY: Mr. Lewis.

REP. LEWIS: Thank you very much, Mr. Chairman.

Mr. Commissioner, there's a view in certain quarters, maybe in Washington, maybe in some other places that you and IRS have all of this information, just plenty of information on unauthorized workers and that you're not sharing this information with Homeland Security. Is it your role to locate and identify illegal or unauthorized workers and turn them in to the Homeland Security or Immigration officials?

MR. EVERSON: No, sir, and I think that's the nub of this issue.

We run an independent database and there is 6103 very strict standards as to what can be shared and it is that routine information is not shared at this stage through Social Security over to Homeland so that again -- as the written testimony indicates, last year we issued something like a million six ITINs. An ITIN is a tracking number that we use for someone to file tax returns. It used to be, last time I was here, we had a bigger problem with it being an identity creation document. Now we've got a better handle on that. It's being used for tax returns. But an alien is encouraged to -- (inaudible) -- elsewhere to come in and file a tax return and they are confident that that information is not going across town to Homeland.

REP. LEWIS: Thank you very much, Mr. Commissioner.

Secretary Baker, could you tell members of the committee how do you reach a happy medium and not violate privacy when you're asking DHS or asking IRS for information. I would like for you to just elaborate. What are your feelings about people, Social Security Number, their IRS information being put in a super super agency made available to Homeland Security? I know we need to protect our country but it has something about violating the civil liberties or civil rights of people.

MR. BAKER: I'd be glad to address that. I completely agree with you that privacy is part of our country's most important values and we need to protect that. The kinds of information that we're asking for here in this context is not tax return information, the kinds of information that people are most concerned about the privacy of. This is information by and large that says this person with this Social Security Number works for this employer. And that's really in most cases the extent of the information that we're trying to get. That is private tax information because it's been reported on a tax form to the government but there's nothing inherently related to income tax about that information. So while it's necessary I think after 6103 was passed to engage in a privacy discussion about any

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

such information, we're trying in our discussion of this to avoid intruding into the most private aspects of people's tax returns.

REP. LEWIS: Mr. Commissioner, as a former INS deputy administrator, what are your views on --

MR. EVERSON: I have to be careful here, sir, because I have a current position in this administration but I do have some experience in this area. These are two very important national interests. I say frequently in speeches that we can't allow our tax system to become broken the way our immigration laws and our drug laws are, where they are viewed as optional for people. So I couldn't agree more with the secretary and with the president who has said we have to fix our immigration system. But if we do this we have to go forward, as the president and the secretary have said, with a very strong program which gives people a legal vehicle to be here but on the other hand has a very strong interior enforcement program to make sure if they're not here legally they don't remain.

If we fail to do that -- I implemented the '86 act. That was my job in the Reagan days. If we failed to do that, and the '86 act didn't have the teeth in it to do that, we really won't have helped Secretary Baker and we will make my job or my successor's job worse. So if we're going to go forward on this we've got to go all the way and do it right with a liberal, if you will, employment program but a strict enforcement program on the interior.

REP. LEWIS: Thank you very much.

Thank you, Mr. Chairman.

REP. McCRERY: Mr. Johnson.

REP. SAM JOHNSON (R-TX): Thank you, Mr. Chairman.

Let me ask the Social Security guy one question. Have you all stopped giving away cards on phone calls?

MR. LOCKHART: We don't give cards away on phone calls. To get a new card you have to come into the office, present identification information and birth certificates and other --

REP. JOHNSON: Do you know of people getting more than one?

MR. LOCKHART: People can get replacement cards if you mean that. They can come in. But the law was changed last year and we're starting to --

REP. JOHNSON: No, I just wondered if you all were enforcing the law.

MR. LOCKHART: We are enforcing the law and we are tracking to make sure that no one gets more than three a year and ten lifetime.

REP. JOHNSON: Okay, thank you very much.

Mr. Baker, you know, I don't agree with you on anything you said and I would like to know when you're going to stop the catch and release program because that's part of the problem on the border. And furthermore, how do you differentiate between other than Hispanic and Hispanics that come across?

MR. BAKER: I certainly agree with you that the catch and release program --

REP. JOHNSON: When are you going to stop it?

MR. BAKER: We are -- the secretary has said that we are trying to stop it by the end of this fiscal year which is in October. The difficulty with the catch and release program, it's not a program. Catch and release arises with non-Mexican illegal crossers of the border whom we cannot simply return across the border as we do with Mexicans. We have to put them in detention while we wait for them to have their identity and nationality established and then

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

send them back to their home country. That takes a long time and it fills up an enormous number of the detention beds that we have. The difficulty, the way catch and release began was we ran out of beds. We just didn't have any space for people, we had to release them.

What we're trying to do now is to make sure we have enough beds, enough space to everyone who crosses that border who is not a Mexican in detention and send them home. We are doing that today with Guatemalans, Hondurans, Nicaraguans, most of the large numbers of immigrants who come across that border illegally and who have begun to do it in large numbers. There is still the biggest part of the season for crossing that border still to come and it's going to be a question whether we can continue to have the space to put all of them and get them back to their home countries quickly enough.

REP. JOHNSON: Well, you keep talking about other than Mexican, are you deporting the Mexicans?

MR. BAKER: Yes, the Mexicans are taken back across the border when they're captured. They don't have to be detained, they can be taken right back to the border.

REP. JOHNSON: What kind of law change do you need to do the same with the others?

MR. BAKER: The biggest problem we're facing today, the largest numbers that we have not been able to get a handle on are Salvadoran immigrants and the reason is that they cannot be subject to expedited removal in the same way that other nationalities can because of a law suit that was filed in the 1980s -- the last time I was here before this committee that lawsuit was pending -- and we have an injunction against us along with several other injunctions that are that old that make it very difficult to move them quickly through the process.

REP. JOHNSON: Well, if you don't have room for them do you let them get out and go to work?

MR. BAKER: Yes.

REP. JOHNSON: Do you give them a green card?

MR. BAKER: We have no choice but to let them go and in general if they are -- we essentially give them a court date and say please show up for your court date.

REP. JOHNSON: Yeah, sure, and they don't come.

MR. BAKER: I entirely agree with you. This is not the right way to run a system but we do not always have the space for them. We have asked for Congress to take a look at the injunction process as it affects immigration law so that some of these immigration laws that are older than my kids can be taken off the --

REP. JOHNSON: Okay. Well, I hope you all will get with it faster.

Let me ask the IRS one question. You know, according to the Center for Immigration Studies in 2004 you only -- only three employers were fined for hiring illegals -- only three. I think that's kind of unacceptable. Do you know -- are you all trying to rectify that problem? I know you've discussed it a little bit already.

MR. EVERSON: Yes, sir. I think that we want to do more here but again there is this conundrum where while the employer has to have accurate documents, the burden is on the employee to provide the documents to the employer not vice versa. So you've got a reasonable cause exception here. We're looking at whether we can tighten it up. These 300 audits or investigations that we're doing, that will help us see this. But the real answer here again is not to have us enforce the immigration laws since we're trying to go after the tax gap and all those other things, but this information sharing is -- but we're going to do what we can.

REP. JOHNSON: Thank you, sir.

Thank you, Mr. Chairman.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

REP. McCRERY: Thank you, Mr. Johnson.

Mr. Becerra.

REP. XAVIER BECERRA (D-CA): Thank you, Mr. Chairman.

And thank you to the witnesses. Let me follow upon Mr. Johnson's questions because I think that's very important.

Commissioner, is the IRS capable of trying to detect employers who are violating our immigration laws or those individual employees who may be violating immigration laws without having to search for Social Security Administration records as well as INS or Immigration records?

MR. EVERSON: Not in a meaningful -- to any meaningful extent, sir, given the press of the tax gap and the other compliance areas. As I indicated -- I can't recall if you were in the room -- we have about 2,500 frontline people who work on employment taxes, that's out of our frontline enforcement personnel of about 20,000. And they've got to take care of all employment tax issues where people -- from our point of view, the substantially more important issue of where you're my employee, I've come on hard times in my small business so I'm taking your Social Security out but I'm not sending it over to Jim. That's a problem.

REP. BECERRA: Let me ask you this. Is it still the case that some \$300 to \$350 billion of taxes that are owed go unpaid?

MR. EVERSON: Yes, sir. We just updated our study on the tax gap, refined it from last year relating to the year 2001 the gross tax gap is about \$345 billion.

REP. BECERRA: And most of that has nothing to do with whether there's an undocumented immigrant working in this country paying or not paying taxes.

MR. EVERSON: That's correct. We have a very high compliance rate in this country. It's about 83.5 percent but the monies at stake that we could bring in by improving that are significant.

REP. BECERRA: What happens if all of a sudden we announce that the federal government is going to allow IRS to share information with Homeland Security for immigration purposes to try to track down undocumented immigrants? Do you think those undocumented immigrants who are here without documents to work but are working and actually are filing tax returns, do you think they are going to file tax returns?

MR. EVERSON: Well, this is the basic concern that I've outlined and the position as we have these discussions that are referenced, that I think we all need to consider because right now increasingly people who are here working illegally feel comfortable participating in the tax system.

REP. BECERRA: So we'd have less compliance, chances are, if we found that all of a sudden IRS is complying with Homeland Security on sharing information about people's tax filings?

MR. EVERSON: I agree with that in the short term, however if Secretary Baker is able to really fix this and the people in the country are here legally, over the long term we'll get it right. Where we can't go is not fix that situation and hurt tax administration.

REP. BECERRA: Well, let's turn to Secretary Baker. But by the way, before I leave you, Commissioner, I want to thank you for your quick action recently on this refund freeze program that you have. Once the taxpayer advocate indicated that there were some real problems in the way some low income individuals were having their legitimate refunds suspended for over a period of eight months, more than a year in some cases, I want to thank you for the action you've taken to make sure that folks who exist on \$13,000 a year are able to get the refund that they legitimately earned. So I want to thank you for that.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

MR. EVERSON: Yes, sir, thank you.

REP. BECERRA: Will we have now notice go out for this filing period coming up?

MR. EVERSON: Yes, the notices -- we're putting that in place this filing season and --

REP. BECERRA: How about all those folks who still haven't received their funds who legitimately earned them who are still waiting?

MR. EVERSON: We're going to have to work through the old inventory probably after we get out of this filing season. So we'll do that as quickly as we possible can.

REP. BECERRA: Can we chat about that because there are a whole bunch of folks who are existing on meager incomes who are still waiting for it.

MR. EVERSON: We're going to do it as quickly as we can, sir.

REP. BECERRA: Mr. Secretary, let me ask you a couple of questions and also I think Mr. Johnson touched on this. We have a number of folks that we have acted on to deport from this country because they don't have the permission to be here and that's the way we should handle it. But we have a whole bunch of folks who are employing these individuals and creating this tremendous magnet for people from across the world to come into this country to work because, even if they're working at substandard wages here in this country, they're still making more than they could have ever hoped to have made in their home country. If we're not prosecuting folks who are hiring folks who don't have the right to work in this country and if we allow people to make the excuse that they reasonably relied on documents of someone who is a clear immigrant to work in this country, how will we ever solve the problem of legitimately allowing only those entitled to work in this country to do so?

MR. BAKER: I think you make a good point. There's no doubt that the vast majority of people who have employed illegal immigrants don't know it, obeyed the law and were the victims of someone who gave them false documents.

But I think there are also people whose business model is violating the immigration law. We need tools to go after them, whether it's criminal law or higher fines, an ability to attack pattern of practice. We do need authority to do that.

REP. BECERRA: Would you agree with the commissioner that if we give you better tools you can do a better job than if you necessarily went out and started getting information from IRS to try to help you track down that information through some indirect way?

MR. BAKER: I think -- we do need the information, there's no doubt about that. We have not asked for tax return information so we're not asking for the kind of information that would directly impinge on people's willingness to file tax returns. But there is no doubt, as my colleague and Mr. Johnson suggests, we also need the ability to put people in detention while we're trying to get them out the country.

REP. BECERRA: Absolutely. Thank you very much.

Thanks, Mr. Chairman.

REP. McCRERY: Mr. Hayworth.

REP. J.D. HAYWORTH (R-AZ): Mr. Chairman -- or more accurately, Mr. Chairmen, thank you for holding this joint hearing.

And my gratitude is exceeded only by my disappointment, and that's putting it mildly, for the ample display of what can only be described as a schizophrenic policy concerning our borders and the presence of illegal aliens -- not

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

undocumented workers, that is Orwellian news speak -- workers who have documents galore coming into our system. What distresses me most is the complete and utter lack of urgency inherent in all the remarks and testimony we have received this morning.

Secretary Baker, please pass along to Secretary Chertoff, who I'm sure is here testifying in other areas this morning, my genuine concern with the evaluation he proffered in Houston in November when he said it was his goal to gain operational control of our borders in five years' time. For a nation at war, that is wholly unacceptable.

Commissioner Everson, thank you for coming, sir, and I realize you have worn both hats at different times in history. But to suggest on one hand that we can have strict enforcement at the same time liberal employment -- which it's not my intent to put words in your mouth, sir but I take as well, basically the status quo, let's continue to let businesses gainfully employ illegals or perhaps more accurately, in terms of keeping with the stated policy of the administration, create a new type of program that the intent may not be amnesty but that is really what it is --

MR. EVERSON: If I could, sir, I want to clarify this.

REP. HAYWORTH: Please do.

MR. EVERSON: I am saying if you truly clamp down on the illegal you will want to expand legal; that's all I am saying.

REP. HAYWORTH: Okay. Well, I thank you. Reclaiming my time, let me also get you to clarify -- granted the fact that revenue is the middle name of the organization that you so ably represent, Commissioner, if you had the opportunity to have bank robbers file returns and gain that revenue, do you think that would be helpful for paying the nation's bills? Would you suggest that as a policy action? If we could get the identity of bank robbers and other thieves in our society and get the revenue, a portion of that revenue that they have obtained through ill gotten gains, would that be helpful to solve the revenue challenges we confront?

MR. EVERSON: Well, sir, we obviously pursue illegal source income and it's an important part of criminal prosecution. So yes, again, as I stated at the top of the hour, we want our share, our tax share whether the income was earned legally or illegally.

REP. HAYWORTH: But again I want to understand this. Revenue is the final notion, however you can get your hands on it, however it's earned, the bottom line with your organization is getting that revenue.

MR. EVERSON: That is correct, sir.

REP. HAYWORTH: So it would follow that if there are criminal enterprises, we want that revenue as well and if we just have to look the other way on the criminal enterprise at hand to gain the revenue, well, so be it. Okay, good. I'm glad.

MR. EVERSON: No, that is not what we're doing. That is not -- I don't agree with that at all. That's a mischaracterization.

REP. HAYWORTH: Good. We work very --

(Cross talk.)

MR. EVERSON: I also -- please, please --

REP. HAYWORTH: Reclaiming my time I offer the mischaracterization purposefully, Mr. Chairman, and with your indulgence because it points out the inherent schizophrenia of the policy the administration and, quite frankly, many on the right and left -- on the right for cheap labor, on the left for cheap votes -- are trying to create for a nation at

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
 COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
 REP. EVERSON....

work. It is inherently disappointing and inherently dangerous and it is the wrong path at the wrong reasons for the wrong times.

I've heard from all three of you gentlemen words to the effect that we have to bring people out of the shadows. I believe, gentlemen, we would be far better off shining the lights on employers and employees alike enforcing existing laws, beefing those laws up where we need to. And I will just tell you I appreciate the spirit in which you come, but whether it's five years' time to get control of the border or one year's time to come back with an incisive report, gentlemen, the Legislative Branch can only do so much. The Executive Branch exists of course to administer and execute the laws. We may have imperfection in laws, there's testimony that exists today in some ways that we can help streamline and improve it, but please understand and convey to all of your cohorts in the administration, though we may for the most part share a letter of affiliation politically, there is deep dissatisfaction across the nation with the continued pursuit of a schizophrenic policy that is wholly impractical. I thank you for your time and your indulgence.

I thank you, Mr. Chairman.

REP. McCRERY: Thank you, Mr. Hayworth.

Gentlemen, we have a couple of votes on the floor, so if you don't mind we're going to recess the subcommittees just long enough for us to go over and vote and return. And if the first panel wouldn't mind staying, there are still members who would like to address questions to you, is that satisfactory?

MR. EVERSON: I never like taking questions from Earl Pomeroy if that's who you mean.

(Laughter.)

REP. McCRERY: Well, I don't know if he'll come back but -- committee is in recess.

(Recess.)

REP. McCRERY: Thank you, gentlemen, for being patient and waiting as we completed those votes on the floor.

And now we'll resume questioning with Mr. Pomeroy.

REP. EARL POMEROY (D-ND): I thank the chair and especially note my feelings of appreciation to Commissioner Everson. Now that I'm not ranking member any more I do not expect such courtesy as to have you wait.

You'll forgive my confusion, but in reading the testimony I'm having a little trouble understanding where principally this worksite enforcement business falls.

And I listened very closely to the discussion earlier in this hearing, I think it was Congressman Johnson who noted that worksite enforcement actions were three last year. That is from a number of 417 in 1999, three in 2004. Now, this worksite enforcement of the immigration law, Mr. Baker, is principally Homeland Security Immigration, right? Now I note in your testimony you state, "A vigorous enforcement of our worksite immigration laws a crucial step in moving toward a system where foreign migrant workers are employed in this country legally and transparently." Can you describe to us how this jibes? It looks to us like worksite enforcement has not been something that has been the subject of much attention at DHS?

MR. BAKER: I'm glad to address that. There has been a shift in the way in which we have approached worksite enforcement including a focus on critical infrastructures. As I said earlier, we're particularly concerned about people who are not here legally working in baggage handling facilities at airports or at chemical plants where they could do real damage with an act of sabotage or just an accident. There's also been an increased focus on trying to find ways to work with employers to get employers to do some more work, take more responsibility for doing

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

some of the screening, getting employers to join the Basic Pilot so that they can check people at the intake point rather than afterwards when we're trying to get access to no match records.

But I think there is no doubt that we need to expand our enforcement efforts. We need better tools to be able to do that and I'm hoping that the administration shortly will be proposing new ways of doing enforcement so that we can improve our record.

REP. POMEROY: The Department of Homeland Security is having a tough week. And let me acknowledge that I think you have a very difficult job, an impossible job in light of some of the circumstances, various laws and then circumstances on the ground leave you to resolve. So sometimes I think that from dais here we don't appropriately recognize the extraordinary difficulty of your mission.

Having said that, it seems to me that this is a time where Department of Homeland Security, this enormous agency that obviously has yet to figure out how to effectively use all the wherewithal at its disposal, be it natural disaster response in Katrina as we're seeing in the Senate this week, or worksite immigration law enforcement which has dropped to three actions last year even though your testimony this morning says it's a crucial step -- your words. So we've got some hesitation about now you want to get all this IRS data. I don't know that you've fully figured out how to use the data you've already got.

Maybe in the rest of my time we can get to the bottom of whether or not we think that there's quite the treasure trove of information here that you think there is. You indicate that the Social Security mismatch is all about evasion of immigration laws. Commissioner Everson, do you think -- or Commissioner Lockhart, are there other explanations? Do you conclude that all of these mismatches represent a fraudulent effort to hide illegal immigration activity? Or sometimes do people just screw up and it's inadvertent error or attributed to other reasons?

MR. LOCKHART: Well, certainly the mismatch file, which I've said is about 8.8 million, is composed of a lot of different pieces. We do a lot of scrubbing to try to correct typographical errors and other things, but certainly people change their names, people get married, change their names, or people use the wrong name with the employer, they may use a nickname that doesn't match in our records. So there is a lot of activity in our records that is not related to undocumented workers. On the other hand there is probably a significant number that is related to undocumented workers.

REP. POMEROY: Fifty-fifty, ninety-ten, any idea?

MR. LOCKHART: We really don't have good data on that. I would say it's less than the 90-95 percent that DHS has said but I don't know how much less.

REP. POMEROY: My time is up, Mr. Chairman. I thank you.

And, Mr. Everson, next time -- (laughs.)

MR. EVERSON: I'll look forward to it, sir.

REP. McCRERY: Ms. Tubbs Jones.

REP. STEPHANIE TUBBS JONES (D-OH): Thank you, Mr. Chairman.

Good afternoon -- good morning, gentlemen. It's still morning. Let me start with Secretary Baker. How are you, sir?

MR. BAKER: Very good, thanks.

REP. TUBBS JONES: Good. I need my glasses because this print is too little. Maybe that's why your employers don't want to fill this out. OMB form 1615-0047 Employment Eligibility Verification. Are you familiar with that form?

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

MR. BAKER: I'm not sure that I am.

REP. TUBBS JONES: Okay. It's called an I-9.

MR. BAKER: Yes.

(Laughter.)

REP. TUBBS JONES: All I have to do is give you the right number, right?

MR. BAKER: Yes, exactly.

REP. TUBBS JONES: Okay. And the I-9 has a section that gives employee information and verification and the employee is required to fill that out with a Social Security Number. Then section 2 is an employer review and verification and has several sections to it. And then it gives the employer as well as you a list of acceptable documents that document the employee eligibility and the like. Now, this is the same information that you're asking that the IRS provide to you or you would like to have from the IRS for purposes of preventing terrorism or whatever, right?

MR. BAKER: Much of it, yes.

REP. TUBBS JONES: Now, when you receive this from the employers, what do you do with this?

MR. BAKER: We actually -- as I remember we ask them to hang on to that. I'm not sure that we're asking them to file that.

REP. TUBBS JONES: Okay. So you ask the employer to hang on to it so it's information that is within your grasp since it's a form required by your department.

MR. BAKER: We could ask for it, yes.

REP. TUBBS JONES: Right. Have you ever used this information in order to reach the compliance that you are trying to get from the IRS?

MR. BAKER: The difficulty with that information is it's in the hands of the employer and the question is which employer -- if we went to an employer we could say we'd like to see your I-9 forms.

The difficulty is in choosing which employer we're going to devote scarce investigative resources to and what we're hoping is that access to the Social Security information will allow us to say well, here's a place we ought to look as opposed to --

REP. TUBBS JONES: Well, let me ask you this. Historically before you ever had this form, you have a group of employers who you believe historically have not complied with or have been -- what's the better word -- consistently employing people without verifiable or legitimate papers to be in the United States, right?

MR. BAKER: Yes.

REP. TUBBS JONES: And it clearly is more than the three that you've investigated since 1999, right?

MR. BAKER: I'm sure there are more people than that.

REP. TUBBS JONES: Well, wouldn't that be a logical place to start with the employers? Even if you just want to try it out and see if it would work and that you wouldn't use scarce resources in order to do that.

MR. BAKER: The difficulty is picking the right people. Picking companies where we're most likely to find abuses and this is a tool that would allow us to identify people who are most likely to have abuses defined.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
 COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
 REPRES....

REP. TUBBS JONES: The IRS has suggested to you that the 300 worst companies are in agriculture, restaurant and day labor groups. Is that a logical place for you to start your search?

MR. BAKER: Certainly we could look in those industries but then we would be picking blind among an enormous number of restaurants, say.

REP. TUBBS JONES: You know, I'm a former prosecutor, and one of the offences that we deal with we couldn't catch the person stealing the car but they were driving the car so there's an offence called receiving stolen property other than theft. I mean, there is something in the course of what you do that you don't have to necessarily establish the underlying offence but you could look at the fact that these people were there or whatever in order to reach some compliance.

I hate I'm running out of time with just you but I would just hope that there will be other processes by which you would try to figure out how you handle that. I'm not necessarily totally in support of the IRS not having to provide the information, I'm still angry that when I pick up the phone and dial my bank I have to give my Social Security Number in order to reach my money, you know. But it's clearly we've gone outside of the traditional private area of what we call private in the sake of tapping my telephone and so forth and so on, so maybe there would be an opportunity to do what you want to do without reaching into the private area of private information of people.

MR. BAKER: We're not asking for authority to tap your telephone.

REP. TUBBS JONES: Oh, I know you personally are not doing that but somebody is. Not my personal phone but I mean -- well, you know what I'm talking about. Everybody does. It's been all over TV.

I yield back my time, thanks, if I have any.

REP. McCRERY: Thank you.

Mr. Everson, Mr. Lockhart, Mr. Baker, thank you very much for your testimony and your answering our questions and we look forward to having you back in not too many more months to get an update on this important issue.

Now I call the second panel, the Honorable Patrick P. O'Carroll, inspector general, Social Security Administration. Barbara D. Bovbjerg, director, Education, Workforce, and Income Security Issues, U.S. GAO.

Thank you both for being patient as we worked our way through the first panel and the votes. And, like the first panel, your written testimony will be admitted to the record in its entirety and we would like for you to summarize your testimony in about five minutes.

And we'll begin with Mr. O'Carroll.

MR. PATRICK O'CARROLL: Good afternoon, Chairman McCrery, Chairman Ramstad, and members of the subcommittee. Thank you for the invitation to be here today.

Today's issue is one of the most persistent we have faced in our 11 years as an organization: SSN's misuse as it pertains to the reporting of wages. As you know, SSA receives wage reports, W-2 forms, from employers and posts the wages to workers' accounts. But when a wage report contains errors and cannot be properly posted to a worker's account it is instead placed in the Earnings Suspense File or the ESF. As of November 2005, there were 255 million wage items placed in the ESF representing \$520 billion in wages through tax year 2003.

In 1998 SSA's first inspector general testified before Congress and identified the major challenges facing SSA. After solvency, the first challenge on his list was the ESF. In 2002, SSA's second inspector general testified that the ESF remained one of the great challenges facing SSA, and he also placed particular emphasis on immigration and on the impact unauthorized workers have on ESF.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

Now I stand before you as SSA's third inspector general and the ESF remains one of SSA's greatest challenges, and the most significant impediment to resolving the challenge are unchanged: first, the lack of sanctions against the most egregious employers, and second, legal obstacles that prevent SSA from sharing data with employers and immigration authorities. It would be an unfortunate neglect of the trust placed in all of us if, when my tenure is over, SSA's fourth inspector general someday testifies that the same two obstacles remain in place.

Last year, we issued two audit reports that highlighted the need for an effective program of sanctions against employers who repeatedly submit high volumes of erroneous wage reports. The first report noted significant problems in the restaurant, service, and agriculture industries, and repeated prior recommendations for SAA to intensify talks with the IRS aimed at convincing IRS to make more effective use of existing sanctions.

The second reported more outreach to employers as part of the issuance of no match letters by SSA, however SSA responded that with no fear of retribution, employers had generally determined that their current practices met their needs. A high proportion of ESF entries results from wages reported for work performed by non-citizens who do not have work authorization from DHS. Unfortunately, SSA and the IRS interpret current law so as to prohibit SSA from sharing information from the ESF with the DHS, even as it pertains to the most persistently egregious employers. Information that could help address the ESF problem is in SSA's hands but SSA must remain mute. The authority to sanction and deter employers is in the IRS's hands but the IRS rarely exercises this authority.

While the ESF is the largest repository of misinformation, another file exists that is similarly troubling. Each year SSA is required by law to submit to DHS the names and SSNs of all employees with wages reported under the Non-work SSN. While SSA shares this information with DHS, little has been done to analyze and utilize the information, and more importantly, the disclosure laws I mentioned earlier also prohibit SSA from informing employers that they have illegal workers in their employment.

In summary, disclosure laws handcuff SSA and DHS and keep them from making meaningful progress with respect to unauthorized non-citizens and with regard to the ESF, this difficulty is exacerbated by the lack of sanctions against employers who have been given no reason to comply with the law. Without meaningful change we will likely hear the same frustration from my successor that you have heard from me and my predecessors today.

Thank you again for inviting me to be here and I'll be happy to answer any of your questions.

REP. McCRERY: Thank you, Mr. Inspector General.

Ms. Bovbjerg.

MS. BARBARA D. BOVBJERG: Thank you, Mr. Chairman. Good afternoon, Mr. Chairman, Ms. Tubbs Jones.

I'm happy to be back today, this time to discuss the use of Social Security Number data to reduce unauthorized work.

No one is lawfully permitted to work in the U.S. without a valid SSN and either citizenship or work authorization, yet non-citizens work without such authorization and gain employment using false information. How such unauthorized work can be detected and prevented clearly continues to challenge the agencies involved.

Today I'd like quickly to discuss two things: the Social Security data that can help identify unauthorized employment, and issues for improving the usefulness of the data.

First let me talk about the Social Security data. SSA has two types of data useful to prevent and detecting unauthorized work. The participant records and the earnings reports. Participant records that include the name, date of birth, SSN, among other things can be used to verify that a worker seeking employment is providing the SSN assigned to someone of that name. SSA uses these data to provide SSN both batch and web-based verification services for employers' use on a voluntary basis. The services designed to ensure accurate employer wage reporting and discourage hiring of unauthorized workers are offered free of charge.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
 COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
 REPRES....

SSA also uses participant records in a verification system developed by DHS. DHS offers electronic verification of worker status by a program called the Basic Pilot. This program sends employee data through SSA to verify name and SSN, and for non-citizens also through DHS to verify that the person is both legally present and authorized to work. This system too is voluntary and has only recently been available nationwide and none of these verifications systems is widely used by employers.

SSA's earnings data provide a different sort of information. There are two SSA data files for these records that Mr. O'Carroll mentioned. The first, SSA's Non-work Alien File contains earnings reports that are posted under non-work authorized SSNs. These records are thought to belong to a group of people who may be in the U.S. legally that may also be working without authorization. And under law, SSA passes this file to DHS annually. But, as Mr. O'Carroll stated, little has been done with that information.

The second type of earnings data is found in the earnings suspense file. The ESF holds earnings reports where the name and SSN cannot be matched to records in SSA's participant files. GAO has reported that this file, which contains almost 300 million records, appears to include an increasing number of earnings records associated with unauthorized work but is not regularly used as a DHS enforcement tool because the file contains legally protected taxpayer information.

Let me turn now to the usefulness of the data in addressing unauthorized work. Under the current arrangement on the Non-work Alien File, DHS staff believe they would have to invest significant resources to determine which workers are truly still unauthorized. A number of them in the file may have been authorized but not informed SSA of the change in status.

Also the lack of a common identifier for records in DHS and SSA files makes the matching process difficult and time consuming. The lack of industry codes as well associated with the employers prevents DHS from targeting employers in the critical infrastructure areas that are important to homeland security. The Earnings Suspense File on the other hand potentially has employer information that's more useful to DHS but some of the same difficulties that pertain to the non-work file could also affect the suspense file's usefulness. And the sensitivity of sharing taxpayer records means the case for their use outside SSA must be truly compelling.

But if the challenges of the suspense file can be overcome, authorizing transmittal of at least some of that protected information to DHS might be warranted. It is likely that producing accurate and useful unauthorized work data from these records could require a continued effort on the part of SSA, DHS and IRS.

But these efforts will be of little value without credible and coordinated enforcement programs in place. The three agencies will still need to improve employer reporting and worksite enforcement efforts if measures to improve the usefulness of existing data are to bear fruit.

In conclusion, the federal government can make better use of information it already has to support enforcement of immigration, work authorization and tax laws. The Suspense and Non-work Alien Files have promise but the best information in the world won't make a difference if the relevant federal agencies cannot work together to improve employer reporting compliance and conduct targeted and effective worksite enforcement.

And that concludes my statement. I welcome your questions.

REP. McCRERY: Thank you, Ms. Bovbjerg.

To both of you, you both mentioned in your testimony how the recent trends in the Earnings Suspense File seems to indicate an increase in illegal work and Social Security Number fraud and misuse. I wonder if I can get you to expound upon that a little bit. You've obviously -- both offices have done extensive examination of the composition of the Earnings Suspense File. Can you for example describe the characteristics of employers with the largest number or highest percentage of wage reports in the ESF, or the characteristics of employees whose earnings are in the ESF?

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
 COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
 REPRESE....

MR. O'CARROLL: I'll take it first. What has come out in previous testimony is the sort of the trends that we're coming up with is that the three largest employing groups are the service industry, the restaurant industry and the agriculture industry. I think in one of the previous testimonies the states that contributed the most are California, Texas and Illinois. And what we're finding is that about the same amount of wages go into the ESF every year, which is about \$9 million, but although that's level over the last few years we are finding that the problem employer numbers are increasing. So although we've identified these problem employers on that they keep posting more and more wages into the ESF which is problematic.

MS. BOVBJERG: We took a little different cut of the ESF. We looked at records just between 1985 and the year 2000. There were 85 million records. We found certain types of errors come up all the time. Nine million of them had all zeroes, for three and a half million of the records employers used the same SSN for multiple workers in the same year, one and a half million had SSNs had never been issued. There were a lot of these types of problems. We've done a similar cut of the industries, eating and drinking establishments, actually found construction was the second largest industry in the group of records that we looked at. We also found that 8,900 employers -- this is out of the six million who send information annually to SSA, 8,900 were responsible for more than 30 percent of the records we reviewed.

But the reason that we think that there could be more unauthorized work coming into the suspense file is that we looked at reinstatements. You really can't tell from looking at the suspense file records where people were born and who they are, it wouldn't be in the suspense file. But you can tell something by looking at information on those records that were reinstated to someone's Social Security account. We looked at 265 numbers that came up more than a thousand times in the period that we examined. Of those, there were 13 million reinstatements to almost 12 million different people on these most frequently used numbers.

And what we found that was in 1986 about 8 percent of those people who received reinstatements were foreign born. I mean the vast majority is U.S. born. The majority still U.S. born but we're up to about 20 percent of the reinstates are foreign born. And of those, almost half involved earnings received prior to the individual getting a work authorized SSN.

So we thought that while it is a tremendous exaggeration to say that the Earnings Suspense File represents unauthorized work, that is clearly not the case. I think it's fair to say that there is an increase in mismatches that are the result of unauthorized work.

REP. McCRERY: Thank you. Now, Ms. Bovbjerg, you're familiar with I'm sure the bill that the House recently passed. It hasn't passed the Senate so it's not law, just a House passed bill, but that bill would require employers to verify Social Security Numbers and employment eligibility through an electronic system modeled on the Basic Pilot Program. Your organization, the GAO though, in the 2005 report stated that the Basic Pilot Program has some serious weaknesses.

It does not detect identity theft, the DHS databases are not up to date, employers may use the verification service to engage in discriminatory practices, and verifications may be delayed if system use increases substantially. Based on the GAO's research, if the Basic Pilot were to be made mandatory as under the provisions of the House bill, would the system have the capacity to handle some six million employers in this country?

MS. BOVBJERG: I think we have some concern about that. When we did that work last year and looked at the processes at DHS, one of our recommendations was to assess the feasibility and cost of correcting the weaknesses in the Basic Pilot. This is a recommendation that the department has accepted and said that they will pursue. Whether -- simply doing that is a big job, making sure that those things are corrected is an even bigger job. And so I don't know whether they will be ready or not but it would be something that I think DHS should be concerned about. SSA, by the way, says that they are ready for their part in that.

REP. McCRERY: How many employers now are covered under the Basic Pilot?

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

MR. O'CARROLL: I've got that. It's about 8,000 employers are under the Basic Pilot of 6.5 million.

REP. McCRERY: So 8,000 -- we go from 8,000 to 6.5 million. Have you any thoughts on if the Basic Pilot were made mandatory would we see an increase in the use of counterfeit documents like the Social Security Number card or would we see an increase in identity theft because people would know that they're being checked?

MS. BOVBJERG: If everything is up and running and we as a government are able to run a verification process like that, I think it would undermine the value of the fake documents. But you would have to have a working system with a credible enforcement program behind it.

REP. McCRERY: Which may involve changes to the Social Security Number card itself to make it tamper proof or, you know, less subject to theft or --

MS. BOVBJERG: And it depends really on what kind of role the Social Security card would have in the whole I-9 process which I know is under review at DHS.

REP. McCRERY: So are you concerned that we're not ready as a government to move forward with making this program mandatory for all employers?

MS. BOVBJERG: I always like to try things out before we go to a full implementation. And I know we've been running the Basic Pilot as the pilot program and I think what we've found is that a lot of the verification -- maybe not a lot but significant verifications have to be done by hand. And that concerns me for opening it up to six million employers. Does that mean we can't do it? I think no, I think it means that we have to really plan how we go forward and how long it's going to take to really be ready to do that. I would be concerned if we went ahead with a mandatory verification where the government is not really prepared to provide the verifications that are required.

REP. McCRERY: Mr. O'Carroll, do you have any thoughts on this?

MR. O'CARROLL: I concur in that the reason that we endorse pilots is to be testing a process to see how it's working. And again, as I noted before, we have -- what we're getting back in terms of the Basic Pilot and doing some surveying on it is that employers like it. They feel it's working out well. It's getting a great -- you know, it's getting good response. But I think our responsibility and GAO's responsibility is to monitor these types of pilots, give it some time to work out and then report back. And in both cases we've been working on doing surveys in relation to the pilot and in relation to SSNVS to get more information for the committee as to the viability of rolling it out across all 6.5 million employers.

REP. McCRERY: Okay. Thank you.

Mr. Lewis.

REP. LEWIS: Thank you very much, Mr. Chairman.

Ms. Bovbjerg, your testimony implies that you think that the ERF should share tax return information with the Department of Homeland Security. Are you saying or suggesting that the law should be changed?

MS. BOVBJERG: I'm not ready to suggest that today. We have work underway for the subcommittees looking at -- starting with the Non- work Alien File and how useful that might truly be to DHS enforcement efforts and what alternatives exist. And certainly the Earnings Suspense File could be an alternative and it's something that we will look at. I would say that even if there are data that could help DHS, if DHS is not ready to use that information in a credible enforcement program, that would not meet our criteria for providing tax access.

REP. LEWIS: Do you happen to know the views or the position of the comptroller general?

MS. BOVBJERG: On this particular issue?

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

REP. LEWIS: Right.

MS. BOVBJERG: I do not. I do not. I have not spoken to him directly on this exact issue. I know that when we ask for 6103 authority ourselves we only do it when we are positive that we need access to that information to do something in particular that we've already figured out what we're going to do.

So I'm just a little concerned about going forward and saying they need this information, DHS needs this information let's provide this when I'm not sure that they're ready to use it in an enforcement program.

REP. LEWIS: Thank you very much.

Mr. O'Carroll, do you believe employers should have a greater responsibility to verify the identity, Social Security Number and immigration status of their employees? Where should the burden be?

MR. O'CARROLL: Yes, Mr. Congressman, I do believe that the employers do have a responsibility. And what we've been noting in some of our audits that we've been doing is certain employers are reporting the same Social Security Number for 900 different employees every year. There's trends and I think that's the important part.

REP. LEWIS: Let me -- you're saying certain employers --

MR. O'CARROLL: Yeah, one employer --

REP. LEWIS: The same Social Security Number --

MR. O'CARROLL: Nine hundred times.

REP. LEWIS: Is that widespread or just one or two --

MR. O'CARROLL: I'm using that as an egregious one, Mr. Lewis, but what we're finding is that certain employers are doing sequential SSNs numerous times where they'll just do 1 through 9, change the name, use another 1 through 9. So it does become -- there are egregious employers out there and those are the ones that we think -- you know, it should be brought to their attention that they are reporting this thing so that they can take corrective actions.

REP. LEWIS: Are you prepared today to make any particular recommendation for additional employer responsibilities? If so, who supports your position?

MR. O'CARROLL: I think what we've noticed from the panel that was ahead of me today was that we've got three agencies that have equal concerns in terms of information that's being supplied by the employers. Each one has mentioned it one way, shape or form that there are concerns on the information that we're getting from employers and that we need to have methods for the employers to be encouraged to take better care of the numbers that they're reporting. And yes, I think that employers should -- the laws that we have now should be used to have employers use better scrutiny in terms of the numbers that they are reporting.

REP. LEWIS: Thank you very much.

Thank you, Mr. Chairman.

REP. McCRERY: Mr. Ramstad.

REP. RAMSTAD: Thank you, Mr. Chairman.

I want to thank both of the witnesses for your testimony.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
 COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
 REPRESE....

Director Bovbjerg, I'd like to ask you a question if I may, please. The GAO's 2005 report on immigration enforcement -- are you familiar with that report?

MS. BOVBJERG: Yes, I am.

REP. RAMSTAD: The report found that the number of notices of intent to file as well as worksite enforcement arrests by the Department of Homeland Security had decreased considerably since 1999 in that six year period. In fact, the report found that worksite enforcement arrests had declined by 84 percent between 1999 and 2003. Shouldn't we be concerned with this lack of enforcement? And since the GAO released its report last year have you noticed any changes or improvements made by Homeland Security in fulfilling its responsibilities?

MS. BOVBJERG: We know that what we were told about the drop-off, in the intention to fine and in the arrests had to do with not only a shift of focus to the antiterrorism efforts that Secretary Baker spoke about in critical infrastructure areas, you know, airports, power plants and so on that it's also -- the agency is looking at alternatives to making arrests and fines, that they're looking more at civil settlements as a way of more effective use of their resources. Whether they have taken actions that would change that approach I do not know. It's in -- our report was released at the end of the summer in August so there hasn't been a lot of time for response to that.

I do think that they have been very clear with us that there is a shift in priorities. They have limited enforcement resources and we, in always looking at any kind of enforcement -- I look at pension enforcement too -- we always say it's better to target the limited resources that you have. I think the question here is, is it only critical infrastructure enforcement that the Congress wants to see or does the Congress want to see a more general worksite enforcement, in which case those priorities would need to be reordered.

REP. RAMSTAD: But doesn't the -- I mean, isn't enforcement essentially a joke? I mean, 84 percent decrease. I understand the reordering of priorities but I also understand the laws and the regulations and it seems to me that we shouldn't be picking and choosing which laws to enforce? So you haven't really seen any changes or improvements by Homeland Security in this regard since that report, is that a correct statement?

MS. BOVBJERG: I cannot really answer that question because I'm not primarily on an immigration issue.

REP. RAMSTAD: I understand.

Let me ask you for the remaining minute or two I have, Inspector General O'Carroll, about information sharing between Social Security and Department of Homeland Security. I know in a 2001 report the Social Security Administration IG recommended that Social Security collaborate with INS -- which of course was then incorporated in Homeland Security -- to develop a better understanding of the extent that immigration issues contribute to Social Security Number misuse and the growth of the Earnings Suspense File. Also Social Security IG recommended that the administration, the Social Security Administration revalue its application of existing disclosure laws or come to Congress for legislative authority to remove barriers that pertain to information sharing.

Given the fact that this information sharing issue has been studied exhaustively, I know by the Social Security Administration IG and so forth, do you have any conclusion or observations as to which data would you recommend Social Security share with Homeland Security?

MR. O'CARROLL: Yes, Chairman. There's some very basic information that I believe would be useful and it ties in to what I was answering Mr. Lewis with is that we have information on chronically bad employers, the ones that are hiring the vast majority of what -- or of employers posting wages, of using bad SSNs to post their wages. And we feel that that's important, that we should be able to inform those employers that one, we should be notifying DHS to the trends in that type of employment industry, the employers that are involved in it, and then two, is for us to even be able to go to those employers as part of SSA's employer outreach programs and let them know that they are one of the worst violators of posting bad wages. And I think that would have a very good positive effect on this thing in terms of the education process of it as well as the enforcement.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

REP. RAMSTAD: Again I want to thank both the witnesses.

REP. McCRERY: Ms. Tubbs Jones.

REP. TUBBS JONES: Thank you, Mr. Chairman.

I always have to take myself back to other jobs when I start thinking about some of this. When I first became the elected DA in Cuyahoga County, Ohio, we had no computer system connecting the prosecutor, the courts, the sheriffs, it was the craziest thing. And I sat and said it can't be that all these smart people can't figure out what they're supposed to do with all this information. I'm stunned in your statement -- I think it's Ms. Bovbjerg's statement, let me check and make sure before I -- I'm sorry, Mr. O'Carroll's statement.

At page 5 you say, "While SSA and DHS have extensive information at their disposal, they have been unable to find a way to work with the information to prevent, detect, and enforce unauthorized employment." How many people do you have allocated to figuring out a way you work with all this information to get an answer?

MR. O'CARROLL: Well, being in the inspector general's office we're making recommendations to SSA and to DHS to work those issues out. And what came in the earlier testimony this morning was from DHS is that they have problems with the information that they're given in that SSA tracks the individuals by a Social Security Number. They said the Department of Homeland Security is tracking it by their alien number and because of that they've had difficulties in matching that information.

We've made numerous recommendations asking for the two agencies to work with each other. I agree with you, Congresswoman Tubbs Jones, that I think technology has caught up to a point now that with the other information that's in that file, even though one agency tracks under one number and another agency tracks under a different number, that they should be able to find a commonality to be able to identify which person is which, pick up the trends on it, and it kind of ties in with what my colleagues from GAO have found out is, is that there is a lot of useful information that's going over to Department of Homeland Security that they can be using to do their trend analysis from if they have the -- I guess inclination would be the proper would to use the computer technology to be able to make that information viable.

REP. TUBBS JONES: The money that comes from -- okay. I'm an employee and I am in an Earnings Suspense File. The dollars, the FICA dollars that I've paid, where do they sit? Do they collect interest? What happens with those dollars if I'm in the suspense file mode? The employer had to pay it whether it was right or wrong, right?

MS. BOVBJERG: Yes. And we the government have already spent that money. It's just cash into the Treasury.

REP. TUBBS JONES: It's just cash into the Treasury.

MS. BOVBJERG: Yes. But the record of that contribution of yours, but they don't know it's yours or it wouldn't be in the suspense file, is still there with your earnings record.

REP. TUBBS JONES: What would you -- what's your recommendation? I mean take your -- can you take your hat off as an employee of the federal government?

MS. BOVBJERG: Never.

REP. TUBBS JONES: Let's see, I give you immunity. What the heck should we be doing? I mean this is outrageous that we can't work out a system in which to address this. I'm big on privacy. I don't want you to invade my privacy and I've already claimed that my Social Security Number is used for everything but my Social Security. But what would you do? I mean you've been in this business a long time. Let's figure it out. What can we do? And I've got probably two minutes so each of you get a minute left.

MS. BOVBJERG: Okay, I'll talk fast. But I can never take my GAO hat off, you know.

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

REP. TUBBS JONES: Okay, pretend. I'm going to put another hat on top of the GAO hat -- consultant to the Social Security Subcommittee.

MS. BOVBJERG: We have said before that we need to improve the data that is reported at the worksite. That that would help SSA, it would also help discourage unauthorized work.

REP. TUBBS JONES: So the better thing we need to do is have one location. If you want to go work for ABC company you come to this location, you give us the information, we send all that information to ABC company then we already have a place where we collect all the information about work. Has anybody ever thought about that?

MS. BOVBJERG: Well, in some ways a verification system --

REP. TUBBS JONES: The lady behind you is frowning. What -- come on, you tell me.

MS. BOVBJERG: In some ways the verification system that does go to SSA and DHS is going to a central repository. I think that really what I'm talking about is that we have not established a credible system of penalizing employers for misreporting. That's something that the IRS is working on, I understand. That's something that they need to work on with SSA and DHS. It's not only a tax issue and it's something that would help improve -- that's very fundamental. The other side is that we need to devote some resources, whether those are existing resources or additional resources, I don't know, but we need to devote some resources to general worksite enforcement in DHS.

REP. TUBBS JONES: Begging your indulgence, Mr. Chairman, can I get a one minute response from Mr. O'Carroll?

MR. O'CARROLL: I think probably the most valuable lesson that I learned from the panel ahead of me was when the commissioner of IRS asked for one year to come back and report to you to see what has changed in that year. And one of those things that I'd like to see changed in that year is where they would use their enforcement capabilities to penalize the employers that are chronically misreporting this wage information. The other thing that I'd like to see happen in this year is for -- as you mentioned before is that the information that we've been giving to DHS which is identifying problem employers for non-work aliens, for them to start doing some action on that. And I think hopefully, as I said -- hopefully in my tenure as the inspector general we'll see that these three agencies are talking to each other and that we get this synonymous database where we can all be working off of the same information.

REP. TUBBS JONES: My guess is the employers know what a hard time we are having trying to figure this out and they say the heck with you all, we just go on and do our thing and when you all catch up with us we will have gotten our workers, made our money and probably gone bankrupt or whatever.

Thanks, Mr. Chairman.

REP. McCRERY: You're quite welcome.

Mr. Levin.

REP. LEVIN: Thank you, and I'm sorry I was at another meeting and I missed the testimony. But I guess I think I know enough about it to ask a couple of quick questions.

Your comment about wishing that we would penalize employers for false information more effectively, this has been an issue we have been discussing for a long time. So the assumption underlying that statement is that in many cases we know enough, we have enough information to pursue employers who are not meeting the law. Is that a correct statement?

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
 COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
 REP. BOVBJERG

MS. BOVBJERG: In my belief we do. The reasonable cause standard that the IRS uses is waived if there's intentional disregard. I still do not understand why intentional disregard is not used more frequently because, as Mr. O'Carroll reported, we have employers who time after time after time use the same Social Security Number for all their employees. That's a little different, I would submit, than goofing up and doing it once.

REP. LEVIN: I think it's important for us to take that into account because if the focus is mainly on the data, we may not understand the full picture, because what you're saying is in many cases where we have the data and much of it relates to a smaller number of states and I think you testified a relatively small number of companies, there hasn't been effective action vis-à-vis those companies.

Secondly, if all this data pours in, how do you think it's disaggregated by DHS so that they can go after their main target and that is potential terrorists? Has anyone figured out what the relationship would be between more data available to DHS and the implementation of their basic function?

MS. BOVBJERG: Well, that's a concern we have and that's something that we are going to look at as part of this work that we're doing for the subcommittees on the Non-work Alien File and other sources of data that might be useful to DHS.

REP. LEVIN: Okay.

Thank you, Mr. Chairman.

REP. McCRERY: Thank you, Mr. Levin.

Thank you, Mr. Ramstad.

Mr. Lewis.

And thank you, Mr. O'Carroll and Ms. Bovbjerg, very much for your testimony. This is an issue that does require I think a lot of thought and we are looking forward to receiving at some point from the administration some concrete proposals as to how to tighten this system to say the least. So thank you very much.

MR. O'CARROLL: Thank you.

MS. BOVBJERG: Let us know if we can help.

REP. McCRERY: The hearing is adjourned.

Classification

Language: ENGLISH

Document-Type: Washington-Dateline General News

Publication-Type: Transcript

Subject: WAGES & SALARIES (90%); SOCIAL SECURITY (90%); US SOCIAL SECURITY (90%); TAXES & TAXATION (90%); US FEDERAL GOVERNMENT (89%); TAX LAW (89%); COMPANY EARNINGS (89%); SPECIAL INVESTIGATIVE FORCES (89%); IMMIGRATION (87%); ILLEGAL IMMIGRANTS (86%); LEGISLATIVE BODIES (79%); PUBLIC FINANCE (78%); IMMIGRATION LAW (78%); NATIONAL SECURITY (77%);

HEARING OF THE SOCIAL SECURITY SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS
COMMITTEE SUBJECT: SOCIAL SECURITY NUMBER HIGH-RISK ISSUES (PART II) CHAIRED BY:
REPRESE....

LEGISLATION (75%); TAX ENFORCEMENT (73%); BORDER CONTROL (73%); TAX AUTHORITIES (73%);
GOVERNMENT CONTROLLERS & **AUDITORS** (70%); COUNTERTERRORISM (50%)

Organization: SOCIAL SECURITY ADMINISTRATION (94%); US GOVERNMENT ACCOUNTABILITY OFFICE
(91%); INTERNAL REVENUE SERVICE (84%); US DEPARTMENT OF HOMELAND SECURITY (84%)

Industry: TAX AUTHORITIES (73%); GOVERNMENT CONTROLLERS & **AUDITORS** (70%)

Person: JIM MCCRERY (59%)

Geographic: UNITED STATES (92%)

Load-Date: February 28, 2006