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WASTE, FRAUD, AND ABUSE

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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CONTENTS

Page

Advisory of July 10, 2003, announcing the hearing 2

WITNESSES

U.S. General Accounting Office, Hon. David M. Walker, Comptroller General; accompanied by Mike Brostek, Director for Tax Issues, Leslie Aronovitz, Director for Healthcare, and Barbara Bovbjerg, Director of Education, Workforce, and Income Security 6
Internal Revenue Service, Joseph R. Brimacombe, Deputy Director, Compliance Policy, Small Business and Self Employed Operating Division 73
Social Security Administration, Hon. James G. Huse, Jr., Inspector General ... 78
U.S. Department of Justice, William H. Jordan, Senior Counsel to the Assistant Attorney General, Civil Division 86

Burman, Leonard E., Urban Institute, Tax Policy Center, and Georgetown Public Policy Institute 94
Taxpayers Against Fraud, James W. Moorman 106
United Council on Welfare Fraud, Michael G. Rice 110

SUBMISSIONS FOR THE RECORD

U.S. Department of Labor, Office of Inspector General, Hon. Gordon S. Heddell, statement 125

Applied Information Sciences, Inc., Greenbelt, MD, David Mucka, statement .. 128
Avallone, Anthony, Blackwood, NJ, statement and attachment 131
Callaway, Martha, Wichita Falls, TX, letter 132
Center for Parental Responsibility, Roseville, MN, Molly K. Olson, statement . 134
Cloer, Steve, Norcross, GA, statement 135
Fathers Rights Association of New Jersey & Mid-Atlantic Region, Wayne, NJ, Bruce Eden, statement 143
Hatfield, Malcolm, Franksville, WI, statement and attachments 150
Indiana Civil Rights Council, Whitestown, IN, Torm L. Howse, statement 152
Klubertanz, Theresa, National Association of Disability Examiners, Madison, WI, statement 163
Lorsbach, Michael, On Point Technology, Inc., LaGrange, IL, statement 169
McLeod, Keith, Richmond, VA, statement 154
Mucka, David, Applied Information Sciences, Inc., Greenbelt, MD, statement . 128
National Association of Disability Examiners, Madison, WI, Theresa Klubertanz, statement 163
Olson, Molly K., Center for Parental Responsibility, Roseville, MN, statement 134
On Point Technology, Inc., LaGrange, IL, Michael Lorsbach, statement 169
Paul, Margaret, Redlands, CA, statement 171
Spence, William L., Ben Lomond, CA, statement 171
Untershine, James D., Long Beach, CA, statement 172
Wood, Bill, Charlotte, NC, statement 182

WASTE, FRAUD, AND ABUSE

THURSDAY, JULY 17, 2003

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
WASHINGTON, DC.

The Committee met, pursuant to notice, at 10:17 a.m., in room 1100, Longworth House Office Building, Hon. William M. Thomas (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
July 10, 2003
No. FC–8

CONTACT: (202) 225–1721

Thomas Announces Hearing on Waste, Fraud, and Abuse

Congressman Bill Thomas (R–CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing on waste, fraud, and abuse in programs under the Committee's jurisdiction. **The hearing will take place on Thursday, July 17, 2003, at 10:00 a.m., in the main Committee hearing room, 1100 Longworth House Office Building.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

One of the important responsibilities of the Committee on Ways and Means is to conduct oversight of programs within its jurisdiction to guard against waste, fraud, and abuse. Misuse of taxpayer funds undermines confidence in government programs, hurts legitimate beneficiaries, and squanders scarce resources.

Already this year, the Committee has taken legislative action on a number of measures to protect taxpayer monies, including: closing the loophole that allows some government workers to avoid the Government Pension Offset, thereby protecting the Social Security Trust Funds; denying Social Security benefits to fugitive felons and probation/parole violators; facilitating the proper payment of unemployment benefits by better sharing new hire data; subjecting payment for durable medical equipment and off-the-shelf orthotics to competitive bidding; reforming Medicare payment for certain outpatient prescription drugs currently covered; and reforming the Medicare secondary payor system to prevent companies from improperly billing Medicare. This hearing will provide the Committee with further opportunities to identify measures to improve existing programs.

In addition, the Committee will consider the extent to which programs within its jurisdiction ought to be modernized. Many of these programs are approaching 50 years of age or more, and the Committee has a responsibility to ensure that they are meeting the needs of beneficiaries today and tomorrow. In the last eight years, this Committee has made great strides modernizing welfare programs and Medicare. Other programs need to be closely scrutinized to ensure they are providing the best possible service at the least cost to taxpayers.

In accordance with H. Con. Res. 95, the Concurrent Resolution of the Budget for Fiscal Year 2004, the Committee will submit findings from this hearing to the Committee on the Budget by September 2, 2003.

In announcing the hearing, Chairman Thomas stated, "The tax dollars that working Americans send to Washington should be used wisely and for their intended purpose. That is why Congress has a responsibility to root out waste, fraud, and abuse where it exists in Federal Government programs."

FOCUS OF THE HEARING:

The Committee will review programs in its jurisdiction to identify waste, fraud, and abuse. The findings of the Committee will be submitted to the Committee on the Budget in accordance with the Concurrent Resolution of the Budget for Fiscal Year 2004.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to hearingclerks.waysandmeans@mail.house.gov, along with a fax copy to (202) 225–2610, by the close of business, Thursday, July 31, 2003. Those filing written statements that wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the full Committee in room 1102 Longworth House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

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

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

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

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

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

Chairman THOMAS. The Chair apologizes to the Members for his tardiness.

As a Committee with jurisdiction over programs that affect and improve the lives of nearly every American, we have a responsibility to ensure that these programs operate responsibly and effectively.

Not that the Chair is paranoid about whose mike works and whose doesn't—does that work any better?

The reason we are meeting today is to take a look at what programs we have and ways in which we might identify waste, fraud and abuse that might be in these programs. I know that is a hackneyed phrase, but given the size of the Federal Government, given any project that is at the level of our activity, for anyone who says that there is no waste or fraud or abuse simply doesn't realize that a little bit of an examination will sometimes turn up some interesting behavior.

The current budget resolution for fiscal year 2004 instructed all congressional Committees to identify waste, fraud and abuse and report back the findings to the Budget Committee. They will then analyze and perhaps make some adjustments based on that infor-

mation. That doesn't mean Committees in identifying these areas can't make changes on their own.

I commend our colleague and Chairman of the Budget Committee, Mr. Nussle, for his work to protect taxpayers, but basically all of us are responsible, not just one Committee, for finding waste, fraud and abuse in our own jurisdiction. In fact, we have done that. We have taken legislative action to guard the Social Security trust funds by closing the loophole that allows some government workers to avoid the government pension offset. We have said that individuals who are fugitive felons and parole violators should not receive their Social Security benefits. The Committee has acted to implement improved sharing of new-hire data to ensure unemployment benefits are properly distributed. Most recently we took legislative action in H.R. 1, the Medicare Prescription Drug and Modernization Act, to reform the Medicare secondary payer system, to halt improper billing practices, fix the Medicare payment system for outpatient prescription drugs, and inject a little bit of competitive bidding structure into the market for durable medical equipment. These, although sounding modest, would produce $33 billion in savings.

Joining us today are witnesses from the U.S. General Accounting Office (GAO), Administration officials, and representatives from outside groups to help us examine other areas that perhaps we haven't focused on. So, we are pleased to have all of you with us this morning.

Part of the problem is that many of the government programs within our jurisdiction go back more than half a century or longer, and so if, in examining these programs, we do want to retain them, I do think we ought to continue to examine them to make sure that they are relevant and cost-effective in carrying out the activities that we continue to support.

With that, I would recognize the gentleman from New York, Mr. Rangel, for any comments he may wish to make over his microphone.

[The opening statement of Chairman Thomas follows:]

Opening Statement of The Honorable Bill Thomas, Chairman, and a Representative in Congress From the State of California

As a Committee with jurisdiction over programs that affect and improve the lives of nearly every American, we have a responsibility to ensure that these programs operate responsibly and effectively. The reason we're meeting today is to help identify waste, fraud and abuse entrenched in the programs we oversee.

The Concurrent Budget Resolution for Fiscal Year 2004 instructed all Congressional Committees to identify waste, fraud and abuse, and then report the findings back to the Budget Committee. They will analyze the findings and perhaps implement program reforms. I commend our colleague and Chairman of the Budget Committee, Mr. Nussle, for his work to protect taxpayers. But removing waste, fraud and abuse from government programs is all of our responsibilities—it doesn't just rest with one Committee.

This Committee has taken legislative action to guard the Social Security Trust Funds by closing the loophole that allows some government workers to avoid the Government Pension Offset. We have said that individuals who are fugitive felons and parole violators should not receive Social Security benefits. The Committee has acted to implement improved sharing of new hire data to ensure unemployment benefits are properly distributed.

Most recently, we took legislative action on H.R. 1, the *Medicare Prescription Drug and Modernization Act of 2003*, to reform the Medicare secondary payer system to halt improper billing practices, fix the Medicare payment system for out-

patient prescription drugs and inject a little bit of competitive bidding structure into the market for durable medical equipment. Although sounding modest, we've been told these Medicare reforms, and others, save nearly $33 billion.

Joining us today are witnesses from the General Accounting Office, Administration officials and representatives from outside groups to help us examine other areas perhaps we haven't focused on yet.

Perhaps part of the problem is that many of the government programs within our jurisdiction are nearly half a century old, or older. As these programs continue to develop, we retain an ongoing responsibility to guarantee the taxpayer dollars funding them are spent wisely.

Mr. RANGEL. Thank you, Mr. Chairman. Mr. Chairman, when I saw the press release from the Budget Committee saying it was going to root out waste, fraud and abuse in this Administration, I thought it was put out by the Democratic Campaign Committee. We got to get to the bottom of all of this criminal activity. I know it is outside of our jurisdiction, but I don't know whether you got the Intelligence Committee listed on this. If you were just talking about our Committee, I would have thought the Inspector General would be here from Social Security and someone from the Internal Revenue Service (IRS), but you have got the U.S. Department of Justice here. That is serious business, which means we are going to put someone in jail for fraud and abuse. Mismanagement we accept over the last few years.

Having said that, I think this is far more serious than just putting people in jail. I am so sorry that Mr. Nussle is not here because what a time to be the Chairman of the Budget Committee. We got a $450 billion deficit, and we got the GAO in front of us. This is going to be very interesting as you share with us, Mr. Walker, how we can balance the budget, because I know that is why you are here.

Now, somehow I think that through this testimony we are going to send a letter to the Chairman of the Budget Committee saying somehow we will be saving $71.4 billion. This could be the most important hearing that you have ever called, Mr. Chairman, because if we have these hearings every month, for the next few years imagine how dramatically we can really eliminate the deficit. All you have to do is send a letter to Nussle when he is here, and then at the end of the day we would have rooted out not only corruption in government, but saved a lot of money.

Mr. Chairman, we got serious things to do. We got to take care of our foreign sales corporation problems, we got to try to see whether we can bring our conferees closer together on Medicare. You and I are going to have to stop the other committees from taking Medicaid and making that a block grant. We've got to bring peace in the Middle East. We've got a lot of things to do. If you want to send a letter to Mr. Nussle, I assure you the Democrats on our side would agree with you. We will support you, send him a letter, say, what have you to say? These letters have no consequence on us politically or on the economy.

I am a little embarrassed to be here, but in all due respect to our witnesses, I hope you will get immunity from any names that you might feel free to identify—people involved in waste, fraud and abuse. I hope the Department of Justice will take the time out, having been a Federal prosecutor myself, not to give us broad gen-

eral terms and not to get involved in the accounting of how much savings we got to have by putting people in jail. That you should do without the encouragement of our Committee, but if the Department of Justice is here to talk about fraud—fraud, waste and abuse, I want names. I don't want departments and agencies just to be humiliated and just to be insulted with a broad brush. We want names, we want to put people in jail, and if this works, who knows, we may have something to do with the Intelligence Committee, and we all can move forward.

I wondered why so many Members were absent today, Mr. Chairman, until I looked at the agenda, and I know you want to be here just as badly as I do, so let's get on with it, and thank you for this opportunity.

Chairman THOMAS. The Chair thanks the gentleman from New York for his unbridled enthusiasm. One of the things we all know is that people who may be well-intentioned, but are involved in waste, fraud and abuse aren't always involved in criminal activity.

It is my pleasure to start the hearing off with introducing our seventh Comptroller General of the United States, who does serve a 15-year term, which clearly insulates and isolates him to a very great degree from the political winds that may be blowing hot or cold.

I believe you are finishing the first one-third of your term. Just let me say briefly from his biography, that GAO's mission is to help improve the performance and assure the accountability of the Federal Government for the benefit of the American people, and if that is what your duty is as head of the GAO, I can think of no more appropriate hearing than this one to invite you to, Mr. Walker. It is a pleasure to have you in front of the Committee once again. Any written testimony you may have will be made a part of the record. You may address us as you see fit for the time that you have. Thank you very much.

STATEMENT OF THE HONORABLE DAVID M. WALKER, COMPTROLLER GENERAL OF THE UNITED STATES, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY MIKE BROSTEK, DIRECTOR FOR TAX ISSUES, LESLIE ARONOVITZ, DIRECTOR FOR HEALTHCARE, AND BARBARA BOVBJERG, DIRECTOR OF EDUCATION, WORKFORCE, AND INCOME SECURITY

Mr. WALKER. Thank you, Chairman Thomas, Ranking Member Rangel and other Members of the Committee. I do appreciate the opportunity to be here as an officer of the United States in the legislative branch. The GAO and I take seriously our responsibility to try to help the Congress discharge its constitutional responsibilities and to improve the performance and assure the accountability of the government for the benefit of the American people.

Today's hearing is about fraud, waste, abuse and mismanagement. I will touch on that, but I also want to touch on a broader perspective as well. Let me summarize.

The Federal Government is the largest, the most complex, the most diverse, and arguably the most important entity on the face of the Earth, bar none. With an entity like that, waste, fraud, abuse and mismanagement will never be zero, but we should have

zero tolerance for it, and we should try to do everything that we can to minimize fraud, waste, abuse, and mismanagement.

Even if we do everything that we can, and I will give you several examples of where I think additional action is necessary, it won't be enough to close our large fiscal gap and our structural deficit. We are going to have to look at how we can do things more economically, more efficiently and more effectively, and we are going to have to ask some tough questions about what is the proper role of the Federal Government in the 21st century, how should the government do business in the 21st century, and in some cases who should do its business, because there is a huge difference between wants, needs, affordability and sustainability looking into the future.

With that, let me go into the three tiers and give you a few examples, then open it up for questions and answers, Mr. Chairman.

This Committee has jurisdiction over some incredibly important programs to the American people: Social Security, including its sub-elements such as the disability insurance program; Supplemental Security Income (SSI); Medicare; Temporary Assistance for Needy Families (TANF); and also jurisdiction over the tax system, including the many different tax preferences. You have a huge responsibility, and obviously periodically conducting oversight over this portfolio is a very, very critical element to try to help deal with our structural deficit and growing fiscal gap.

I have with me today several executives from GAO who can get into more detail if you would like through the question and answer period, but let me hit the highlights and give you examples of the three categories that I mentioned.

First with regard to fraud, waste, abuse and mismanagement, I will give three examples. Many more are in our testimony. In the SSI Program additional efforts are necessary in order to try to deal with overpayments to individuals who are violating residency requirements; in other words, they are citizens of the United States, but they are not resident domestically, therefore they should not be eligible for these benefits, but are receiving these payments.

Secondly, with regard to the Medicare Program. Much progress has been made to reduce improper payments from over $20 billion a year to approximately $13 billion a year, but needless to say, much more progress needs to be made in order to deal with that issue.

On tax compliance, both on the individual and the corporate side, there is a need to strengthen enforcement and to provide for more accountability, both as it relates to the individual side, such as earned income tax credit (EITC), as well as corporate tax shelters and employment taxes.

With regard to economy, efficiency and effectiveness, this Committee has taken steps on the government pension offset provision as it relates to Social Security, which is a positive step. Disability claims must also be improved. Disability programs represent only about 20 percent of Social Security Administration's (SSA) benefit expenses but take up about 55 percent of SSA's administrative costs. With regard to the Medicare Program, opportunities for additional competitive contracting for claims administrators; opportunity to improve pricing with regard to prescription drugs; the

need to look at reasonable reimbursement payments for home health care; and the need to hold contractors, third-party administrators who administer health care claims, more accountable for their actions. Clearly there are a range of tax preferences that could and should be looked at.

As far as fundamental reassessment, reexamination of the government's role in programs, the Federal disability programs were designed for 50 years ago. The world has changed. Fundamentally they need to be reviewed, reexamined, and reengineered for the modern world and looking forward.

Medicare is not sustainable in its present form. The Hospital Insurance Trust Fund alone has a $5.9 trillion discounted present value gap. That is only one part of Medicare. Tax preferences, some of which were implemented years ago, may or may not be achieving their intended purpose, including tax preferences for health care, which comprise over $100 billion per year.

In summary, Mr. Chairman, the Chinese have a curse that says may you live in interesting times. We clearly do, but I would prefer not to look at this as a curse, but as a challenge and an opportunity. Tackling fraud, waste, abuse and mismanagement is tough work, but it needs to be done, because if there is fraud, waste, or abuse, it means that we have less money to benefit intended beneficiaries, and it means our fiscal challenges are even greater.

This will not be enough. We will have to address economy, efficiency, and effectiveness, and engage in a fundamental review and reassessment of government policies, programs, and activities. Hard work will be required. Tough choices will have to be made. We also need to quit digging, because the hole is getting deeper with regard to our fiscal gap.

Thank you, Mr. Chairman. I would be happy to answer any questions you may have, and needless to say, GAO stands ready to help this Committee and other committees in addressing these issues.

[The prepared statement of Mr. Walker follows:]

Statement of The Honorable David M. Walker, Comptroller General of the United States, U.S. General Accounting Office

Mr. Chairman, Mr. Rangel, members of the Committee.

It is a pleasure to be here today as you deal with one of your important obligations—to exercise oversight over the use of taxpayer funds. No government should waste its taxpayers' money, whether we are operating during a period of budget surpluses or deficits. And, as you all recognize, waste, fraud, abuse, and mismanagement are not victimless activities. Our resources are not unlimited, and when they are diverted for inappropriate, illegal, inefficient, or ineffective purposes, both taxpayers and legitimate program beneficiaries are cheated. Both the Administration and the Congress have an obligation to safeguard benefits for those that deserve them and avoid abuse of taxpayer funds by preventing such diversions. Beyond preventing obvious abuse, government also has an obligation to modernize its priorities, practices, and processes so that it can meet the demands and needs of today's changing world. More broadly, the Federal Government must reexamine the entire range of policies and programs—entitlements, discretionary spending, and tax preferences [1]—in the context of the 21st century. Both the Congress and the executive

[1] In this testimony the term "tax preferences" is used to describe provisions in the tax code sometimes referred to as "tax incentives" or "tax expenditures." "Tax expenditures" are defined under the Congressional Budget and Impoundment Control Act of 1974 as "revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." The Joint Committee on Taxation describes tax expenditures as includ-

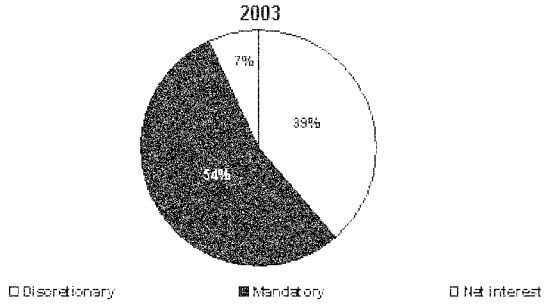
branch have a fiduciary and stewardship obligation to gain control over our fiscal future.

Periodic reexamination and revaluation of government activities has never been more important than it is today. Our nation faces large and growing long-term fiscal challenges. Increased pressure also comes from world events: both from the recognition that we cannot consider ourselves "safe" between two oceans—which has increased demands for spending on homeland security—and from the U.S. role in an increasingly interdependent world. Government also faces increased demands from the American public for modern organizations and workforces that are results-oriented, capable, responsive, agile, and accountable.

This committee has jurisdiction over some of the most important programs in the Federal Government: Social Security—including related programs such as SSI—Medicare, and TANF. As the committee with jurisdiction over our tax system—over raising the revenue to finance government's activities—you also oversee the growing number of "programs" conducted through the tax code in the form of tax preferences. By anyone's definitions, your oversight agenda is massive. It is important that you take it seriously. Today's hearing is a positive step in this regard.

And, of course, as everyone on this committee knows well, today discretionary spending makes up less than 40 percent of the budget. Net interest and other mandatory spending[2]—including the programs under your control—represent over 60 percent of the federal budget. Figure 1 shows the composition of federal spending in 2003. Including the Iraq war supplemental mandatory spending makes up 54 percent of the budget—up from 25 percent in 1963 before the creation of Medicare and 45 percent in 1983.[3] If you look only at programmatic spending (i.e., excluding interest on the debt) the shares are 58 percent mandatory and 42 percent discretionary.

Figure 1: Composition of Federal Spending, 2003



Source: GAO analysis of data from the Congressional Budget Office.

Note: Includes $41 billion in discretionary spending and about $1 billion in mandatory spending for the Iraq war supplemental. Includes $11 billion in mandatory spending for the 2003 tax cut package.

Direct, or mandatory, spending programs and tax preferences are by definition assumed in the baseline and not automatically subject to annual congressional decisions as are appropriated discretionary programs. In our view, a periodic reassessment of these programs and tax preferences is critical to achieving fiscal discipline in the budget as a whole. Moreover, such a review can help ascertain whether these

ing any reductions of income tax liabilities that result from special tax provisions or regulations that provide tax benefits to particular taxpayers.

[2] While Social Security and Medicare are the largest direct spending or mandatory programs, this category also includes such others as farm price supports, insurance programs, food stamps, TANF block grants to the states, federal civilian and military pension and health.

[3] Excluding the Iraq war supplemental the figures are 56 percent mandatory and 37 percent discretionary.

programs are protected from the risk of fraud, waste, and abuse, and are designed to be as economical, efficient, and effective as possible.

As you know, the Budget Resolution directs GAO to prepare a report identifying "instances in which the committees of jurisdiction may make legislative changes to improve the economy, efficiency, and effectiveness of programs within their jurisdiction." My testimony draws in part on some of the items that will be included in that report, which is due August 1, 2003. You asked me today to focus on several areas within this Committee's jurisdiction: Social Security and disability, unemployment insurance, Medicare, and tax preferences and compliance activities.

With me today are four GAO Directors with detailed knowledge in these areas: Barbara Bovbjerg of our Education, Workforce and Income Security Team [Social security, disability], Leslie Aronovitz and Laura Dummit of our Health Care Team [Medicare] and Michael Brostek who is a Tax Director in our Strategic Issues Team.

In this testimony, I will discuss program reviews, oversight, and stewardship of taxpayer funds on three levels:

- First are those areas vulnerable to fraud, waste, abuse, and mismanagement. Payments to ineligibles drain resources that could otherwise go to the intended beneficiaries of a program. Everyone should be concerned about the diversion of resources and subsequent undermining of program integrity.
- Second, and more broadly, policymakers and managers need to look at ways to improve the economy, efficiency, and effectiveness of federal functions, programs, and policies—including specific tax preferences. Even where we agree on the goals, numerous opportunities exist to streamline, target, and consolidate programs to improve their delivery. This means looking at program consolidation, at overlap, and at fragmentation. It means improved targeting in both spending programs and tax preferences.
- Finally, a fundamental reassessment of government programs, policies, and activities can help weed out programs that are outdated, ineffective, unsustainable, or simply a lower priority than they used to be. In most federal mission areas national goals are achieved through the use of a variety of tools and, increasingly, through the participation of many organizations, such as state and local governments and international organizations, that are beyond the direct control of the Federal Government. Government cannot accept as "givens" all of its existing major programs, policies, and operations. A fundamental review, reassessment, and reprioritization of what the Federal Government does, how it does it, and in some cases, who does the government's business will be required, particularly given the demographic tidal wave that is starting to show on our fiscal horizon.

Before turning to the three program areas on which you asked us to focus today, let me briefly discuss each of the three levels of review.

Addressing Vulnerabilities to Fraud, Waste, Abuse, and Mismanagement

Programs and functions central to national goals and objectives have been hampered by daunting financial and program management problems, exposing these activities to fraud, waste, abuse, and mismanagement. These weaknesses have real consequences with large stakes that are important and visible to many Americans. Some of the problems involve the waste of scarce federal resources. Other problems compromise the ability of the Federal Government to deliver critically needed services, such as ensuring airline safety and efficiently collecting taxes. Still others may undermine government's ability to safeguard critical assets from theft and misuse.

In recent years, GAO's work across the many areas of government program and operations has highlighted threats to the integrity of programs which prompt potential for fraud, waste, abuse, and mismanagement. As the sections in this testimony on social security programs and unemployment insurance, health care, and tax issues illustrate, much of our work for the Congress is in fact dedicated to helping redesign programs and improve management to address these long standing problems, in areas ranging from uncollected taxes—both corporate and individual—to critical entitlement programs that provide health and social services.

In 1990, GAO began a program to report on government operations we identified as "high risk." This label has helped draw attention to chronic, systemic performance and management shortfalls threatening taxpayer dollars and the integrity of government operations. Over the years GAO has made many recommendations to improve these high-risk operations. We discovered that the label often inspired corrective action—indeed 13 areas have come off the list since its inception. For each of these areas, we focus on (1) why the area is high-risk; (2) the actions that have been taken and that are under way to address the problem since our last update

report and the issues that are yet to be resolved; and (3) what remains to be done to address the risk.

In January of this year we provided an update for the 108th Congress, giving the status of high-risk areas included in our January 2001 report and identifying new high-risk areas warranting attention by the Congress and the administration.[4] GAO's 2003 high-risk list is shown in Attachment I. This Committee has jurisdiction over a number of these areas. Lasting solutions to high-risk problems offer the potential to save billions of dollars, dramatically improve service to the American public, strengthen public confidence and trust in the performance and accountability of our national government, and ensure the ability of government to deliver on its promises. We have noted that continued congressional interest and oversight, such as that exemplified by this hearing today are of crucial importance. In addition, perseverance by the administration in implementing needed solutions is needed. The administration has looked to our recommendations in shaping government-wide initiatives such as the President's Management Agenda, which has at its base many of the areas we have previously designated as high risk.

Clearly progress has been made in addressing most of the areas on our current high risk list, both through executive actions and congressional initiatives. However, many of these problems and risks are chronic and long standing in nature and their ultimate solution will require persistent and dedicated efforts on many fronts and by many actors over a period of time. Some will require changes in laws to simplify or change rules for eligibility, provide improved incentives or to give federal agencies additional tools, such as additional tools to track and correct improper payments. Continued progress in improving agencies' financial systems, information technology, and human capital management will be vital in attacking and mitigating risks to federal program integrity. Some areas may indeed require additional investments in people, process, and technology to provide effective information, oversight, and enforcement that protects programs from abuse. Ultimately, a transformation will be needed in the cultures and operations of many agencies to permit them to manage risks and foster the kind of sustained improvements in program operations that is called for. Continued persistence and perseverance in addressing the high-risk areas will ultimately yield significant benefits for the taxpayers over time. Finding lasting solutions offers the potential to achieve savings, improve services, and strengthen public trust in government.

Improving Economy, Efficiency, and Effectiveness

Important as safeguarding funds from fraud, waste, abuse, and mismanagement is, I believe that for long-lasting improvements in government performance the Federal Government needs to move to the next step: to pursue widespread opportunities to improve the economy, efficiency, and effectiveness of existing federal goals and program commitments. The basic goals of many federal programs—both mandatory and discretionary—enjoy broad support. That support only makes it more important for us to pay attention to the substantial opportunities to improve cost effectiveness and the delivery of services and activities. No activity should be exempt from some key questions about its design and management.

Key Questions for Program Oversight

- Is the program targeted appropriately?
- Does the program duplicate or even work at cross purposes with related programs and tools?
- Is the program financially sustainable and are there opportunities for instituting appropriate cost sharing and recovery from nonfederal parties including private entities that benefit from federal activities?
- Can the program be made more efficient through reengineering or streamlining processes or restructuring organizational roles and responsibilities?
- Are there clear goals, measures and data with which to track progress, results costs, and benefits?

GAO's work illustrates numerous examples where programs can and should be changed to improve their impact and efficiency.

For example, our work has shown that scarce federal funds could have a greater impact on program goals by improving their targeting to places or people most in need of assistance. Poorly targeted funding can result in providing assistance to recipients who have the resources and interest to undertake the subsidized activity on their own without federal financing. Moreover, lax eligibility rules and controls

[4] U.S. General Accounting Office, *High-Risk Series: An Update*, GAO–03–119 (Washington, D.C.: January 2003).

can permit scarce funds to be diverted to clients with marginal needs for program funds. Federal grant programs with formula distributions to state and local governments could be better targeted to places with high needs but low fiscal capacity. Other programs should be re-examined for perverse incentives (e.g. flood insurance, which provides an incentive to rebuild in areas vulnerable to flooding).

GAO's work over the years has also shown that numerous program areas are characterized by significant program overlap and duplication. In program area after program area, we have found that unfocused and uncoordinated programs cutting across federal agency boundaries waste scarce resources, confuse and frustrate taxpayers and beneficiaries and limit program effectiveness.

And finally, the allocation of costs that once made sense when programs were created needs to be periodically reexamined to keep up with the evolution of markets. In some cases, private markets and program beneficiaries can play greater roles in financing and delivery of program services.

Reassessing What Government Does

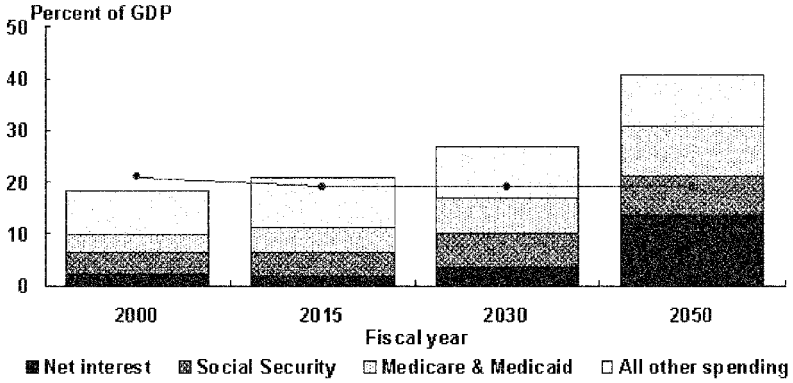
I have talked about the need to protect taxpayer dollars from fraud, waste, abuse, and mismanagement and about the need to take actions improving the economy, efficiency, and effectiveness of government programs, policies, and activities. However, to meet the challenges of today and the future, we must move beyond these levels to undertake a more fundamental reassessment of what government does and how it does it.

In part, this requires looking at current federal programs—both spending and tax—in terms of their goals and results. Why does the program/activity exist? Is the activity achieving its intended objective? If not, can it be fixed? If so, how? If not, what other approaches might succeed in achieving the goal/objective? More fundamentally, even if a program or activity is achieving its stated mission—or can be "fixed" so that it does so—where does it fit in competition for federal resources? Are the taxpayers getting a good "return on investment" from the program? Is its priority higher or lower today given the nation's evolving challenges and fiscal constraints?

A fundamental reassessment also requires asking whether an existing program, policy, or activity "fits" the world that we face today and will face in the future. It is important not to fall into the trap of accepting all existing activities as "givens" while subjecting new proposals to greater scrutiny than existing ones undergo. Think about how much the world has changed in the past few decades and how much it will change in future years. We need a fundamental reassessment and reconsideration of "the base." We need to ask: What is the purpose? What tools are used? What resources? What are the results? What are the costs and benefits? Who benefits? What other programs or activities exist in the same area or with the same goal? How do they compare?

I do not need to tell this Committee that any discussion about the role of the Federal Government, about the design and performance of federal activities, and about the near-term federal fiscal outlook takes place within the context of two dominating facts: a demographic tidal wave is on the horizon, and it, combined with rising health care costs, threatens to overwhelm the nation's fiscal future. The numbers do not add up. The fiscal gap is too great for any realistic expectation that the country can grow its way out of the problem. Figure 2 is just one illustration of this.

Figure 2: Composition of Federal Spending as a Share of GDP



Source: GAO's March 2003 analysis.

Note: Assumes currently scheduled Social Security benefits are paid in full throughout the simulation period.

Now, Mr. Chairman, Mr. Rangel, members of the Committee, let me turn to each of the areas that are the subject of this hearing: Social Security programs and unemployment insurance, Medicare, and tax compliance activities and preferences. In each of these areas the three levels of review I described are relevant: vulnerability to fraud, waste, abuse, and mismanagement; improvements in economy, efficiency, and effectiveness; and, finally, re-examining what government does, how it does business, and sometimes who does the government's business. Needless to say, I will not be discussing all the challenges faced in these program areas or by the departments and agencies that administer them.

SOCIAL SECURITY PROGRAMS

The Social Security Administration (SSA) faces a number of difficult management and policy challenges. This Committee has shown great leadership in pressing SSA to address such concerns, and indeed has achieved many management improvements that have saved millions of dollars, but much remains to be done. First, the agency needs to ensure the integrity of its three programs—Old Age and Survivors Insurance (OASI), Disability Insurance (DI), and Supplemental Security Income (SSI). In particular, it needs to provide continuing management attention to problems in the SSI program, including monitoring new initiatives to correct program weaknesses, and addressing the continuing problem of program complexity. Second, SSA must focus on improving the economy, efficiency, and effectiveness of these programs. SSA urgently needs to address the disappointing results of its efforts to improve the disability claims process it currently uses. Further, the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) both need attention to assure they are administered effectively and equitably. Third and finally, SSA must focus on modernizing its disability programs. GAO has placed modernizing federal disability programs on its high-risk list in recognition of the transformation these programs must undergo to serve the needs of 21st century Americans.

SSA Needs to Continue to Strengthen the Integrity of the SSI Program of SSA's Programs

SSI is the nation's largest cash assistance program for the poor. The SSI program poses a special challenge for SSA because, unlike its insurance programs (OASI and DI), SSI is a means-tested program. For this reason, SSA must collect and verify information on income, resources, and recipient living arrangements to determine initial and continuing eligibility for the program.

We designated SSI a high-risk program in 1997, after several years of reporting on specific instances of abuse and mismanagement, increasing overpayments, and poor recovery of outstanding SSI overpayments. In response to our high-risk designation, SSA made sufficient progress in improving SSI's financial integrity and management to warrant removing its high-risk designation earlier this year. SSA's actions included developing a major legislative proposal with numerous overpay-

ment deterrence and recovery provisions. Many of these provisions were incorporated into the Foster Care Independence Act, which passed in 1999 thanks to the leadership of this Committee. The act directly addresses a number of our prior recommendations and provides SSA with additional tools to prevent and recover overpayments. SSA also took a number of internal administrative actions to strengthen SSI program integrity, many in response to GAO recommendations.[5] These include using tax refund offsets for collecting SSI overpayments and more frequent automated matches to identify ineligible SSI recipients living in nursing homes and other institutions.

Although SSA's current initiatives demonstrate a stronger management commitment to SSI integrity and have the potential to significantly improve program management, challenges remain. In prior work, we have reported that SSI living arrangement and in-kind support and maintenance policies used by SSA to calculate eligibility and benefit amounts were complex, prone to error, and a major source of overpayments.[6] We also recommended that SSA develop options for simplifying the program. Although SSA is considering various options, it has not moved forward in recommending specific proposals for change.

Our current work, to be issued by the end of this month for the Human Resources Subcommittee, suggests that some of these complex policies—such as living arrangements—remain a problem. In recent years, SSA has identified a general increase in the amount of annual overpayments made to (1) individuals who are found to have violated program residency requirements, or (2) recipients who leave the United States and live outside the country for more than 30 consecutive days without informing SSA. The Social Security Act requires that an individual be a resident of the United States to be eligible for SSI benefits.[7] SSA guidelines define a resident as a person who has established a dwelling in the United States with the intent to live in the country. The Act also stipulates that no individual is eligible for SSI benefits for any full month that the individual is outside the United States.[8] Further, an individual who is outside the United States for 30 consecutive days cannot be eligible for SSI benefits until he or she has been back in the country for 30 days. SSA detected overpayments of $118 million for residency violations between 1997 and 2001, but interviews with OIG and agency officials suggest that the agency detects only a portion of the violations that occur each year, at least in some parts of the country.

We identified three kinds of weaknesses which impede SSA's ability to detect and deter residency violations: First, in asking SSI recipients about their current residence, field staff often rely on recipients' own assertions and may accept only minimal documentation from them, such as rent receipts and statements from neighbors or clergy. Recipients who wish to misreport their residency can manipulate such documents. Second, the agency makes limited use of tools at its disposal to detect possible violators. For example, while SSA routinely employs a risk analysis system to identify SSI recipients who are more likely to incur overpayments, it does not use this tool to specifically consider and target potential residency violators. Finally, SSA has not adequately pursued the use of independent, third party data, such as recipient bank account information, to help detect residency violations. Although SSA is currently working with an independent contractor to obtain access to SSI recipients' financial data, the agency plans to use the information only to verify their financial resources. It does not plan to use the information to detect those who may be living and making financial transactions outside the United States for extended periods of time.

As a consequence of the SSI program's problems, we believe that sustained management attention continues to be necessary to improve SSI program integrity. Following our most recent review of SSA's progress,[9] the agency agreed with our recommendations to (1) sustain and expand its program integrity activities underway and continue to develop additional tools to improve program operations and management, (2) identify and move forward with implementing cost-effective options for simplifying complex policies, (3) evaluate current policies for applying penalties for individuals who fail to report essential eligibility information and remove barriers

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[5] U.S. General Accounting Office, *Supplemental Security Income: Action Needed on Long-Standing Problems Affecting Program Integrity,* GAO/HEHS–98–158 (Washington, D.C.: Sept. 14, 1998).

[6] GAO/HEHS–98–158.

[7] See 42 U.S.C. sec. 1382c(a)(1)(B)(i).

[8] See 42 U.S.C. sec. 1382(f).

[9] U.S. General Accounting Office, *Supplemental Security Income: Progress Made in Detecting and Recovering Overpayments, but Management Attention Should Continue,* GAO–02–849 (Washington, D.C.: Sept. 16, 2002).

to their use and effectiveness, and (4) reexamine its policies for waiving recovery of SSI overpayments

Improving the Economy, Efficiency, and Effectiveness of SSA's Programs

As important as ensuring the integrity of SSA's programs is, the agency also faces difficult challenges in improving the economy, efficiency, and effectiveness of its programs, including administering certain provisions of the Social Security Act such as the Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP). Most importantly, the agency must place greater emphasis on improving its flawed disability claim process.

Administration of the Government Pension Offset and Windfall Elimination Provision Remains a Concern

The GPO and the WEP reduce Social Security benefits for those who receive noncovered pension benefits.[10] The GPO affects spouse and survivor benefits and the WEP affects retired worker benefits. Both provisions depend on having complete and accurate information on receipt of noncovered pension benefits. However, such information is not always available for the state and local pension plans that do not participate in Social Security. In particular, our prior work found that SSA is often unable to determine whether applicants should be subject to the GPO and WEP because it does not have access to any independent source of noncovered pension information. Thus, both the GPO and WEP have proven difficult for SSA to administer. To help correct this situation, we previously recommended that SSA work with the Internal Revenue Service (IRS) to revise the reporting of pension information on IRS Form 1099R, so that SSA would be able to identify people receiving a pension from noncovered employment, especially in state and local governments.[11] However, IRS does not believe it can make the recommended change without new legislative authority. Thus, in a recent testimony before the Ways and Means Social Security Subcommittee, we recommended that the Congress consider giving the Service the authority to collect this information.[12] We estimate that millions of dollars in reduced overpayments could be achieved by implementing such payment controls.

In addition to this administrative problem, we continue to be concerned about the GPO "last day" exemption. As you know, the GPO prevents workers from receiving a full Social Security spousal benefit on top of a pension earned from government employment not covered by Social Security. However, the law provides an exemption from the GPO if an individual's last day of state/local employment is in a position that is covered by both Social Security and the state/local government's pension system. In a recent study, we found instances where individuals performed work in Social Security covered positions for short periods to qualify for the GPO last-day exemption. The practices we identified in Texas and Georgia alone could increase long-term benefit payments from the Social Security Trust Fund by $450 million. In response to a recommendation we made, this committee—and subsequently the full House—passed the Social Security Protection Act of 2003 (H.R. 743), which includes a provision to lengthen the time period to qualify for the GPO exemption from 1 day to 5 years. The bill is still pending in the Senate, and if passed, will narrow this loophole significantly.

Efforts to Improve the Disability Claims Process Have Been Disappointing

SSA's disability determination process is time-consuming, complex, and expensive. Although the agency has been working for years to improve this process, ensuring the quality and timeliness of its disability decisions remains one of SSA's greatest unmet challenges. Individuals initially denied benefits by SSA who appeal their claims may wait a year or more for a final decision on their eligibility. These long waits result, in part, from complex and fragmented decision-making processes that are laden with many layers of reviews and multiple handoffs from one person to another. The demanding nature of the process can be seen in the cost of administering the DI and SSI programs. Although SSI and DI program benefits account for less

[10] Social Security's provisions regarding public employees are rooted in the fact that about one-fourth of them do not pay Social Security taxes on the earnings from their government jobs. Even though these noncovered employees may have many years of earnings on which they do not pay Social Security taxes, they can still be eligible for Social Security benefits based on their spouses' or their own earnings in covered employment.

[11] See U.S. General Accounting Office, *Social Security Administration: Better Payment Controls for Benefit Reduction Provisions Could Save Millions,* GAO/HEHS–98–76 (Washington, D.C.: Apr. 30, 1998).

[12] See U.S. General Accounting Office, *Social Security: Issues Relating to Noncoverage of Public Employees,* GAO–03–710T (Washington, D.C.: May 1, 2003).

than 20 percent of SSA's total benefit payments, they consume nearly 55 percent of the annual administrative resources.

SSA has also had difficulty ensuring accurate and consistent decisions regarding a claimant's eligibility for disability benefits across all levels of the decision-making process. Our work shows that in fiscal year 2000, about 40 percent of the applicants whose cases were denied at the initial level appealed this decision and about two-thirds of those who appealed were awarded benefits at a hearing.[13] The large proportion of cases awarded benefits at the hearings level and the potential inconsistency of decisions at these two levels has raised questions about the fairness, integrity, and cost of SSA's disability programs.

SSA is at a crossroads in its efforts to redesign and improve its disability claims process. SSA's new Commissioner has acknowledged the limited progress to date, has made the issue one of the agency's priorities, and has taken the first steps to address this problem. However, as we testified in May 2002, the agency's past experience may argue for SSA to undertake a new and comprehensive analysis of the fundamental issues impeding progress.[14] Such an analysis should include reassessing the root causes contributing to the programmatic weaknesses in the agency's disability determination process that we noted earlier. The outcome of this analysis may, in some cases, require legislative changes to the disability determination process.

Reassessing What Government Does: Disability Programs Must be Modernized

Although SSA's disability claims process requires urgent management attention, the *policies* underlying federal disability programs also require transformation. Federal disability programs represent an example of a disconnect between program design and today's world—a disconnect great enough to warrant our designation as a high-risk area this year.[15] Already growing, SSA's disability programs are poised to surge as baby-boomers age, yet the programs remain mired in outdated economic, workforce, and medical concepts and are not well positioned to provide meaningful and timely support to Americans with disabilities. These outdated concepts persist despite scientific advances and economic and social changes that have redefined the relationship between impairments and the ability to work. In addition, while SSA has taken some steps in trying to return beneficiaries to work, it has not developed, as we have recommended, a comprehensive return-to-work strategy that focuses on identifying and enhancing beneficiaries' work capacities.

Over the last 10 years, the number of working-age beneficiaries of the DI and SSI programs has increased by 38 percent even as changes in medicine, technology, society, and the nature of work have increased the potential for some people with disabilities to return to, or remain in, the labor force. In addition, legislative changes have also focused on returning disability beneficiaries to work. Specifically, the Americans with Disabilities Act of 1990 supports the premise that people with disabilities can work and have the right to work and the Ticket to Work and Work Incentives Improvement Act of 1999 increased beneficiaries' access to vocational services.

About 12 years ago, SSA began reviewing relevant medical advances and updating the criteria used to evaluate disability claims.[16] SSA's efforts to update the criteria were curtailed in the mid-1990s by staff shortages, competing priorities, and lack of adequate research on disability issues. The updates resumed in 1998, but progress has been slow and the lengthy time frames could undermine the very purpose of an update.

Using outdated information calls into question the validity of disability decisions and raises the risk of overcompensating some individuals while under compensating or inappropriately denying compensation entirely to others. SSA needs to reexamine the criteria—both medical and vocational—it uses to determine whether individuals are eligible for benefits.

Even if SSA modernizes its criteria, it will continue to face difficulties in returning beneficiaries to work, in part, due to weaknesses in the design of the disability

[13] U.S. General Accounting Office, *Social Security Disability: Efforts to Improve Claims Process Have Fallen Short and Further Action is Needed,* GAO–02–826T (Washington, D.C.: June 11, 2002).

[14] U.S. General Accounting Office, *Social Security Administration: Agency Must Position Itself Now to Meet Profound Challenges*, GAO–02–289T (Washington, D.C.: May 2, 2002).

[15] GAO–03–119.

[16] These updates include adding or dropping conditions that qualify one for benefits, modifying the criteria needed to establish the presence and severity of certain medical conditions, and wording changes for clarification and guidance in decision making.

programs.[17] The current process produces a strong incentive for applicants to establish their inability to work to qualify for benefits. Moreover, instead of receiving assistance to stay in the workforce or return to work—and thus to stay off the long-term disability rolls—an individual can obtain assistance through DI or SSI only by proving his or her inability to work. And even in its efforts to redesign the decision-making process, SSA has yet to incorporate into these initiatives an evaluation of what an individual may need to return to work.

Although the agency has taken a number of actions to improve its return-to-work practices, it has achieved poor results in this arena and few DI and SSI beneficiaries leave the disability rolls to work. As we have recommended previously, SSA still needs to move forward in developing a comprehensive return-to-work strategy that integrates, as appropriate, earlier intervention, including earlier and more effective identification of work capacities and the expansion of such capacities by providing essential return-to-work assistance for applicants and beneficiaries.[18]

Modernizing and fully incorporating work-oriented policies in the disability programs requires fundamental change, such as revisiting the programs' basic orientation. Such a reorientation would require examining complex program design issues such as beneficiaries' access to medical care and assistive technologies, the benefits offered and their associated costs, mechanisms to return beneficiaries to work, as well as the integration of SSA's programs with other programs and policies affecting people with disabilities. Success in implementing fundamental change to the orientation of the disability programs will be dependent upon consultation and cooperation between the executive and legislative branches as well as cross-agency efforts, and will likely require statutory as well as regulatory action.

UNEMPLOYMENT INSURANCE

We have identified program integrity weaknesses similar to those we have identified in the SSI program in another program that falls under this committee's jurisdiction: the Department of Labor's (Labor) Unemployment Insurance (UI) program. We found problems at both the federal and state level that contribute to overpayments in this program, including an insufficient balance between the need to process and pay UI claims in a timely manner with the need to control program payments.

Of the $30 billion in UI benefits paid in calendar year 2001, Labor estimates that a total of about $2.4 billion in overpayments occurred, including about $577 million (24 percent) attributable to fraud or abuse. Overpayments in the UI program result from management and operational practices we identified at both the state and federal level. At the state level, we found that many states do not sufficiently balance the need to quickly process and pay UI claims with the need to control program payments. For example, we found that five of the six states we visited had diverted staff from benefit payment control operations to claims processing activities over the past year in response to increases in the volume of UI claims. Moreover, while a number of states we visited routinely use independent automated data sources to verify key information that can affect claimants' eligibility for benefits—such as an individual's wages and employment status—they also rely heavily on self-reported information from claimants for other important data, such as a claimant's receipt of other federal or state program benefits and whether they are citizens of the United States. Many of these states lack access to data sources for verifying claimants' identity in a timely manner and thus rely on verification processes that are incomplete or information sources that are only checked periodically.

In addition to the practices we identified at the state level that contribute to overpayments, we found that policies and directives from the Department of Labor affect states' priorities and procedures in a manner that makes overpayments more likely. For example, the performance measures that Labor uses to gauge states' operations tend to emphasize payment timeliness more heavily than payment accuracy. Labor has also been reluctant to link the states' performance on payment accuracy to the annual administrative budget as a way of providing incentives or sanctions for good or poor performers. Despite these problems, we found that Labor has taken actions to improve UI program integrity by working to obtain data from additional sources that could help states make more accurate eligibility decisions and developing a performance measure in its fiscal year 2003 performance plan for gauging state payment accuracy in future years. In addition, under the leadership of this committee, the House recently passed the Welfare Reform bill of 2003 (H.R. 4), which author-

[17] U.S. General Accounting Office, *SSA Disability: Program Redesign Necessary to Encourage Return to Work*, GAO/HEHS–96–62 (Washington, D.C.: Apr. 24, 1996).

[18] U.S. General Accounting Office, *SSA Disability: Return-to-Work Strategies From Other Systems May Improve Federal Programs*, GAO/HEHS–96–133 (Washington, D.C.: July 11, 1996).

izes state unemployment insurance agencies to obtain wage and new hire information from the Department of Health and Human Service's National Directory of New Hires.[19] These data could be used to more effectively verify individuals' eligibility for UI benefits.

MEDICARE

Medicare is one of the largest and most complex programs in the Federal Government, making it highly vulnerable to waste, fraud, abuse, and mismanagement. We placed Medicare on our list of high-risk programs more than a decade ago and it remains on that list today. In fiscal year 2002, Medicare paid about $257 billion for a wide variety of inpatient and outpatient health care services for over 40 million elderly and disabled Americans. The Centers for Medicare & Medicaid Services (CMS) contracts with 38 health insurance companies to pay and process about 1 billion fee-for-service claims submitted each year by over 1 million hospitals, physicians, and other health care providers. Over the years, we have reported on challenges the agency has faced to safeguard billions of program dollars and obtain current and reliable data to set payments and monitor its programs. While CMS has made progress in improving Medicare's financial management, much more could be done to improve Medicare's operations.

Oversight of Contractor Performance Critical to Program Integrity

Medicare contractors are charged with ensuring that claims are paid properly and that fraud or abuse is prevented or detected. However, contractors' performance has varied and CMS has not always overseen their efforts effectively, as the following illustrates:

- *Medical review*—Medical review is a program safeguard designed to detect improper billing and payment. Medical reviews involve detailed examinations of a sample of claims by clinically trained staff and require that physicians submit medical records to substantiate their claims. Although our assessment found that claims administration contractors' decisions to pay or deny claims were generally accurate, contractors were less effective at targeting for review those claims most likely to be billed inappropriately.[20] Furthermore, CMS did not guide the contractors in selecting the most effective criteria for medical review or encourage them to share best practices—two steps that could help reduce improper payments.
- *Communication with physicians*—In order to bill Medicare correctly, physicians need to understand program rules and how to implement billing changes as they occur. We found that contractors' communications with physicians were often incomplete, confusing, untimely, or even incorrect—making it more difficult for physicians to bill correctly.[21] For example, only 15 percent of the calls we placed to contractors' call centers asking "frequently asked questions" were answered accurately and completely by contractors' staff. CMS has set few standards to guide claims administration contractors' communications with physicians.

Weaknesses in contractor performance and agency oversight increase the risk of improper payment. Since 1996, the Department of Health and Human Services' (HHS) Office of the Inspector General (OIG) has estimated that Medicare's contractors improperly paid claims worth billions of dollars each year—more than $13 billion in fiscal year 2002 alone. While useful to focus attention on the extent of the problem, this error rate did not provide CMS with information to target improvements. To address this shortcoming, in August 2000, CMS began implementing a new error rate measurement methodology that will provide national error rates beginning in fiscal year 2003, as well as error rates by contractor, provider type, and benefit category. Better error rate data is a first step toward enhancing CMS's ability to hold individual Medicare contractors accountable or help contractors identify and take steps to correct problematic billing practices.

Difficulties in Setting Appropriate Payment Rates Increase Medicare Spending

We have reported in many instances that Medicare has paid too much for items and services provided to its beneficiaries. Such wasteful spending is disturbing news for both the American taxpayer and Medicare beneficiaries, who pay higher co-pay-

[19] This bill is currently pending in the Senate.

[20] U.S. General Accounting Office, *Medicare: Recent CMS Reforms Address Carrier Scrutiny of Physicians' Claims for Payment*, GAO–02–693 (Washington, D.C.: May 28, 2002).

[21] U.S. General Accounting Office, *Medicare: Communications With Physicians Can Be Improved,* GAO–02–249 (Washington, D.C.: Feb. 27, 2002).

ments when the amount Medicare pays is too high. While the problem of excessive Medicare payments has been clearly identified, solutions may not be quick or easy.

- *Skilled nursing facilities and home health agencies*—Medicare payments are significantly more than the cost of caring for beneficiaries in most skilled nursing facilities and by most home health agencies.[22] In 2000, Medicare paid nearly one quarter of skilled nursing facility providers over 30 percent more than costs.[23] In the first 6 months of 2001, Medicare paid, on average, 35 percent more than providers' costs for home health care.[24] We have recommended that CMS minimize excessive payments to home health agencies by introducing risk sharing.[25] Risk sharing would limit the total losses or gains a home health agency could experience by sharing them with the Federal Government. Such an approach would protect the Medicare program from overpaying for services and home health agencies from the financial risk of serving beneficiaries with greater than average needs, when those service costs are not accounted for under the current payment system.
- *Medical equipment and supplies*—Over the years, studies have shown that Medicare has been paying too much—in some cases more than three times suppliers' acquisition costs—for certain medical equipment and supplies.[26] For example, we estimated that Medicare could have saved over $500 million in fiscal year 1996 if it paid rates for home oxygen services comparable to those paid by the Department of Veterans Affairs (VA).[27] Since then, the Balanced Budget Act of 1997 reduced oxygen payment rates by 25 percent effective in 1998, and by an additional 5 percent effective in 1999. Nevertheless, in a demonstration of competitive acquisition, CMS was able to reduce Medicare's payments by at least 16 percent more in the demonstration areas, while requiring suppliers to meet additional quality standards. Medicare pricing for medical equipment and supplies is problematic because payments are based on fee schedules that are generally tied to suppliers' historical charges to the program—not to current actual or market prices. Moreover, the process for adjusting these fees nationally has been cumbersome and rarely used.
- *Covered prescription drugs*—The pricing of covered prescription drugs—for which Medicare and its beneficiaries paid more than $8.2 billion fiscal year 2002—is particularly problematic. In 2000, Medicare paid over $1 billion more than other purchasers for outpatient drugs that the program covers.[28] Medicare's method for establishing drug payments is flawed because it is based on 95 percent of the average wholesale price (AWP), which is neither an average, nor a price that wholesalers charge. For example, in January 2003, we reported that Medicare paid significantly more than the two major types of suppliers for blood clotting factor, which is used to treat people with hemophilia. While Medicare received a 5 percent discount from AWP, one type of supplier acquired the clotting factor at a discount of 35 percent to 48 percent.[29] Similarly, we re-

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[22] In fiscal year 2001, Medicare paid $13 billion to skilled nursing facilities and $9 billion for home health services.

[23] U.S. General Accounting Office, *Skilled Nursing Facilities: Medicare Payments Exceed Costs for Most but Not All Facilities,* GAO–03–183 (Washington, D.C.: Dec. 31, 2002).

[24] U.S. General Accounting Office, *Medicare Home Health Care: Payments to Home Health Agencies Are Considerably Higher than Costs*, GAO–02–663 (Washington, D.C.: May 6, 2002).

[25] U.S. General Accounting Office, *Medicare Home Health Care: Prospective Payment System Will Need Refinement as Data Become Available*, GAO/HEHS–00–9 (Washington, D.C.: Apr. 7, 2000) and U.S. General Accounting Office, *Medicare Home Health Care: Prospective Payment System Could Reverse Recent Declines in Spending*, GAO/HEHS–00–176 (Washington, D.C.: Sept. 8, 2000).

[26] Medicare fee payments and beneficiary cost sharing for medical equipment and supplies, which includes prosthetics (or artificial limbs or other body parts) and orthotics (or braces) totaled approximately $9 billion for calendar year 2002. This category includes some drugs covered under part B, such as drugs used in a piece of equipment—for example, a nebulizer or an infusion pump.

[27] U.S. General Accounting Office, *Medicare: Home Oxygen Program Warrants Continued HCFA Attention,* GAO/HEHS–98–17 (Washington, D.C.: Nov. 7. 1997).

[28] While Medicare does not have a comprehensive outpatient drug benefit, certain drugs and biologicals are covered under part B of the program, which also provides coverage for certain physician, outpatient hospital, laboratory, and other services to beneficiaries who pay monthly premiums. See U.S. General Accounting Office, *Medicare: Payments for Covered Outpatient Drugs Exceed Providers' Cost*, GAO–01–1118 (Washington, D.C.: Sept. 21, 2001).

[29] Hemophilia treatment centers and homecare companies are the two major providers of clotting factors to beneficiaries. See U.S. General Accounting Office, *Medicare: Payment for Blood Clotting Factor Exceeds Providers' Acquisition Cost*, GAO–03–184 (Washington, D.C.: Jan. 10, 2003).

ported in 2001 that pharmacy suppliers could acquire the two most common inhalation drugs, which are among the five drugs with the highest Medicare payments, for a 78 percent to 85 percent discount from AWP.[30] As a consequence of Medicare's pricing method, its payments are not related to market prices that physicians and suppliers actually pay.

We made two recommendations to improve drug pricing that could also be applicable to pricing for medical equipment and supplies. They are to: 1) use information on market transactions already available to VA and HHS as a benchmark for Medicare payment and 2) examine the benefits and risks of expanding competitive bidding.

CMS's recent competitive bidding demonstration to set fees for selected medical equipment, supplies, and covered outpatient drugs suggests that such competition can lead to lower prices. Preliminary annual gross savings from competitive bidding were estimated to range from 17 percent to 22 percent for the products bid compared to fee schedule amounts. However, CMS would need statutory authority to use this method of setting fees on a wider scale.

Current Legislation Introduces Operational Changes To Address Certain Program Administration and Payment Issues

- In this session of the Congress, both Houses have passed major legislation that—if reconciled and signed into law—would restructure Medicare through adding a prescription drug benefit. Depending on how it is finalized, this legislation may also introduce significant operational changes to the Medicare program.
- *Competitive contracting for claims administration*—Under Medicare's current statute and regulations, its contracting authority and practices differ from those embodied in standard federal contracting law and regulations. One key difference is that CMS generally does not competitively bid for the services of its claims administration contractors. Both the Senate and the House bills amend the Medicare statute to require competitive contracting for claims administration. This authority has the potential for significantly improving Medicare program administration. Nevertheless, managing the transition to a competitive contracting environment will be an enormous new challenge. Federal agencies that manage large procurements of contracted services—such as the departments of Energy and Defense—have had problems with cost and schedule overruns and have failed to hold their contractors accountable for performance.[31] CMS would need to carefully manage its own contracting efforts to avoid some of the pitfalls experienced by other agencies.
- *Setting payments for medical equipment and supplies and covered outpatient drugs*—The House and the Senate bills have taken different approaches to this issue, but both have sections that are designed to address payment-setting for medical equipment, supplies, and currently covered prescription drugs. The House passed legislation that would give CMS authority to use competitive bidding to set payments for certain medical equipment, supplies, and certain drugs. It would also allow market information from these efforts to be used as a benchmark for national payments. The Senate bill continued to rely on AWP as a pricing mechanism for currently covered outpatient drugs. However, it allowed CMS to substitute payment amounts that differed from those linked to AWP, using amounts developed through a new process and based on market price information from a number of specified sources.

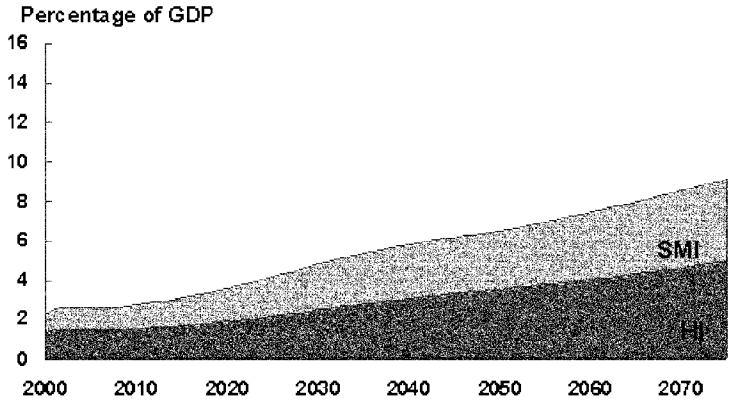
Medicare Reform Calls for Aligning Incentives and Strengthening Accountability

The 2003 Trustees' annual report reminds us that Medicare as it is currently structured is not fiscally sustainable. The retirement of the baby boom generation will place huge fiscal pressures on the program. Between now and 2035, the number of people age 65 and older will double. Federal health and retirement spending on Medicare and Social Security are expected to increase, as people live longer and spend more time in retirement, as shown in figure 3.

[30] GAO–01–1118.

[31] U.S. General Accounting Office, *High-Risk Series: An Update*, GAO–01–263 (Washington, D.C.: January 2001).

Figure 3: Medicare Is Projected to Grow Dramatically As A Share of GDP



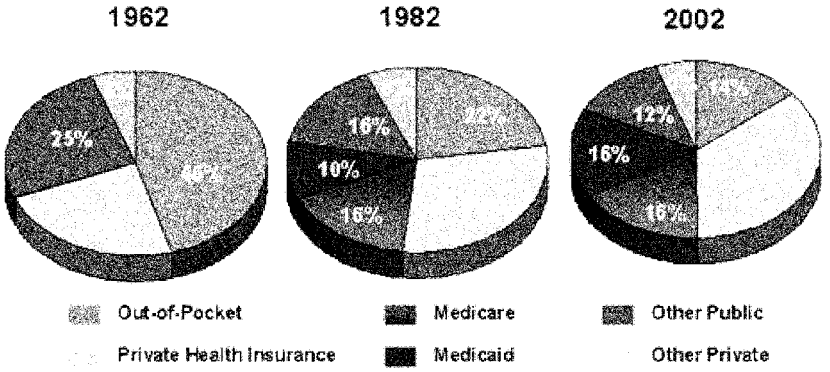
Source: CMS, Office of the Actuary

Notes: Projections are based on the intermediate assumptions of the 2003 Trustees' Reports for Hospital Insurance (HI) and Supplemental Medical Insurance (SMI).

Moreover, the baby boomers will have fewer workers to support them in retirement. Further fiscal pressures will be placed on the program by a new prescription drug benefit, although adding coverage that includes protection against financially devastating drug costs will help beneficiaries who lack prescription drug coverage.

While the demographic trends will affect both Medicare and Social Security, Medicare spending growth also reflects rising health care costs. The growth of medical technology has contributed to the number and quality of health care services, but has helped increase health care costs, which have risen faster than inflation. Consumers are less sensitive to those costs when third parties pay most of the price tag. As figure 4 shows, the percentage of health care costs paid through out-of-pocket spending has declined in the last 40 years, with private and public insurance paying a larger share.

Figure 4: Out-of-Pocket Spending Has Declined Substantially Over The Last Four Decades



Source: CMS, Office of the Actuary, National Health Statistics Group

Note: The figure for 2002 is estimated. Out-of-pocket spending includes direct spending by consumers on coinsurance, deductibles, and any amounts not cov-

ered by insurance. Out-of-pocket premiums paid by individuals are not counted here, but are counted as part of Private Health Insurance.

Providing tax preferences for health insurance further masks the full costs of care and can work at cross purposes to the goal of moderating health care spending. This suggests that some of the solutions to Medicare's dilemma reside outside the program—in the larger arena of the health care system, its cost drivers, and the tax preferences that support them.

Given this context, aligning incentives to restrain spending growth and strengthen accountability within the program—while not sufficient by themselves—are still necessary. This is an ongoing effort that has to be accomplished in myriad small and large steps in the current program and as changes are made to it. At present, 84 percent of beneficiaries are in the traditional fee-for-service Medicare program. As a consequence, traditional Medicare is likely to have a significant role for years. Addressing its flaws—such as billions in improper payments and sometimes overly generous payments—is critical to any effort to restrain spending growth.

Unfortunately, addressing these flaws is unlikely to be sufficient to restrain Medicare's growth. Substantive financing and programmatic reforms will be necessary to put Medicare on a sustainable footing for the future. Without such fundamental reforms, Medicare's growth threatens to absorb ever-increasing shares of the nation's budgetary and economic resources. As we seek to bring our government in line with 21st century challenges, we must be mindful that health care costs compete with other legitimate priorities in the federal budget, and their projected growth threatens to crowd out future generation's flexibility to decide which competing priorities will be met. The public sector can play an important role in educating the nation about the limits of public support. In this regard, we are preparing a health care framework that includes a set of principles to help policymakers in their efforts to assess various health financing reform options. By facilitating debate, the framework can encourage acceptance of changes necessary to put us on a path to fiscal sustainability.

TAX COMPLIANCE AND PREFERENCES

Ensuring that taxpayers meet their tax obligations under an increasingly complex tax code has long presented the IRS with daunting challenges. Although the majority of taxpayers voluntarily and timely pay the taxes they owe, regrettably high levels of noncompliance by some taxpayers persist. Some noncompliance is intentional and may be due to outright fraud and the use of abusive tax shelters or schemes. In other cases, noncompliance stems from unintentional errors and taxpayers' misunderstanding of their obligations. Regardless of the cause or type of taxpayer—corporate, individual, or other—we have designated the collection of unpaid taxes as a high-risk area. This high-risk area includes detecting noncompliance and collecting taxes due but not paid. More broadly, Congress has created an increasing number of tax preferences that IRS must administer. In some cases, those tax preferences are among the largest federal efforts to address social and other problems. Yet the economy, efficiency, and effectiveness of those preferences in achieving their purposes are often not well understood. A better understanding of how well these preferences work would both support improving them as well as reconsidering whether certain preferences should be retained.

Tax Compliance and Collection Activity Declines Are Of Increasing Concern

Because of the potential revenue losses and the threat to voluntary compliance, the collection of unpaid taxes is a high-risk area. Collecting taxes due the government has always been a challenge for IRS, but in recent years the challenge has grown. Collecting taxes due includes both compliance programs, like audits, that identify those who owe more than they self-report, and collection programs that seek payment of taxes assessed but not timely paid. However, IRS compliance and collections programs have seen larger workloads, less staffing, and fewer cases closed per employee.

For the last several years, Congress and others have been concerned that the declines in IRS's enforcement programs are eroding taxpayers' confidence that their friends, neighbors, and business competitors are also paying their fair share of taxes, which may put at risk their willingness to voluntarily comply with the tax laws. Further, there is some evidence that willingness to voluntarily comply with the tax laws may be declining. A survey conducted by the IRS Oversight Board in 2001 found that the percentage of respondents who thought it was never acceptable to cheat on their income taxes was 76 percent, which was down from 87 percent who felt that way in a 1999 survey. Also, 42 percent of respondents to the 2001 survey said that they believed it was more likely than in it was in the past that people

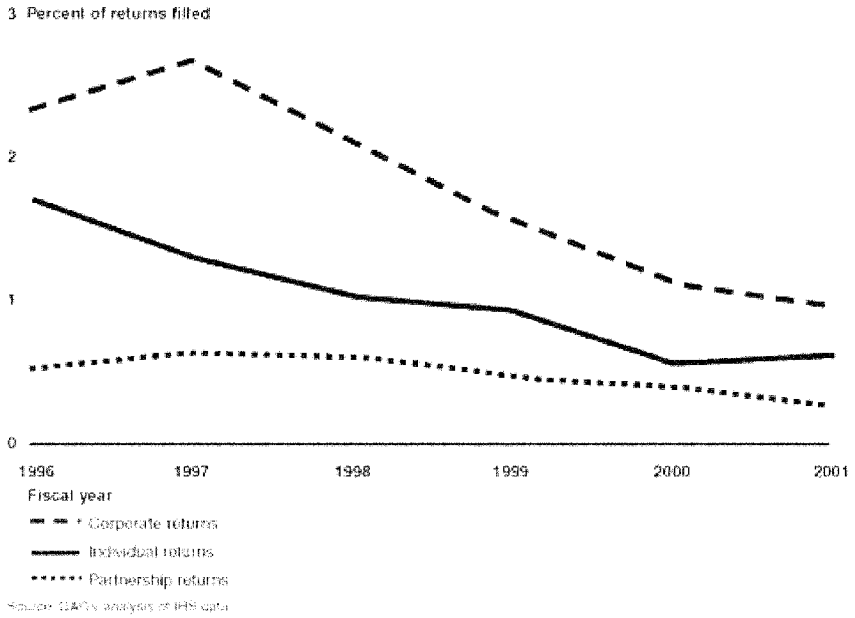
do not report and pay their fair amount of taxes and 9 percent said that they were more likely to take a chance on being audited than they had been before.[32]

Unfortunately, not enough is known at present about the extent of noncompliance and where problems are the most serious. IRS only recently restarted the research program necessary to develop this information after many years without such research. When last IRS last conducted detailed compliance research using tax year 1988 data, some types of taxpayers were found to have especially serious compliance problems. For example, small business noncompliance was about 40 percent, farm and non-farm sole proprietor noncompliance was about 32 percent, and informal suppliers' noncompliance was about 81 percent.[33] While specific, current data is not yet available, the IRS Commissioner said in May 2002 congressional hearings that IRS was not providing taxpayers with adequate assurance that their neighbors or competitors were complying with the tax laws and paying what they owed.

The number of tax returns increases every year. Between 1993 and 2002, the number of individual returns filed went from 114.7 million to approximately 130 million—a 13 percent increase over those 10 years. IRS projects the number of total individual returns filed will be 132.3 million in 2003 and continue to increase at an annual rate of 1.5 percent until 2009. Such a rate of increase would lead to 145.3 million total individual returns filed in 2009. Returns from businesses and other entities have also increased substantially.

While the number of tax returns has increased, key compliance program rates have declined. In testimonies and reports, GAO has highlighted large and pervasive declines in IRS's compliance programs. These programs, not all of which have seen declines, include computerized checks for nonfiling and underreported income as well as audits of both individual taxpayers and business entities. Between 1996 and 2001, key programs generally experienced growing workloads, decreased staffing, and decreases in the number of cases closed per employee. Figure 5 shows the decline in audit rates for different types of taxpayers.

Figure 5: Change in Percentage of Returns Audited, 1996–2001



Even as these audit rates decline, IRS has faced new challenges in ensuring that individuals, small businesses, and corporations pay the taxes they owe. IRS's Chief

[32] These two questions were new in the 2001 survey so there are not comparative figures from 1999.

[33] Informal suppliers are sole proprietors who operate in an informal business style, such as door-to-door sales and individuals who moonlight to augment their wage income.

Counsel has said that, in the 1990s, thousands of corporations and wealthy individuals participated in abusive tax shelters promoted by accounting firms, law firms, investment banks, and others, and the tax benefits claimed per taxpayer were significant. To deal with this and other problems, the President's fiscal year 2004 budget proposal noted that IRS is shifting enforcement resources from the tax returns of lower-income individuals and small corporations. One recent IRS initiative resulted in 1,206 taxpayers disclosing transactions involving $30 billion in claimed losses and deductions.

IRS faces challenges in executing its strategy for dealing with tax shelters and schemes. As the former Commissioner of Internal Revenue noted, abusive shelters have been factually and legally complex, accompanied by tax opinions legitimizing transactions and encouraging litigation. Also, in a September 2001 report, the Treasury Inspector General for Tax Administration recommended that IRS start laying a better foundation for its strategy by more precisely estimating the shelter problem. IRS agreed to estimate abusive corporate shelters' potential tax revenue effect.

Another increasingly challenging area is that of corporate inversions. According to a 2002 Department of a Treasury report, corporate inversions are transactions that change a U.S.-based multinational group's structure "so that a new foreign corporation, typically located in a low- or no-tax country, replaces the existing U.S. parent corporation as the parent of the corporate group."[34] The report stated that although such transactions were not new, they were growing in frequency, size, and profile. Instead of being motivated by market conditions, they were motivated largely by available tax savings and involved little or no immediate operational change. According to Treasury, the fact that our tax law operates so that substantial tax reductions are available through transactions of more form than substance is troubling to both policymakers and the public.

IRS collections programs are also increasingly stressed. As we reported in May 2002, between fiscal years 1996 and 2001 trends in the collection of delinquent taxes showed almost universal declines in collection program performance in terms of coverage of workload, cases closed, direct staff time used, productivity, and dollars of unpaid taxes collected.[35] Although the number of delinquent cases assigned to collectors went down during this period, the number of collections cases closed declined more rapidly, creating an increasing gap. During that 6-year period, the gap between the new collection workload and collection cases closed grew at an average annual rate of about 31 percent, as shown in figure 6.[36]

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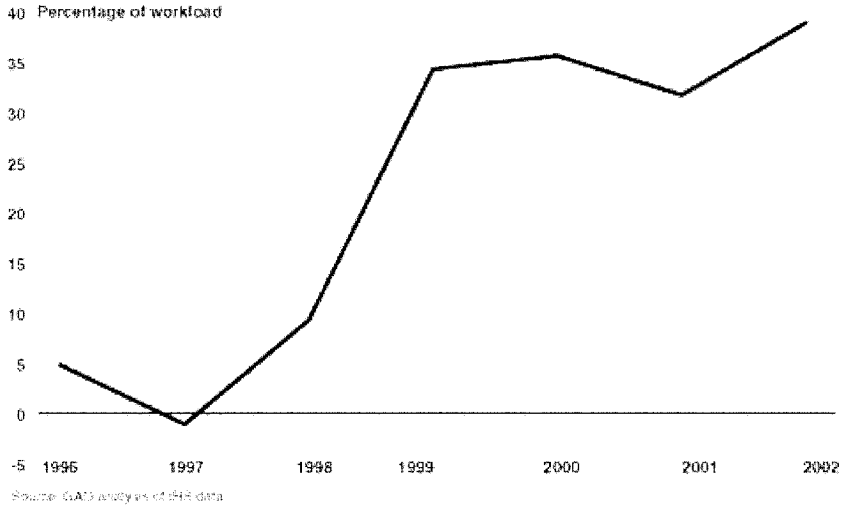
[34] Department of the Treasury, Office of Tax Policy, *Corporate Inversion Transactions: Tax Policy Implications,* (Washington, D.C.: May 17, 2002).

[35] U.S. General Accounting Office, *Tax Administration: Impact of Compliance and Collection Program Declines on Taxpayers*, GAO–02–674 (Washington, D.C.: May 22, 2002).

[36] Workload is the number of delinquent accounts assigned to field and telephone collection. Work completed is the number of delinquent accounts worked to closure, excluding accounts for which collection work has been deferred.

Figure 6: Percentage Gap Between New Collection Workload and Work Completed, Fiscal Years 1996–2002



Source: GAO analysis of IRS data

The increasing gap between collection workload and collection work completed led IRS in March 1999 to start deferring collection action on billions of dollars in delinquencies. Officials recognized that they could not work all collection cases, and they believed that they needed to be able to deal with taxpayers more quickly; particularly taxpayers who were still in business and owed employment taxes.[37]

By the end of fiscal year 2002, after the deferral policy had been in place for about 3 and one-half years, IRS had deferred taking collection action on about $15 billion in unpaid taxes, interest, and penalties that are likely collectable. IRS's deferral of collection action has declined somewhat since the deferral policy was adopted. Although the rate has declined from 45 percent in 2000, in 2002 IRS was still deferring collection action on about one out of three collection cases—about 32 percent.

IRS is working to reverse these declines. One key element of improving IRS's compliance programs is obtaining current measures of compliance to use in targeting IRS's scarce resources to known compliance problems. The National Research Program (NRP) is a major effort now underway at IRS to identify the extent and sources of noncompliance. The current NRP initiative includes individual returns, including taxpayers reporting income from small businesses. IRS plans to conduct future iterations of NRP for different types of returns and to return to individual filers every 3 years. We have reported that the program's design is likely to yield the detailed information IRS needs about the extent and causes of noncompliance and enable IRS to improve its targeting of compliance programs.[38]

Another key to improving IRS's compliance and collections programs is to make more efficient use of its resources. IRS has a number of reengineering efforts underway to improve its compliance and collection processes. These efforts range from relatively small-scale improvements to much more ambitious changes. For example, IRS is seeking to substantially increase the amount of information available to its auditors before they first contact a taxpayer. The goal is to make the best use of the information IRS already has available to it before commencing an audit. IRS is also seeking to change the way it identifies collections cases to pursue in order

[37] IRS considers employment tax compliance to be among the most challenging issues for small business, since delinquent tax can rapidly compound beyond the employer's ability to pay. See U.S. General Accounting Office, Tax Administration: IRS's Efforts to Improve Compliance with Employment Tax Requirements Should Be Evaluated, GAO–02–92, (Washington, D.C.; Jan. 15, 2002).

[38] U.S. General Accounting Office, Tax Administration: New Compliance Research Effort is on Track, but Important Work Remains, GAO–02–769, (Washington, D.C.: June 27, 2002); and U.S. General Accounting Office, Internal Revenue Service: Assessment of Fiscal Year 2004 Budget Request and 2003 Filing Season Performance to Date, GAO–03–641T, (Washington, D.C.: Apr. 8, 2003).

to improve targeting of scarce collections resources towards cases that it is most worthwhile to pursue.

Yet another key to ensuring that taxpayers meet their obligations is adequately staffing IRS's compliance and collections programs. Since 2001, IRS's budget requests have made increasing its compliance and collection staff one of several key priorities. However, staffing in two key compliance and collection occupations—revenue agents and revenue officers—was lower in 2002 than in 2000. This continues a general trend of declining staffing in these occupations for a number of years.

While tax compliance and collection issues can be found in many areas, I would like to give a few examples of persistent compliance issues. This is by no means an inclusive list. For example, compliance issues are also pervasive in the area of excise taxes, such as fuel tax evasion.

Employment Tax Compliance

In fiscal year 2000, IRS collected $1.3 trillion in amounts withheld by employers from employees' salaries to cover individual federal income tax, Social Security, and Medicare taxes; and in employers' matching amounts for Social Security and Medicare taxes. Although the majority of employers withhold, match, and deposit these taxes as required, for those who fail to do so, the amount of unpaid employment taxes, penalty and interest has grown significantly. As of September 30, 2001, IRS data showed that employers owed about $49 billion in delinquent employment taxes, penalties and interest.

The businesses that failed to remit payroll taxes were typically in wage-based industries and had few available assets from which IRS could recover these taxes. They were usually small, closely held businesses using a corporate structure. The most common types of businesses or industries with unpaid payroll taxes included construction companies and restaurants, although other types of businesses (including computer software, child care, and professional services such as legal, medical, and accounting firms) also have unpaid payroll taxes. Most unpaid payroll taxes are not fully collectible, and there is often no recovery potential as many of the businesses are insolvent, defunct, and otherwise unable to pay.

To the extent that withholdings are not forwarded to the Federal Government, the business is liable for these amounts, as well as its matching contributions. Under the Internal Revenue Code, individuals—typically officers of a corporation such as a president or treasurer—who are determined by IRS to be "willful and responsible" for the nonpayment of federal income taxes and the employee's Social Security and Medicare taxes can be held personally liable for the unpaid taxes and assessed penalties. More than one individual can be found willful and responsible for a business's failure to pay the Federal Government withheld payroll taxes and can be assessed a penalty. IRS considers employment tax compliance to be among the most challenging issues for small businesses, since delinquent tax may rapidly compound beyond the employers' ability to pay—ultimately placing their business in financial jeopardy.

In 2002, we reported that IRS had four programs to prevent or reduce employers' tax delinquencies. Two of these programs were designed to achieve early contact with employers and two were designed to identify employers with existing, multiple employment tax delinquencies and help them to return to compliance. However, we found that IRS had not successfully evaluated these programs. We recommended IRS do so since without an evaluation IRS does not know the benefits, if any, of the programs, whether they need to be improved, or whether the programs should even be continued.[39]

Levies of Federal Payments

Many taxpayers who are delinquent in paying their federal taxes are receiving billions of dollars in federal payments annually. IRS and federal payment records indicate that nearly 1 million taxpayers owed about $26 billion in delinquent taxes as of February 2002 and were receiving some type of federal payments. To help the IRS collect these delinquent tax debts, provisions in the Taxpayer Relief Act of 1997 gave IRS authority to continuously levy[40] up to 15 percent of certain federal pay-

[39] U.S. General Accounting Office, *Tax Administration: IRS's Efforts to Improve Compliance with Employment Tax Requirements Should Be Evaluated,* GAO–02–92 (Washington, D.C.: Jan. 15, 2002).

[40] Levy is the legal process by which IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy. A continuous levy remains in effect from the date such levy is first made until the tax debt is fully paid or IRS releases the levy.

ments made to delinquent taxpayers.[41] Payments subject to IRS's continuous levy program include Social Security, federal salary and retirement payments, and federal vendor payments. According to IRS, the program resulted in collecting over $60 million in fiscal year 2002 by directly levying federal payments.

GAO has issued three reports including several recommendations focused on increasing collections and assuring that safeguards are in place so that only taxpayers with valid tax debts are levied. Although progress has been made in establishing the continuous levy program, several changes to the continuous levy program, which have yet to be implemented, could yield millions of dollars in additional revenue. For example, in our 2000 report we estimated that as much as $77.7 million[42] annually in additional revenue could be generated if IRS broadened the program to include spouses held by IRS to be liable for joint tax delinquencies and individuals with multiple IRS identification numbers.[43] IRS has not yet implemented this recommendation.

In our 2001 report, we found that several large agencies were not included in the continuous levy program.[44] We found, that as of June 30, 2000, about 70,400 individuals and businesses that received an estimated $8.2 billion annually in federal payments collectively from three large agencies—the United States Postal Service, the Department of Defense, and CMS, which disburses Medicare fee-for-service payments—owed over $1 billion in federal taxes. We estimated that IRS could recover at least $270 million annually in delinquent federal taxes if these payments were included in the continuous levy program.

In our 2003 report we found that IRS blocks many eligible delinquent accounts from being included in the Federal Payment Levy Program, missing an opportunity to gather information on which debtors are receiving federal payments.[45] IRS officials imposed these blocks because of concerns that the potential volume of levies—about 1.4 million taxpayer accounts—would disrupt ongoing collection activities. However, we estimate that about 112,000 would actually qualify for levy. These taxpayers were collectively receiving about $6.7 billion in federal payments and owed about $1.5 billion in delinquent taxes. In January 2003, IRS unblocked and began matching delinquent taxpayer accounts identified as receiving a federal salary or annuity payment. IRS officials will not unblock the remaining delinquent accounts until sometime in 2005.

Earned Income Credit (EIC) Noncompliance

For tax year 2001, about $31 billion was paid to about 19 million EIC claimants. Although researchers have reported that the EIC has generally been a successful incentive-based antipoverty program, IRS has reported high levels of EIC overpayments going back to 1985. IRS's most recent study, released in 2002, estimated that between $8.5 and $9.9 billion should not have been paid out to EIC claimants for tax year 1999, and earlier IRS studies also found significant problems with the program. Table 1 shows the rates of EIC overclaims estimated by IRS in three EIC compliance studies.

Table 1: EIC Overclaim Rates for Selected Years—Overclaim rate estimates

Tax year	Lower-bound	Upper-bound
1994	--	23.5
1997	23.8	25.6
1999	27.0	31.7

Source: IRS reports.

[41] Specifically, the 1997 legislation allows continuous levy of "specified payments," including nonmeans-tested federal payments, as well as certain previously exempt payments.

[42] The 95-percent confidence interval for the $77.7 million ranges from $73.5 million to $81.9 million.

[43] U.S. General Accounting Office, *Tax Administration: IRS's Levy of Federal Payments Could Generate Millions of Dollars,* GAO/GGD–00–65, (Washington, D.C.: Apr. 7, 2000).

[44] U.S. General Accounting Office, *Tax Administration: Millions of Dollars Could be Collected if IRS Levied More Federal Payments*, GAO–01–711, (Washington, D.C.: July 20, 2001).

[45] U.S. General Accounting Office, *Tax Administration: Federal Payment Levy Program Measures, Performance, and Equity Can Be Improved*, GAO–03–356, (Washington, D.C.: Mar. 6, 2003).

Notes: All overclaim rates were adjusted by IRS to reflect dollars recovered from ineligible recipients. For 1994 only a single estimate was available. In 1997 and 1999, because not all individuals responded to audit contacts, IRS used certain assumptions to estimate an overclaim rate range. The lower bound assumes that the overclaim rate for nonrespondents is the same as for the respondents, while the upper bound assumes that all nonrespondents are overclaims.

Administering the EIC is not an easy task—IRS has to balance its efforts to help ensure that all qualified persons claim the credit with its efforts to protect the integrity of the tax system and guard against fraud and other forms of noncompliance associated with the credit. Further, the complexity of the EIC may contribute to noncompliance. The EIC is among the more complex provisions of the tax code, which can contribute to unintentional errors by taxpayers. In addition, unlike other income transfer programs, the EIC relies more on self-reported qualifications of individuals than on program staff reviewing documents and other evidence before judging claimants to be qualified for assistance.

Early in 2002, the Assistant Secretary of the Treasury and the IRS commissioner established a joint task force to seek new approaches to reduce EIC noncompliance. The task force sought to develop an approach to validate EIC claimants' eligibility before refunds are made, while minimizing claimants' burden and any impact on the EIC's relatively high participation rate. Through this initiative, administration of the EIC program would become more like that of a social service program for which proof of eligibility is required prior to receipt of any benefit.

According to IRS, three areas—qualifying child eligibility, improper filing status, and income misreporting (i.e., underreporting)—account for nearly 70 percent of all EIC refund errors. Although the task force initiative is designed to address each of these sources of EIC noncompliance, many of the details about its implementation are still to be settled. A significant change to the initiative was announced on June 13, 2003, when IRS said that its pilot effort to precertify the eligibility of qualifying children for the EIC would not include requesting claimants to show their relationship to the qualifying child. Because planning and implementation for the EIC initiative will proceed simultaneously, its success will depend on careful planning and close management attention.

As with other tax compliance issues such as corporate tax evasion, Congress has focused oversight attention on the EIC initiative and continued oversight can help ensure that the initiative balances efforts to reduce EIC overpayments with continued efforts to maintain or increase the portion of the EIC-eligible population that receives the credit. Further, Congress can consider making the several definitions of children in the tax code more uniform. The differing definitions contribute to the complexity taxpayers face and complexity is widely believed to contribute to errors taxpayers make in claiming the EIC. As early as 1993 we had suggested that Congress consider changes that would have made the definitions for children more similar for several tax purposes. More recently, IRS's Taxpayer Advocate, the Joint Committee on Taxation, and the Department of the Treasury have made proposals as well.

The Economy, Efficiency, or Effectiveness of Tax Preferences Are Often Not Well Understood

Tax preferences are often intended to achieve policy goals that may be similar to those of federal spending programs. However, data on the economy efficiency, and effectiveness of tax preferences is often lacking. Further, tax preferences are not subject to some review processes that would support more integrated and informed decisions about what the government does and how it does it.

Tax preferences refer to departures from the normal tax structure designed to favor a particular industry, activity, or class of persons through special deductions, credits, and other tax benefits. Tax preferences currently in place include programs to encourage economic development in disadvantaged areas, build affordable housing, make education more accessible, reduce pollution, and stimulate capital investment, research, and development. Many tax preferences have counterparts in direct spending programs created to accomplish similar goals. In some cases, a tax preference may be among the largest federal efforts dealing with a social issue. For instance, we reported in 1997 that the Low-Income Housing Tax Credit was the largest federal source of federal funds to develop or substantially rehabilitate rental housing for low-income households.

Tax preferences have become a growing part of the federal fiscal picture over the past 30 years. Based on Joint Committee on Taxation estimates, the total revenue loss due to tax preferences increased by twice the rate of overall federal outlays over the last 10 years. Tax preferences grew about 50 percent, from about $488 billion

in 1993 to about $730 billion in 2003, while federal outlays grew about 25 percent, from $1.7 trillion to $2.1 trillion over the same period.[46]

Not only has the dollar sum associated with these tax preferences grown over the past 10 years, but the number of programs has also increased. The number of tax preference programs has doubled since the Joint Committee on Taxation started reporting on them in 1974, growing from 74 to 148. As shown in figure 7, this growth continued over the past 10 years, from 124 tax preference programs in 1993 to 148 programs in 2002.[47] Table 2 lists the ten largest tax preference programs in terms of dollars claimed in 2002.

Figure 7: Growth in the Number of Tax Preference Programs Listed In Joint Committee on Taxation Reports, 1993 through 2002

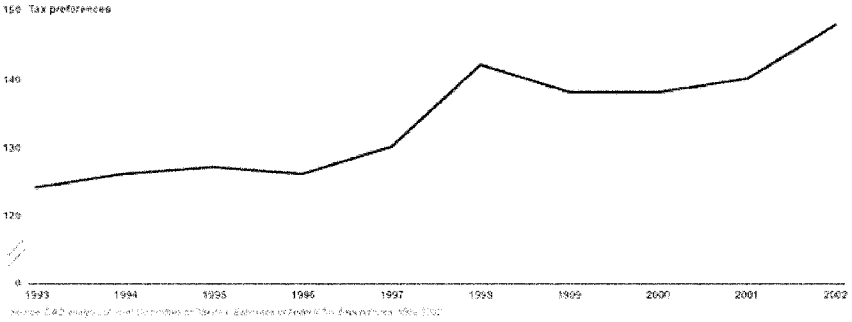


Table 2: 10 Largest Tax Preferences by Estimated Dollars Claimed in 2003

Provision	Dollars projected for FY 2003 (in billions of dollars)	Description
Net exclusion of pension contributions and earnings: Employer Plans.	83.5	Certain employer contributions to pension plans are excluded from an employee's gross income even though the employers can deduct the contributions. In addition, the tax on the investment income earned by the pension plan is deferred until the money is withdrawn.
Exclusion of employer contributions for medical insurance premiums and medical care.	79.6 [a]	Employer's can deduct employer-paid health insurance premiums and other medical expenses (including long-term care) as a business expense, but they are not included in employee gross income. The self-employed may also deduct part of their family health insurance premiums.

[46] All dollar figures are reported in 2003 adjusted dollars. Though it is not precisely correct to add up all tax expenditures because some have interactive effects though they are reported individually, these figures provide a useful gauge of the general magnitude of these provisions. The tax preference figures only include the portions of the refundable child tax credit and EIC that offset income taxes paid.

[47] Although we refer to them as tax preferences, these annual figures come from the Joint Committee on Taxation's annual reports on tax expenditures.

Table 2: 10 Largest Tax Preferences by Estimated Dollars Claimed in 2003—Continued

Provision	Dollars projected for FY 2003 (in billions of dollars)	Description
Deductibility of mortgage interest on owner-occupied homes.	69.9	Owner-occupants of homes may deduct mortgage interest limited to interest on debt no greater than the owner's basis in the residence; for debt incurred after October 13, 1987, it is limited to no more than $1 million. Interest on up to $100,000 of other debt (less than market value of residence) secured by a lien on a principal or second residence is also deductible.
Capital gains (except agriculture, timber, iron ore, and coal) (normal tax method).	55.3	Currently, the capital gains rate has been reduced from 20 percent to 15 percent and from 10 percent to 5 percent for taxpayers in the 10 percent and 15 percent marginal income tax bracket. The special tax rates (18 percent top rate, 8 percent for taxpayers in the 10 and 15 percent tax brackets) for assets held over 5 years have been removed.
Deductibility of nonbusiness state and local taxes other than on owner-occupied homes.	50.9	Taxpayers may deduct state and local income and property taxes.
Depreciation of equipment in excess of alternative depreciation system.	49.8	A tax expenditure provision that arises from the depreciation of machinery and equipment in excess of the normal tax baseline.
Step-up basis of capital gains at death.	38.1	Currently the cost basis for an appreciated asset is adjusted up to the market value at the owner's death. With the repeal of the estate tax for 2010, the basis for property acquired from a decedent will be the lesser of market value or decedent's basis.
Deductibility of charitable contributions, other than education and health.	34.2	Taxpayers may deduct charitable, religious, and other non-profit contributions up to 50 percent of Adjusted Gross Income. Corporations' deductions are limited to 10 percent of pre-tax income.
Earned Income Credit.	34.1 [(b)]	The EIC is a refundable tax credit that offsets the impact of Social Security taxes paid by low-income workers and encourages low-income persons to seek work rather than welfare. The EIC is available to taxpayers with and without children and depends on the nature and amount of qualifying income and on the number of children who meet age, relationship, and residency tests.

Table 2: 10 Largest Tax Preferences by Estimated Dollars Claimed in 2003—Continued

Provision	Dollars projected for FY 2003 (in billions of dollars)	Description
Tax credit for children under age 17.	27.1	Taxpayers with children under age 17 can qualify for a $600 refundable per child credit. The credit is phased out for taxpayers at the rate of $50 per $1,000 of modified Adjusted Gross Income above $110,000 ($75,000 for singles).

Sources: Ten largest tax preference programs taken from program cost estimates identified in the Joint Committee on Taxation's December 2002 report, *Estimates of Federal Tax Expenditures for Fiscal Years 2003–2007*, report number JCS–5–02. Tax preference descriptions from the U.S. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2004* (Washington, DC: Government Printing Office) 2003 and Congressional Research Service, Taxation Briefing Book, *Individual Capital Gains Tax Issues*; and *Federal Taxes: Information on Payroll Taxes and Earned Income Tax Credit Noncompliance*, GAO–01–487T, March 7, 2001.

Note (a): This is the single largest health-related tax preference reported by the Joint Committee on Taxation. The Joint Committee on Taxation reports also includes other health-related tax preferences.

Note (b): The tax preference figure for the EIC only includes the portion of the EIC that offsets income taxes paid.

Despite the importance of tax preferences, the economy, efficiency, and effectiveness of tax preferences in achieving their purposes is often not well understood, in part because data on their use and effectiveness may not be available. For example, we recently studied business tax preferences to encourage the hiring, retention, and accommodation of workers with disabilities and found that information on the effectiveness of the programs was limited and inconclusive.[48] In 2002, we studied the use of tax preferences intended to help families meet the costs of postsecondary education and found that Congress did not have the information it needed to weigh the relative effectiveness of the range of tools created to accomplish this goal.[49] In 1999 we reviewed businesses' use of empowerment zone tax preferences and had to conduct our own survey to find information about businesses that were and were not using the preferences.[50]

When critical information about the economy, efficiency, and effectiveness of tax preferences is made available, it can be very valuable to congressional decision makers. For example, in 1993 we described the impacts of a tax credit designed to encourage investment in Puerto Rico.[51] This tax preference effectively exempted income earned by U.S. firms from operations in U.S. possessions from federal corporate income taxes. We found that the credit per employee was, on average, slightly higher than the wages paid per employee and in some industries was considerably higher. Congress subsequently chose to phase out the tax credit program.

A decade ago we concluded that greater scrutiny of tax preferences is warranted. We made a number of recommendations intended to achieve that end, including recommendations to OMB to incorporate tax preferences, to the extent possible, into the annual budget review process. Our intent was that tax preferences be assessed and considered along with related federal efforts so that the relative effectiveness of both spending and tax preferences could be considered jointly.

However, tax preferences are still excluded from important review processes that apply to spending programs. Tax preferences are not explicitly covered by the Government Performance and Results Act (GPRA) of 1993 and therefore are not subject to its requirements that are intended to help ensure that federal programs are achieving their intended results. However, the Senate Governmental Affairs Committee Report on GPRA says that tax preferences should be taken into consideration in a comprehensive examination of government performance.[52] Nevertheless, tax preferences often are not currently covered by agencies or executive branch processes that consider the effectiveness of government programs. For example the new

[48] U.S. General Accounting Office, *Business Tax Incentives: Incentives to Employ Workers with Disabilities Receive Limited Use and Have an Uncertain Impact,* GAO–03–39, (Washington, D.C.: Dec. 11, 2002).

[49] U.S. General Accounting Office, *Student Aid and Tax Benefits: Better Research and Guidance will Facilitate Comparison of Effectiveness and Student Use,* GAO–02–751, (Washington, D.C.: Sept. 13, 2002).

[50] U.S. General Accounting Office, *Community Development: Businesses' Use of Empowerment Zone Tax Incentives,* GAO/RCED–99–253, (Washington, D.C.: Sept. 30, 1999).

[51] U.S. General Accounting Office, *Tax Policy; Puerto Rico and the Section 936 Tax Credit,* GAO/GGD–93–109, (Washington, D.C.: June 8, 1993).

[52] Report of the Committee on Governmental Affairs, United States Senate, Government Performance and Results Act of 1993, (June 16, 1993, Report 103–58).

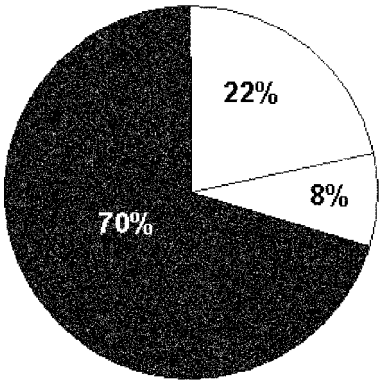
program performance reviews conducted by OMB in connection with the annual budget process generally do not cover tax preferences.

According to OMB, the Executive Branch is continuing to focus on the availability of data needed to assess the effects of the tax expenditures designed to increase savings.[53] Treasury's Office of Tax Analysis and IRS's Statistics of Income Division have developed a new sample of individual income tax filers as one part of this effort. This new "panel" sample will follow the same taxpayers over a period of at least 10 years. Data from this sample will enhance OMB's ability to analyze the effect of tax expenditures designed to increase savings. Other efforts by OMB, Treasury, and other agencies to improve data available for the analysis of tax expenditures are expected to continue over the next several years, according to OMB. In practice, data availability is likely to be a major challenge, and data constraints may limit the assessment of the effectiveness of many provisions. In addition, such assessments can raise significant challenges in economic modeling.

REASSESSING WHAT THE GOVERNMENT DOES SHOULD INCLUDE TAX PREFERENCES

Given their growth and importance, tax preferences must be part of any comprehensive review of existing programs and activities to adapt government for the challenges of this century. Any reassessment of federal missions and strategies should include the entire set of tools the Federal Government can use to address national objectives. These tools include discretionary and mandatory spending, tax provisions, loans and loan guarantees, and regulations. Spending is most visible and it is all too easy when we look to define federal support for an activity to only look at the spending side of the budget. Federal support, however, may come in the form of exclusions or credits in the tax code. It may come in the form of direct loans or loan guarantees. It may come in the design of regulations. Yet none of these tools should be ignored if we are to get a true picture of federal activity in an area. So, for example, if we are evaluating federal support for health care we need to look not only at spending, but also at tax preferences. Figure 8 shows federal activity in health care and Medicare budget functions in FY 2003: $48 billion in discretionary BA, $419 billion in entitlement outlays, $177 million in loan guarantees, and $129 billion in tax expenditures.[54]

Figure 8: Relative Reliance on Policy Tools in the Health Care Budget Functions (FY 2003)



Source: GAO analysis of data from the Office of Management and Budget.

Note: Loan guarantees account for about $177 million or 0.03 percent of the approximately $597 billion in total federal health care resources.

[53] U.S. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2004* (Washington, DC: Government Printing Office) 2003.

[54] This represents the sum of a number of different tax provisions.

CONCLUDING REMARKS

There is a Chinese curse that goes "May you live in interesting times." We clearly do. I would prefer to see this not as a curse—but as a challenge and an opportunity.

Tackling areas at risk for fraud, waste, abuse, and mismanagement will require determination, persistence and sustained attention by both agency managers and Congressional committees. Large and complex federal agencies must effectively use a mixture of critical resources and improved processes to improve their economy, efficiency, and effectiveness, Congressional oversight will be key.

We should be striving to maintain a government that is effective and relevant to a changing society—a government that is as free as possible of outmoded commitments and operations that can inappropriately encumber the future. The difference between "wants," "needs," and overall "affordability" and long-term "sustainability" is an important consideration when setting overall priorities and allocating limited resources.

Government must operate in the context of broader trends shaping the United States and its place in the world. These include:

- National and global response to terrorism and other threats to personal and national security;
- Increasing interdependence of enterprises, economies, civil society, and national governments—also know as globalization;
- The shift to market-oriented, knowledge-based economies;
- An aging and more diverse U.S. population;
- Advances in science & technology and the opportunities & challenges created by these changes;
- Challenges and opportunities to maintain & improve the quality of life for the nation, communities, families & individuals; and
- The increasingly diverse nature of governance structures and tools.

In addition to the above trends, large and growing fiscal challenges at the federal, state, and local levels are of great concern. Furthermore, known demographic trends, and rising health care costs and other health care related challenges (e.g., access, quality) are of growing concern crossing all sectors of the economy and all geopolitical boundaries.

Government leaders are responsible and accountable for making needed changes to position the Federal Government to take advantage of emerging opportunities and to meet future challenges. Focusing on accountable, results-oriented management can help the Federal Government operate effectively within a broad network that includes other governmental organizations, nongovernmental organizations, and the private sector.

In view of the broad trends and large and growing fiscal challenges facing the nation, there is a need to fundamentally review, reassess, and reprioritize the proper role of the Federal Government, how the government should do business in the future, and—in some instances—who should do the government's business in the 21st century. It is also increasingly important that federal programs use properly designed and aligned tools to manage effectively across boundaries work with individual citizens, other levels of government, and other sectors. Evaluating the role of government and the programs it delivers is key in considering how best to address the nation's most pressing priorities. Existing programs, policies and activities cannot be taken as "givens." We need to look at "the base" across the board—mandatory and discretionary spending and tax preferences/incentives. Such periodic reviews of programs can prompt not only a healthy reassessment of our priorities but also changes needed in program design, resources and management to get the results we collectively decide we want from government.

Needless to say, we at GAO are pleased to help Congress in this very important work.

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Attachment I: GAO's 2003 High-Risk List

2003 High-Risk Areas	Year Designated High Risk
Addressing Challenges In Broad-based Transformations	
• Strategic Human Capital Management*	2001
• U.S. Postal Service Transformation Efforts and Long-Term Outlook*	2001
• Protecting Information Systems Supporting the Federal Government and the Nation's Critical Infrastructures	1997
• Implementing and Transforming the New Department of Homeland Security	2003
• Modernizing Federal Disability Programs*	2003
• Federal Real Property*	2003
Ensuring Major Technology Investments Improve Services	
• FAA Air Traffic Control Modernization	1995
• IRS Business Systems Modernization	1995
• DOD Systems Modernization	1995
Providing Basic Financial Accountability	
• DOD Financial Management	1995
• Forest Service Financial Management	1999
• FAA Financial Management	1999
• IRS Financial Management	1995
Reducing Inordinate Program Management Risks	
• Medicare Program*	1990
• Medicaid Program*	2003
• Earned Income Credit Noncompliance	1995
• Collection of Unpaid Taxes	1990
• DOD Support Infrastructure Management	1997
• DOD Inventory Management	1990
• HUD Single-Family Mortgage Insurance and Rental Assistance Programs	1994
• Student Financial Aid Programs	1990
Managing Large Procurement Operations More Efficiently	
• DOD Weapon Systems Acquisition	1990
• DOD Contract Management	1992
• Department of Energy Contract Management	1990

2003 High-Risk Areas	Year Designated High Risk
• NASA Contract Management	1990

*Additional authorizing legislation is likely to be required as one element of addressing this high-risk area.
Source: GAO

Attachment II: Selected Reports Regarding Specific Areas in Testimony

Overall

Federal Budget: Opportunities for Oversight and Improved Use of Taxpayer Funds. GAO–03–922T. Washington, D.C.: June 18, 2003.

Social Security Programs

Social Security Administration: Revision to the Government Pension Offset Exemption Should Be Reconsidered. GAO–02–950, Washington, D.C.: August 15, 2002.

Social Security: Congress Should Consider Revising the Government Pension Offset "Loophole." GAO–03–498T. Washington, D.C.: February 27, 2002.

Supplemental Security Income: SSA Could Enhance Its Ability to Detect Residency Violations. GAO–03–724. Washington, D.C.: July 31, 2003.

Social Security: Issues Relating to Noncoverage of Public Employees. GAO–03–710T. Washington, D.C.: May 1, 2003.

Major Management Challenges and Program Risks: Social Security Administration. GAO–03–117. Washington, D.C.: January 2003.

High Risk Series: An Update. GAO–03–119. Washington, D.C.: January 2003.

Supplemental Security Income: Progress Made in Detecting and Recovering Overpayments, but Management Attention Should Continue. GAO–02–849. Washington, D.C.: September 16, 2002.

Social Security Administration: Agency Must Position Itself Now to Meet Profound Challenges. GAO–02–289T. Washington, D.C.: May 2, 2002.

SSA and VA Disability Programs: Re-Examination of Disability Criteria Needed to Help Ensure Program Integrity. GAO–02–597. Washington, D.C.: August 9, 2002.

Social Security Disability: Efforts to Improve Claims Process Have Fallen Short and Further Action is Needed. GAO–02–826T. Washington, D.C.: June 11, 2002.

SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts. GAO–01–153. Washington, D.C.: January 12, 2001.

Supplemental Security Income: Action Needed on Long-Standing Problems Affecting Program Integrity. GAO/HEHS–98–158. Washington, D.C.: September 14, 1998.

Social Security: Better Payment Controls for Benefit Reduction Provisions Could Save Millions. GAO/HEHS–98–76. Washington, D.C.: Apr. 30, 1998.

SSA Disability: Return-to-Work Strategies From Other Systems May Improve Federal Programs. GAO/HEHS–96–133. Washington, D.C.: July 11, 1996.

SSA Disability: Program Redesign Necessary to Encourage Return to Work. GAO/HEHS–96–62. Washington, D.C.: April 24, 1996.

Unemployment Insurance

Unemployment Insurance: Increased Focus on Program Integrity Could Reduce Billions in Overpayments. GAO–02–697. Washington, D.C.: July 12, 2002.

Medicare

Medicare: Financial Challenges and Considerations for Reform. GAO–03–577T. Washington, D.C.: April 10, 2003.

Medicare: Observations on Program Sustainability and Strategies to Control Spending on Any Proposed Drug Benefit. GAO–03–650T. Washington, D.C.: April 9, 2003.

Medicare: Payment for Blood Clotting Factor Exceeds Providers' Acquisition Cost. GAO–03–184. Washington, D.C.: January 10, 2003.

Major Management Challenges and Program Risks: Department of Health and Human Services. GAO–03–101. Washington, D.C.: January 2003.

High-Risk Series: An Update. GAO–03–119. Washington, D.C.: January 2003.

Skilled Nursing Facilities: Medicare Payments Exceed Costs for Most but Not All Facilities. GAO–03–183. Washington, D.C.: December 31, 2002.

Medicare Financial Management: Significant Progress Made to Enhance Financial Accountability. GAO–03–151R. Washington, D.C.: October 31, 2002.

Skilled Nursing Facilities: Providers Have Responded to Medicare Payment System by Changing Practices. GAO–02–841. Washington, D.C.: August 23, 2002.

Medicare: Challenges Remain in Setting Payments for Medical Equipment and Supplies and Covered Drugs. GAO–02–833T. Washington, D.C.: June 12, 2002.

Medicare: Recent CMS Reforms Address Carrier Scrutiny of Physicians' Claims for Payment. GAO–02–693. Washington, D.C.: May 28, 2002.

Medicare: Using Education and Claims Scrutiny to Minimize Physician Billing Errors. GAO–02–778T. Washington, D.C.: May 28, 2002.

Medicare Home Health Care: Payments to Home Health Agencies Are Considerably Higher than Costs. GAO–02–663. Washington, D.C.: May 6, 2002.

Medicare: Communications With Physicians Can Be Improved. GAO–02–249. Washington, D.C.: February 27, 2002.

Medicare: Payments for Covered Outpatient Drugs Exceed Providers' Cost. GAO–01–1118. Washington, D.C.: September 21, 2001.

Medicare: Comments on HHS' Claims Administration Contracting Reform Proposal. GAO–01–1046R. Washington, D.C.: August 17, 2001.

Medicare Management: CMS Faces Challenges to Sustain Progress and Address Weaknesses. GAO–01–817. Washington, D.C.: July 31, 2001.

Medicare: Successful Reform Requires Meeting Key Management Challenges. GAO–01–1006T. Washington, D.C.: July 25, 2001.

Medicare Contracting Reform: Opportunities and Challenges in Contracting for Claims Administration Services. GAO–01–918T. Washington, D.C.: June 28, 2001.

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Medicare Management: Current and Future Challenges. GAO–01–878T. Washington, D.C.: June 19, 2001.

Medicare Reform: Modernization Requires Comprehensive Program View. GAO–01–862T. Washington, D.C.: June 14, 2001.

Medicare: Opportunities and Challenges in Contracting for Program Safeguards. GAO–01–616. Washington, D.C.: May 18, 2001.

Nursing Homes: Aggregate Medicare Payments Are Adequate Despite Bankruptcies. GAO/T–HEHS–00–192. Washington, D.C.: September 5, 2000.

Tax Policy and Administration Issues

IRS Modernization: Continued Progress Necessary for Improving Service to Taxpayers and Ensuring Compliance. GAO–03–769T. Washington, D.C.: May 20, 2003.

Compliance and Collection: Challenges for IRS in Reversing Trends and Implementing New Initiatives. GAO–03–732T. Washington, D.C.: May 7, 2003.

Internal Revenue Service: Assessment of fiscal year 2004 Budget Request and 2003 Filing Season Performance to Date. GAO–03–641T. Washington, D.C.: April 8, 2003.

Tax Administration: Federal Payment Levy Program Measures, Performance, and Equity Can Be Improved. GAO–03–356. Washington, D.C.: March 6, 2003.

Tax Administration: IRS Should Continue to Expand Reporting on Its Enforcement Efforts. GAO–03–378. Washington, D.C.: January 31, 2003.

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Tax Administration: IRS's Efforts to Improve Compliance with Employment Tax Requirements Should Be Evaluated. GAO–02–92. Washington, D.C.: January 15, 2002.

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Tax Administration: IRS' Levy of Federal Payments Could Generate Millions of Dollars. GAO/GGD–00–65. Washington, D.C.: April 7, 2000.

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Multiple Employment and Training Programs: Funding and Performance Measures for Major Programs. GAO–03–589. Washington, D.C.: April 18, 2003.

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Workforce Investment Act: States and Localities Increasingly Coordinate Services for TANF Clients, but Better Information Needed on Effective Approaches. GAO–02–696. Washington, D.C.: July 3, 2002.

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Mr. SHAW. [Presiding.] Thank you, Mr. Walker. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman. Mr. Walker, my understanding is the IRS' estimate in 1998 was that $232 billion in taxes were due, but never collected. Is that correct?

Mr. WALKER. That sounds about right, Mr. Crane.

Mr. CRANE. Can you explain a little bit how the $232 billion was never collected?

Mr. WALKER. Well, part of the problem is that the IRS to a great extent—and Mike Brostek may be able to come up with some more details—has been focused over the past few years on improving customer service, and a lot fewer resources have been dedicated to compliance. They have not updated a lot of their programs to be able to look for noncompliance. In addition to that, they have growing backlogs with regard to looking at issues that they have identified.

Mike, could you provide a little bit more detail here?

Mr. BROSTEK. Yes. I am Mike Brostek, and I am Director for Tax Issues for the GAO.

The trends that Mr. Walker has talked about are in part behind the uncollectability of those taxes. In part there are a lot of taxes owed by people who will not be able to pay them, corporations and individuals who have gone bankrupt or have too few assets to actually pay all the taxes that are owed. The collectable amount of the taxes is a smaller amount. It is around $112 billion.

Mr. CRANE. Still substantial. The former Commissioner Rossotti estimated that in a given year, the IRS assesses almost $30 billion of taxes that it will never collect. Does that sound correct?

Mr. BROSTEK. I believe what the Commissioner was saying was that they have identified about that level of taxes that could be collected if they had additional resources to work them. Those would be cases where they have identified that someone owes taxes, but they haven't been able to work the cases.

Mr. CRANE. He estimated further it would cost about $2.2 billion to collect that money, and that would give us a net gain of almost $28 billion.

Mr. WALKER. Sounds like a good return on investment to me.

Mr. CRANE. Right, yes. Let me know if you know of any investments that I can make in the market that I would get that kind of return. Thank you. I yield back the balance of my time.

Mr. SHAW. Mr. Rangel.

Mr. RANGEL. Thank you. Mr. Walker, let me join with the Chairman in lauding the fine work that you do, and the GAO over the years have been so dependable in a bipartisan way.

Is there such a thing as civil fraud? I am not certain, but I know that most of the fraud that I have come across has been criminal in nature, and it would seem to me that while we are investigating for fraud—and obviously you have said that when a business is this large, it has to be there—have you referred in the course of your

oversight—have you referred any cases to the Department of Justice?

Mr. WALKER. When we end up doing work, Mr. Rangel, and come across issues that we think could be violations of the law, then we do refer them to the appropriate authorities. If we think it is a criminal matter, then we would refer it to the Department of Justice. As you know, the Inspectors General are on the frontline of fighting fraud, waste, and abuse with regard to their respective departments and agencies.

Mr. RANGEL. Well, if I didn't care about you and respect you so much, I would ask why would not the frontline people be testifying today?

Mr. WALKER. I think at least one Inspector General is going to be on the next panel, but I am not sure.

Mr. RANGEL. Well, he is a good man, but I think he would agree that the people from IRS would be able to be in a better position to help us out as to how we can save money. You don't come here telling us how much money you are going to save us, do you?

Mr. WALKER. We have given in our testimony specific items that we think that Congress should consider taking action on. We don't give you a specific bottom line total, but there is no question that it is billions of dollars.

I will say, however, I think you are putting your finger on an important point. If you look at fraud, waste, abuse and mismanagement, most of it is waste and mismanagement, not fraud.

Mr. RANGEL. Okay.

Mr. WALKER. In addition, if you look at improper payments, all improper payments don't represent fraud, and some of them are payments that we should have made, but we don't have appropriate documentation.

My personal view is there is a lot of money that can be saved in fraud, waste, abuse and mismanagement, but there is much more money in the next two categories I mentioned, much more money. That is why I say we need to address all three tiers.

Mr. RANGEL. Well, you do realize that you are being called today because we have a budget deficit, and we have to save every dollar that we can and make certain that we eliminate every wasteful act. It would just seem to me that while you do an excellent job with the overview, that this Committee's interests could be better served if we had the front-line troops that deal with the problems every day and not only tell us what we are losing, but to suggest to us legislatively how we can correct it, because so much—so many of these issues we have jurisdiction over, and all we can do is thank you for the fine work that you have done over the years. It doesn't really allow us in our Committee, assuming that we legislate, to correct the errors that may exist.

You do a great job. The GAO has historically provided a great service for the Congress. Thank you for making yourself available.

Mr. WALKER. Thank you, Mr. Rangel. We do have specific items that we would recommend that this Committee and other committees should consider, such as requiring competitive contracting in certain areas and a few other activities that could save money.

Mr. RANGEL. Why don't you just send them to me and the Chairman, because clearly, this hearing is not for that purpose, but

it would be that we could do something about it and remedy it if you would do that. I will make certain that the Minority gets these things, and we may be able to put them in the form of amendments in legislation. Thank you so much.

Mr. WALKER. I would be happy to do that, Mr. Rangel. Thank you.

[An attachment is being retained in the Committee files.]

Mr. SHAW. Mr. Houghton.

Mr. HOUGHTON. Thank you very much. Well, thanks for the work that you are doing. I think this is a worthy meeting. I disagree a bit with the Ranking Member. It is not just because of the budget deficit; we always ought to be monitoring what is going on to make the government more efficient.

I guess the thrust of my basic question is this: There are certain things legislatively that must be done. For example, in order to collect more money for the IRS, we need more people, and we want to have a private collection agency. That has to be legislated, but—and I am not talking about fiscal gaps either—there are certain things that ought to be the function of the administrative department to stay on top of all the time. So, my question, whether it is in Medicare or Social Security or some of these other things, is the slippage really a part of people—because we don't give them enough money to have enough people, or is it attitude? What is it?

Mr. WALKER. It is a combination of things. I do think that one of the challenges that we have in government is there has been an assumption for years that the base of spending, the base of tax preferences, the base of programs and policies, functions and activities of government are okay, and, therefore, there is a lot of time spent each year by both the executive branch and the legislative branch just debating incremental pluses or minuses from that base.

There has not been enough transparency and scrutiny and accountability with regard to the base. For example, why does this program exist? How does it measure success? How is it making a difference? What type of return on investment is it generating?

I think the same thing has to happen for tax preferences. What impact are they having? What incentives are they creating? That has not happened for many years, and I think it needs to happen, because our fiscal gap is large and growing. It is structural, and we are not going to grow our way out of it.

Mr. HOUGHTON. Yes, but does the remedy rest with us, or does it rest with the administrative departments?

Mr. WALKER. It rests with both. There are actions that need to be taken, and we are trying to work in a constructive way on good government issues with the Office of Management and Budget (OMB) on things like how to link resources to results. One of the things the Administration is doing right now is trying to look at 20 percent of major government programs each year and assess the effectiveness of those programs and what type of outcomes are being achieved. Last year was the first year for this.

We are trying to work in a constructive way, but clearly there are legislative issues that have to be addressed as well. There has to be more data-sharing to try and minimize improper payments, to be able to require or encourage competitive contracting for

things like Medicare payment administrators and things of that nature.

Mr. HOUGHTON. Yes, but you said there used to be a slippage of about $20 billion in Social Security. Now it is down to $13 billion.

Mr. WALKER. Medicare. That was for Medicare.

Mr. HOUGHTON. I thought you said Social Security.

Mr. WALKER. No, sir. Medicare.

Mr. HOUGHTON. Medicare, okay. What should we do? Is there something we should do, or what is the proper target? Should it be $7 or $5 billion. Is this an administrative or a function of the Committee on Ways and Means?

Mr. WALKER. Well, for one thing, with regard to Medicare, there are a lot of things that have been done. I think in some cases this is an example similar to the IRS. The U.S. Department of Health and Human Services (HHS) may not be dedicating enough resources to be able to try to deal with improper payments.

I think the other thing that can be considered is that a vast majority, if not all, of Medicare payment responsibilities are placed with third-party administrators. We need to look at the contractual arrangements with those third-party administrators. We need to look at competitive bidding. We need to provide incentives in those contracts and accountability mechanisms for contractors to be able to get better control of improper payments.

I think there is also additional transparency that is needed over some of these payments to try to look for improper billings or upcoding of certain services. More rigorous enforcement is going to be part of it as well. There is no doubt about that. It may cost a little money to save money, but in the net you could be a lot better off.

Mr. HOUGHTON. Thank you very much.

Mr. SHAW. Mr. Walker, could you be a little more specific in pursuing what Mr. Houghton is speaking of? You talk about upcoding, and I guess services that weren't rendered, perhaps like overpayments in hospitals for certain drugs that are administered to patients. Exactly what is it we are looking for?

Mr. WALKER. There are several issues. Number one, sometimes you will end up having services that weren't rendered that are being billed for. Sometimes more expensive services are being billed than are actually provided. That is called upcoding, where providers say they did something more expensive than they actually did. Alternatively they may claim that they did something that was more expensive that wasn't necessary. Sometimes you can have a circumstance in which something is paid twice, which we may or may not catch down the road. Leslie, you want to come up and give a couple of more examples?

Ms. ARONOVITZ. My name is Leslie Aronovitz. I am one of the directors in health care.

In terms of the error rate, there are a lot of categories of payment errors. In addition to what Mr. Walker was talking about, one is the category of uncovered services. This is where Medicare is paying erroneously for services that should not be covered. Also, there are documentation errors, where there is insufficient documentation to support the medical necessity of that particular serv-

ice. Under Medicare, if a service is not proven to be medically necessary, it is not supposed to be paid for.

Mr. SHAW. I think all of us in Congress from time to time receive something from constituents, a Medicare bill in which they sent it in and says, hey, this said you paid for this particular service, and I don't think I got it. I have one sitting on my desk right now from a dermatologist to a constituent in which Medicare paid for several procedures. The constituent said he was in there 10 minutes, and the procedures didn't happen.

What would be your advice as to people that think that they are probably the patient that has been victimized, in effect, through Medicare payments for services that weren't rendered, and what could Congress do legislatively in order to change that?

Mr. WALKER. My understanding is—and I would like for Leslie to provide more detail—that many times the recipient of the services does not receive adequate information in order to be able to do what you are talking about. Therefore, part of the problem that we have in health care, which, as you know, is a huge part of our budget and of our economy, is that we don't have adequate transparency over who allegedly provided what to whom. Therefore we are not able to have a check and balance, where the individual can say, exactly as you said, I was there for 10 minutes, there is no way he or she did all these different things. Leslie.

Ms. ARONOVITZ. That is absolutely correct. In addition to that, when a beneficiary is aware that Medicare is paying for a service on their behalf that they did not obtain there is a phone number, on the explanation of Medicare benefits for reporting those discrepancies. The discrepancies would be reported to the Medicare Claims Administration contractor. The contractors have an obligation to pursue those matters and to make sure that, in fact, the provider was not paid erroneously.

Mr. WALKER. I believe, Mr. Shaw, that there needs to be more transparency. We need to look at what can be done to make sure that the person who received the services has an understanding in general terms of what the taxpayers are being billed for, which may or may not have been provided, and we need to have better accountability over the contractors to make sure they are following up on this. We need to look at related contract provisions to find out what kind of financial incentives or accountability mechanisms can be put in place if they don't already exist.

Mr. SHAW. We ought to put in some type of standard accounting and billing principles. Anyone who has been in a hospital lately knows that you get a flood of bills if you are lucky enough to be insured. I just went through some major surgery at the beginning of this year, and the bills keep coming in. Believe me, when I think the whole thing has settled down, I will check my credit rating and be sure nothing fell through the cracks. It is very confusing, but luckily I can try to match it up with my Blue Cross/Blue Shield coverage to make sure everything has been done correctly, but sometimes it is not.

My wife had a cataract operation just at the end of last year, and the insurance carrier on a preferred provider let a charge go through for $8,000 when it should have been negotiated down to $2,000 and something, and it was a mistake. We called it to the

attention of Blue Cross/Blue Shield. They corrected it and went back and got it straightened out.

I can tell you, in particular for older people, it is so confusing, you end up with just a big wad of bills, and you have no idea what they are. There ought to be some uniformity put in place.

Nancy, I think this is something that your Subcommittee could really address, and it would do a great service not only in Medicare, but for other people. The uninsured are the ones that would have gotten that $8,000 bill instead of the $2,000 and something bill. The uninsured are those that least can afford to pay for these type of services. I think this would be something that would be certainly on the fringe of your jurisdiction, if not squarely within your jurisdiction. I would hope that you might want to take a look at it. Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman. Mr. Walker, it is always a pleasure to have you before our Committee. I will change gears a little bit and look at another area.

You issued a June 2003 report in regards to the Medicaid home—and community-based waiver program under the Social Security Act, and, of course, the waiver program not only affects Medicaid, many individuals receive Medicare covered services as well. The waiver program is a very valuable program. It allows our constituents to get long-term care services in a more convenient and a more acceptable way. It also, we hope, saves the Federal Government money under the total health care costs of our country. So, it is an important program, provides States flexibility.

Your report, though, pointed out a couple points. First the amount of Federal funds in the waiver program has increased dramatically from fiscal year 1991. The total amount spent on the waiver program was $1.6 billion or 5 percent of our long-term care Medicaid cost. Ten years later that grew to $14 billion—about $4 billion and 19 percent of all of our long-term care Medicaid costs. Eight hundred thousand people are currently being served.

Now, I am not going to go through all the findings of your report, but it was pretty damning as to the quality assurance standards, that the Centers for Medicare and Medicaid Services (CMS) was not even inquiring into a significant number of the cases on quality assurance; that the amounts, I think, were—we had 42 waivers, or 18 percent of all waivers in effect for 3 years or more serving 132,000 beneficiaries were never reviewed. The application process does not give us any real comfort level as to what is happening as far as quality assurance itself. The local reports were—in many cases one-third were at least 1 year late in being filed.

I guess my point is as we look at waste, fraud, and abuse, as we look at our responsibilities on oversight, it is always convenient to try to give more flexibility to the States, to look at changing programs from specific Federal required programs to a block grant type of expectations of the States. If we are not providing the oversight, if we are not providing the quality assurance, to me that also falls under waste, fraud, and abuse. I am just interested as to whether you have any further help for us or guidance to us as to how we can do a better job in one of our principal responsibilities of oversight.

Mr. WALKER. I think one of the things we have to recognize is that there has been an increase in the number and types of activities involving a partnership between the Federal and State governments. These may be block grants or other approaches, but Federal taxpayers are paying money and the programs are being administered solely or partially by the States. One of the things that we have to do is to recognize that the Federal Government has a responsibility to make sure that there is adequate transparency, appropriate accountability and enforcement mechanisms to make sure that the Federal dollars are being used for the intended purpose. I will tell you that this is one area where more action needs to be taken, and expect that there are others as well.

Mr. CARDIN. I might ask you to give us some more specifics on this. This is a $14 billion program currently, and the report indicated that there were faults both at the Federal agency level, CMS, and in not oversighting the way it should, as well as with local government. I think we need more guidance from GAO as to how we can make sure the quality assurances are built into these programs without overburdening the intent of the program to give flexibility to the States, but if we don't have any—the purpose of these programs are to provide quality service to our constituents for long-term care. If that is not happening, then we are not carrying out our responsibilities.

So, I think we need some help from you as to what we can do with CMS or what we can do with local governments in this waiver process to make sure that we have a greater expectation on quality.

Mr. WALKER. Let me note now for the record that we are required by the budget resolution to send a report to the Congress by August 1, 2003 with some specific suggestions of areas that Congress may want to look into. I will make sure that we try to include something in this area.

Mr. CARDIN. I thank you for that, Mr. Walker. I yield back.

Mr. SHAW. Mr. Ryan. Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman, and welcome, Mr. Walker. It is good to have you with us today.

I liked very much your point you made in your opening statement about how it is difficult in a government the size of ours to have zero fraud, waste, abuse and mismanagement, but we should have zero tolerance. I think that is well worth remembering. We on this Committee want to support you in that principle and make sure that we watch over our government in every way where we can be in control to make sure that mismanagement, fraud, waste, and abuse are eliminated, and efficiency and integrity continue as part of the government which we oversee.

Your testimony goes into detail about noncompliance, the stress on IRS collection programs and complexity in the Tax Code, abuse of tax shelters, and the cost of tax preferences. Can we fix these problems without major reform or simplification of the Internal Revenue Code? In other words, are the complexities of the Tax Code and the problems with compliance simply two sides of the same coin?

Mr. WALKER. Well, I think there are several steps that will be necessary. Clearly there are things that can and should be done administratively through placing a higher priority on enforcement,

possibly some targeted resources to try to be able to make sure that the IRS does that and captures the return on investment that Mr. Crane talked about before.

I do, however, believe that some of the problems with this area has to do with the complexity of our laws. I am a Certified Public Accountant (CPA). I will tell you I do my own tax return. I cannot imagine somebody that doesn't have a degree of financial expertise even trying to do their tax return and doing it properly. If you look at the EITC, where the error rate is estimated at about 30 percent, a lot of it is because of the complexity and because it is intended to help generally less educated and poorer individuals. We need to recognize reality—that our laws are overly complex, and, therefore, even people in good faith may not be able to comply because of that complexity. So, ultimately we are going to have to streamline and simplify a lot of the Tax Code.

Ms. DUNN. As Congressman Shaw was talking about his experience, it reminded me of a fairly recent experience I had helping my father through a surgical operation with the piles and piles of bills that came in for months after the surgery. It made me very distressed about the effect, especially on seniors who don't have anybody to help them work through the process. In a quick discussion we just had with one of our excellent staff who said when she retires, she is going to go into the business of helping seniors wade through this morass. These are folks who have paid their bills through their lives and in some cases are threatened by the threat of them turning these bills over to collection agencies, and that is a very frightening thing for them.

I don't know if there is anything we can do about this, but maybe, Congressman Shaw, we ought to think about making a law against turning over those bills to collection agencies.

Another problem, of course, is that seniors tend to pay those bills as soon as they come in because they wish to be living their lives with integrity and making sure that they are responsible for what they have to endure. Yet then you move into an area where you are trying to get the refund because the insurance company is really going to pay that check. So, that, too. I wanted you to know how concerned I am about that same issue. I would like to delve into it further. Are there any suggestions you have?

Mr. WALKER. Absolutely. I think there has to be more transparency over what the government is being billed for. Secondly, I think we have to have more accountability in the contracts with the administrators who administer the Medicare payments system. Thirdly, I think we have to recognize reality that some of the individuals involved, the senior citizens, may need help. They may need help in trying to be able to ascertain whether or not this is a legitimate charge or not. We may have an interest in trying to make sure that they get help, because if they get that help, it could end up saving us money.

So, I would be happy to work with Mrs. Johnson and her Subcommittee to try to come up with some ways to look at this area, because I think it is a large and growing problem.

Ms. DUNN. Good. I appreciate your answers. Thank you very much, Mr. Walker. Yield back.

Mr. SHAW. Thank you, Ms. Dunn. I think that this is something that we desperately need to attack. What really happens on these billings is that you expect to get one from the hospital, maybe one from the anesthesiologist, and one from the surgeon, but there are so many subcontractors within the hospital, you get all of these things. I think some central billing agency within the hospital should be set up so someone says, here is my bill, and here is what I spent, instead of this stuff trickling. It trickles in, I can tell you by my experience. Mine is still trickling in from 6 months ago. We are still getting bills. You kind of go crazy. Thankfully we set up a file when they first started coming in so we could try to keep up with them. If we hadn't done that, we would be totally lost.

I had trouble. I, too, was a CPA, but to try to wade through these hospital billings and the physician billings and try to figure out what they are doing is really next to impossible.

Ms. DUNN. Would you yield for a moment? I wonder, I remember our former Chairman of this Committee Mr. Archer was about the only person on the whole Committee who did his own income taxes. I wonder sometimes if it wouldn't be interesting to inquire that the point—if there is anybody on our Committee that does his own income taxes.

Mr. SHAW. I think the next question is if you do your own taxes, could you do it without a computer. This is one of the big, big problems. I talked to my CPA, and I said when the alternative minimum tax (AMT) came in, that is it, I will have to do something else. Of course, I didn't practice—I practiced law for all those years and didn't practice accounting, but I did my own tax return until the AMT came in. At that point I turned it over to a CPA. My CPA says that he couldn't do many of the tax returns that he does without the computer.

Mr. WALKER. I will tell you, if I may, Mr. Chairman, a recent personal frustrating experience. As you know, both you and I are CPAs. I can't imagine how a typical American would deal with this. I do my own tax return. You are right; with AMT it is a lot more complicated, but that is not the only complication. I ended up sending mine in. I got a notice back from the IRS saying I overestimated my income and underestimated my taxes, which obviously doesn't make sense, and I don't agree with them, and so I called them to say, well, there is obviously a problem here, let's fix it. This was 4 months ago. They still haven't assigned it to anybody yet, and so there is nothing that I can do. In the meantime I am trying to file my return for this year. I am not going to accept what they say because I know they are wrong, and I am a CPA. So, I can just imagine what the typical taxpayer has to deal with here.

Mr. SHAW. That would be very interesting to see who is assigned your return.

Mr. WALKER. I know the Commissioner, but I am resisting calling him. Hopefully the system will work in time.

Mr. SHAW. Interesting exercise. Now we are going to hear from a physician. Mr. McDermott.

Mr. MCDERMOTT. Do you know if they are doing A–76 at IRS?

Mr. WALKER. I don't know, Mr. McDermott. I can try to find out.

Mr. MCDERMOTT. It would work much better if it was privatized, don't you think?

Mr. WALKER. No, I don't necessarily think that.

Mr. MCDERMOTT. Why are you, a government official, sitting there trashing them?

Mr. WALKER. Oh, no, no. I am not trashing them. Let me clarify what I said. What I am saying here is a real life experience. It is a fact. It may be an exception. I am not saying it is representative of what they do. I am saying it is frustrating.

Mr. MCDERMOTT. Did you look into whether we had cut the budget such that there were not sufficient agents to handle all this stuff? We made about a 19-percent reduction in the budget with an increase in number of claims filed. How does that work?

Mr. WALKER. Mr. McDermott—you brought up a good point. I mentioned before that one of the problems that the IRS has, while they haven't been able to do as much in enforcement, is because, first, it hasn't been as high a priority, and second, they don't think they have enough resources to do that. In any case it is not an enforcement issue. I would say it is a taxpayer service issue.

Mr. MCDERMOTT. Well, let me move to another issue because I listen to this, and I have read your report. On page 24 you say, well, this is where we got the problem with the EITC. Maybe it is not page 24, but when I look at this tax gap map that came from the IRS Office of Research, 2003, they say that out of that $232 billion, $65 billion of it is business income that is badly reported in unpaid amounts, and self-employment tax is $45 billion. Now, that is almost half, but instead what you recommend or what you comment on is that the IRS is looking at EITC, which is $7.8 billion. Now, I don't understand why you would look for the big savings of waste, fraud, and abuse in $7.8 billion when apparently the business and self-employment and if you add to that the non-business income, which is another $30 billion, you have got way over half of the money in those three areas, and the IRS is focusing on EITC. Why that? How do they set that as a place to look for the money?

Mr. WALKER. There is absolutely no question that there are problems on the corporate side. In many cases the problems on the corporate side are much greater than the problems on the EITC, and there is absolutely no question that more time, attention, and resources need to be allocated there. The uncollected taxes area is individuals, partnerships, and corporations, but one of the things I tried to mention in my opening statement is there is increasing concern with regard to tax shelters and tax schemes involving corporations and high-income individuals, and that is real money.

Mr. MCDERMOTT. I think that you are really raising the question—the former IRS Commissioner Rossotti said the most serious tax noncompliance areas are promoters of tax schemes of all varieties, misuse of devices such as trusts and offshore accounts to hide or improperly reduce income, abusive corporate tax structures, under-reporting of tax by high-income individuals, and the failure to file and pay large amounts of unemployment tax by employers.

It seems to me if you are looking to save money—when I used to write budgets at the State level, it must be different up here at the Federal level, but we always used to go where the big money was when looking at Medicaid and the school budgets and because

there is no sense in looking at the State part. The State part is 0.07 percent of the State budget. You don't waste your time over there.

This looks like the IRS is wasting its time for some reason. I would like to understand how they made that decision. Is there a Committee in the IRS that says, let's look and see where we should go after—where we should look?

Mr. WALKER. Well, Mr. McDermott, I think you would have to ask Commissioner Everson that. I will tell you this: Recently there has been an effort on behalf of Commissioner Everson to allocate more time, attention, and resources to corporate tax shelters and to tax schemes involving high-income individuals. It is clearly needed and necessary. I question whether or not that they have an adequate amount of resources, time, and attention focused on that. There is big money there, and there are a lot of people who are trying to do what is arguably legal and acceptable rather than what is ethically and economically right. Mike, do you want to provide some details there?

Mr. BROSTEK. Well, I would just like to add that the IRS has had a structured process for deciding that those items that you read off were their priority items. They do an annual survey of their chief officers in the IRS to get their opinion on where are the largest problems; and in order to come up with that list, they followed a systematic voting process to decide that those were among the largest issues that they should address, and they have been trying to adjust their internal resources to focus on those areas.

Mr. MCDERMOTT. May I just say, in closing, Mr. Chairman, in fiscal year 2004, the IRS put in $200 million for auditing, $100 million to EITC, and $100 million to all the rest of that system. Now, I don't know who is running this Committee, but, boy, somebody has got a fix on EITC that doesn't make much sense. Thank you, Mr. Chairman.

Mr. SHAW. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. Mr. Walker, I note in your testimony that you have focused on residency fraud in the SSI program, which occurs when individuals claim to be living in the United States for purposes of collecting SSI benefits, but actually are living outside of the country, which is not allowed under the program.

Can you review for us what else your investigation found, and what steps you recommend for the SSA, or us here in the Congress, to take to prevent continued abuse of this type?

Mr. WALKER. With your permission, Barbara Bovbjerg is the executive responsible for this work, and I will ask her to address that.

Ms. BOVBJERG. My name is Barbara Bovbjerg; I am Director of Education, Workforce, and Income Security.

As you know, Mr. Herger, we are about to issue a report to you at the end of this month on this important topic. This is a place where the SSA has had difficulty addressing some of the—it may be fraud, it certainly is abuse—issues in the SSI Program.

This is the program in Social Security where beneficiaries are required to maintain residency in the United States. Social Security reports that it has identified $118 million in overpayments associ-

ated with this requirement. Based on our work for you, we have reason to believe the overpayments are much higher.

We have found that there are really three weaknesses in this program. The SSA relies on self-reported residency information, and we believe they need to verify that. The SSA also doesn't make full use of tools that it has to look at residency. It can make home visits, for example, and it could do a more risk-based assessment of which beneficiaries it maybe ought to take a closer look at, like, for example, beneficiaries who are using post office boxes. The Agency also hasn't pursued independent sources of information, like recipient bank account information, to detect non-residents.

We are planning to make recommendations to the SSA to address these issues; perhaps unannounced home visits, a more targeted review of beneficiaries; or use of the entry/exit data that Homeland Security is developing. Our report will be issued at the end of the month, and we would be happy to talk with this Committee about that at any time.

Mr. HERGER. Thank you very much. I might ask, Mr. Walker, are there implications of this same sort of abuse of other programs under the jurisdiction of the Committee on Ways and Means?

Mr. WALKER. There is no question that there is a significant issue associated with improper payments beyond SSI and Medicare. This is an area that we are working on, along with the Inspectors General and OMB. The OMB is requiring additional transparency with regard to improper payments and also requiring, at our suggestion, that there be a plan for how you are going to try to go about estimating them and reducing them. I believe this is both appropriate and long overdue.

Mr. HERGER. Well, thank you very much. Mr. Chairman, I want to thank you again for having this hearing. We are certainly a very generous people, the American people, but the taxpayers do have the right to see that their dollars are spent in the way they were intended and not spent in ways that are breaking the law. Again, I thank you for your work, and I look forward to working with you.

Mr. WALKER. Thank you.

Mr. HERGER. Thank you.

Mr. SHAW. Mr. Neal.

Mr. NEAL. Thank you very much, Mr. Chairman. I know some of the Members of the Committee have spoken earlier; they left, but I would point out that I have got a great tax simplification bill that we could all sign on to. I have got a great piece of legislation that deals with AMT that we could all sign on to. They should be bipartisan measures.

Most importantly, in the 11 years I have been on this Committee, we have talked a lot during the last few years about tax simplification. We have done very little, and—very, very little. We did have hearings here at one point, I remember, some years ago in which we were going to pull the Tax Code up by its roots and change it, but I regret to tell you today we have made very little progress on it.

Our former friend and colleague on this Committee—my classmate, incidentally—Mr. Hancock, did a great job here some years ago of pointing out some of the abuses that he believed were occurring at the IRS. In fact, they were documented by "60 Minutes"

and a number of other instances. In particular, he had some constituents who felt that the IRS had overreached in its effort to collect back taxes from this family; and once they got into this web, there was little opportunity for them to get out.

The issue at the time was from the majority here, that the IRS was too assertive in collecting taxes that were owed to the government. In fact, the argument here was that the IRS acted like thugs; in particular, this contracting out had become a problem.

Now, in your testimony, you suggest that there has been an increase in people who, you believe, cheat on taxes or those who believe that the IRS is no longer going to do anything to them. Is it your position that this Committee and perhaps the majority in the House of Representatives overreached in its effort? Or are you arguing today that we should consider a more aggressive effort to step up what was the best voluntary tax compliance system in the history of the world?

Mr. WALKER. First, I think it is fair to say that historically there may have been some abuses. The fact of the matter is—is that we have issued several reports on this issue and found that while clearly there will be some abuses from time to time, given the nature of the responsibility IRS has, there was not pervasive abuse as some asserted years ago. Culturally what ends up happening is that Congress passed a law that said, you shall not do certain things.

Obviously people want to comply with the law, but culturally what happened is, the pendulum, in my view, swung dramatically to where the IRS is now focused overwhelmingly on customer service, not on compliance. I believe that in a voluntary tax system you need to simplify to try to help provide reasonable assurance that people can comply in good faith, more needs to be done there.

You also need to have an effective enforcement program so that people know that they are at risk if they don't comply. You need to do that not only civilly, but in appropriate circumstances, criminally, because otherwise it has a very adverse effect on the willingness of corporations, individuals, and others to comply.

As we have said, the IRS needs to be spending more time and allocating more of its resources, and may need additional resources, to enforce areas including, in the corporate high-income areas.

Mr. NEAL. Thank you, Mr. Walker. The second question: I know many of our colleagues in this body are going to spend a lot of energy and a lot of time on ensuring that lower income workers don't get a penny more than they should from the EITC. I understand that the zeal that they undertake in asserting that there is some abuse as it relates to the EITC, but let me direct your attention to your testimony, Mr. Walker, about corporations that move to Bermuda for the purpose of escaping American corporate taxes. Now, a year ago the Speaker was quoted in a column by David Rogers of the Wall Street Journal saying that there would have to be a vote in the Congress on the issue.

That is a year ago; we haven't had a vote on this issue yet. Members of this Committee who were all worked up about it during the election season last year scheduled as kind of a hasty matter a couple of small hearings, and the issue kind of fell off the table.

Today you are acknowledging that corporate inversions have become a problem and that those who move to Bermuda for the purpose of escaping corporate taxes really get away with it.

We have estimated up to $5 billion due in taxes, it has been suggested, could be collected over the next 10 years—$5 billion at a time when we have 146,000 troops in Iraq; and we are going to need that money for Afghanistan, we are going to need it for Iraq, and we are going to need it perhaps to do a better job of collecting through the IRS.

Would you talk a little bit about corporate inversions and this notion of those who move offshore with a post office box for the purpose of avoiding their tax burden share?

Mr. WALKER. At the high level—and Mike can provide some more detail—there are a number of tax techniques that corporations have followed in order to try to minimize their taxes, one of which has to do with their legal structure and where they are domiciled. There has been an interest, for legal purposes, in being domiciled in other countries in order to minimize U.S. taxes. This is a problem that has grown.

We do live in a globalized world; there is no doubt about that. There is a lot of activity going on where people are trying to dot the I's and cross the T's to be able to say that arguably, legally they are okay, but from an ethical and economic substance standpoint, one would have to raise real questions whether this is appropriate. I think it is an area that needs more attention and more enforcement activity, but, Mike, do you want to elaborate?

Mr. BROSTEK. The only thing I would add on that is, the IRS does face a large problem in policing corporate tax shelters and other sophisticated shelters, in part because they are deliberately constructed to walk the fine line between what is legal and what is not legal many times; and it takes an intense amount of investigation to determine whether a situation is problematic. The inversion situation is a case where it is not necessarily illegal for a corporation to do that type of thing.

Mr. NEAL. Mr. Chairman, could I have 30 more seconds?

Mr. SHAW. You are already 2 and a half minutes over. I would tell the gentleman that the House has already passed an inversion moratorium, and on April 3, 2003 the House passed 247 to 175 the energy bill which contained this provision, and it is awaiting action in the Senate.

Mr. NEAL. I appreciate that, Mr. Chairman, but the truth is, we have not done what we pledged to do a year ago. Could I have 30 seconds more?

Mr. SHAW. Well, this Committee has and the House has. We are awaiting action by the Senate. Very, very quickly, because we have got to move on.

Mr. NEAL. Thank you, Mr. Chairman. What would you do to an individual taxpayer who moved to Bermuda and set up a post office box and said that they were no longer going to pay their individual taxes?

Mr. WALKER. I would have to think about what I think the appropriate action is there. I do believe that, as we have seen of late with some of the accountability failures in the private sector, we are facing a troubling trend in this country where people are trying

to do what is arguably legal and what is minimally acceptable rather than what is ethically and economically the right thing to do. I don't have an easy answer, but I do think it's a problem.

Mr. NEAL. Thank you for those 30 seconds, Mr. Chairman.

Mr. SHAW. Mr. McCrery.

Mr. MCCRERY. Thank you, Mr. Chairman.

Mr. Walker, I just have one question and it relates to the question of employment taxes. In your testimony, you point out some figures that are rather startling. You say that as of the close of fiscal year 2002, there were approximately $49 billion in delinquent, unpaid employment taxes.

Can you suggest anything that the Congress ought to do to change the law or encourage the IRS to change regulations which would make us more efficient in collecting those taxes?

Mr. WALKER. Mike Brostek, please.

Mr. BROSTEK. The thing that we have found when we have looked at the employment tax situation is that in many cases these are smaller businesses who get themselves into financial difficulties, and they don't pay their employment taxes because they are a source of funds to stay in business.

The effective way of trying to deal with that is to stop the problem before it grows out of hand. So, the IRS has created various programs to intervene early when a taxpayer gets into that type of situation, to try to educate them that they need to be paying those taxes, or even to take enforcement action early on. However, those programs have been very small in IRS, and they haven't been evaluated to see if they are very effective.

I think encouraging IRS to determine what are the effective tools to use in addressing the situation is an appropriate thing to do.

Mr. MCCRERY. Well, what about using technology to have a more direct submittal of those taxes, filing them electronically or something like that?

Mr. BROSTEK. Currently, the IRS does make available electronic payment of employment taxes through the Internet to all businesses that want to. It is not a requirement that all do. You might want to consider whether there should be an expansion of the requirement.

One thing to keep in mind in considering such an expansion is the burden that smaller businesses might face in being required to file in that fashion.

Mr. MCCRERY. What would the burden be? Buying a computer and having an Internet service?

Mr. BROSTEK. It may be a fairly minimal burden, but not all small businesses do have computers and Internet connections.

Mr. WALKER. I think one other thing that we have to look at—and this is an example of it—is how, leveraging technology, can the IRS become aware in a more timely manner when somebody has not paid unemployment taxes, who has previously paid unemployment taxes.

Frequently what ends up happening is, as Mr. Brostek said, you will have a small business. This is a significant amount of cash by the time you take the employee's portion and the employer's portion, if they are having cash flow problems. They may have paid their payroll taxes for both the employer and employee for a period

of time, then all of a sudden they don't transmit it in a timely manner, hoping that things are going to turn around; and they may not turn around.

So, I think one of the things that has to happen is, how can we get more timely notification, leveraging technology, of who is not paying so we can intervene earlier.

As to the other question, I would say, you may want to consider additional penalties that you can bring to bear that would encourage people not to use that option. They knew that if they really thought they were going to turn around, that they were going to end up paying a big price and, therefore, that wouldn't be something that they might do as a first resort. It was something that they would do more as a last resort.

Mr. MCCRERY. Well, I agree with the first part of your statement, that is, that we ought to think of ways to encourage employers not to get in that trap in the first place.

The second part with respect to increasing penalties doesn't seem to me to be an effective tool since we know that we are already assessing substantial penalties and we are not collecting those. So, I don't think that is a very effective way to address this.

I would rather we try to think of innovative ways to make the collection smoother, quicker, more practical, and not tempt those employers to dip into that and misappropriate those funds for purposes that were not intended.

Mr. WALKER. I agree. I think realistically we have to be able to help them be able to do it, but we have to know when they are not doing it; in other words, when they discontinue, we need to be able to intervene in a timely manner. Quite frankly, I don't know that the IRS has that capability right now.

Mr. BROSTEK. It is something that IRS is hoping to do a better job of, identify when that pattern of payments is broken.

As you are probably aware, there are a number of fairly complex filing requirements for employment taxes that are graded according to the size of the business. If you are a very large business, you have a daily filing requirement, and it is easy to track patterns there. The smaller firms may only have to file on a monthly or a quarterly basis. Since those are often the ones that have the filing problem, detecting when they have broken a pattern can be a little difficult for IRS.

Also, because those smaller businesses often are seasonal businesses—a lawn-mowing business in the summer, a Christmas sale at the Christmas season—the payment pattern may have some natural fluctuation that has to be discerned, but the overall point is correct. The more progress that can be made in determining when the pattern has been broken, the better, because that is when the IRS needs to intervene.

Mr. WALKER. We ought to be able to leverage technology more in that regard. Technology that is working for us, not against us.

Mr. MCCRERY. Right. Good. Thank you, Mr. Chairman.

Mr. SHAW. Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman. I want to thank Mr. Walker for being with us again and providing us some good, hard-headed analysis, particularly raising again the concern about entitlement spending and the degree to which mandatory spending

over the next 20 years is going to take over our budget. We need to look at Medicare and Social Security.

I think, though, in the short term probably our best chance of dealing with some of the issues before this Committee today is looking at the tax side, looking at the Tax Code. I appreciate your raising the SSI issue again, however—also, some other tough issues.

On tax compliance, you just responded to some of Mr. McCrery's good questions. In general, if you could, give us a sense of the degree to which you think the compliance problem is related to the complexity of the Tax Code. I ask this question because I think there are a couple of ways the GAO could help us in this regard.

Mr. WALKER. First, I think there are two dimensions of the complexity problem. One is that if our laws are very complex, then even individuals who want, in good faith, to do the right thing, have difficulty sometimes in doing the right thing, because they don't understand the law.

The second is, if our laws are very complex, then that provides opportunities for legal and financial engineering to be able to do things that you can try to dot the I's and cross the T's in order to be able to argue that this is legal, and therefore it is tax minimization rather than tax evasion. So, I think complexity is relevant in both dimensions.

Mr. PORTMAN. To the extent you can put a finer point on that, I think that would be very helpful in going forward.

Obviously, we have not done much in terms of simplifying the Tax Code in the last several years. We talk about it a lot, and it is something I think that is on the agenda for, I hope, Members of the Committee on both sides. I think that one of the issues here with regard to fraud and abuse and with regard to mispayments is complexity.

Let me skip quickly to electronic filing. Some of the complexity of the Tax Code and some of the mistakes and erroneous payments are due to the fact that people file paper returns. I am amazed by those numbers. You get a 22 percent error rate with paper returns, less than a 1 percent error with electronic. We have got an 80 percent goal by the year 2007.

We have come up with some creative ways to try to deal with that, some of which is controversial. Anything you can do, I think, to help continue to keep us focused on that would be helpful. Electronic filing is part of the answer, and I don't think we have an adequate focus on it, although we are now up to, I think, 42 percent this year on electronic filing.

Quickly, in terms of the Tax Code, we talked a little about the small business side and some of the concerns here on compliance. We are increasing funds on compliance, as you know; we are trying to get that pendulum to swing back not just on taxpayer service, but on enforcement compliance.

With regard to EITC, a perennial problem. We now know that in food stamps, for instance, you have, what, about a 6 or 7 percent error rate. With regards to SSI, a big program, a problem, as you stated earlier, we have got a 6 percent error rate. We think—based on the 1999 figures from the IRS and U.S. Department of Treasury—we think there is a 28 to 32 percent or 34 percent error rate.

So, about a 30 percent error rate in the EITC, which is now between, we think, $8.5 and $10 billion; and that is based on 1999 figures.

We have talked about this certification process. Can you give us a sense of where you think the IRS is on EITC? Are we getting a hold of this problem? We have heard concerns raised by this Committee on the other side that we are doing too many audits of EITC, yet I am told only 4 percent of EITC returns are being audited in any respect.

What is your solution to this, and what have you guys come up with to try to help us with regard to EITC compliance?

Mr. WALKER. Well, first, I think that clearly the IRS has been noted as dedicating a significant amount of resources to try to get a handle on the EITC. I would respectfully suggest that they need to be dedicating more resources on some of the other areas where there are a lot of dollars involved, whether it be corporate tax shelters or high-income tax devices.

Mr. PORTMAN. Let me follow up on that, though. Are you saying that a 30 percent error rate is not a problem?

Mr. WALKER. No, no, I am not saying that at all. I am saying it is a problem, and I am saying——

Mr. PORTMAN. They should divert resources from that to other areas?

Mr. WALKER. Well, not necessarily. I think we need to look at it as return on investment. Thirty percent is unacceptable. On the other hand, where do we believe the biggest problem is? As was mentioned before, Commissioner Rossotti, who is on GAO's audit Committee, has estimated that there is a lot more money in some of these areas where IRS has not dedicated enough time, attention, and resources.

So, yes, we need to get the 30 percent down, but we also have to make sure that we recognize that there are other areas that involve a lot more money that we need to start getting on the beat more.

Mr. PORTMAN. You think there is a 30 percent error rate in some of these other areas, for instance, even small business, where probably the biggest number of dollars is involved?

Mr. WALKER. Well, 30 percent is one of the highest error rates that I have seen, no doubt about it. On the other hand, I think there are a couple of ways to look at it, one of which is the error rate, the other of which is how much money is involved, and thirdly, what type of individuals are involved.

Mr. BROSTEK. One of the significant issues there is that we don't have current information on the compliance rate in most areas of the Tax Code because IRS has not been doing standard statistical measurements of that component.

Mr. PORTMAN. We are moving ahead with the new compliance measurement?

Mr. BROSTEK. Yes. They have a measurement program for the individual taxpayers. That is updating work that was last done in 1988, for tax year 1988. There were significant areas of noncompliance found in the tax measurement in 1988. Small businesses had a noncompliance rate, if I recall correctly, around 30 percent. Independent businessmen—informal suppliers, I believe they called

them—had a noncompliance rate of 81 percent. So, there were other pockets of compliance problems that were detected through that compliance measurement program.

We are very pleased that they are doing it, because when they get the data, it will help them in allocating the resources to where the problems are. We are looking forward to them rolling forward and doing similar compliance measurements not just for the individual taxpayers, but for the small businesses and others as well.

Mr. PORTMAN. Well, there is no question we need the compliance data. My time is up—and I apologize, Mr. Chairman—but I think it—it concerns me that you are saying that we should divert resources away from an area where we know we have got a problem with 30 percent noncompliance based on 1999 figures.

It is not a matter of resources, it is a matter of focus. This certification program, for instance, would simply have people say in advance what their residence is, how many children they have, and so on. It concerns me that GAO would say this is not a big enough problem, that we ought to be diverting resources because there might be more money somewhere else, even though we don't know as much about that problem.

So, I would hope that GAO would continue to help us to get a hold on this and on the small business front, and on compliance in general and on complexity. Thank you, Mr. Chairman.

Mr. WALKER. I agree. Let me just say, Mr. Portman, we know what we know. We know that this is a problem, but we are also confident that there are other problems, and that is why it is important that the IRS do what they are doing now. They are focusing their time and attention on this area because they know about it. They need to continue to do that, but there could be other areas that are problems that they need also to be focused on. That is what we are saying.

Mr. PORTMAN. This Committee has been supportive of them moving ahead with this new compliance data, which was a political problem over the last two decades almost.

Mr. SHAW. Ms. Tubbs Jones is recognized.

Ms. TUBBS JONES. Oh, I didn't think I would get a chance right behind my colleague from Ohio. What I want to say, ask a question about is, you are saying that because in EITC, the amount of money is smaller compared to the possible or likely noncompliance in larger areas; so 30 percent of $10 is not a lot compared to 10 percent of $100 million, for lack of a better explanation?

Mr. WALKER. That is correct.

Ms. TUBBS JONES. Thank you. Let me, first of all, say I am pleased to be a part of this hearing today. I agree entirely that we need to take a direct approach to address fraud, waste, and abuse as it relates to the issues that fall within our jurisdiction, and that a mindset of passing the buck along to others, as was said, just doesn't cut it.

I am reminded that when I was a Cuyahoga County prosecutor and I took over a unit that dealt with welfare fraud, we focused all these dollars on women who got a second check because the first one came late, and they had children who needed to get to school with clothes and needed to have food to eat.

So, we prosecuted these women for a check for $330, and then when they were indicted. After we went through the process of indicting them and using the grand jury and the prosecutors, we then took them to court; then we assigned them a lawyer for which we paid more dollars. Then, after we assigned them a lawyer, we then put them on probation. Then they had review for that. Then we spent more money and we took their next welfare check and used it to reimburse them for the loss of the last welfare check.

I don't want to minimize looking at the fraud, waste, and abuse, but I applaud you for understanding the importance of allocating the resources where they need to be allocated, not just rolling it around, particularly on the people who are at the lower rung of the ladder. Even if we looked at all the money that is expended in some of these lower areas, if we just focused on maybe two or three larger pockets, we would get much more money back than we are getting right now.

So, I just applaud you for understanding what we are talking about with regard to EITC. The difficulty in establishing some of the preliminary issues that are being proposed by the administration to try and cut off the payments. So, I am just so happy to hear you say those kinds of things.

I am almost forgetting what else I wanted to ask you. Oh, I do have a question. What if, in the area where we are dealing with employers, we were to require that employers pre-certify to the IRS, before filing their tax return and claiming deductions for having paid their employees' tax dollars into the government, that they have turned over to IRS all of the money that they owe IRS with regard to tax withholding for their employees? Do we require them to pre-certify them right now?

Mr. WALKER. No, we don't.

Ms. TUBBS JONES. Wouldn't that be a heck of an idea, to require them to pre-certify that? That might deal with some of the issue of taxes not—employees' dollars not being paid in?

Mr. WALKER. Well, part of the question would be, what is the sanction if they certify falsely?

Ms. TUBBS JONES. Well, we can think about that, too. Don't think that I am just sitting here trying to think of ways to lock up people. That was my job before I came here, and I guess I think about it sometimes still, but I am just suggesting that might be something that you might include as you go through the process of looking at this. What else do I want to ask you about?

Mr. WALKER. I think your point is, take a concept and see if we might be able to apply it in a broader way, and we will look at that.

Ms. TUBBS JONES. Absolutely, Mr. Walker. In fact, I am going to—if any of my colleagues who ran out of time want to use some more time, you just answered the perfect question I wanted to ask about EITC and allocation of resources. So, Mr. Chairman, even though you don't think I ought to do this, I am yielding back the balance of my time, and I have time left.

Mr. SHAW. Miracles do happen. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. Really a couple of follow-ups to my friend, Mr. Neal from Massachusetts, who is very passionate about corporate inversions and asked you some ques-

tions about that. I know that is really beyond the scope of this hearing, Mr. Walker, and your appearance today, but I would commend to him or others that are interested in this area of international tax policy, 2 days ago Pamela Olson testified before the Senate Finance Committee on this subject, and I will just read one sentence from the testimony:

"Both the increase in foreign acquisitions of U.S. multinationals and the corporate inversion activity of the past few years evidence the potential competitive disadvantage created by our international tax rules."

The reason I point this out is because our Committee, I think, is going to be charged with dealing with international taxation, with the foreign sales corporation situation and the World Trade Organization.

So, I commend this testimony to any Member of this Committee that has focused on corporate inversions because I think this is a symptom of a larger problem that our Committee will have the opportunity to address in the future. Let me say to my friend from Ohio——

Ms. TUBBS JONES. Which one?

Mr. HULSHOF. You, Ms. Tubbs Jones, my good friend, which would be you, as opposed to my semi-good friend here.

I can assure the gentlelady that no one on this Committee wants to cut off payments from the EITC. I dare say that there are things that—it might be that this error rate in the EITC is our fault.

In fact, Mr. Walker, let me move to you, because in your testimony, in your written testimony or report—specifically on page 39 if you need to reference it—you mentioned that, for instance, the several definitions that we have of, "children" in the Tax Code, if we were to make simple changes in the definition of what is a child and make that uniform, that somehow might impact positively the ability to be compliant with the EITC. Would you elaborate on that just a bit?

Mr. WALKER. For example, one could have a child, but it may not be a dependent child; this could be a broken family; you could have two people who, it is their child but only one has responsibility for the care and feeding; and so, therefore, both could end up trying to claim credit for something that only one is entitled to.

So, this is an example of where even if people want to in good faith be able to comply, they may not be able to.

Mr. HULSHOF. I would say, in prior hearings—and I just know this, Ms. Tubbs Jones, because this happens to be an area of inquiry when we had representatives from the Department of Treasury under President Clinton's Administration; and I remember the discussion about the EITC, about noncompliance and what have you.

I seem to recall that then, a couple years ago, there was a 23 percent error rate with EITC. Now, unfortunately, the pendulum is swinging in the wrong direction; that is, now we have between, as was pointed out by my other friend from Ohio, 27 and 32 percent.

So, I think that is the gist of this inquiry; we have identified an area of noncompliance, and if it is our fault, we should help fix it. So, that is the point of the inquiry. Any additional comments?

Mr. BROSTEK. Your recollection is, I believe, correct, that there was an estimated 23 percent error rate in the past for the program. The only caution I would have is that the methodology for measuring it at that time differs from now, so it is not clear that there is a trend.

Mr. HULSHOF. Thank you for making that clarification to us. Specifically, and again focusing on this area a little further, you mentioned, Mr. Walker, citing the IRS, that three areas—qualifying child eligibility that we discussed briefly, improper filing status, and income misreporting—account for roughly 70 percent of refund errors. Is that right?

Mr. WALKER. That is my understanding, yes.

Mr. HULSHOF. Are there individuals or families out there that should be getting the EITC that aren't?

Mr. WALKER. Oh, I am sure there are some that aren't filing for it that are eligible for it.

Mr. BROSTEK. We did an estimate of that about a year and a half or so ago, and the extent to which people are not claiming it who appear to be qualified varies based on whether you are a married couple with children or whether you are a single individual.

Overall, about 75 percent of those eligible, we estimated, were receiving the EITC. So, one out of four who was eligible is not. For those with children, around 90 percent of those eligible are receiving EITC. For single individuals, that declines to the 40 percent area, as I recall.

Mr. WALKER. Let me quickly say that when I was practicing public accounting in the private sector I used to provide assistance to low-income individuals a couple of days a year to try to help them file their tax returns; and this was one of the issues that was a key issue. Namely, who was eligible for the EITC. Most people who came in had no idea what it was, and so you had to end up asking some tough questions with regard to, well, do you have a child? Is it a dependent child? You also had to look at what their income level was.

So, yes, there is a problem both ways. Some people are getting it who aren't eligible, and some people who aren't eligible are getting it.

Mr. HULSHOF. Thank you. Thank you, Mr. Chairman.

Mr. SHAW. Mr. Becerra has agreed for Mr. Lewis to go next.

Mr. LEWIS OF GEORGIA. As a matter of fact, I don't want to get into the debate with the gentleman from California or you, Mr. Chairman, but I think I was sitting here when the gentleman from California came in.

Mr. SHAW. Well, I am recognizing you.

Mr. LEWIS OF GEORGIA. Thank you very much, Mr. Walker. Thank you very much for your testimony.

I agree that we need to root out waste, fraud, and abuse in these problems, but I have one question. Could you tell me or tell Members of this Committee whether there is a greater degree of waste, fraud, and abuse in the basic human needs programs than in the programs of the U.S. Department of Defense?

We make a great deal about waste in Social Security, Medicare, Medicaid, and we heard about EITC. Now, I would like for you to elaborate and make some comparison.

Mr. WALKER. There is a lot of waste, fraud, abuse, and mismanagement in both, including in defense programs. If you look at our high-risk list, which we publish every 2 years, the most recent being in January 2003, there are 25 high-risk areas. The Department of Defense has 9 of the 25 high-risk areas.

Areas such as contract management, financial management, and acquisitions. The Department of Defense is an "A" on effectiveness in fighting and winning armed conflicts, however, they are a "D"—and I am grading on a curve—in economy, efficiency, transparency, and accountability. There are billions of dollars wasted there.

Mr. LEWIS OF GEORGIA. What are your recommendations?

Mr. WALKER. Well, we have had numerous recommendations. Part of the recommendations are, greater contractor accountability, following commercial best practices with regard to how we go about designing and developing weapons systems, and part of which is asking tougher questions about what systems do we really need versus systems that people want.

Another issue you can look at is, I don't know if it is still true today, but we were paying $4 million a day to former Iraqi military and civilians. I will double-check that, but I think that should not be coming out of taxpayer funds. It should come out of Iraqi funds or Iraqi oil revenue.

Mr. LEWIS OF GEORGIA. Are the people in the Department of Defense responding to your recommendation?

Mr. WALKER. I will say that these problems are longstanding. They have been there for years; they have spanned Administrations, they have spanned Congresses.

Some are going to take years to solve, but I will also say that Secretary Rumsfeld and his team are spending more time and energy on trying to deal with some of the basic management problems in Department of Defense than has happened in years.

The problem is, as you know, they are also focused on Iraq and Afghanistan and other problems around the world, and so we are not making as much progress as we would like to. They are trying hard.

Mr. LEWIS OF GEORGIA. Would you say to this Congress and to the administration that we should have the same zeal about doing something about waste and fraud and abuse in the Department of Defense program as we do in these basic human needs programs?

Mr. WALKER. We should have zero tolerance wherever it is.

Mr. LEWIS OF GEORGIA. Thank you, Mr. Walker.

Mr. SHAW. Ms. Johnson is recognized.

Mrs. JOHNSON OF CONNECTICUT. Thank you, and welcome, Mr. Walker. You said in your opening comments that Medicare needs to do a lot better job, and pointed at drug pricing, contracting reforms, and a couple of other areas. We do have in our proposed bill both pricing reforms, contractor reforms, an ombudsman, a number of things that you mentioned. Have we done it satisfactorily? Or if you have recommendations as to how that language could be strengthened, would you be able to provide that to us?

Mr. WALKER. We will take a look at it, and we will respond directly, Mrs. Johnson.

Mrs. JOHNSON OF CONNECTICUT. There is more reform—and I wish there were more Members of our Committee to hear this. There are more reforms to the system and management of Medicare in this bill than in any bill we have ever brought to the floor of the House. So, I hope the record will note that clearly.

Then you also mentioned some of the problems with undercoding and the need for aggressive enforcement.

It is also true that we have a growing problem with—you talked about overcoding. We have a growing problem with undercoding, and if you have a big problem with undercoding, it means that your providers are too afraid to code accurately and, therefore, err on the side of coding at a lower level. Then they get paid less, and there are a lot of reasons to be concerned about the systemic undercoding problem that is developing. Would you agree with that?

Mr. WALKER. Well, I think we need to try to get it right. It is similar to what we talked about—the EITC. You want to keep people who are ineligible from getting it, but you want to make sure people who are eligible do get it.

Mrs. JOHNSON OF CONNECTICUT. I agree, but when we go in and do audits, we penalize physicians, hospitals, others if they have overcoded. We do not repay them if they have undercoded. We don't offset undercodes with overcodes.

So, there is a fundamental reform in our audit effort that we need to make, because right now we are just looking at the half of the glass that is either full or empty and not balancing off. So, I urge you and your people to begin considering that, because I believe we are doing not only damage in terms of morale, but in terms of guaranteeing the resources that are necessary to support the services that we put so much stake in.

Then on to this issue of transparency, and particularly in billing, you have got to help us. The reason you can't understand the bills—and I found it frankly downright embarrassing that, as Chairman of the Subcommittee on Health and being Medicare eligible myself, for a simple break of the ankle, I could not follow the bills that came to me. I could not tell from the ones that said "This is not a bill" whether it was or was not, or how it had paid or who got paid what and whether anybody got paid what they ought to have gotten paid. It is shameful.

The billing system is the outward consequence of the underlying payment system. So, I can't make it—I will work at it. I take Clay's comment very seriously. I can imagine, with the complexity of his medical issues, it must have been horrendous. It is unfair, because our seniors have no idea where they are in—and, therefore, they have no sense of the cost of service and so on and so forth.

We need your help. How do we straighten this out? What are the inter-overlapping circles? Why do we get so many pieces of paper that seem to relate to similar, varied, or different things?

So, what is that relationship between this terrible billing experience that we have and the underlying payment systems, which we experience differently even in this bill? We talk about doctor reimbursements, we talk about hospital reimbursements, and so on, and yet that is not how the system works itself out. So, we do need a lot of help on that.

Then, just lastly, let me ask you to go over a little more clearly than you did at one point in your testimony about this tax not collected. How much of it actually represents taxes that cannot be collected because somebody went bankrupt, but we are required to hold that liability on our books for 10 years in case they hit the jackpot?

So, how much of it is the kind of debt that is very unlikely to be collected? How much of it could be collected, for instance, by applying the continuous levy policy all across the board to government agencies as well as the private sector? Give us a little more insight into what is the realistic number, rather than $232 billion.

Mr. BROSTEK. As I think I may have mentioned earlier, I believe my recollection is that the estimate is around $100 billion to $112 billion in uncollected assessments that has some collection potential. It is obviously much less than the full number. Tax debts are statutorily required to be carried on IRS' books for 10 years. So, there are a lot of old debts that are on there that are never going to be collected.

Mrs. JOHNSON OF CONNECTICUT. I believe you should change the way you report this, so that you report $100 billion, and then you report this other amount that is held on the books in case something miraculous happens and a taxpayer can repay, because I think it is misleading to taxpayers and to legislators.

Mr. WALKER. I think that is a good point, Mrs. Johnson. There are really two numbers here. One number is what the IRS is statutorily required to keep on its books; the other is what is realistic as far as being collectible. That is really the financial statement number, and I think we can provide greater transparency there.

Mrs. JOHNSON OF CONNECTICUT. Thank you. There is one other comment that I want to make, and that is that you also need to give us more help on this issue of clarity of the law. In the EITC, we have had fraud estimates. Sometimes fraud has been up to 34 or 35 percent; then it has been down to 20 or 21 percent. It is a function of how we write the law.

There is no way the IRS can possibly enforce this so that the fraud rate is down in any reasonable area, and I think you ought to take all those sections of the law where we have an 80/20 percent noncompliance rate, and help us straighten out, how do we fix the law so it is enforceable. If you think we are going to do this all with technology, Chairman Rostenkowski used to say, "Simplicity is the enemy of equity," and in politics, we like to pursue equity and fairness.

It is true, the fairer the bill, the more hopelessly complex it becomes. So, you need to begin posing for us the reforms that would make the law enforceable and, therefore, more equitable; at least then everybody covered by the law would be paying.

So, I hope that you will both be taking more seriously your responsibility to help us get to the first cause rather than just trying to get heavier and heavier systems to go after the money.

Mr. WALKER. I think, Mrs. Johnson, there are certain things we can do although I will argue that this is part of the IRS' basic responsibility. We are happy to help the Congress look at this independently, when they get done with their analysis that they are

updating from 1998 as to where they believe the compliance problems are. I think your idea is excellent.

That is, the IRS ought to be asked, and then we can look at it independently, for those areas where there is estimated to be high noncompliance, to what extent is that because of complexity in the law, to what extent is that because of administrative issues. There ought to be a focused effort on that.

In the longer term, I think one of the things that this Committee and this Congress is going to have to consider is, to what extent do we want to consider more consumption-based taxes? I think the experience of most other major democracies around the world is, eventually you need to move in that direction, given the economic trends that are going on in the world.

Mrs. JOHNSON OF CONNECTICUT. Can you consider that a question asked, that that kind of analysis be done of the IRS report? Or do we have to put that in writing to you?

Mr. WALKER. Consider that we will do it.

Mrs. JOHNSON OF CONNECTICUT. Thank you.

Mr. WALKER. I also think that it is part of IRS' basic management responsibility to do that in allocating their resources to get the biggest return on investment.

Mrs. JOHNSON OF CONNECTICUT. Thank you.

Mr. SHAW. Mr. Becerra.

Mr. WALKER. I will do that under my own authority.

Mr. BECERRA. Thank you, Mr. Chairman. Mr. Walker, thank you very much. I guess with the 5 minutes, let me try to focus a bit more on the EITC, because we have said so many things about it. I want to make sure we have these numbers that we have being throwing about somewhat correct.

We estimate that about $8 to $10 billion are in overpayments; we pay more than we should. That is an estimate based on 1999 data, which does not, of course, take into account some of the changes we have made to try to make some of those corrections. So, it could actually be less that we are overpaying people under the EITC, correct?

Mr. BROSTEK. That is true. The Department of Treasury in doing a study last year looked at the statutory changes, and they estimated that the change that was made to the adjusted gross income tie-breaker rule would reduce that problem by about $1.4 billion, I believe. They didn't believe that the other statutory changes that had been made would have reduced the remainder materially.

Mr. BECERRA. So, it could be between $8 to $10 billion, but it could be less because of the new changes that have been put into effect. That corresponds to the $230-plus billion that we don't collect that is due to the Federal Government, which means that all of America's taxpayers who voluntarily and in good faith pay their taxes, they are paying and having to carry a load through their tax payments for all the people who are not paying the $230-plus billion that they owe the Federal Government in taxes. That comes out—the $8 to $10 billion or so comes out to about 3 or 4 percent of that $230-plus billion that is not paid to the Federal Government.

We heard numbers of $100 million being spent for compliance purposes under the EITC to try to reduce that number of overpay-

ments out of about $200 billion that the IRS will be spending for compliance purposes. So, if I have got this correct, we are spending close to 50 percent of the IRS' budget to go after the tax cheats, to go after less than 4 percent of the problem.

When you take into account that EITC is a program that, for the most part, helps working Americans who earn likely less than $30,000 or $32,000, because you don't qualify for the EITC unless you are a working American earning less than about $30,000 to $35,000, we are going after those folks—spending half of our resources for noncompliance to go after our modest-income working families. Yet, if I have this correct, we have in the case of the estate tax, where we are talking about only the 2 percent wealthiest families in America, costing the Federal Government in non-tax payments almost half of what we believe we are not collecting or we are overpaying in the EITC.

So, here we spend 50 percent of our resources to go after our modest-earning families, American families, and I don't know of anything that has been said that we do to try to go after the taxes that are owed by the 2 percent wealthiest families in America. Can you tell me what is wrong with that picture?

Mr. WALKER. Well, let me say several things. First, the $200 to $300 billion is a balance sheet number. That is an accumulated number. In addition to that, some of that is not likely to be collected because the reasons that have been stated before.

Number two, the IRS for years has not updated its estimation of compliance in some of the areas that you refer to, which they are doing now. I would respectfully suggest that, when they do that, one of the things that this Congress needs to do is to try to make sure that, first, they have adequate resources to try to enforce all the laws where there are big dollars involved; and secondly, that they are allocating their resources in a prudent manner to try to get the most recovery with whatever resources they are given.

Mr. BECERRA. I think you have already answered this, because you mentioned something earlier, but do we believe that the—do you believe that the IRS is currently allocating its resources to attack noncompliance in a prudent manner?

Mr. WALKER. No. I think they can do much better.

Mr. BECERRA. One of our witnesses to come, Mr. Burman from the Urban Institute, will mention—at least he mentions in his testimony, that half of noncompliant taxpayers with incomes over $100,000 get off scot-free, and we don't fine them. These are taxpayers with over $100,000 in income. Yet we are devoting this money, and we should go after all tax cheats, those who do. Isn't it true that two-thirds of all the folks who file for the EITC, the tax credit, actually use professional tax preparers?

Mr. BROSTEK. Yes, sir. It may be 70 percent this year.

Mr. BECERRA. So, either we have a whole bunch of tax preparers who are trying to commit fraud—and I don't think that is the case—or we have just a very complex program under the EITC, and a lot of folks are making genuine mistakes. If that is the case, then it makes it even more difficult to understand why we are devoting so many dollars—and, again, these are taxpayer dollars—for the purposes of seeking out the tax cheats.

We are forgetting over half of the $100,000 income earners and above who are cheating the tax system, and we are going after those who are making $30,000 or less in working income.

So, I appreciate your testimony, and I hope we come up with some prudent solutions because it seems like we are going after the folks who work hard and make innocent errors, for the most part, and avoiding all the folks who are making big money and could pay some real taxes to make it fair for all of those who are paying their fair share. Thank you, Mr. Chairman.

Mr. SHAW. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman. I find it of interest to listen to my colleagues as they talk about different categories of people who either falsely or by error file their tax returns for payment or for receiving a credit. My question to you revolves around something that you said you were going to voluntarily do just a few minutes ago, and that is run a study on the consumption angle of collecting taxes.

Mr. WALKER. Mr. Collins, I think what I agreed to do was that when the IRS gets done updating their analysis of where they believe there are compliance problems—in other words, the estimated noncompliance rate—then try to be able to look at what might be some of the reasons for that noncompliance—to what extent might it be complexity in the law and, therefore, Congress needs to think about making changes in the law; to what extent might there be administrative issues associated with it—not on consumption taxes, per se, just with regard to compliance under the current tax law.

Mr. COLLINS. I understood you to say you were going to look at and evaluate a consumption tax. Be that as it is, in analyzing the different taxes, you talked—you have spoken a good bit about the EITC and the income tax, the corporate tax. I know we have a panelist that is going to follow you that is going to be speaking on compliance of fuel taxes. What about other areas of excise tax that we levy at the point of sale? Have you done a study to see where or how much there is fraud or abuse involved in the collection of those taxes?

Mr. BROSTEK. No, we have not, Mr. Collins.

Mr. WALKER. The point that I made before on a consumption tax, you are correct, I did say something about consumption tax. It was in a little bit different context. I believe I said on that, that ultimately we may need to look to go more toward consumption taxes rather than income taxes as many other industrialized nations have already done around the world.

Mr. COLLINS. Well, that is exactly what you said, yes, and that was my point. But you haven't done a study to determine the difference between fraud or errors in the collection of taxes or filing of taxes based on the income tax versus an excise tax, which is just a consumption tax within itself, have you?

Mr. WALKER. No, sir, we have not.

Mr. COLLINS. Well, I think it would be a good idea to look in that direction, because you talk about other industrialized nations, many of them have a consumption tax. That is a border correction provision when it comes to trade in exports and imports. We don't have that; and that is something that I am very interested in, and a lot of other people are very interested in, particularly a lot of peo-

ple in Georgia. I think it is a good idea and a good opportunity for us to begin to look in that direction.

I know one of our colleagues from Georgia has introduced the fair tax, which is a national retail sales tax measure, for that purpose.

If we can find that we have better compliance there, better collection, less complexity, less cost in compliance, then that is something that we should be looking at and reviewing. I think it is something that you should take a real strong look at and do some study in.

Mr. WALKER. I think it is not only relevant to look at it from the standpoint of domestically, but also, what are the experiences of other countries as well, because others have done more of this than we have.

Mr. COLLINS. Well, they have. Our Tax Code is a large portion of the overall cost of producing in this country; it is built into the cost of production. Whether you are producing a good or delivering a service, the Tax Code is built into that cost, and if you have no way to correct it, if you export it, or you have no tax that you are levying on something that is being imported, it is very difficult for the products that the American worker is producing or the service they are delivering to compete in the world market.

So, I think it is of utmost importance that you and others and the IRS review how the consumption tax compares to the income tax, and how it would better our position as a workforce in the marketplace.

Mr. WALKER. I believe we have done some related work.

Mr. BROSTEK. We have looked at various issues involved in implementing a consumption tax; a value-added tax, in particular, is what we looked at. We can send you a list of the reports we did there. Those reports, as I recall, didn't look at the amount of evasion that might occur in a consumption tax versus an income tax.

[The information follows:]

GGD–98–37; Tax Administration: Potential Impact of Alternative Taxes on Taxpayers and Administrators

GGD–93–55; Tax Policy: Implications of Replacing the Corporate Income Tax With a Consumption Tax

GGD–93–78; Tax Policy: Value-Added Tax: Administrative Costs Vary With Complexity and Number of Businesses

GGD–90–50; Tax Policy: State Tax Officials Have Concerns About a Federal Consumption Tax

GGD–89–125BR; Tax Policy: Value Added Tax Issues for U.S. Policymakers

GGD–89–87; Tax Policy: Tax-Credit and Subtraction Methods of Calculating a Value-Added Tax

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Mr. COLLINS. Well, the implementation, cost of compliance of what we have today is another thing, and also, errors in compliance is another. So, I think it would be a good work for you if you would do some studying and reporting in the overall area of how we transfer from this, what the results would be to go to a consumption tax.

Mr. WALKER. We will see what we have done and speak with you, Mr. Collins. I will say that, as you pointed out before, the primary responsibility for tax policy and the primary responsibility for tax administration, at least in the executive branch, would presum-

ably be the Department of Treasury and the IRS respectively. They should be looking at these issues, too, but we are happy to look at what we have done and what the gaps might be and what might make sense in that regard.

Mr. COLLINS. My response to that, David, is don't pass the buck.

Mr. WALKER. Oh, I am not. I didn't say I was. I just said that I think other people should be working here, too.

Mr. COLLINS. You are here in front of me, and I am suggesting that you do it, sir.

Mr. WALKER. I hear you, Mr. Collins.

Mr. SHAW. Mr. Pomeroy.

Mr. POMEROY. Thank you. Mr. Walker, it is good to see you again. It seems to me like this is a room, the Committee on Ways and Means room, where we hear an awful lot about tax simplification except when we mark up a major tax bill. Seems there that we are much more interested in getting in every ideological, partisan, or special interest giveaway that might be in the minds of the Majority, and the end is a Tax Code that, far from being simpler, is even more complex.

We passed a couple lollapalooza tax bills in the last few years. In your opinion, have we made the Tax Code simpler or more complex by the addition of the tax reforms of the 2001 and 2003 packages?

Mr. WALKER. Without making a judgment of those two packages, let me just say, Mr. Pomeroy, that I believe that there have been problems for years, and it spans both parties. I believe that our tax system is overly complex, and we have a long way to go in really and truly simplifying it. We have not helped a lot lately, but it is a bipartisan problem.

Mr. POMEROY. I will certainly acknowledge that the majorities of either party have had the same tendency. It just happens that the Majority at the present time is on the other side of the aisle.

I gleaned from your parsed answer that we have not made things easier. We have made the Tax Code more complex. A consumption tax is pretty simple. It is also pretty regressive. Generally speaking, under a consumption tax format as opposed to the present array of revenue provisions in our Tax Code, you would move toward a system where the wealthiest would pay even less, and everyone else would pay more. Is that generally how——

Mr. WALKER. Well, it depends on how the consumption tax is designed. Obviously there are ways to design a consumption tax where basic essentials could be exempt from that consumption tax. I think one of the things we have to keep in mind is not only what is administratable and what is equitable and the fact that we have—how does our system promote savings, because with savings you get investment, with investment you get improved productivity, with improved productivity you get more economic growth, with that you get better quality of life.

I would respectfully suggest we have a problem now because our system is not promoting savings. In many cases you have people with significant net worth and significant assets that are consuming a lot, but may not be earning a lot of taxable income. So, it doesn't necessarily have to be regressive if you take steps to ex-

empt certain types of things that would otherwise bear a greater burden on lower-income individuals.

Mr. POMEROY. I believe a fair reflection of consumption-based systems globally would in the end find them more regressive than progressive.

Let's look at the issue before us, which is where the money is that we might collect, and I am particularly interested in your thoughts as a former accountant, major accounting firm. A friend of mine who was serving as a partner in one of the major accounting firms expressed privately to me his discomfort with a new realm of professional responsibility, the marketing of tax shelter schemes. It was all—he felt like a life insurance salesmen, not to make that—that was too pejorative. He felt like a salesman in terms of going out to market stuff. He views the accountants in providing services needed to help companies with complex financial matters, not hawking tax avoidance schemes of questionable merit.

Now recently we heard from some of your—by the way, I think your tax staff is excellent in many different areas where I have heard them testify. I heard testimony about the tax avoidance schemes and marketed by major accounting firms in the areas of avoiding unemployment tax, shifting the status of permanent employees to temporary employees and moving them back and forth for purposes of bringing it down. Unethical, indeed illegal under State laws, but these are the schemes being marketed by, again, major, well-identified, highly credible firms. There are other examples of where tax shelters of a highly questionable nature have been marketed aggressively by these accounting firms.

Have you watched this phenomenon, and, if so, do you believe that this might be an area where the IRS ought to significantly enhance its enforcement activities?

Mr. WALKER. We have done some monitoring and do have concern about tax shelters and tax schemes. This is an example of what I said before, where there is an attempt to engineer through law and through financial transactions things such that they are arguably legal and—but they are on the edge. There are a variety of dimensions here. One dimension is that under the new independence rules that we promulgated and also that are in Sarbanes-Oxley, there are restrictions on what kind of tax services CPAs can provide that deal with, in effect, structured transactions.

I think it is important to note that CPAs aren't the only ones doing this. There are a variety of professionals, including lawyers, investment bankers, and a variety of others are marketing these types of schemes. So, this is not something that is just an issue with regard to CPAs.

Mr. POMEROY. I noted in the last GAO testimony they did not name names, but I want anyone paying attention to this representing a well-established name carrying high public trust and goodwill for which they have invested an awful lot of money and marketing that we ought to be coming to a point where we are not going to take this anymore. We will name names. The quickest way for you to tarnish the reputation of fine firms is to engage in this tawdry marketing of inappropriate tax shelters and schemes. I really do think that ought to be an area beyond the IRS even where the GAO and Congress can play a useful role.

Mr. WALKER. Having practiced public accounting in the private sector for a number of years, there are firms, and they aren't CPA firms, I might add, that are in the business of marketing tax schemes and tax shelters where they will take a percentage of the savings achieved through the scheme. They are not typically CPA firms. So, I think it is important to note.

I will tell you this: I am a CPA. I recently met with leaders in the profession to say that while the profession took a recent hit on the auditing side, that they better be concerned about the tax side, too, because there is growing concern that there are a lot of these schemes and shelters that are being entered into that are arguably legal, but they don't pass a straight face test. I think this is a matter of reputational risk for a variety of parties.

Mr. POMEROY. The Chairman has been very indulgent with my time. I would close by saying I would like to work with you on fashioning a request for a GAO study. The one on unemployment was just targeted to that area. I would like a broad review of the promotion and marketing of these kinds of schemes, study by the GAO. It might give both guidance to Congress and the IRS in terms of an enforcement response. Thank you.

Mr. SHAW. I think this concludes the questioning by the Members of Mr. Walker. I want to be able to set the record straight because there has been a great deal of discussion by Members up here as to how much money we are spending for enforcement of the EITC. It has been pointed out to me that the total fiscal year 2004 budget request contains $3.976 billion for general tax law enforcement and only $251 million for EITC compliance. This means that only 6 percent of the total enforcement budget is being spent for EITC compliance, according to the figures that are before me. So, I don't think there is this lopsided going after low-income people. I think clearly it would show—assuming these figures are correct, I think clearly it would show that we are trying to go where the money is and where the fraud is. Mr. Walker, you might comment on that briefly, and then we are going to move.

Mr. WALKER. I don't have the numbers in front of me. I will say this: That I think one of the things we have to do is to reinforce that the IRS needs to update, and they are updating their methodologies to try to ascertain where the compliance problems are. After they do that, we then need to look at to what extent is it because of its complexity, and to what extent is it because of administrative or other issues. Then they need to reallocate their resources on a more informed basis to where they are likely to get the best return for the taxpayer. I think that is a principle that is just a basic management 101 that needs to be followed.

Mr. SHAW. Many people don't really realize it, but in some of these large corporations IRS agents actually have offices within the corporation to perform audits on a daily basis. I was speaking to one of the tax staff of one of the large corporations last night, and he was telling me that 10,000 man-hours a year are spent just on trying to keep things together as far as the income tax return and the reporting process. So, it is an expensive proposition for business, and also I think it shows that the IRS is trying to do its best, although not perfect, as none of us are, I think, that——

Mr. WALKER. I wouldn't want my remarks to in any way, shape or form be viewed as negative against the dedicated public servants of the IRS who are trying to do their best. I also will acknowledge that the current Commissioner, Mark Everson, who I know well and have worked with in his prior capacities, is trying to place additional time and attention in some of the areas that we have talked about today. There is no question about that.

Mr. POMEROY. Would you yield just for a moment?

Mr. SHAW. Very, very quickly. We really have to move on.

Mr. POMEROY. Not to quibble with what you said, but maybe give the other side of the coin in terms of additional revenue sought this year, about $200 million additional noncompliance money sought, half for the EITC noncompliance issues, half for other noncompliance, and that does not comport with lost revenue. That would appear like we are really loading up the audit and compliance enforcement activities on the low end and not making a similar effort on other areas of taxed on compliance.

Mr. CARDIN. I would ask unanimous consent that we could put in the record at this point charts that are attached to Len Burman's testimony that deals with the outlays for enforcement of EITC and all taxes for fiscal year 1997 through 2004, and also a chart showing the amount of taxes that are not collected versus the individual corporate and EITC.

Mr. SHAW. Without objection.

Dave, it is nice as always to see you. You have been a good friend of this Committee. You can see that you have earned a great deal of respect from both sides of the aisle.

Mr. WALKER. Thank you, Mr. Chairman.

[Questions submitted from Mr. Herger to Mr. Walker, and his responses follow:]

Questions from Representative Wally Herger to the Honorable David M. Walker

Question: The 1996 welfare reform law included provisions to prohibit felons and probation and parole violators from receiving SSI and TANF benefits. What are the results of this provision? Does Congress need to look at ways to strengthen it? If so, how?

Answer: As you know, the Personal Responsibility and Work Opportunity Reconciliation Act 1996 (PRWORA) amended the authorizing language in statutes governing the Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF), Food Stamp, and housing assistance programs by prohibiting fugitive felons and probation and parole violators from receiving benefits under these programs. In a September 2002 report, we found while there has been some progress in implementing the provisions in the welfare reform law, we also found that the law has not been implemented aggressively in all programs.[1] In particular, the Department of Housing and Urban Development (HUD) has done little to ensure that fugitive felons do not receive housing assistance. We made a number of recommendations to the Secretaries of HUD, Health and Human Services (HHS), and Agriculture aimed at strengthening the oversight and implementation of the fugitive felon provisions. At this time, we do not believe that the Congress needs to take additional steps to improve the fugitive felon provisions pertaining to the SSI and TANF programs.

Question: Earlier this year GAO added Federal disability programs to its list at high risk of waste, fraud, and abuse. This includes the Supplemental Security Income (SSI) and Social Security Disability Insurance (DI) programs. Why were these programs added to the high-risk list? How much is

[1] See U.S. General Accounting Office, Welfare Reform: Implementation of Fugitive Felon Provisions Should Be Strengthened, GAO–02–716 (Washington, D.C.: Sept. 25, 2002).

fraud in these programs costing the taxpayers each year? Do you have specific recommendations for addressing this problem?

Answer: As you know, GAO's high-risk program has increasingly focused on those major programs and operations that need urgent attention and transformation in order to ensure that our national government functions in the most economical, efficient, and effective manner possible. As such, we added modernizing federal disability programs to our high-risk list because the existing programs—including SSA's DI and SSI Programs and the disability programs administered by the Department of Veterans Affairs—are grounded in outmoded concepts of disability. In particular, these programs are not in line with the current status of science, medicine, technology, law, and labor market conditions. Moreover, the programs have been growing and are poised to grow even more rapidly as more baby boomers reach their disability prone years. This growth is taking place despite greater opportunities for people with disabilities to work and is occurring at the same time that agencies such as SSA are struggling to provide timely and consistent disability decisions. While SSA is taking some actions to address these problems in the short term, longer-term solutions are likely to require fundamental changes including legislative action.

In prior work, we have noted a number of actions that SSA should take to modernize its disability programs. GAO believes that SSA should take the lead in examining the fundamental causes of program problems, such as outmoded disability criteria. It should also seek both management and legislative solutions as appropriate to bring their programs in line with the current status of science, medicine, technology, law, and labor market conditions. At the same time, SSA should continue to develop and implement strategies for improving the accuracy, timeliness, and consistency of disability decisionmaking. Further, the agency should pursue more effective quality assurance systems.

While we are not able to accurately estimate the overall extent of fraud in the disability programs at this time, we are initiating work that will examine overpayments and other potential problems in SSA's DI program.

Question: In a September 2002 report, GAO indicated that information was "not available" regarding erroneous payments reported by the TANF program in 2000. Such information was available from other needs-based Federal programs such as SSI, Food Stamps, and housing assistance. Reported erroneous payments in those three programs totaled nearly $4 billion. Unfortunately, it just doesn't make sense that there wouldn't have been any erroneous payments in the TANF program. Since the report came out last year, is there any better information about erroneous payments in the TANF program? Are states actively working to detect and prevent fraud and abuse in their TANF programs? Is there anything we can do to help them?

Answer: Data on erroneous payments were available under the TANF program's predecessor—Aid to Families with Dependent Children—through the Federally required quality control system. That quality control system is no longer required under TANF. However, HHS is taking steps to develop an error rate for the program as requested by the Office of Management and Budget (OMB). OMB Circular No. A–11 requests information on erroneous payments for selected agency programs and specifies reporting requirements for the programs where erroneous payment data currently are not available. HHS recently testified that it would seek legislation to authorize the collection of data necessary for determining an error rate in TANF.

GAO is beginning a study on state and federal internal controls in place to address fraud and improper payments for Administration for Children and Families (ACF) programs. This study is being done for the Chairman of the Senate Committee on Finance. This work will provide a broad overview of control activities in place for all ACF programs, as well as more in-depth information for selected ACF programs, which may include the TANF program.

Question: Mike Rice of the United Council on Welfare Fraud said that a survey they conducted found that "40 of 42 fraud directors polled were of the opinion that child care fraud posed a problem in their states." Further, his group "recommends that, due to the substantial increase in child care fraud funding made available to the states and the growing number of instances of fraud in Child Care Assistance," various measures should be taken to better prevent fraud in this area. Have you done any work that would provide background for us on child care fraud and abuse issues? If not, would you be willing to explore such issues in cooperation with us?

Answer: While GAO has not done any work on fraud related to the Child Care and Development Block Grant, it is considering addressing the issue as part of the

ongoing study—noted above—on state and Federal controls to address improper payments in ACF programs. We would also be happy to work with you to identify any additional work that would meet your needs. It is also important to note that OMB has requested HHS to develop information on erroneous payments for the Child Care and Development Fund, along with the TANF program and other ACF programs. In response, HHS has said it is considering how to develop an error rate for this program in a cost-efficient manner.

Question: The Social Security Administration recently began a pilot project requiring photo identification for individuals applying for disability benefits. Do you know why that was initiated? Do other benefit programs (i.e. cash welfare/TANF, child care, foster care and adoption payments, and unemployment benefits within Ways and Means jurisdiction) use photo identification to confirm that people claiming benefits are who they say they are? Should they?

Answer: We are aware that SSA is developing a photographic identification pilot as part of its broader efforts to improve SSI program integrity. However, we are not currently aware of similar steps being taken in other benefit programs. We would be happy to work with this subcommittee to help determine the scope and nature of such procedures in other programs, and whether such tools might help improve the integrity of other benefit programs.

Question: Current law provides for automatic offsets of Federal income tax refunds to cover child support debts, among other purposes. It has been suggested to the Committee that it makes sense to also allow offsets of such refunds to recover welfare and unemployment benefit overpayments. What are your thoughts on this?

Answer: In a recent report, we noted that the Social Security Administration began using tax refund offsets in 1998 to recover outstanding debt in the SSI program.[2] At the end of calendar year 2001, this initiative has yielded $221 million in additional overpayment recoveries for the agency. While we have not specifically recommended that the tax refund offset be used in other programs such as welfare or unemployment insurance, our work suggests that administrative offsets can be a useful tool to recover overpayments and strengthen the integrity of benefit programs.

Mr. SHAW. The next two panels have agreed to combine their testimony. I have been told that there is going to be a vote on the floor. There will probably be a series of votes at about 1:00 p.m. I will try as hard as I can to complete this hearing before those votes because there will be a substantial number of votes, and I would like for the Committee to be able to move on.

So, first of all, we have Mr. Joseph R. Brimacombe, Deputy Director, Compliance Policy, Small Business Self-Employed Division, IRS, New Carrollton, Maryland; and the Honorable James Huse, who is the Inspector General of the SSA. We also have Bill Jordan, who is the Senior Counsel to the Assistant Attorney General for the Civil Division of the Department of Justice. All of these people are the frontline people that Mr. Rangel said he wanted to hear from.

We also have Len Burman, who is a Senior Fellow at the Urban Institute; Hon. James Moorman, President and Chief Executive Officer of the Taxpayers Against Fraud; and Michael Rice, who is the President of the United Council on Welfare Fraud (UCOWF), from Rochester, New York.

We welcome all of you gentlemen. We have all of your written testimony, which will become a part of the record. Because of the length of this hearing, any way that you might be able to summa-

[2] See U.S. General Accounting Office *[Supplemental Security Income: Progress Made in Detecting and Recovering Overpayments, But Management Attention Should Continue,]* GAO–02–849 (Washington, D.C.: Sept. 16, 2002)

rize would be appreciated. As I said, your entire statement will be made a part of the record. Thanks for your patience.

I think there is probably a little more interest than we thought with regard to the first witness, and, therefore, we ran a little longer than usual.

Mr. Brimacombe, I hope I am pronouncing your name correctly. You are going to have to speak directly in the mikes. As Chairman Thomas says, this is 1950s technology, and we really need to update it, and some of these mikes are beginning to break down up here, so I hope you can hear me.

STATEMENT OF JOSEPH R. BRIMACOMBE, DEPUTY DIRECTOR, COMPLIANCE POLICY, SMALL BUSINESS AND SELF EMPLOYED OPERATING DIVISION, INTERNAL REVENUE SERVICE, NEW CARROLLTON, MARYLAND

Mr. BRIMACOMBE. Mr. Chairman and Members of the Committee, my name is Joseph Brimacombe, Deputy Director of Compliance Policy, Small Business and Self Employed Operating Division. I appreciate the opportunity to describe recent compliance trends and issues in highway-related excise taxes and to highlight IRS activities to address them.

The IRS is responsible for the administration of more than 40 separate excise taxes including motor fuel. Motor fuel excise taxes are an important source of Federal and State revenues and finance a large share of the improvement to the Nation's transportation system. Motor fuel, which includes gasoline, diesel fuel, kerosene and special fuels, accounts for more than 90 percent of trust fund receipts. Tax receipts deposited in the Highway Trust Fund account totaled $34.2 billion in fiscal year 2002.

Increased excise tax rates at the Federal and State levels have created incentives for tax evasion. The IRS uses its enforcement power to collect the taxes due; however, we simply do not have the resources to attack every case of noncompliance.

The IRS currently has 140 employees to monitor 1,400 terminals, all fuel wholesalers and retail outlets and U.S. border crossings. They also conduct periodic inspection of on road vehicles.

The IRS has identified and is addressing critical areas of noncompliance. The first problem is the continued misuse of dyed diesel fuel. The IRS has assessed over 900 penalties totaling over $1.8 million since October 1, 2002 for this misuse.

Another compliance challenge is the smuggling of motor fuel. This occurs at the border crossing at ports of entry for ocean-going vessels.

A further critical compliance problem is the use of altered fuels through cocktailing. This evasion technique increases profits by extending the taxable fuel with used motor oil and other petroleum-based products.

The diversion of aviation jet fuel to highway use to avoid motor fuel taxes is an ongoing compliance problem. Exempt removal of undyed jet fuel from the rack creates tax evasion incentives and opportunities that result in loss to the Federal and State aviation taxes as well as diesel fuel excise taxes.

Last, the Committee asked that we address the mobile machinery exception from the definition of a highway vehicle. In creating

the Highway Trust Fund, the Congress expressed its intention that the highway program be funded on a pay-as-you-go basis, apportioning the cost of the highway program among those vehicles that use the highway. The mobile machinery exception was intended to apply to vehicles that make minimum use of the highways and serve solely as a permanent mount for job site machinery, such as a job site crane. The Department of Treasury has delayed issuance of regulations pending congressional action and is working with Congress to develop a statutory definition of highway vehicles.

In the last decade there have been four major excise tax compliance success stories. The first of these is moving the point of taxation for motor fuel to the terminal rack. Second is requiring home heating oil and other diesel products to be dyed red if sold tax free. The third is the taxation of undyed kerosene at the same basis as diesel fuel; and finally, the development and implementation of the excise files information retrieval system.

In conclusion, Mr. Chairman, I believe that we are making progress in our goals to ensure that the Federal motor fuel taxes are reported, paid, collected, and made available to the highway trust fund. We are using technology in the administration of the excise tax program more efficiently and effectively than ever. I want to thank you for your continued support.

[The prepared statement of Mr. Brimacombe follows:]

Statement of Joseph R. Brimacombe, Deputy Director, Compliance Policy, Small Business and Self Employed Operating Division, Internal Revenue Service, New Carrolton, Maryland

Mr. Chairman and Members of the Committee, I appreciate the opportunity to describe recent compliance trends and issues in highway-related excise taxes and to highlight Internal Revenue Service activities to address these matters.

Background

The Internal Revenue Service is responsible for administration of more than 40 separate excise taxes, including motor fuel. Motor fuel excise taxes are an important source of federal and state revenues and finance a large share of improvements to the nation's transportation system. Six separate excise taxes are levied to finance the Federal Highway Trust Fund program. Three of these taxes are imposed on highway motor fuels. The remaining three are a retail sales tax on heavy highway vehicles, a manufacturers' excise tax on heavy vehicle tires, and an annual use tax on heavy vehicles.

Motor fuel, which includes gasoline, diesel fuel, kerosene and special fuels, account for more than 90 percent of trust fund receipts. It is taxed when it moves out of the bulk transportation and storage network—a refinery, pipeline, barge, or terminal and into tanker trucks at the terminal rack. At this point, generally all gasoline is taxed and diesel fuel is either taxed or dyed if it is intended for nontaxable purposes. The owner of the fuel as it passes the terminal rack—the position holder—is liable for payment of the tax. All persons owning taxable motor fuels before tax is paid must be registered with the IRS. Additionally, terminal operators must be registered with the IRS. This policy of taxing fuel at the terminal rack is an important part of our overall compliance system.

One major fuel component is not subject to the tax at the rack system. Most aviation jet fuel is a special grade of kerosene. The Internal Revenue Code allows undyed aviation grade kerosene (jet fuel) to be removed from terminals without payment of the Highway Trust Fund tax if the Secretary determines that the kerosene is destined for use as a fuel in an aircraft. Under Treasury regulations, this exemption is generally allowed if the buyer of the jet fuel at the terminal rack certifies, in writing, that the jet fuel will be used as a fuel in an aircraft. If the jet fuel is later diverted from aircraft use, the seller of the jet fuel at that time is liable for the Highway Trust Fund tax.

Taxpayers report their excise tax liability quarterly on Form 720, which is due one month following the close of the quarter. On the Form 720, taxpayers itemize

their liability; for example, reporting the number of gallons of each type of fuel and the tax due, and claims of nontaxable use of the fuel. Any balance due or overpayment is settled at the time the Form 720 is filed. Highway motor fuels are taxed as follows: 1) gasoline at a rate of 18.4 cents per gallon, 2) diesel fuel and kerosene at 24.4 cents per gallon; and 3) special motor fuels, such as propane, at various rates up to 18.4 cents per gallon. Gasohol, a mixture of ethanol and gasoline, is taxed at rates ranging from 13.2 to 15.436 cents per gallon, depending on the concentration of ethanol in the mixture.

Tax receipts deposited in the Highway Trust Fund Account totaled $34.2 billion in FY 2002.

Compliance Problems

Maintaining the flow of receipts into the Highway Trust Fund requires continuing efforts to secure better tax compliance. Federal and state excise tax rate increases over the years have increased incentives for tax evasion with the tax exceeding the profit margin and/or the cost of the product in many instances. The corresponding ongoing revenue losses are a significant problem for tax administrators and honest business taxpayers facing competition from tax evaders.

When taxpayers do not voluntarily meet their tax obligations, the IRS must use its enforcement powers to collect the taxes due. It is not possible to seek out every case of non-compliance, therefore we must apply our resources to where non-compliance is greatest while still maintaining adequate coverage of all other areas.

The IRS has identified, and is addressing, critical areas of excise tax non-compliance. These include the continued misuse of dyed diesel fuel, "bootlegging" to evade payment of taxes at a higher rate, "smuggling" to evade payment of any and all taxes, "cocktailing" to illegally reduce the effective tax rate, and the diversion of aviation jet fuel to highway use to illegally evade motor fuel taxes. Another issue that affects the funds flowing into the Highway Trust Fund is the loss of revenue from taxpayers claiming exemptions from tax for off-road highway use.

The first of these critical compliance problems is the continued misuse of dyed diesel fuel despite the numerous legislative and regulatory steps taken by Federal and State Governments. The IRS currently has approximately 140 Fuel Compliance Officers (FCOs) to monitor 1,400 terminals, all fuel wholesalers, thousands of retail motor fuel outlets, and U.S. border crossings. Additionally, these personnel are charged with conducting periodic inspections of on-road vehicles on highways throughout the country.

The FCOs continue to uncover fuel misuse. For example, since the start of the fiscal year beginning October 1, 2002, the IRS FCOs have assessed over 900 penalties, totaling over $1.8 million for misuse of dyed diesel fuels. Over 70% of the penalties involved the misuse of fuel by taxpayers in the construction and agriculture industries. Both of these industries are subject to broad-based tax exemptions for non-highway use of motor fuels thereby presenting opportunities for abuse.

A second significant compliance problem is motor fuel "bootlegging". This form of tax evasion occurs when a low tax jurisdiction is near a high tax jurisdiction and taxpayers scheme to evade payment of taxes at a higher rate, "bootlegging" the fuel from a lower-taxed rate jurisdiction. It frequently occurs between states—costing states tax revenues and their share of the Federal Highway Trust Fund. For example, if the tax rate in Georgia is 7.5 cents, taxpayers may illegally bootleg the fuel to North Carolina where the tax rate is 24.2 cents. This difference is huge in an industry where over 30 million gallons are transacted daily.

A third critical compliance problem is smuggling of motor fuel that involves the illegal introduction of fuel within the United States to evade payment of excise taxes. This problem occurs at border crossing points and ports of entry for ocean-going vessels. There are 55 border crossing points between Canada and Mexico and more than 9 million trucks crossing these borders each year. Currently, illegal smuggling activity can only be detected by conducting border checks. This includes detaining a truck, reviewing the manifest, extracting a sample of the cargo, and analyzing the sample to determine if the substance matches the description on the manifest. The 140 FCOs perform all fuel compliance activities throughout the country, including periodic border checks. These border checks are further constrained by potential disruption of international traffic due to the time required for each truck inspection under the existing processes. In addition to the border crossing points, the U.S. Army Corps of Engineers reports that there are over 300 facilities throughout the U.S., capable of receiving fuel products from water-borne traffic.

Another critical compliance problem is the use of adulterated fuel through "cocktailing" or blending the product. This tax evasion technique increases profits by extending diesel fuel with used motor oil and other distillates including pollutants, cleaning agents, and unfinished refinery products. This form of tax evasion is

attractive for two reasons. First, the substances used to extend the fuel are often not regulated; therefore, these quantities are not in any fuel reporting system. Second, in some cases, the substances are regulated as waste materials, providing an unscrupulous individual an opportunity to get paid to dispose of the product(s) and then blend them into gasoline and get paid again. This tax evasion technique results in an ongoing revenue loss and also may be dangerous to the public when hazardous waste is blended with taxable fuels.

The diversion of aviation jet fuel to highway use to avoid motor fuel taxes is an ongoing compliance problem. Exempt removal of undyed jet fuel from the rack creates tax evasion incentives and opportunities that result in loss of federal and state aviation taxes, as well as diesel fuel excise taxes, because the "jet" fuel can readily be used in on-road diesel trucks.

Lastly, the Committee has asked that we address the issue concerning the Mobile Machinery Exception from the definition of highway vehicle and how funds are diverted from the Highway Trust Fund. In creating the Highway Trust Fund, the Congress expressed its intention that the highway program be funded on a pay-as-you-go basis, apportioning the cost of the highway program among those vehicles that use the highway. Thus, the taxes on fuel, the sale of heavy vehicles and tires, and heavy vehicle use are the sources of revenue for the Highway Trust Fund because these taxes apply to "vehicles used on, or suitable for use on, highways." The Treasury Department has delayed issuance of regulations regarding mobile machinery pending congressional action and is working with Congress to develop a statutory definition of a highway vehicle as part of the reauthorization of the Highway Trust Fund.

Compliance Strategies and Successes:

In the last decade there have been four major Excise Tax compliance success stories. First, moving the point of taxation for motor fuels to the terminal rack significantly reduced opportunities for tax evasion, some of which had been carried out on a multi-million dollar scale by sophisticated criminal organizations. Second, requiring home heating oil and other diesel products to be dyed red if sold tax-free eliminated another key source of evasion. The third has been the taxation of undyed kerosene on the same basis as the regular diesel fuel with which it is often mixed. The fourth, and most recent, was the implementation of the Excise Summary Terminal Activity Reporting System (ExSTARS) to collect and share information about the movement of all fuel and related products throughout the country.

What is ExSTARS?

Matching information received from employers, financial institutions, and other businesses with information reported by taxpayers has long been recognized as one of the most powerful tools that the IRS has used to ensure income tax compliance. In fact, third parties report approximately 80 percent of the personal income received by taxpayers. Through its document matching programs, the IRS is able to use this data as an effective compliance tool.

Recognizing that compliance with the excise tax laws of this country would be greatly enhanced by a similarly constructed excise information matching system, the Congress, in response to industry concerns, mandated the development of such a system in the 1990s. ExSTARS is the information reporting system created as a result of this congressional mandate that enables the IRS to track all fuel transactions that occur within the fuel industry's bulk shipping and storage system—refineries, pipelines, barges, and terminals. It provides tracking capabilities of fuel from the pipeline system to the point of taxation for the Federal Excise Tax at the terminal rack. This information will then be matched by the IRS to fuel sales transactions reported by the terminals and to verify the tax liabilities reported on the quarterly Forms 720.

The design, development, and implementation of ExSTARS is a tribute to the working collaboration between the IRS, contractors, Federal Highway Administration, state tax administrators, and industry stakeholders over more than a five-year time period. This success story was a direct result of the sustained investment provided by the Congress through the Transportation Equity Act for the 21st Century.

ExSTARS was initially implemented in April 2001 and imposed information reporting requirements on the 1,440 terminals registered to transact fuel sales in this country as well as the pipelines and barge carriers that transport the fuel from the refineries to the terminals. The IRS is currently receiving information reports on 10 to 14 million fuel transactions monthly. Approximately 60% of these are filed electronically. It is both impractical and cost prohibitive to work with the remaining 40% that are filed on paper documents. The implementation of ExSTARS caused the petroleum industry and the related petroleum product carriers to incur significant

new reporting requirements. During this initial period of implementation, the IRS has worked closely with the affected companies to ensure that the information we receive is accurate. Some companies encountered problems in meeting the filing requirements to ensure accuracy. Therefore, the IRS has worked with the industry to extend filing requirements. This extension was provided to facilitate electronic filing and allow each impacted taxpayer the opportunity to be compliant with electronic data information (EDI) filing requirements.

Other Key Internal Revenue Service Compliance Strategies

While ExSTARS will enhance compliance efforts, including misuse of dyed fuel—there will remain those instances of willful non-compliance that will continue to require IRS intervention. In several of these areas, the IRS is developing sophisticated and state-of-the-art technologies to address excise tax evasion techniques such as smuggling, bootlegging, and cocktailing.

For example, the IRS has developed a "fuel fingerprinting" technology to combat fuel tax evasion occurring "below the rack"—particularly bootlegging, smuggling, and adulterated fuel through "cocktailing" or blending the product. Fuel fingerprinting is a technique that examines the "chemical fingerprint" of samples taken from retail stations for adulteration or for a mismatch with samples taken from the terminal racks that normally supply those stations. This technology allows for the detection of untaxed kerosene intended to be used as aviation fuel, "transmix" taken out of pipelines, waste vegetable oils, used dry-cleaning fluids, and other chemicals that may be mixed with diesel fuel and find their way into the tanks of trucks on the road. Fuel fingerprinting provides a more efficient and comprehensive method to monitor compliance compared to traditional audit techniques.

In another example, the IRS is also developing state-of-the-art technology to identify smuggling of motor fuel at U.S. border points of entry and ocean-going vessels and barge traffic over intercoastal waterways. Under existing processes, illegal smuggling activity can only be detected by physically detaining a truck at the border, reviewing the manifest, extracting a sample from the propulsion tank, and analyzing the sample to determine if the substance matches the description on the manifest. The IRS is working with the Department of Energy's Pacific Northwest National Laboratory (PNNL) to design, develop, and test a new technology called an Acoustical Identification Device (AID) that uses hand-held sonar technology to identify the liquid contents of sealed containers, such as tanker trucks. Concurrent with this effort, PNNL is working with the United States Customs Service to use the same technology for other purposes, such as drug interdiction and border inspections for security purposes.

The IRS has initiated efforts in response to emerging findings and concerns regarding the exempt removal of undyed jet fuel from the rack for use in on-road diesel trucks. Through use of its fuel fingerprinting technology, the IRS has identified instances of jet fuel being sold as diesel fuel in retail outlets and in highway diesel trucks.

Additionally, in recent years, the IRS has expanded its compliance efforts by making the Form 637 Registration Program—that allows a taxpayer to engage in tax-free transactions—the cornerstone and first step in compliance. Fuel is taxed when it moves out of the bulk transportation and storage network—a refinery, pipeline, barge, or terminal—and into tanker trucks at the terminal rack. The IRS conducts periodic compliance checks with these taxpayers to ensure that the taxes are collected consistent with the statutes and that, any and all, transactions involving a tax exemption are accounted for. By strengthening this up-front compliance activity, downstream compliance problems can be minimized.

Surface Transportation Reauthorization Proposal

The Administrations surface transportation reauthorization proposal, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA), was submitted to the Congress in May 2003 and contains a number of modifications to the collection highway-related excise taxes. These proposals would provide more resources to a collaborative government-wide enforcement effort at Federal, state, and local levels. In addition, more than $200 million would be directed to highway use tax evasion projects over the six-year reauthorization period.

Conclusion

Mr. Chairman, in conclusion, I believe that we are making progress in our goals to ensure that federal motor fuels taxes are reported, paid, collected, and made available to the Highway Trust Fund. We are using technology in the administration of the excise tax program more efficiently and effectively than ever before.

The progress we have made to date is due in no small measure to your continued leadership, guidance, and active support of our Excise Tax Programs. We are pleased to report the successes described here today, and I thank you for your continued support of our efforts to address and eliminate noncompliance with federal excise tax requirements.

Mr. SHAW. Thank you, sir. Mr. Huse.

STATEMENT OF THE HONORABLE JAMES G. HUSE, JR., INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION

Mr. HUSE. Good afternoon, Mr. Chairman, Mr. Cardin, and Members of the Committee on Ways and Means. Our efforts to identify and prevent fraud, waste, and abuse in Social Security programs are at the core of our mission in the Office of the Inspector General of Social Security. In the interest of brevity, I ask that my written testimony be entered into the record.

Today I would like to focus on my office's efforts to reduce improper payments in all of Social Security's programs and spend a moment discussing the provisions of H.R. 743. Our office aims to not only identify fraudulent and erroneous payments, but also to prevent such payments from being issued in the first place. Our audits focus on ways SSA can better manage its programs in order to realize dollar savings. Although the Agency has made progress in improving payment accuracy in recent years, more needs to be done. Considering the $483 billion volume of benefit payments SSA makes, even the smallest percentage of fraud, waste, and abuse can result in the loss of millions of dollars.

In fiscal year 2002, SSA identified and reported $3.6 billion in overpayments in its programs. These statistics represent only the identified overpayments in these programs. Although a portion of these overpayments could not be prevented under current laws and regulations, another portion can be attributed to fraud, waste, and abuse. The SSA also collects only a small portion of these overpayments and also has the authority to waive collections of overpayments under the Social Security Act. I have provided you additional details on waivers in my written testimony. Again, I reiterate that because of these circumstances, prevention is the key.

Our Cooperative Disability Investigations teams have proven to be an effective tool in fraud prevention, because the teams prevent payments from ever being made to those who are undeserving. To further our efforts to assist SSA in preventing and detecting improper payments, we plan to conduct a comprehensive review of about 1,500 disabled cases to determine the appropriateness of the payments to these individuals. This review should take between 12 and 15 months to complete.

We also have audit work both completed and underway to address improper payments. In one review, we recommended that SSA strengthen its controls to prevent SSI payments from being paid to recipients outside the United States who are ineligible for payment. We also have work underway to evaluate situations where recipients repeatedly claim that they did not receive their monthly payment, and then negotiate both the original and the replacement checks SSA provides. In one case we investigated, a woman filed false non-receipt claims in 16 of 19 months for benefits

payable to her son. In another investigation a parent filed false non-receipt claims 14 times in 30 months.

Our investigators are involved in a nationwide project to uncover such fraud, and we are also conducting an audit on SSA's procedures for controlling these double check negotiations. When these two projects are completed, we will report on their results to Congress.

We worked closely with you and your staff during the last legislative session to develop a proposal that provides greater oversight of representative payees and expands the Title XVI fugitive felon provisions to the Title II program.

I am pleased that the provisions in H.R. 743 will address some of the issues we have identified over the years with respect to both fugitive felons and representative payees. If enacted, it will provide greater protection to some of the most vulnerable individuals in our country and enhance SSA's ability to be a good steward of its programs. It will also allow my office to ensure fraud, waste, and abuse are minimized.

Mr. Chairman, I would be remiss if I did not briefly mention Social Security number integrity and our efforts to protect the number from misuse.

Last week I testified before the Subcommittee on Social Security on the need for legislation to strengthen protections for the integrity of the Social Security number, an area where we have worked with the Subcommittee for a long time. I would also comment to this Committee that misuse of the Social Security number—which plays so critical a role in problems ranging from identity theft to homeland security—remains one of the key tools for those whose fraudulent acts cause some of the erroneous payments we are trying to reduce.

With that I will conclude my remarks by saying that we have worked with the Subcommittee on Social Security of this Committee a long time to accomplish the goals with fugitive felons and representative payees. This legislation will give us some of the key tools we need to do our job well. At this time, I would be happy to answer any questions the Committee might have. Thank you.

[The prepared statement of Mr. Huse follows:]

Statement of The Honorable James G. Huse, Jr., Inspector General, Social Security Administration

Good morning, Chairman Thomas, Ranking Member Rangel, and Members of the Committee on Ways and Means. Last week, I submitted testimony for the record to the House Committee on the Budget on our efforts to identify and prevent fraud, waste, and abuse in the programs that Social Security administers. Since these issues are at the core of our mission in the Office of the Inspector General (OIG), I welcome the opportunity to testify before you today.

I want to first reiterate what I told the Budget Committee last week: that the prevention of program fraud, waste, and abuse is more cost-effective and more meaningful because it occurs before benefits are ever paid. To that end, our office has focused not merely on identifying erroneous payments, but also preventing such payments from being issued in the first place. My office endeavors not only to deter and punish those who would defraud the Social Security Administration (SSA), but also to find those savings that may be realized through better management and less waste.

Today's hearing will give me the opportunity to discuss the fugitive felon, prisoner, and representative payee provisions in H.R. 743, as well as our efforts to improve SSA's payment accuracy and reduce improper payments in all of SSA's pro-

grams. It will also allow me to discuss how important it is that we all protect the integrity of the Social Security number (SSN).

First, we must recognize that the Agency has made progress in improving payment accuracy in recent years as demonstrated by the removal of the Supplemental Security Income (SSI) program from General Accounting Office's (GAO) high risk list this year, a place it held since 1997. SSA has undertaken many projects to identify how it could do more to reduce improper payments and/or to recover amounts overpaid due to fraud, waste and abuse. For instance, the Agency has been working to improve its ability to prevent overpayments by obtaining beneficiary information from independent sources sooner and/or using technology more effectively. In this regard, SSA has initiated new computer matching agreements, obtained on-line access to wage and income data, and implemented improvements in its debt recovery program.

SSA has also made great progress in reducing benefit payments to prisoners. SSA's Actuary estimated $3.46 billion in savings for the 7-year period covering calendar years 1996 through 2001 due to Social Security Act provisions prohibiting SSI and Old Age, Survivors and Disability Insurance (OASDI) benefits to prisoners. In addition, we are currently completing an audit involving SSA's fugitive felon program that will report on SSA's savings and recoveries since this program's inception. The preliminary results from our current fugitive audit found that SSA has saved and/or recovered an estimated total of $79.9 million in SSI funds through its joint effort with OIG to match fugitive warrant data from Federal, State, and local law enforcement agencies against SSA's payment records.

Despite significant strides, more needs to be done. In fiscal year (FY) 2002, SSA issued $483 billion in OASDI and SSI benefit payments to 53.1 million people. Considering the volume and amount of payments SSA makes each month, even the smallest percentage of fraud, waste, and abuse can result in the loss of millions of dollars. It can also harm SSA's stewardship of its programs and weaken America's faith in Government overall.

In FY 2002, SSA identified and reported $1.6 billion in overpayments in the OASDI program and $2 billion in overpayments in the SSI program—a total of $3.6 billion in overpayments. The Agency must now expend scarce resources to recover these overpayments and return them to the OASDI Trust Fund and the General Fund. Although a portion of these overpayments could not be prevented under current legislative or regulatory requirements, another portion of these overpayments is attributed to fraud, waste, and abuse. These statistics represent only the ***identified*** instances of overpayments in SSA's program. They do not represent "undetected" overpayments stemming from fraud, waste, and abuse.

According to SSA, it collected about $1.9 billion in overpayments in FY 2002 for periods prior to and including FY 2002, but waived about half a billion dollars in overpayments and deemed a similar figure uncollectible. (See the charts attached to this testimony.)

By way of definition, SSA has the authority under the Social Security Act to ***waive*** collection of an overpayment. If collection is ***waived***, the individual is no longer liable for the debt and SSA can ***not*** collect the overpayment amount at a later date. In contrast, SSA may recover at a later date funds that SSA deemed ***uncollectible***. But if that person comes back into pay status or other circumstances arise that indicate the person can repay the debt, SSA can try to recover the funds. For example, once a debt is determined to be uncollectible, SSA can still recover the funds through the tax refund offset program with the Department of the Treasury.

We need to gather additional information about the fraud in SSA's various programs by quantifying the amount through in-depth audit work and investigation. To initiate this process, we are going to focus on SSA's disability programs because GAO designated the modernization of Federal disability programs as a high risk area and because SSA's disability programs attract so much fraud and abuse.

We will conduct a comprehensive review in which we will sample and analyze about 1,500 disabled cases to determine the appropriateness of the payments to these individuals. This work will focus on four disability diagnosis codes that our prior audit and investigative work have shown to be the most problematic. Due to the comprehensive nature of our planned review and the resources needed to investigate this type of activity, we expect this study to take between 12 and 15 months to complete.

In addition to our planned work to quantify the amount of unidentified improper payments due to fraud, waste, and abuse in SSA's disability program, our Cooperative Disability Investigations (CDI) teams—which first opened in FY 1998—are at the forefront of our efforts to identify and prevent fraud. The CDI teams investigate suspicious disability claims under the DI and SSI programs. These teams combine the talents of OIG special agents and personnel from SSA, the State DDS, and State

and local law enforcement. Today, 17 CDI units have been opened in 16 States and we plan to add CDI units on a year-to-year basis, depending on availability of funds. In the first six months of this year, we reported that the CDI units had confirmed 733 fraud cases out of 1,483 referrals, obtained recoveries and restitution totaling $879,235, and saved the Social Security program over $43 million.

Our work on the audit side has also identified fraud, waste, and abuse in other areas of SSA's programs. For example, last year we recommended to SSA that it strengthen its existing controls to prevent SSI payments from being erroneously paid to recipients who are outside the United States and therefore ineligible for payment. Our work showed that SSA's systems generate a foreign address alert for individuals receiving both SSI and OASDI benefits when the OASDI record shows an address outside the country. This alert notifies SSA that it needs to investigate and determine whether the individual is still eligible for SSI payments. However, we found that if individuals had their payments ***direct-deposited*** to a bank outside the U.S., an alert was not generated. Although SSA agreed with the intent of our recommendation, the Agency did not want to implement it until it conducted a cost-benefit analysis. We continue to urge SSA to implement our recommendation.

Another area of concern to me is the practice of recipients who claim repeatedly that they did not receive their monthly payment. They then negotiate both the original and the duplicate check that is provided by the Agency. In one case investigated by our office, a woman filed false non-receipt claims in 16 of 19 months for benefits payable to her son, an SSI recipient. Sentenced to 5 years probation, she was ordered to pay restitution of over $7,000 and there were program savings of $34,000.

In another case, over $13,000 in overpayments appear on two children's records due to their mother filing false non-receipt claims 14 of 30 months, or 47 percent of the time. Based on these and other cases, our investigators are involved in a nationwide project to comprehensively uncover those who abuse the replacement check process. In addition, we are currently conducting an audit on SSA's procedures for controlling duplicate SSI checks issued to and cashed by the same recipient and for recovering overpayments resulting from these double check negotiations. When these two projects are completed, we will report on their results. Based on our work, SSA has already revised its procedures to improve its controls over double check negotiations and recovery of related overpayments.

Now I would like to turn our attention to the provisions of H.R. 743. We worked closely with your staff during the last legislative session to develop a proposal that provides greater oversight of representative payees and expands the Title XVI fugitive felon provisions to the Title II program.

First, let me address the representative payee provisions. There are currently about 5.4 million representative payees who manage benefits for about 7.6 million beneficiaries. I have previously recounted in testimony before this committee, several instances in which representative payees misused funds intended for beneficiaries in their charge. The effect on the lives of the beneficiaries in those cases was catastrophic.

I applaud H.R. 743's improved oversight provisions, as well as additional civil and administrative penalties to allow my office to more effectively combat this problem.

As we have pointed out in audit reports and prior testimony, legislation is needed to ensure the integrity of the representative payee process at several stages. This includes a spectrum of activities ranging from selection, monitoring, and oversight to proper accounting when funds are misused and measures designed to punish and deter such misuse. I believe this legislation makes important strides in each of these areas.

At the outset, closer attention to the initial selection process can resolve many potential problems before they arise, so it is critical that SSA more thoroughly screen potential representative payees. In October 2002, we issued a report that identified 121 individuals serving as representative payees for others whose own SSI benefits were stopped by SSA because they were fugitive felons or parole or probation violators. As you know, current SSA policy permits fugitive felons and parole or probation violators to serve as representative payees. We also completed an additional audit in March 2003 wherein we quantified the number of representative payees who were fugitive felons regardless of whether they were receiving SSI payments. In this audit, we estimated that fugitives would manage approximately $19 million in Social Security funds each year if SSA does not take action to replace them as representative payees.

Our work also shows that once an appropriate representative payee is selected, it becomes incumbent upon SSA to adequately monitor that individual or organization to ensure that benefits are being used as intended to aid the beneficiary and that the representative payee continues to be suitable. We published an audit report entitled "Nonresponder Representative Payee Alerts for Supplemental Security In-

come Recipients" on September 23, 1999. That report recommended that SSA develop procedures to redirect benefit checks to field offices and require representative payees to provide accounting forms before releasing checks when attempts to obtain required forms have failed. SSA agreed with this recommendation in principle, but chose not to take action until the supporting legislation was enacted. This is also the case with our fugitive representative payee audit recommendations. Enactment of this legislation will result in SSA's implementation of some important prior recommendations in this area.

In April 2003, we issued a report on SSA's oversight of representative payees and concluded that SSA's representative payee review methodology should be modified to ensure that representative payees are using Social Security funds only for the benefit of the vulnerable beneficiaries they represent. We made several recommendations for SSA to improve its oversight of representative payees, and the Agency generally agreed with most of them.

Even with improved oversight, there will always be representative payees unable to resist the temptation to misuse individuals' funds. When this occurs, SSA should reissue the funds, and the representative payee who misused the funds should be held liable to repay them. Unfortunately, under current law, SSA has authority to reissue misused benefits only if the Agency finds that it has been negligent. This withholds benefits from those who need and deserve them.

H.R. 743, however, would eliminate the requirement that benefits can be reissued only upon a finding of SSA's negligence. Instead, the Agency would be able to reissue benefits to those who are vulnerable even absent a finding of negligence. Further, this legislation makes the representative payee liable for the amount of benefits misused.

Once the beneficiary's needs have been addressed, attention then turns to punishing and deterring misconduct by representative payees. We have found the Civil Monetary Penalty (CMP) program to be an effective tool against fraud in other areas. Unfortunately, as previously reported to you, we have reviewed potential cases for enforcement under the CMP program and found that the current CMP statutes do not adequately address some of the most egregious situations involving representative payees. To remedy this, we proposed two amendments to the CMP statutes, both of which are included in H.R. 743.

The first is amending Section 1129 of the Social Security Act to allow the imposition of CMPs for the willful conversion of a beneficiary's funds by a representative payee. For example, the benefits of a disabled child whose mother (as a minor herself) could not serve as her son's representative payee, were instead paid to the father. The father, who did not live with the child and the child's mother, converted more than $10,000 of his child's benefits to his own use. The U.S. Attorney declined to prosecute the father criminally, and the case was referred to my office for consideration under the CMP statutes. Unfortunately, the current CMP statutes do not provide for penalties to be imposed for conversion of benefits by representative payees. H.R. 743 provides this much needed authority.

I would now like to turn your attention to the Title II fugitive provisions included in H.R. 743. We have always believed that criminals fleeing from justice should not have the support of Federal benefits. Therefore, we support H.R. 743's expansion of the Title XVI fugitive felon provisions to the Title II programs. Preliminary results from our current audit on the SSI program show that there are significant potential savings if the fugitive prohibition is extended to the Title II program.

Finally, I would like to discuss briefly the SSN integrity issue and our efforts to protect the number from misuse. The SSN has grown in stature to where it is no longer merely a social insurance number, but an instrument for financial crimes and a potential weakness in homeland security as well.

In addition to its direct impact on SSA's programs, SSN misuse can have significant financial implications for the number holder—not to mention enormous consequences for our Nation and its citizens in the context of homeland security. The critical role of the SSN in our daily lives provides a tempting motive for unscrupulous individuals to fraudulently acquire SSNs and use them for illegal purposes.

Now more than ever, SSA must be particularly cautious in striking a balance between serving the public and implementing SSN integrity measures that admittedly delay the processing of SSN applications. However, we believe the Agency has a duty to the American public to safeguard the integrity of the enumeration process. Given the magnitude of SSN misuse, we believe SSA must employ effective front-end controls in issuing SSNs. Likewise, additional techniques, such as data mining, biometrics, and enhanced systems controls, are critical in the fight against SSN misuse. SSA and its OIG have taken steps and continue to be committed to improve procedures for ensuring SSN integrity, thereby strengthening our link in the homeland security chain.

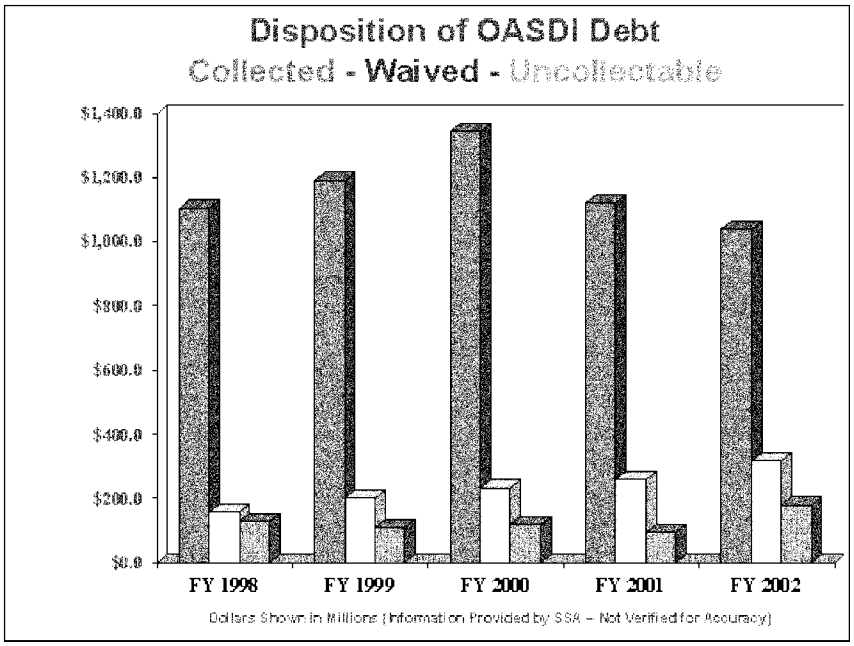
These efforts also pay off in increased cost effectiveness. During questioning at the June 18th hearing of the House Budget Committee, Comptroller General David Walker cautioned Congress to adopt the recommendations of the various Offices of the Inspector General and to hold agencies accountable for not adopting OIG recommendations—especially those which have not been implemented over time and could save Federal funds. Twice each year we report to Congress on recommendations we have made to save money or to deliver Agency services more effectively. Our semiannual reports are required by statute to advise you on what SSA has done to put our recommendations into effect, and what they have left undone or done differently.

The savings we propose year after year represent great sums of money that could be used better elsewhere, whether within or outside of Government. We exist not only to capture frauds and cheats, but equally to find those savings that may be realized through better management and less waste. Our ability to do all of this is limited only by our resources, and we return more in savings than we cost in outlays by a return-on-investment figure most corporations would envy. While we are currently working to make our internal measurements of our own cost effectiveness more sophisticated, our best estimate today of our return on investment is that we save or recover about $8 for every dollar we are given. Our FY 2002 budget was $83 million, and we saved or recovered over $647.5 million.

We continue making excellent progress in preventing fraud, waste, and abuse in SSA's programs, as well as in identifying and recovering erroneous benefit payments. I am pleased that the provisions in H.R. 743 will address some of the issues we have identified over the years with respect to fugitives and representative payees. This legislation will not only provide greater protection to some of the most vulnerable individuals in our country, but will also enhance SSA's ability to be a good steward of its programs and allow the OIG to ensure that fraud, waste and abuse are minimized.

I appreciate this committee's continued interest in improving the OASDI and SSI programs. We will continue to focus our resources on preventing and detecting fraud, waste, and abuse.

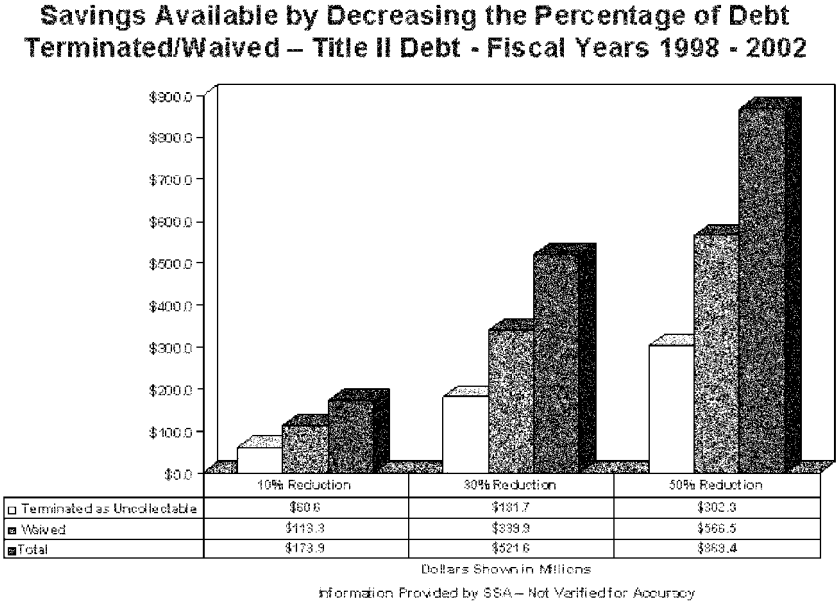
I would be happy to answer any questions the committee might have. Thank you.



OASDI Overpayments	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Collected	$1,103.4	$1,191.3	$1,343.6	$1,121.1	$1,036.1
Waived	$159.5	$201.8	$233.5	$260.2	$278.0
Uncollectible	$128.7	$110.5	$120.7	$95.1	$150.7

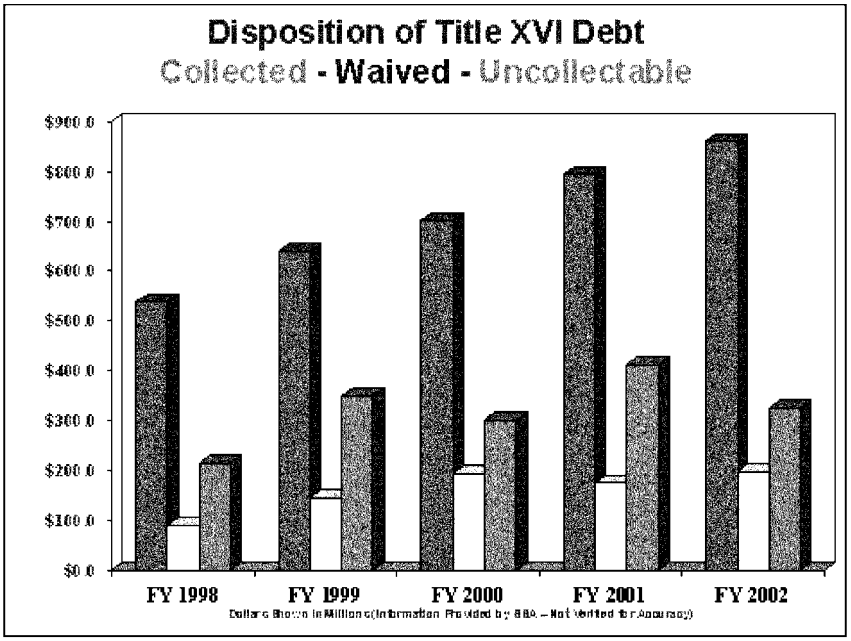
The bar chart shown above—which was provided by SSA—illustrates the disposition of SSA's OASDI overpayment debt for the past 5 years in terms of what has been collected (the green bar), what has been waived (the yellow bar) and what has been terminated as uncollectible (the red bar).

Collections peaked in FY 2000 at $1.34 billion. However, they decreased the last 2 years, and collections were only a little over $1 billion dollars in FY 2002.



This chart shows that if SSA were to collect just 10 percent of the OASDI funds it waived or wrote off as uncollectible for the last 5 years, the Agency could save about $174 million. (Breakdown: If SSA collected 10 percent of the funds it waived, savings would be $113.3 million. If SSA collected 10 percent of the funds it deemed uncollectible, savings would be $60.6 million).

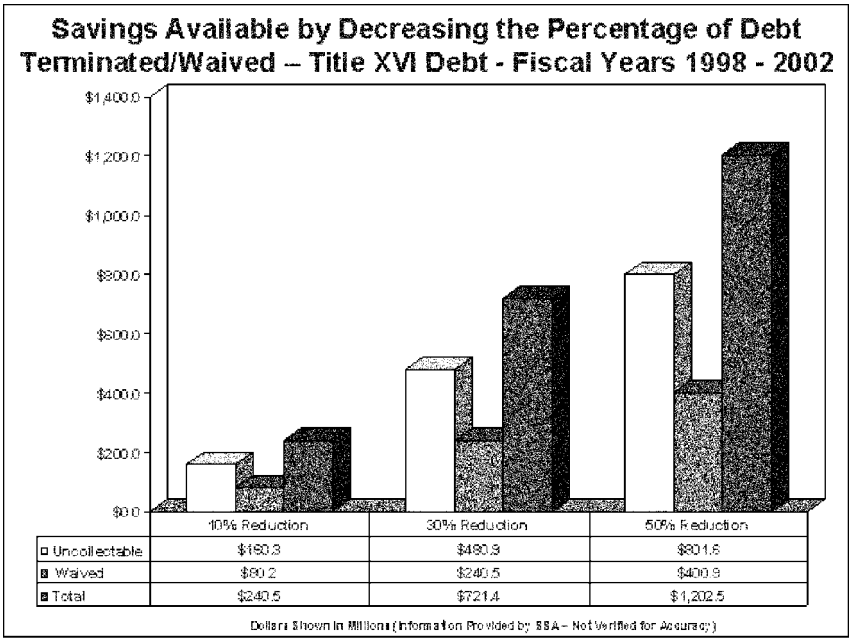
The chart also shows the savings if SSA collected 30 percent or 50 percent of the erroneous payments it waived or wrote off over the last 5 years (from 1998 to 2002).



SSI Debt	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Collected	$539.2	$639.9	$701.6	$795.5	$859.7
Waived	$91.1	$145.2	$194.4	$174.3	$196.7
Uncollectible	$215.2	$349.5	$301.2	$410.6	$326.6

As shown in the chart above (which was also provided by SSA), the Agency's collection of SSI overpayments has been increasing slightly each year. For example, SSA collected of $795 million in FY 2001 and $859 million in FY 2002.

However, waivers and uncollectible debt make up a larger percentage of the SSI program than the OASDI program. This is not unexpected since the SSI program is a needs-based program and it is difficult to collect overpaid funds from those who are financially needy in the first place. Also, the general limitation of only collecting 10 percent from current SSI benefits impacts the Agency's ability to collect SSI overpayments.



This chart shows that if SSA were to collect just 10 percent of the SSI funds it waived or wrote off as uncollectible for the last 5 years that the Agency could save about $240 million—$80 million from waivers and $160 million from funds deemed uncollectible.

The chart also shows the savings if SSA collected 30 percent or 50 percent of the overpayments it waived or wrote off over the last 5 years (from 1998 to 2002)—$721 million in savings if 30 percent of waivers/uncollectible funds recovered and $1.2 billion in savings if 50 percent of waivers/uncollectible funds recovered.

Mr. SHAW. Thank you, Mr. Huse. Thank you for mentioning one of my favorite subjects. Mr. Jordan.

STATEMENT OF WILLIAM H. JORDAN, SENIOR COUNSEL TO THE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. JORDAN. Mr. Chairman and Mr. Cardin, thank you very much. I wanted to focus my testimony today on the efforts of the Department of Justice to combat fraud and abuse in Federal and State health care programs arising from schemes that implicate pharmaceutical and biologic products as well as durable medical equipment.

Last September President Bush spoke to a group of prosecutors at the Department of Justice from across the Nation regarding the administration's commitment to root out and punish corporate wrongdoers. In that context of financial and accounting fraud, the President stated:

> "A few dishonest individuals have hurt the reputations of many good and honest corporations and their executives. They have hurt workers who have committed their lives to building

> the companies that hired them, they have hurt investors and retirees who place their faith in the companies' growth and integrity. For the sake of our free market, these corporate criminals must pay."

This statement applies equally to health care fraud that is committed against the taxpayers of this country. That is why the Department of Justice through the Civil and Criminal Divisions and through the U.S. Attorney's Office is fully committed to the fair and vigorous enforcement of the various laws at our disposal to deal with those companies and with the individuals that steal from the taxpayers.

By no means is the Department of Justice alone in this fight to combat fraud and preserve the integrity of the country's Medicare and Medicaid systems. We work very closely with our colleagues at HHS, at CMS, Office of General Counsel at the Food and Drug Administration, the HHS Office of the Inspector General, and with the various State law enforcement partners, the National Association of Attorneys General, and the National Association of Medicare Fraud Control Units.

In working with our colleagues, we obtained last year judgments that exceeded $1.6 billion in health care fraud cases; the year before that $1.2 billion. Last year alone we filed 361 criminal indictments in health care fraud cases against 480 defendants. This year—excuse me, also last year 1,529 civil health care fraud matters.

This Committee and this Congress are considering a variety of ways to reform the Medicare system. However, it is indisputable that Medicare now pays too much for durable medical equipment, it pays too much for pharmaceuticals. Recently the HHS Office of the Inspector General reports have concluded that the Medicare programs sometimes pay an amount for durable medical equipment that is greater than market prices.

The pricing of prescription drugs and durable medical equipment has been at the heart of a number of the Department of Justice's fraud cases. Although I provided them in greater detail in my prepared statement, let me just provide a summary of some of those.

With Bayer Corporation we resolved allegations that arose from Bayer's sale of pharmaceutical products to Federal health care programs. Allegations against Bayer came to the Department of Justice from a relator under the False Claims Act that alleged that Bayer had inflated its drug prices for infusible and injectable drugs that can't be purchased over the counter. These drugs are often used to treat life-threatening illnesses such as AIDS, cancer and hemophilia.

State Medicaid programs reimbursed providers for the purchase of these drugs for covered beneficiaries using the average wholesale price (AWP) or wholesale acquisition cost as a benchmark. The government alleged that Bayer reported inflated wholesale average cost to First DataBank, which is a national drug-pricing reporting service used by most States. The government also alleged that Bayer falsely reported to the First DataBank that certain products were not sold to wholesalers, and, therefore, no wholesale average cost, in fact, existed. Bayer paid $14 million to settle those allegations.

In a separate case Bayer paid $257 million to settle allegations of private labeling where certain drugs for some of its health maintenance organization customers were used to evade the Medicaid rebate liability portion and, therefore, deprive Medicaid of needed funds. Private labeling is a method used by manufacturers to affix a customer's label and, more importantly, the customer's national drug code to the drug to avoid the manufacturer's statutory reporting and payment obligations.

Although private labeling has certainly legitimate uses in the industry, for example where a chain pharmacy wants to offer a store brand in connection to a brand name product, this practice can run afoul of the Medicaid rebate program where it is done to avoid the manufacturer's best price reporting obligations to the Federal Government.

There are a variety of other cases. We have recovered $875 million against TAP Pharmaceuticals, $87 million against GlaxoSmithKline, and these cases are set forth more thoroughly in my prepared remarks.

I also wanted to thank the Committee and express again the Department of Justice's strong support for section 301 of H.R. 1; that is, the Medicare secondary payer provision that the Committee has put into its bill. Congress enacted that provision to make sure that Medicare was the secondary rather than the primary payer of health benefits. The provision that is in that bill will serve to clarify the certain judicial decisions that we have received that ask for Congress to intervene and clarify the obligations of the government in the situations under the Medicare secondary payer provision. Thank you very much.

[The prepared statement of Mr. Jordan follows:]

Statement of William H. Jordan, Senior Counsel to the Assistant Attorney General, Civil Division, U.S. Department of Justice

Mr. Chairman, I appreciate the opportunity to appear before you to discuss some of the important issues which are the focus of today's hearing. We are grateful for this Committee's leadership on this important topic.

I have been asked to provide testimony today concerning the efforts of the Department of Justice to combat fraud and abuse in Federal and State health care programs arising from schemes implicating pharmaceutical and biologic products, as well as durable medical equipment ("DME"). Last September, President George W. Bush spoke to a group of prosecutors from across the nation regarding the Administration's commitment to root out and punish corporate wrongdoers. In the context of financial and accounting fraud, the President stated that: "a few dishonest individuals have hurt the reputations of many good and honest corporations and their executives. They've hurt workers who committed their lives to building the companies that hired them. They've hurt investors and retirees who placed their faith in the companies growth and integrity. For the sake of our free market, corporate criminals must pay."

This statement applies equally to health care fraud committed against the taxpayers of this country. And that is why the Department of Justice, through the Civil and Criminal Divisions and through the U.S. Attorney's Offices, is fully committed to the fair and vigorous enforcement of the various laws at our disposal to deal with those companies and individuals that steal from the taxpayers. By no means, however, is the Department of Justice alone in the fight to combat fraud and preserve the integrity of the country's Medicare and Medicaid system. We work closely with our colleagues at the Department of Health and Human Services, including those at the Centers for Medicare and Medicaid Services, at the HHS Office of General Counsel, the Administration on Aging, the Food and Drug Administration's Office of Criminal Investigations, and at the HHS Office of Inspector General, and with our State law enforcement partners at the National Association of Attorneys General and the National Association of Medicaid Fraud Control Units.

Working with our colleagues, the Department last year obtained judgments or achieved settlements in health care fraud cases exceeding $1.6 billion. The year before that, we obtained judgments or achieved settlements in health care fraud cases exceeding $1.2 billion. Last year alone, Department prosecutors filed 361 criminal indictments in health care fraud cases and a total of 480 defendants were convicted for health care fraud-related crimes. Also last year, 1,529 civil health care fraud matters were pending and we filed 221 new civil cases.

This Committee and the Congress now are considering ways to implement and make more affordable a Medicare prescription benefits program. It is clear from our experience that government healthcare programs continue to pay too much for prescription drugs. This is due to several factors, including flaws in the Medicare reimbursement system and to the illegal behavior of those who seek to manipulate the system. The Acting Principal Deputy Inspector General of the Department of Health and Human Services testified before the House Budget Committee last week that published wholesale prices of drugs used to establish Medicare payments often bear no resemblance to the actual wholesale prices available to physicians, suppliers, and other large government purchasers. Instead, the current system of reimbursement actually provides an incentive to manufacturers to exaggerate their wholesale prices and, in so doing, inflate the Medicare cost.

It also is indisputable that Medicare now pays too much for durable medical equipment (DME) based on reimbursement rates that were, in some cases, set in 1987. Recent HHS Inspector General reports have concluded that the Medicare program sometimes pays an amount for DME that is greater than market prices. The pricing of prescription drugs and DME has been at the heart of a number of the Department's fraud cases. The lessons learned from these cases about the pharmaceutical industry and how some in that industry have manipulated the pricing of their products may be helpful as you consider new legislation.

Bayer Corporation entered into two settlements with the Department to resolve allegations arising from its sale of pharmaceuticals and biological products to Federal health care programs. Allegations against Bayer initially came to the Department from a relator under the False Claims Act who alleged that Bayer improperly inflated its drug prices, causing Medicare and Medicaid to pay inflated reimbursement. Infusable and injectable drugs that cannot be purchased over the counter by the public at a retail pharmacy were at issue. These drugs are often used to treat life-threatening illnesses, such as AIDS, cancer, and hemophilia.

State Medicaid programs reimburse providers for the purchase of these drugs for covered beneficiaries and use either the Average Wholesale Price (AWP) or Wholesale Acquisition Cost (WAC) as a benchmark for their drug reimbursement rates. WAC is a State-created concept, generally defined as the price that a drug wholesaler pays to purchase the drug from a drug manufacturer for subsequent sale to a provider. The Government alleged that Bayer reported inflated WACs to First DataBank (FDB), a national drug pricing reporting service used by most States. The Government also alleged that Bayer falsely reported to FDB that certain products were not sold to wholesalers and, therefore, no WACs existed.

We alleged that Bayer's WACs were inflated because its purported wholesale acquisition cost calculations did not take into account the price at which Bayer was selling its drugs to specialized wholesalers known in the industry as "distributors." Distributors function exactly as other wholesalers do. As stated above, Bayer either reported WACs without factoring in the distributor prices or did not report WACs at all—asserting that distributors are not wholesalers and, thus, no WACs existed. Bayer agreed to pay a total of $14 million to settle the allegations that it had inflated the WAC of certain of its drugs.

In a second case, Bayer paid $257,200,000 to settle allegations of "private labeling" of certain drugs for some of its HMO customers to evade Medicaid rebate liability, and derivative Public Health Service (PHS) liability. "Private labeling" is a method used by manufacturers to affix the customer's label and, more importantly, the customer's National Drug Code (NDC) to the drug to avoid the manufacturer's statutory reporting or payment obligations with respect to that drug. Although private labeling has legitimate uses in the industry, for example, where a chain pharmacy wants to offer a store brand in addition to a brand name product, the practice may run afoul of the Medicaid Rebate program, 42 U.S.C. § 1396r–8, where it is done to avoid the manufacturer's best price reporting or rebate obligations.

In a scheme commonly referred to as "lick and stick," Bayer private labeled two of its most popular drugs, Cipro and Adalat CC. The Department alleged that Bayer's private label arrangements were intended to provide deeply discounted prices on these drugs to the HMOs while evading its statutory and contractual obligations to provide the same favorable prices to the Medicaid program. In addition, Bayer submitted false statements to the Office of Audit of the Inspector General for the

Department of Health and Human Services (HHS-OIG) and to the Food and Drug Administration (FDA) to further conceal its obligation to pay additional Medicaid rebates in connection with private labeling.

As part of the Medicaid rebate program, manufacturers such as Bayer enter into a rebate agreement with the Health Care Financing Administration, now known as the Centers for Medicare and Medicaid Services (CMS). Under the rebate program, manufacturers such as Bayer agree to report their best price to CMS on a quarterly basis. This best price is defined as the lowest price available from the manufacturer to any "wholesaler, retailer, provider, health maintenance organization, nonprofit entity or governmental entity within the United States" with certain specified exclusions. Bayer further agreed to determine best price "without regard to special packaging, labeling, or identifiers on the dosage form or product or package." 42 U.S.C. § 1396r–8(c)(1)(C)(ii)(II). In addition, Bayer agreed to pay rebates to each State Medicaid program each quarter, calculated as the product of (i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period, and (ii) the greater of either the difference between average manufacturer price and best price, or a minimum rebate percentage of the average manufacturer. §§ 42 U.S.C. 1396r–8(c)(1)(A) and (B). The purpose of the rebate program was to ensure that the nation's insurance program for the poor received the best price for drugs available in the marketplace.

The Government's investigation concluded that Bayer failed to pay rebates owed to the Medicaid program and overcharged certain Public Health Service entities at least $9.4 million.

Bayer pled guilty in the District of Massachusetts to a one count criminal Information of violating the Federal Food, Drug & Cosmetic Act, 21 U.S.C. §§ 331(p), 333(a)(2), and 360(j), and failing to list the private label product with the FDA, and it paid a criminal fine of $5,590,800. Together with the agreed upon civil settlement amount of $251,609,200, the global resolution in this second Bayer matter was $257,200,000.

In a related investigation, **GlaxoSmithKline (GSK)** paid $87,600,922 to settle similar charges based on its relationship with the HMO, Kaiser Permanente Medical Care Program (Kaiser). As I indicated earlier, Federal law requires drug manufacturers participating in the Medicaid program to report their "best prices" to the Federal Government, and to pay rebates to Medicaid to ensure that the nation's insurance program for the poor receives the same favorable drug prices offered to other large purchasers of drugs.

Kaiser provides care and treatment to more than 6 million persons and often purchased drugs directly from drug manufacturers to save on costs for its members. GSK (together with Bayer) provided discounted prices to Kaiser for its drugs and engaged in "private labeling" for Kaiser, affixing different labels to its drug products to avoid reporting the low prices to CMS. GSK also repackaged and privately labeled Paxil, an anti-depressant, and Flonase, a nasal spray for Kaiser at discounted prices and failed to report these lower prices as "best prices" to the Government.

GSK settled its civil False Claims Act liabilities and paid $87,600,922 to the United States, 49 States, the District of Columbia, and Public Health Service entities as civil damages for losses suffered by the Medicaid programs and the Public Health Service entities. When added to the previous Bayer settlement, Bayer and GSK paid over $344 million to resolve these related allegations. Like Bayer, GSK also executed a corporate integrity agreement with HHS-OIG, designed to ensure that GSK (like Bayer) will accurately report its "best price" information to the Government.

TAP Pharmaceutical Products Inc. (TAP), a joint venture between Abbot Laboratories and Takeda Chemical Industries, paid $875,000,000 in 2002 to resolve criminal charges and civil liabilities in connection with its fraudulent pricing and marketing of the cancer drug, Lupron. Under an agreement with the Department, TAP pled guilty to a conspiracy to violate the Prescription Drug Marketing Act paid a $290,000,000 criminal fine. To resolve its civil liability under the False Claims Act, TAP agreed to pay the United States $559,483,560 for filing fraudulent claims with Medicare and Medicaid, and to pay the fifty States and the District of Columbia $25,516,440 for filing fraudulent claims with the States. Thirteen individuals were indicted for their role in the scheme. In addition, four physicians and one individual pled guilty to related crimes. Additionally, TAP entered a sweeping corporate integrity agreement with the Inspector General of the Department of Health and Human Services which significantly changes the manner in which TAP supervises its marketing and sales staffs, and ensures that TAP will report to the Medicare and Medicaid programs the true average sale price for drugs reimbursed by those programs.

While Medicare does not pay for most drugs, Medicare does cover those, such as Lupron, that must be injected under the supervision of a physician. Medicare presently reimburses covered drugs at the lower of 95% of the average wholesale price (AWP) or the physician's actual charge. AWP is a list price set by manufacturers. The Government alleged that TAP set and controlled the price at which the Medicare program reimbursed physicians for the prescription of Lupron by misreporting its AWP as significantly higher than the average sales price TAP offered physicians and other customers for the drug. TAP allegedly "marketed the spread" between its discounted prices paid by physicians and the significantly higher Medicare reimbursement based on AWP as an inducement to physicians to obtain their Lupron business. The Government further alleged that TAP concealed from Medicare the true discounted prices paid by physicians, and falsely advised physicians to report the higher AWP rather than the real discounted price for the drug. The "marketing the spread" practice was recently addressed in the HHS–OIG's Compliance Guidance for Pharmaceutical Manufacturers.

AstraZeneca Pharmaceuticals LP (AstraZeneca), a major pharmaceutical manufacturer headquartered in Wilmington, Delaware, pled guilty last month in Federal district court in Wilmington, Delaware to a healthcare crime and agreed to pay $355,000,000 to resolve criminal charges and civil liabilities in connection with its drug pricing and marketing practices arising from its sales of Zoladex, a drug used primarily for the treatment of prostate cancer.

AstraZeneca pled guilty to conspiring to violate the Prescription Drug Marketing Act by causing to be submitted claims for payment for the prescription of Zoladex which had been provided as free samples to urologists. This criminal conduct caused losses of $39,920,098 to Medicare, Medicaid and other federally funded insurance programs. As part of the plea agreement, AstraZeneca paid a $63,872,156 in criminal fines, paid $266,127,844 to resolve allegations that the company caused false and fraudulent claims to be filed with the Medicare, TriCare, Department of Defense and the Railroad Retirement Board Medicare programs, and paid $24,900,000 to resolve allegations that its drug pricing and marketing misconduct resulted in false state Medicaid claims. Finally, AstraZeneca entered into a corporate integrity agreement with the Inspector General of the Department of Health and Human Services which ensures, among other things, that AstraZeneca will report to the Medicare and Medicaid programs the average sale price for drugs reimbursed by those programs and will promote, through internal training and other programs and policies, marketing and sales practices that are in full compliance with the law.

AstraZeneca marketed Zoladex primarily for the treatment of prostate cancer, as is the drug Lupron which is produced by TAP. The United States alleged that from January 1991 through December 31, 2002, employees of AstraZeneca provided thousands of free samples of Zoladex to physicians, knowing and expecting that certain of those physicians would prescribe and administer the free drug samples to their patients and thereafter bill those free samples to the patients and to Medicare, Medicaid, and other federally funded insurance programs. In order to induce certain physicians, physicians' practices, and others to purchase Zoladex, AstraZeneca offered and paid illegal remuneration in various forms including free Zoladex, unrestricted educational grants, business assistance grants and services, travel and entertainment, consulting services, and honoraria.

Also, to induce physicians to purchase Zoladex, the United States alleged that AstraZeneca marketed a "Return-to-Practice" program to physicians. This program consisted of inflating the Average Wholesale Price used by Medicare and others for drug reimbursement, deeply discounting the price paid by physicians to AstraZeneca for the drug ("the discounted price"), and marketing the spread between the AWP and the discounted price to physicians as additional profit to be returned to the physician's practice from Medicare reimbursements for Zoladex. AstraZeneca set the AWP for Zoladex at levels far higher than what the majority of its physician customers actually paid. As a result, AstraZeneca's customers received reimbursement from Medicare and State Medicaid programs and others at levels significantly higher than the physicians' actual costs or the wholesalers' average price.

Finally, the Government alleged that AstraZeneca misreported and underpaid its Medicaid rebates for Zoladex used for treatment of prostate cancer, under the Federal Medicaid Rebate Program. AstraZeneca was generally required on a quarterly basis to rebate to each State Medicaid program the difference between the Average Manufacturer Price and its "Best Price". AstraZeneca falsely reported the "Best Price" for Zoladex used for treatment of prostate cancer by failing to account for off-invoice price concessions provided to non-government customers in various forms, including cash discounts in the form of grants, services, and free goods contingent on any purchase requirement.

Three physicians also were charged in the Federal court in Delaware for their role in this scheme; two pled guilty to conspiring to bill for Zoladex samples. Dr. Saad Antoun, a urologist practicing in Holmdel, New Jersey, was charged on January 15, 2002, and pled guilty to conspiracy on September 18, 2002. Dr. Stanley Hopkins, a urologist practicing in Boca Raton, Florida, was charged on September 30, 2002, and pled guilty to conspiracy on December 17, 2002. Dr. Robert Berkman, a urologist practicing in Columbus, Ohio, was charged on May 19, 2003, and those charges remain pending.

As I mentioned earlier, in April of this year the Inspector General of the Department of Health and Human Services issued Compliance Program Guidance for Pharmaceutical Manufacturers that seeks to encourage companies that manufacture and market pharmaceutical drugs and biological products to adopt internal controls and procedures to avoid the risk areas I have outlined above. The IG did so after seeking our comments. This is but a first step in assuring protection from predatory pricing schemes that inflate costs to already cash-strapped Government healthcare programs. As these cases illustrate, the financial stakes are high as we seek to reform the reimbursement system.

The Department has also actively pursued schemes implicating durable medical equipment. We have devoted considerable resources and personnel to an undercover operation we refer to as "Operation Headwaters." This investigation targeted DME manufacturers across the United States in the area of enteral feeding, diabetic footwear, and wound care products. The Federal Bureau of Investigation held itself out as a national distributor of medical equipment having access to over 6,000 Medicare patients. Over 300 consensual recordings and video/audio tapes reflecting the criminal intent to commit health care fraud on the part of corporate officers and employees of several different national and multi-national DME manufacturers were captured.

On February 10, 2003, the United States Attorney for the Southern District of Illinois announced indictments against Augustine Medical Incorporated (AMI), charging numerous felony violations, including Conspiracy to Defraud the United States, Mail Fraud and Health Care Fraud, related to the fraudulent marketing of a wound care system known as "warm-up active wound therapy." In addition to AMI, Paul Johnson, Director of Reimbursement for AMI, Tim Henley, Vice President of the Wound Care Division, and Phillip Zarlengo, owner of Strategic Reimbursement, were indicted in the conspiracy. This investigation is ongoing and we expect to announce additional developments with respect to other manufacturers in the near future.

After investigating the billing practices of **Rotech Medical Corp. (Rotech)** and one of its subsidiaries, Community Home Oxygen, Inc., we learned that at least with respect to Region D, one of four DME regions in the United States, Rotech and CHO submitted false claims to the Medicare, Montana Medicaid, Veteran's Administration (VA) and Indian Health Services programs for services and supplies that were not provided, not properly documented or not medically necessary, or were provided to patients who were not properly qualified to receive such services. We recovered $17.5 million in false claims in the context of a bankruptcy proceeding.

An Alabama-based nursing home operator, **Crowne Investments, Inc.**, and **Gericare Medical Supply, Inc.** paid the United States $1,071,000 to settle allegations that they participated in a scheme to overbill the Medicare program. The settlement resolved allegations that from February 1993 to August 1993, the two Monroeville, Alabama-based companies caused the submission of false or fraudulent claims for Medicare reimbursement for enteral (intestinal) feeding supplies. The Government asserts that the supplies were duplicates of others already reimbursed by Medicare directly to Gericare for the same patients and that the overcharged supplies were not medically necessary.

Lincare, Inc., a medical supply company based in Clearwater, Florida, with offices in Redding, California, paid $3,150,000 to settle allegations that it submitted false home oxygen therapy claims to Medicare for therapeutic ventilator claims and unit dose albuterol sulfate claims during the period January 1, 1995 through December 31, 1997, that did not comply with Medicare requirements governing reimbursement for those products.

Red Line Healthcare Corp. (Red Line), a Minnesota medical supply corporation, and its parent, **Medi Mart, Inc. (Medi Mart)**, paid $5.6 million in 1999, to settle, among other things, allegations that their Medicare claims were not properly documented to support the need of Medicare patients for nutritional products, that they intentionally "shopped" their claims for urological supplies to the wrong Government contractor to maximize Medicare reimbursement, and that Medi Mart knowingly retained payments exceeding what Medicare should have paid for the product or supply.

In 2002, the Department entered into a civil settlement of $2,286,752 with **Salvatore Galioto, Bryan Barrish, Michael Giannini and Scott Sandler,** based on allegations that they submitted false claims under Medicare Part B for incontinence supplies, including irrigation syringes and sterile saline irrigation solutions, that were neither medically necessary nor reimbursable under Medicare.

The incontinence supplies in question were provided to residents at Chicago area nursing homes by Specialized Healthcare Products, Inc. (SHP), a durable medical equipment supply business. The nursing homes were owned and operated by Barrish and Giannini. Galioto, through a company called Advanced Vital Med., Inc. (AVM), acted as sales agent for SHP. Various individuals at AVM and SHP completed false Certificates of Medical Necessity for Medicare beneficiaries. The Government alleged that, to gain access to the nursing homes to furnish the unnecessary incontinence supplies that were billed to Medicare, SHP supplied free of charge adult diapers and/or adult undergarments to the Medicare beneficiaries at the nursing homes. These adult diapers/adult undergarments are not reimbursable by Medicare under any circumstances. From December 1994 through May 1995, Medicare paid $1,524,073.79 to SHP. A portion of the funds were then transferred from SHP to AVM. Galioto and others, through AVM, received a portion of the proceeds.

Galioto, Barrish, Giannini and Marc Siebzener were indicted on February 24, 2000 in the Eastern District of Missouri, for mail and wire fraud, money laundering and conspiracy to violate Medicare's anti-kickback statute. Barrish and Giannini each pled guilty on February 23, 2000, to one count of money laundering, in violation of 18 U.S.C. §§ 1341, 1957 and 2. Each was sentenced to three years probation and jointly ordered to pay $46,573.04 in restitution and a fine of $68,478.72.

Galioto pled guilty on May 16, 2000, to conspiring to violate the anti-kickback statute, 42 U.S.C. § 1320a–7b(b)(1) and (2). He was sentenced to ten months and ordered to pay restitution of $120,000 and a fine of $30,000. Siebzener pled guilty to one count of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, on July 10, 2000. He was sentenced to five years probation and ordered to pay $100,000.00 in restitution. The Court found that Siebzener lacked the financial ability to pay a fine.

Medicare Secondary Payer Provisions: Finally, I would like to restate the Department's support for section 301 of H.R. 1, the "Medicare Prescription Drug and Modernization Act of 2003," which would protect the integrity of the Medicare Trust Fund by clarifying that Medicare must be reimbursed whenever another insurer's responsibility to pay has been established. The section is consistent with the litigation positions taken by this Department and the Department of Health and Human Services in numerous court cases.

Congress enacted the Medicare Secondary Payer ("MSP") statute in 1980 to protect the fiscal integrity of the Medicare program by making Medicare a secondary, rather than a primary, payer of health benefits. To ensure that Medicare would be secondary, Congress precluded it from making payment when a primary plan has already made payment or can reasonably be expected to pay promptly. Congress recognized, however, that in contested cases, payments under such plans would be delayed. To protect providers, suppliers, and beneficiaries, Congress authorized Medicare to make a "conditional" payment when prompt resolution of a claim cannot reasonably be expected. The Medicare Trust Fund must be reimbursed, however, once the primary insurer's obligation to pay is demonstrated.

Some recent court decisions have held, however, that Medicare has no right to reimbursement unless the primary insurer could reasonably have been expected to make prompt payment at the outset. See, e.g., Thompson v. Goetzmann, 315 F.3d 457 (5th Cir. 2002); Fanning v. United States, 202 F.R.D. 154 (E.D. Pa. 2001). These rulings make the statute's reimbursement mechanism inoperative in some jurisdictions. Section 301 of this legislation would end this costly litigation and provide clear legislative guidance regarding Medicare's status as a secondary payer of health benefits. The technical changes in Section 301 make clear that Medicare may make a conditional payment when the primary plan has not made or is not reasonably expected to make prompt payment.

On July 7, 2003, in response to the government's petition for rehearing, the Goetzmann court agreed to delete the "prompt payment" analysis from its decision. Although this amendment to the opinion provides temporary relief within the Fifth Circuit, the court's reasoning highlights the need for corrective legislative action. The court acknowledged that its reading of the statutory text arguably creates the "absurd result" described by the government, essentially nullifying the government's right to reimbursement whenever an insurance company disputes a claim, but explained that it "remained convinced" that its analysis of the plain language was correct. The court stressed that courts are not in the business of amending legislation to prevent absurd results, and urged the government to take its complaint to Congress, rather than to the courts.

The technical amendments of section 301 clarify other provisions of the MSP statute, as well. They make clear that a primary plan may not extinguish its obligations under the MSP statute by paying the wrong party (*i.e.,* by paying the Medicare beneficiary or the provider instead of reimbursing the Medicare Trust Fund). The section clarifies that a primary plan's responsibility to make payment with respect to the same item or service paid for by Medicare may be demonstrated, among other ways, by a judgment, or a payment conditioned upon the recipient's compromise, waiver or release of items or services included in the claim against the primary plan or its insurer; no finding or admission of liability is required. In addition, section 301 makes clear that an entity will be deemed to have a self-insured plan if it carries its own risk, in whole or in part. Finally, the section makes clear that the Medicare program may seek reimbursement from a primary plan, from any or all of the entities responsible for or required to make payment under a primary plan, and additionally from any entity that has received payment from the proceeds of a primary plan's payment. These provisions of section 301 will resolve contentious litigation and are designed to protect the fiscal integrity of the Medicare program.

Conclusion

Again, I thank the Committee for seeking the views of the Department of Justice on these issues. The Committee can be assured that the Department will continue to play a lead role in policing the healthcare system for fraud and abuse, and will work with this Committee in addressing the myriad issues which I have briefly discussed this morning.

Mr. SHAW. Mr. Burman.

STATEMENT OF LEONARD E. BURMAN, SENIOR FELLOW, URBAN INSTITUTE, CO-DIRECTOR, TAX POLICY CENTER, AND RESEARCH PROFESSOR, GEORGETOWN PUBLIC POLICY INSTITUTE

Mr. BURMAN. Mr. Chairman, Mr. Cardin, thank you for inviting me to share my views on waste, fraud, and abuse in the tax system. I applaud the Committee's effort to reign in waste, and its recognition that fraud isn't just a problem on the spending side of the ledger, but also appears on the tax side. The tax evasion numbers are staggering. The former IRS Commissioner Charles Rossotti estimated in a given year the IRS assesses almost $30 billion of taxes that it will never collect. This isn't theoretical tax evasion. The $30 billion represents underpayments of tax that the IRS has identified but can't collect because its staff is spread so thin. It is serious money. If we could collect those assessments, we could raise enough over the next decade to pay for the new prescription drug benefit under Medicare. It is more than the entire cost of the jobs and growth tax bill passed last month as scored by the Joint Committee on Taxation.

Even this amount is tiny when compared with the entire tax gap the IRS has estimated of total taxes due, but not collected. The IRS estimated that $232 billion in taxes, almost 15 percent of the total due in 1998, were never collected. With respect, I believe Mr. Walker misstated this morning when he said that that was a stock of uncollected taxes. My understanding is that that is an annual shortfall. Every year we come up short by 15 percent, or about $232 billion.

My written testimony discusses several reasons why the gap is so big and growing. The main reason is that the IRS does not devote enough resources to audits and compliance activity. The IRS views its main responsibility as returns processing and customer

service. Compliance is a residual category and always gets squeezed when there are budget cuts or the IRS is asked to do other things, as often happens. For example, the tens of millions of special refund checks that the IRS is rushing to get out right now are likely to draw resources out of tax compliance.

Tax evasion matters not just because it costs the government money, it is unfair. It costs revenues that could be used to make the tax system better, pay down the debt, or provide additional government services. It wastes resources; that is, it hampers economic growth, and it feeds on itself, reducing respect for the integrity of the tax system and leading to more cheating.

While Mr. Rossotti identified five priority areas for enforcement, which were mentioned this morning, the EITC wasn't one of them. It is at most 3 percent of the compliance gap. Figure 3, which Mr. Cardin asked to have read into the record, shows that spending on EITC compliance far outstrips the rest of EITC enforcement. This is at the same time the $30 billion per year of identified tax debts go uncollected because of a lack of resources.

Now, the apparently high rates of noncompliance for the EITC are troubling for at least two reasons. First, cheating is wrong no matter who does it; and second, noncompliance threatens to undermine political support for a program that helps millions of people. It is necessary to put the noncompliance statistics in perspective. As my written testimony documents, the EITC noncompliance largely reflects compliance problems that are endemic to the entire tax system. We get the impression that EITC compliance is especially low because we only systematically audit poor people, but there is a lot of evidence that many of the EITC problems are broad-based. Thus, targeting compliance activity at EITC participants alone doesn't make much sense.

In my remaining time I would like to comment on the new EITC pre-certification program proposed by the IRS. Certain people will have to prove that they are eligible before they can claim the credit. No other provision of the Tax Code is implemented this way, and it raises some real issues.

The IRS' proposed strategy now is to select about 45,000 single fathers, grandparents and other adults who claim to care for a qualifying child for a pilot test of the pre-certification process. The pre-certification requirements create a catch 22 for many grandparents and fathers who are lawfully eligible for the credit. For example, a grandparent who leaves her grandchild with a non-licensed family day care center can't rely on an affidavit from the day care provider, a relative or a neighbor to prove that the child lived with her for the year since most low-income people can't afford expensive licensed day care facilities. This means that many eligible people will not be able to prove it to the IRS.

Add to this the problems of establishing eligibility for people who are transient or have language problems, and you have a recipe for excluding many eligible recipients. At a minimum the IRS should be required to develop and implement a clearly defined research design for its pre-certification pilot project. The research questions should include: what are the costs to participants of this program, what are the characteristics of those who fail the pre-certification process, how many eligible people choose not to complete pre-cer-

tification forms or are not able to complete them. When someone is found to be ineligible for the EITC, is someone else eligible to claim the credit? Are there more accurate ways to target potentially noncompliant taxpayers than gender profiling and harassing grandparents? These questions should be answered before the pilot program is expanded to include 2 million or more EITC families.

[The prepared statement of Mr. Burman follows:]

Statement of Leonard E. Burman, Senior Fellow, Urban Institute, Co-Director, Tax Policy Center, and Research Professor, Georgetown Public Policy Institute

Mr. Chairman, Mr. Rangel, and distinguished Members of the Committee:

Thank you for inviting me to share my views on waste, fraud, and abuse in the tax system. The views I express are mine alone and should not be attributed to any of the organizations with which I am affiliated.

I applaud the Committee's efforts to rein in waste, fraud, and abuse, and its recognition that fraud is not only a problem on the spending side of the ledger, but also appears on the tax side. Indeed, there is overwhelming evidence that tax fraud is epidemic, and the IRS has already identified tax underpayments that dwarf all of the waste, fraud, and abuse ever identified in a spending program. The main issue is whether the IRS can deploy its resources effectively to collect a larger share of taxpayers' legal obligations without unduly infringing on taxpayers' rights.

In brief, here are my main points:

- Tax evasion is a huge problem, costing the Treasury—and honest taxpayers who get stuck with a disproportionate burden—hundreds of billions of dollars a year.
- The IRS needs more resources and it needs to be able to focus those resources on addressing the most serious elements of noncompliance.
- Although the IRS is doing many things right in this area, its preoccupation with EITC noncompliance is not one of them. For example, EITC errors amount to less than 3 percent of all noncompliance, but would garner 45 percent of the IRS's new enforcement dollars.
- More generally, EITC noncompliance is, unfortunately, a symptom of systemic problems and the appropriate solution is a broad-based attack on noncompliance and the causes of noncompliance throughout the income tax system.

I. The Scope of the Tax Evasion Problem

Former IRS Commissioner Charles Rossotti (2002) estimated that in a given year, the IRS assesses almost $30 billion of taxes that it will never collect. This is not theoretical tax evasion. The $30 billion represents underpayments of tax that the IRS has identified, but cannot collect because its staff is spread so thin. Rossotti estimated that it would cost about $2.2 billion to collect that money. Based on that estimate, the IRS could net almost $28 billion from tax fraud and errors that are identified and ripe for collection.

According to IRS estimates, 60 percent of identified tax debts are never collected. These unclosed cases include:

- 75 percent of identified nonfilers,
- 79 percent of taxpayers who use "known abusive devices" to avoid tax, and
- 78 percent of taxpayers identified through document matching programs.

It is possible that some of these people simply cannot afford to pay their tax debts, but more than half—56 percent—of noncompliant taxpayers with incomes over $100,000 get off scot-free.

It is demoralizing to honest taxpayers, and encouraging to tax scofflaws, that your odds are better than even of avoiding your tax bill, even if you are caught.

The uncollected $28 billion is serious money. Assuming that the amount grows with the economy, collecting on those assessments could, over the next decade, cover the entire cost of the new prescription drug benefit under Medicare (although not the superfluous new savings accounts in the House version of the bill). It is more than the entire cost of the Jobs and Growth Tax Relief Reconciliation Act of 2003 as scored by the JCT (although not enough to finance the extension of the myriad expiring provisions).

But it is tiny compared with the entire "tax gap"—the IRS's estimate of total taxes due but not collected. The IRS estimated that $232 billion in taxes were due in 1998, but never collected. (See Figure 1.) These estimates are highly uncertain

because the IRS stopped systematically measuring tax compliance for all but working poor people after 1988, but it suggests that tax compliance is a huge problem, and it has been growing.

According to Commissioner Rossotti, "Despite significant improvements in the management of the IRS, the health of the federal tax administration system is on a serious long-term downtrend. This is systematically undermining one of the most important foundations of the American economy."

Why is the gap growing? To begin with, the number of tax returns has been growing much faster than the IRS staff. This has occurred for several reasons. There are more head of household and single returns and fewer married filing joint returns because couples are marrying later, if at all, and the divorce rate is rising. Also, many more children are filing tax returns. (Plumley and Steuerle, forthcoming)

Moreover, after a surge in compliance resources through most of the 1980s, IRS staff dedicated to compliance and enforcement plummeted in the 1990s. Between FY1992 and 2001, the IRS workload increased by 16 percent while its staff declined by 16 percent. Field compliance personnel fell by 28 percent—more than 8,000 FTEs—between FY 1992 and 2002.

The effect on examinations is even more striking. According to the Internal Revenue Service (2001), the number of field examiners fell by almost two-thirds between 1997 and 2000. The number of collection cases closed fell by nearly half over the same interval. The number of criminal tax cases not related to income from illegal activities fell by more than two-thirds, from 1,498 in 1997 to 409 in 2000.

Looked at over a longer time frame, the audit rates for both corporations and individuals have plummeted over the past quarter century. Plumley and Steuerle (forthcoming) report that eight percent of corporations were audited in 1977 compared with less than one percent in 2001 (see figure 2), despite a well-publicized epidemic of questionable and illegal corporate tax shelters in the late 1990s. Indeed, one suspects that the corporate tax shelter boom was fed by the IRS's apparent indifference.

The likelihood of a face-to-face individual audit has fallen even more precipitously, from 2 percent in 1977 to 0.1 percent in 2001. (See figure 2.) Even correspondence audits, which require the fewest staff resources, have been cut by more than half. And the audit rates for self-employed individuals, who are known to be a comparatively noncompliant group, have also been slashed. From 1995 to 2001, their audit rate fell from 4 percent to 2 percent. (Internal Revenue Service, 2001)

A large part of the problem, according to the Commissioner, is budgets with "unrealistic assumptions about such items as pay raises, inflation and other mandates, including specific mailing and notification requirements." When there is a squeeze, compliance tends to come up short. In the late 1990s, a key factor was the Taxpayer Bill of Rights, which required the IRS to answer its telephones and focus its efforts on "customer service." The better service, while surely welcome, came at the expense of audit activity. This decade, Congress has twice mandated that the IRS interrupt its ordinary operations to mail out springtime checks to most taxpayers—advance payments on the low-end tax rate cut in 2001 and on the child credit increase in 2003. Without a supplemental appropriation to pay for additional hiring, the staff managing these huge mailings must come out of existing employees, typically compliance staff.

The opportunities for evasion have also been growing. While the overall number of returns grew by 16 percent, the number of tax returns reporting more than $100,000 of income grew by 342 percent. These people who face the highest marginal tax rates have the most to gain from tax evasion, and the most opportunities to engage in it. Commissioner Rossotti reported that "enormous amounts of money . . . flow through 'pass-through entities'—such as partnerships, trusts, and S-corporations," which are ideally suited to hiding income. In tax year 2000, pass-throughs accounted for 4.8 million tax returns with over $660 billion of income.

In sum, Commissioner Rossotti identified five serious compliance problems: "(1) promoters of tax schemes of all varieties, (2) the misuse of devices such as trusts and offshore accounts to hide or improperly reduce income, (3) abusive corporate tax shelters, (4) under-reporting of tax by higher-income individuals, and (5) accumulation and the failure to file and pay large amounts of employment taxes by some employers." (Rossotti, 2002, p. 8)

Rossotti concluded his assessment by noting that the complexity of the tax code requires the IRS to divert resources away from compliance simply to administer the unwieldy tax system. In addition, complexity contributes to noncompliance two more ways. First, complexity may make it hard for honest taxpayers to figure their tax accurately. Their mistakes, while technically noncompliance when they work in the taxpayers' favor, reflect a failure of the tax system rather than deliberate evasion.

Second, complexity creates real and perceived asymmetries in the tax law that may invite aggressive taxpayers to try to exploit them to reduce tax.

Commissioner Everson has taken up where Mr. Rossotti left off calling for a renewed focus on enforcement: ". . . (T)he IRS is committed to ensuring everyone pays his or her fair share, including those who have the resources to move money offshore or engage in abusive schemes or shelters. We must focus our efforts on achieving greater corporate accountability and ensure that high-end taxpayers fulfill their responsibilities. Honest taxpayers should not bear the burden of others who skirt their responsibility." (May 20, 2003)

II. Why Tax Evasion Matters

Tax evasion undermines the tax system in many ways. It is unfair. It costs revenues that could be used to make the tax system better, pay down the debt, or provide additional government services. It wastes resources—i.e., hampers economic growth. And it feeds on itself, reducing respect for the integrity of the tax system and leading to more cheating.

Tax evasion is fundamentally unfair: unless they are caught, cheaters pay less tax than their law-abiding neighbors. Audit rates are at historic lows. According to the IRS (figure 1), of the $282 billion of taxes not paid on time in 1998, only about $50 billion was eventually collected, and about half of that was voluntarily remitted by tardy taxpayers. Thus, the IRS only collects about 10 percent of underpaid tax through enforcement activity.

Tax evasion undermines both Republicans' and Democrats' notion of a good government. The lost tax revenue inevitably means higher taxes on law-abiding citizens, less government services, or both. If we could close half of the tax gap, the IRS could raise close to $150 billion on tax year 2003 returns (assuming that the tax gap grows at the same rate as GDP). Over the decade, collections would increase by something like $1.7 trillion—the entire cost of the 2001 and 2003 tax cuts as scored by the JCT. With that money, we could (1) eliminate more than two-thirds of the public debt according to CBO projections, or (2) cut income tax rates across the board by more than 10 percent, or (3) provide health care for the uninsured and a generous prescription drug benefit under Medicare, or (4) fully fund the transition to individual accounts under Social Security. I don't mean to endorse any of these policy proposals (my four kids, however, think that paying down the debt is a very good idea), but they illustrate that this huge hole in our income tax is keeping us from getting the government any of us wants.

Second, some argue that tax evasion might be okay because it lowers tax burdens. That argument is obviously false in the aggregate—tax evasion simply reallocates tax burdens from noncompliant to compliant taxpayers. But, it also is a uniquely inefficient way to cut taxes. Companies alter their business practices to hide income from the IRS, as Bob McIntyre explained in his testimony before the House Budget Committee. A good tax system interferes as little as possible in businesses' and individuals' decisions, but abusive tax shelters virtually always involve substantial distortions. Some companies now view their tax departments as profit centers—that is, they make money by hiding it from the IRS rather than by producing more and better products. Individuals make investment decisions not based on where they will earn the highest pre-tax rate of return, but where they can make the most money after subtracting taxes, promoters' fees, and legal fees. Thus, money is not going to where it can produce the most return, but to where it can produce the most tax savings. Moreover, the fees paid to tax shelter promoters, unethical lawyers, financial wizards, etc. are a pure waste of resources. Most of these intermediaries could be doing productive work if lax enforcement did not make tax evasion so lucrative.

In contrast, if the IRS stemmed tax evasion and used the money to pay for debt reduction or tax rate cuts, the economy would surely grow faster. First, there would be fewer distortions from the tax shelter arrangements. Second, debt reduction would reduce government crowding-out of private investment: that is, it would lower interest rates, making capital less costly for businesses. Or tax rate reductions would reduce the incentive to avoid tax by working less, saving less, or engaging in legal or illegal tax shelters.

Finally, tax evasion can create a vicious cycle of growing disrespect for the tax system, which undermines voluntary compliance. The IRS has some evidence that this is happening now from Roper surveys they commissioned in 1999 and 2001. In 1999, 87 percent of respondents said that cheating on taxes was unacceptable; in 2001, only 76 percent. In 1999, 96 percent of respondents agreed that it is everyone's duty to pay their fair share of taxes; in 2001, 91 percent.

III. Solutions

What can be done about the epidemic of tax evasion? Two things can deter those who are inclined to cheat: a high probability of detection and a high penalty if caught. In this regard, the first order of business ought to be to make sure that, barring extenuating circumstances, everyone who is caught underpaying their tax is made to pay what they owe.

One option would be to raise the penalties and/or interest for taxpayers once they are identified as noncompliant. The clock on these excess penalties could stop for nonfrivolous legal challenges, but taxpayers who decided to try a rope-a-dope strategy with the IRS would find it unprofitable. A second option would be to allow the IRS to divert a fraction of the revenues it collects from enforcement action into a trust fund that could be tapped to pay for other enforcement activities. (Since money is fungible, this strategy only works if the Congress does not cut the rest of the IRS's budget to offset expenditures out of the trust fund.)

The IRS is taking steps to raise the probability of detection, both by expanding its document-matching program and increasing the number of examiners (although the latter might be derailed by the rebate program and other competing demands for scarce resources). It is well known that compliance is much higher when the IRS has an independent source of verification. IRS statistics suggest that compliance is almost perfect for wages subject to information reporting and withholding—i.e., where a tax payment is automatic. (Steuerle and Plumley, forthcoming) The noncompliance rate declines to 4.2 percent for income and deductions subject to information reporting, 5.7 percent for amounts subject to "some information reporting," and 31.8 percent for income subject to "little or no information reporting." It is likely that compliance increases further when the IRS uses the information generated by information reports, because the probability of detection increases.

The IRS has also taken several steps to improve the odds of detection of corporate tax shelters. In 2000, it created the Office of Tax Shelter Analysis, with a mandate to track down abusive tax shelters. New regulations promulgated the same year require taxpayers to disclose transactions that look like possible tax shelters, such as those expected to generate a loss of $10 million in a single year or $20 million altogether, and transactions of certain publicly traded companies where tax and book accounting differ by more than $10 million. Because corporate tax shelters are sold to many clients, Bankman (forthcoming) speculates that these regulations might result in the detection of as many as 85 percent of corporate tax shelters. (When a single client discloses an illegal tax shelter, the IRS can subpoena the promoter's books and find all of the other clients.) If Bankman's estimate is close to accurate and the IRS actually assesses the statutory penalties on promoters and participants in undisclosed tax shelters, the payoff for corporate tax shelters could decline so much that few would remain profitable.

There are several problems, however, with this rosy scenario as Bankman notes. One is that, to avoid costly litigation, the IRS often settles with taxpayers on very favorable terms, even when the taxpayer is caught red-handed. The second is that there are generally no extra penalties on taxpayers who fail to make disclosures and are found to have engaged in an abusive tax shelter. The third is that the line between legal tax avoidance and an abusive tax shelter is often unclear in the law. The solution to the first problem is to provide the IRS with additional litigation resources. The other problems would be addressed in legislation that was first detailed in a Treasury Department white paper (Treasury 1999), elements of which have passed the Senate (most recently in the "Relief For Working Families Tax Act Of 2003," in June) and considered by the Ways and Means Committee, but never enacted.

There is, of course, a risk that compliance activity could go too far. Arguably, that is why the Congress terminated the taxpayer compliance measurement program (TCMP), which involved highly intrusive random audits. The Taxpayer Bill of Rights was also aimed at redressing a system that favored the tax collector too much at the expense of law-abiding citizens. Unfortunately, the resources to protect taxpayer rights came out of the resources used for enforcement, so the balance may have shifted too far in the other direction.

Given scarce resources, it is important that the IRS targets them where the payoff is greatest. The TCMP was designed to allow that, but was terminated because it was too intrusive on lawful taxpayers. The IRS is now engaging in a new audit strategy called the National Research Program (NRP), which will adjust audit rates based on the yield from less intrusive audits—many of which will not involve any taxpayer contact unless a problem is discovered. This is clearly a promising approach to balancing taxpayer rights with the imperative to improve collections. In particular, the NRP may be able to shed light on how the IRS's processing of infor-

mation returns affects taxpayer compliance. It can also put various forms of noncompliance, such as that attributed to the earned income tax credit, in perspective.

IV. The EITC Compliance Program

Amid all this enlightened activity by the IRS, one example stands out as a misallocation of resources and a failure to balance the rights of taxpayers against the need for enforcement—the EITC compliance initiative. EITC noncompliance appears to be a problem. The IRS estimates that somewhere between 27 and 31 percent of earned income tax credits were issued erroneously in 1999, either because of taxpayer confusion or fraud. They estimate the EITC compliance gap at $7.8 billion in 1998 (See Table 1), about 0.5 percent of revenues and about 2.8 percent of the total tax gap. But EITC enforcement accounts for 3.8 percent of total enforcement budget in 2003. Indeed, the IRS has requested a 68.5 percent increase in its EITC enforcement budget, while increasing other enforcement by only 3.3 percent. In fact, the increase in EITC enforcement would account for 45 percent of all new compliance dollars. (Internal Revenue Service 2003)

And the IRS's disroportionate focus on the EITC is not new. Figure 3 shows outlays on tax enforcement as a share of the amount of money at stake since the EITC compliance program began. In 1998, when the IRS started a program of random audits of EITC recipients—much like the discredited TCMP program—that program cost almost 0.4 percent of all earned income tax credits claimed. By comparison, the total enforcement budget was less than 0.2 percent of tax revenues from all sources, and 27 percent less than the prior year. The President's budget would increase EITC enforcement spending to over 0.60 percent of credits issued, while the overall enforcement budget remains about 0.2 percent of total revenues.

On its face, this seems like an inefficient way to spend scarce compliance resources.

The apparently high rates of noncompliance are troubling, but it is necessary to put them in context. Indeed, it is likely that much EITC noncompliance reflects compliance problems that are endemic to the entire income tax. If that is true, then targeting compliance activity at EITC participants alone may not be the most effective use of IRS resources.

A. EITC Noncompliance in Perspective

Two Treasury economists (Holtzblatt and McCubbin, forthcoming) used data from the IRS's 1999 EITC compliance study to draw out some comparisons between EITC compliance and compliance with other tax provisions that require some definition of an "eligible child." Of children claimed for both the EITC and the dependent exemption (97 percent of "qualifying children" claimed for EITC were also claimed as dependents), more tax filers failed the test for dependency status (for the exemption) than the test for qualifying child (for the EITC). It is striking that one-third of children were claimed in error for the dependent exemption, the EITC, or both. However, while six percent qualified as a dependent but not as an EITC-qualifying child, 11 percent (almost twice as many) were eligible for qualifying child status but not for a dependent exemption. That is, there were more children claimed in error as a dependent for purposes of the exemption than as an EITC-qualifying child. An additional 17 percent of children were ineligible for both.

While this level of noncompliance with both provisions is disconcerting, the statistics only apply to low-income tax filers who were audited as part of the EITC compliance program. These statistics raise the question of whether higher income people have the same propensity to claim dependent exemptions for children who do not qualify. There is some historical evidence (from 1986) that people are prone to cheat with dependent exemptions when they think they can get away with it. In that year, five million children disappeared when the IRS started requiring reporting of Social Security numbers to verify dependent exemptions. (Graetz 1997)

The ineluctable conclusion is that there are likely to be many dependents claimed incorrectly at all income levels—not just among the poor. Thus, the relevant policy response would be to study compliance in the entire taxpaying population, not just among low-income people.

Another fascinating set of statistics drawn from the EITC compliance data relates to homemade marriage penalty relief. In 1999, 0.5 million people filed as head of household when they were actually married and living together, possibly to avoid EITC marriage penalties. Another 0.4 million filed as single when they should have claimed another unspecified status. Three-quarters of a million filed as head of household when they lived apart from their spouse for at least part of the year, but were still married and should have filed as married filing joint or married filing separate. The obvious question is the extent to which this type of roll-your-own mar-

riage penalty relief occurs among higher-income taxpayers who often have a far greater incentive to misstate their filing status.

Some EITC recipients with income in or beyond the phase out range of the credit underreported their income and thus increased their tax refund. Half of the unreported income was from self-employment, consistent with ancient evidence from the TCMP that self-employment income is an area of rampant evasion. In 1987 and 1988, the IRS estimated that self-employed people understated income by 32 to 49 percent. (Slemrod, forthcoming) Those in the informal sector did so by between 81 and 87 percent. Farm income was also understated by an estimated 30 percent in 1998 (data were not available for 1997).

Thus, while the noncompliance among EITC recipients is troubling, there is no reason to think that it is any worse than exists among the taxpaying public generally, and is probably lower than the noncompliance rate for certain classes of individuals and businesses.

B. How Much Noncompliance is Intentional?

A key question is how much of EITC noncompliance is intentional, and how much inadvertent. If intentional tax evasion is rampant, then the solution is to ramp up enforcement. However, if a major source of noncompliance comes from taxpayer confusion, then education, assistance in preparing tax returns, and simplification of the tax law would be better-targeted policy responses.

Janet McCubbin (2000) reported that at least 28 percent of qualifying child errors are systematic, and thus intentional attempts to overclaim the EITC. Some of the remaining 72 percent may be influenced by other elements of code, such as the dependent exemption. How many of the 72 percent are simply confused tax filers?

There's certainly evidence of confusion. As Holtzblatt and McCubbin report, the IRS mailed notices to 194,000 taxpayers who appeared to be eligible for the EITC based on income and the presence of dependent children reported on their 1998 return. About one-third responded requesting the credit. The IRS also sent 680,000 notices to low-wage single filers notifying them that they appeared to be eligible. About 45 percent of them responded requesting the credit. The people who only requested the credit after being notified by the IRS almost surely underclaimed the credit unintentionally. Some of those who overclaimed are probably similarly uninformed.

It is also worth mentioning that not all of the EITC tax gap would be collected if EITC enforcement were perfect. In many cases where one person wrongly claims the EITC as the eligible custodial adult, another person might be eligible for an EITC, albeit possibly a smaller one. We have no evidence on whether someone else is eligible for the EITC when a person is found to be disqualified, although this is clearly an important measure of the costs of noncompliance to the Treasury. In addition, because of flaws in the design of the compliance studies, it is possible that actual noncompliance is much less than the IRS estimates. (Greenstein 2003b)

C. Addressing EITC Noncompliance

As in other areas of the tax law, there is a trade-off between administration and compliance costs on the one hand and targeting, compliance, and participation on the other. The question for policy makers is how to strike the right balance. The IRS could audit every return, which would minimize noncompliance, but would maximize enforcement and compliance costs. At the other extreme, the IRS could make all low-earning families eligible for EITC, without regard to children, which would also reduce noncompliance, but at great cost in terms of tax revenues. In that context, one might argue that the current system does not do a bad job of balancing competing objectives.

The compliance problems with EITC may be viewed as comprising two parts, each of which has a specific policy implication: systemic problems and those specific to the EITC. There are errors and fraud that are endemic to the income tax, such as children claimed incorrectly, understated income, and incorrect filing status. The solution to that problem is system-wide enforcement, not a specific EITC compliance program. Indeed, targeting scarce enforcement resources on low-wage returns to catch systemic noncompliance would be a highly inefficient audit strategy, since so much more money is at stake on the high-income returns.

Certain errors are specific to the EITC. For example, a major factor in the 1999 data involves parents who violated the confusing AGI tie-breaker rule or were disqualified because of too much non-cash earned income (such as pensions, parsonage benefits, and the like). In these cases, Congress ultimately decided that the targeting rule was not worth the cost and the rules were simplified to reduce chances of inadvertent errors. Holtzblatt and McCubbin estimated that those simplifications,

in combination with a new program to identify noncustodial parents, could reduce EITC overpayments by about $2 billion per year.

A similar example is the inconsistent definition of a child for different purposes. The Treasury has proposed rules to make the definitions more consistent and intuitive (Treasury 2002), and the Senate included them in the Relief for Working Families Tax Act Of 2003, but they have not yet been enacted. Further simplifications would be possible, such as automatically allowing a dependent to be a qualifying child for EITC purposes so long as the other parent does not claim the child for the EITC. These simplifications all involve some cost in terms of tax revenues, but they would significantly reduce confusion for low-income working families who do not tend to think like tax lawyers.

Another promising approach is to enlist the help of those who prepare tax returns for low-income people. Almost two-thirds of EITC returns are prepared by paid preparers. IRS statistics show that more competent preparers—accountants, lawyers, enrolled agents, major tax preparation firms—produce returns with fewer errors than less competent preparers. Volunteer tax preparers have the lowest error rate, although the sample is too small to draw firm inference. It is possible that spending more time on tax returns reduces the likelihood of errors. It is also possible that differences in performance among preparers reflect self-selection—that noncompliant taxpayers are more likely to seek the help of disreputable tax preparers—but this conjecture should be tested.

In 1999, the IRS initiated a large-scale outreach program aimed at tax return preparers who had recently prepared at least 100 EITC returns. During those visits, preparers (other than national firms, CPAs, lawyers, and enrolled agents) received one-on-one instruction from Revenue Agents on EITC compliance and preparers' due diligence responsibilities. Because most EITC claimants use paid preparers, such a strategy could prevent both unintentional and intentional errors on tax returns claiming the EITC. The value of this approach could be measured by comparing the accuracy of trained preparers with similar preparers who did not get training. However, no data are available yet and it is not clear that the IRS followed up. If not, they lost an important opportunity to improve compliance without adding extra burdens for low-income taxpayers.

The other tool to improve compliance is to strengthen EITC enforcement. The IRS is about to start a new pre-certification program for the EITC. This probably would improve compliance, but also could significantly reduce participation, and might not save the government much money. Cash assistance programs such as food stamps cost about as much to administer as the EITC, including both the administration and compliance costs and the revenues lost due to noncompliance, but EITC participation is much higher than participation in direct transfer programs. (Holtzblatt and McCubbin, forthcoming). So the result of the IRS's EITC compliance offensive may be less payments to low-income families, including many who are eligible but deterred by the new hurdles to participation, but little or no overall budget savings.

The proposed pre-certification program is supposed to be non-intrusive, but it is not clear how the IRS can accomplish that. How can they determine that the residency requirement is met in advance, especially for households that are highly mobile? Arguably, it is unfair to single out the EITC. Eligibility for other tax benefits, such as head of household status and the dependency exemption, also theoretically require extensive record keeping. Resolving filing status errors would require fairly intrusive tests, which again might be hard to certify in advance. The fear among those who care about the EITC is that the pre-certification strategy is tantamount to a 100 percent audit rate (in advance) for certain people who claim the EITC.

There are also real issues in subjecting EITC recipients to a pre-certification process that does not apply to any other tax filers. People do not need to pre-certify before taking a charitable deduction for a used car or clothing, even though there is ample evidence that these deductions are overstated. Sole proprietorships do not need to pre-certify that they are not hiding cash from the tax authority before claiming deductions for inventories, rent, and equipment, even though they are notoriously noncompliant. And so on.

The IRS's proposed strategy now is to select about 45,000 single fathers, grandparents, and other adults who claim to care for a qualifying child for a pilot test of the pre-certification process. Bob Greenstein (2003a) has documented the ways in which the pre-certification requirements create a Catch-22 for many grandparents and fathers who are lawfully eligible for the credit. For example, a grandparent who leaves her grandchild with a nonlicensed family daycare center cannot rely on an affidavit from the daycare provider or from a relative or neighbor to prove that the child lived with her for the year. Since most low-income people cannot afford expensive licensed daycare facilities, this means that many eligible people will not be able to prove eligibility to the IRS. Add to this the problems of establishing eligibility

for people who are transient or have language problems and you have a recipe for excluding many eligible recipients.

At a minimum, the IRS should be required to develop and implement clearly defined research design for its precertification pilot project. The research questions should be clear. They should include:

- What are the costs to participants of this program?
- What are the characteristics of those who are not precertified?
  - In particular, how many are found to be ineligible in error? The IRS Taxpayer Advocate Service reported that more than half (51 percent) of EITC claimants who were initially rejected by IRS audits were able to prove eligibility when they had help from the taxpayer advocate. (Greenstein 2003b)
- How many eligible people choose not to complete the precertification forms or are not able to complete it?
  - Are Hispanics and others whose first language is not English disproportionately deterred from applying?
  - How are those with cognitive disabilities or low levels of education affected?
  - How does precertification affect those who are highly transient and those who experience spells of homelessness? (Do precertification notices even reach these families?)
- When someone is found to be ineligible for the EITC, is someone else eligible to claim the credit?
- Are there more accurate ways to target potentially noncompliant taxpayers than simply tagging all single fathers and grandparents?

Another question is whether a sample of 45,000 is necessary to answer the research questions accurately. It is likely that they could be answered accurately with a smaller sample, which would free up staff to follow up on those who do not participate or are deemed to be ineligible.

These questions should be answered before the pilot program is expanded to include two million or more EITC families.

Conclusion

Noncompliance is a serious issue that undermines the tax system and carries a huge cost in terms of higher taxes on law-abiding citizens, fewer government services, and more government debt. The IRS is taking a number of important steps to improve tax compliance. However, the IRS's preoccupation with EITC recipients seems like a poor use of scarce audit resources, is likely to undermine the EITC program, and is unfair. It would be better to address the endemic problems in the income tax at all income levels. EITC compliance, and compliance in other areas, could also be improved by simplifying the tax law.

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Figure 1: Tax Gap Map for Tax Year 1998 (in $ Billions)

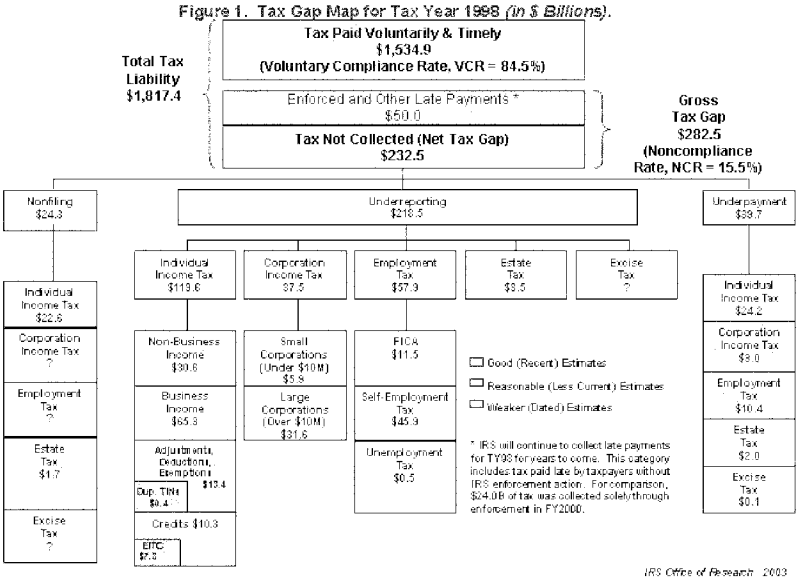
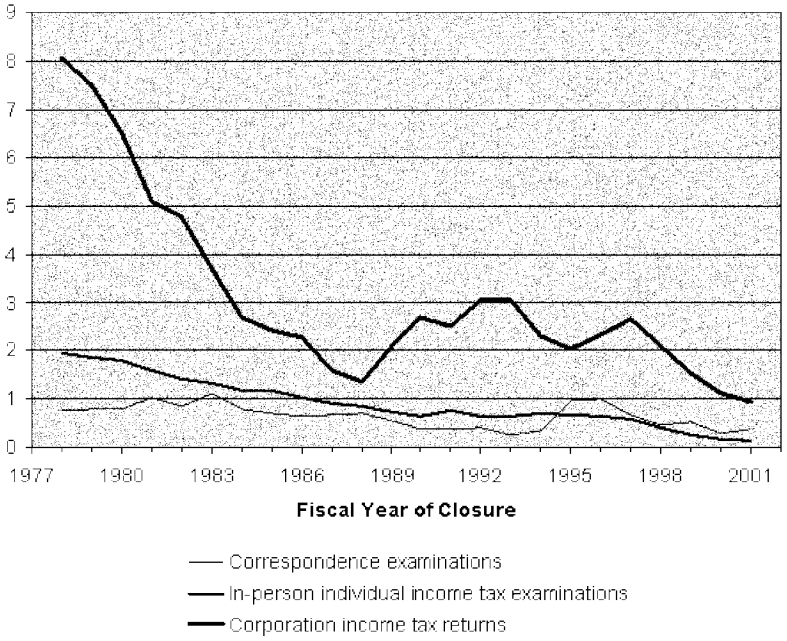


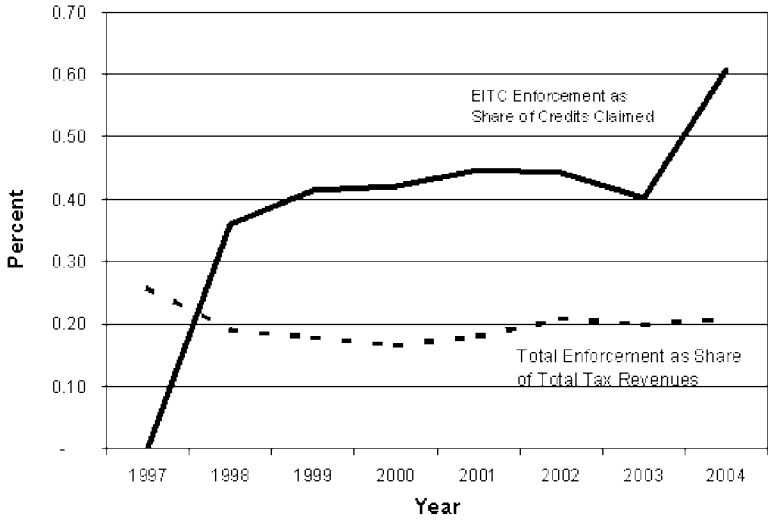
Figure 2. Examination Coverage Rates, 1977–2001

Examinations Closed Per 100 Returns Filed the Previous Calendar Year



Source: IRS Commissioner's Annual Report FYs 1978–92; IRS Data Book FYs 1993–2001 as cited by Plumley and Steuerle (forthcoming).

Figure 3. Outlays for Enforcement on EITC and All Taxes, Fiscal Years 1997–2004



Source: Total tax revenues and outlays on EITC enforcement and total enforcement are from the U.S. Budget for fiscal year 2004. EITC claims in 1997 to 2000 are from the Statistics on Income, Internal Revenue Service. EITC projections for 2001–2004 were computed using the Urban-Brookings Tax Policy Center microsimulation model.

Mr. SHAW. Thank you. Mr. Moorman.

STATEMENT OF JAMES W. MOORMAN, PRESIDENT, TAXPAYERS AGAINST FRAUD

Mr. MOORMAN. Thank you for providing Taxpayers Against Fraud with the opportunity to make a statement on fraud in the Medicare Program. My organization is a nonprofit organization devoted to the False Claims Act and its qui tam provisions. Those are the provisions that allow whistleblowers to bring suits in the name of the United States against those that defraud Medicare and other government programs.

There has been a great deal of activity under the False Claims Act in the area of Medicare fraud, and that is what I will talk about. I will just make three points here quickly. First, using the False Claims Act, the Department of Justice and the HHS Office of the Inspector General working, with whistleblowers, have recouped over $5 billion in Medicare fraud judgments and settlements since fiscal year 1997 to the present. The data we have developed shows that the government is getting back $9 for every $1 spent in this effort. In addition, there is undoubtedly an unmeasured but significant deterrence effect of these cases that has contributed to the decline, the noticeable decline, in the Medicare error rate.

Second, I would like to say that whistleblowers are the key to the success of this Medicare antifraud effort. Almost all the big cases now pursued by the Department of Justice are those brought by whistleblowers. For example, the Department of Justice indicated that over 90 percent of its False Claims Act recoveries in fiscal year 2002 were from cases initiated by whistleblowers.

Third, the False Claims Act cases have been very useful in spotlighting areas of the Medicare reimbursement scheme that facilitate fraud. One such area is the misuse of the AWP mechanism to pay for drugs administered by physicians. Drug companies, or at least some of them, inflate the AWP they report it to Medicare, then charge doctors far less without telling the government. The point of this appears to be to induce doctors to buy their drugs by creating as big a spread as possible between what they charge the doctors and what the doctors are reimbursed by Medicare. They are reimbursed by Medicare at 95 percent of the AWP number. This is called marketing the spread.

Two recent very large settlements of False Claims Act cases brought by whistleblowers illustrate the problem: One, the TAP Pharmaceutical settlement, and the other, the Astra-Zeneca settlement. The companies make competing chemotherapy drugs. To induce doctors to use their drugs and gain market share, they each inflated their AWP. Apparently they each sent letters to the other demanding that the other stop doing what they were both doing. Neither quit, but instead competed to jack up their AWP. When they were caught, they each had to pay back hundreds of millions of dollars to Medicare.

I can't tell the Committee how to do it, but it is clear that the current Medicare drug reimbursement scheme needs to be fixed, and fixed as soon as possible. Thank you.

[The prepared statement of Mr. Moorman follows:]

Statement of The Honorable James W. Moorman, President, Taxpayers Against Fraud

I wish to thank the Committee on Ways and Means for inviting me to present a statement at this important hearing on waste, fraud and abuse in programs under the Committee's jurisdiction. My name is James W. Moorman and I am the President of Taxpayers Against Fraud, also known as "TAF" and as The False Claims Act Legal Center, a position I have held for the past three and a half years. I am an attorney by training and served as an Assistant Attorney General of the Department of Justice under Attorneys General Griffin Bell and Benjamin Civiletti. Between my service at Justice and TAF, I was a partner in the law firm of Cadwalader, Wickersham & Taft.

Taxpayers Against Fraud and its sister organization, Taxpayers Against Fraud Education Fund ("TAFEF"), are non-profit charitable organizations dedicated to combating fraud against the Federal Government through the promotion of the use of the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729–33("FCA"). Qui tam is the unique mechanism in the FCA that allows persons with evidence of fraud in federal programs or contracts to bring suit on behalf of the government. TAF and TAFEF serve to inform and educate the general public, the legal community and other interested groups and entities about the FCA and its qui tam provisions. Based in Washington, D.C., TAF and TAFEF serve to increase understanding of the FCA's importance in suppressing fraud. They provide information to whistleblowers and their attorneys, publish the False Claims Act and Qui Tam Quarterly Review and other educational materials, file amicus curiae briefs in important cases, and provide testimony on issues where the workings of the FCA are relevant. TAF and TAFEF maintain a comprehensive FCA library for public use, and a professional staff available to assist anyone interested in the FCA and qui tam. For more information, see www.taf.org.

Though I understand this hearing concerns waste, fraud and abuse with regard to all the programs within the Committee's jurisdiction, I will restrict my remarks to fraud in the Medicare program. In September of 2001, TAF published a detailed report addressing Medicare fraud, titled Reducing Health Care Fraud, prepared by economist Jack A. Meyer, President of New Directions for Policy. Last month we published an update of that report, titled Fighting Medicare Fraud: More Bang for the Buck, also by Dr. Meyer. Both reports can be found at www.taf.org.

Based on the analyses set forth in these reports, for the five-year period FY1997–FY2001, the Federal Government's civil healthcare fraud recoveries totaled $3.1 billion. Most of this $3.1 billion involved fraud against Medicare, though a small part involved other health care programs. The government's cost to recover the lost Medicare funds was an estimated $315 billion, so the government got back about nine dollars for every dollar spent to investigate, prosecute and recover funds lost to fraudulent Medicare billings.

I should note that the Justice Department has publicly stated it recovered $980 million in healthcare fraud cases in FY 2002, most of which involved Medicare. I also note that False Claims Act settlements announced so far this year involving Medicare appear to be in the billion dollar range, bringing the amount of Medicare funds recovered through the use of the FCA during the seven years from FY 1997 through FY 2003 to over $5 billion.

I would like to make three points about these developments:

FIRST, the Federal Government has, through the use of the FCA, a highly successful tool for fighting Medicare fraud. In addition to the actual money recovered, which is significant in itself, FCA suits have created a powerful deterrent to fraud among healthcare contractors doing business with the Federal Government. Anecdotal evidence points to changes of behavior and the reduction of fraud in many sectors of the healthcare industry. Factors that have led to changed behavior include increased provider awareness of the False Claims Act, increased awareness on the part of internal watchdogs and whistleblowers in health care organizations, regulatory targeting of reimbursement problem areas revealed by FCA cases, and the inclusion of stringent corporate integrity agreements, or CIAs, in FCA settlements. All of the activity to fight fraud on the part of the Justice Department, the Office of the Inspector General at HHS and whistleblowers has contributed to a dramatic reduction in the Medicare error rate as calculated by the Office of Inspector General, which fell from 14 percent of fee for service payments in 1996 to 6.3 percent in 2001, a reduction of 55 percent over six years.

SECOND, the qui tam provisions of the False Claims Act are the key to the success the government has had in fighting Medicare fraud. Whistleblowers provide the Federal Government with the inside information it needs to uncover complex business frauds—frauds that are otherwise invisible to federal regulators. For example, the FCA settlements with the Hospital Corporation of America (HCA) involved allegations stemming from the hospitals' use of two sets of books, one for the benefit of federal regulators, and one for internal purposes. According to the Department of Justice, of the $1.2 billion in False Claims Act recoveries in FY 2002 in all fields, "Recoveries associated with suits brought by whistleblowers . . . accounted for $1.1 billion in settlements and judgments during the fiscal year."

A number of aspects of the False Claims Act are responsible for the mobilization of whistleblowers to spark successful actions on behalf of the Medicare program, but none more so than the combination of the provisions for treble damages and the provisions allowing whistleblowers to receive anywhere from 15 to 30 percent of the awards against fraudfeasors, depending on the circumstances. Historically, the whistleblower awards have run about 16 percent, but I have been informed that they may have averaged 19 percent in FY2002.

THIRD, FCA cases frequently reveal flaws in the Medicare reimbursement systems that foster fraud. A recent example are cases involving drug company fraud against Medicare that reveal an urgent need to devise an alternative to the current use of the "Average Wholesale Price," or "AWP" mechanism as the basis for reimbursement for prescription drugs.

Consider the case of drugs that are administered to patients by physicians, the principal category of drugs Medicare now pays for. One fraudulent marketing technique that has been uncovered by whistleblowers through FCA cases is called "marketing the spread." Under this technique, a manufacturer offers the physician a deep discount on the price of the drug that the manufacturer does not disclose to the Medicare program. The concealment yields a windfall gain to physicians at the expense of taxpayers because the physician keeps the "spread" or difference between the amount the government program pays for the drug and the discounted price charged by the manufacturer. For example, if Medicare reimburses a physician at 95 percent of the AWP for a drug, and the manufacturer, in order to induce the phy-

sician to prescribe the drug, charges him only 25 percent of AWP, the physician keeps the spread (70 percent of AWP). This revenue is in addition to whatever reimbursement the physician receives from Medicare for actual physician services provided during the encounter at which the drug was prescribed.

A manufacturer can increase either the size of the "spread" or the amount of revenue it receives under such an arrangement (or both) by raising the AWP for the drug. If the AWP is $100 in the above example, the physician receives $95 from the government for administering a drug he buys for only $25, making $70 on the spread. To increase the amount the manufacturer makes on a prescription while enabling the physician to continue to receive the same spread, the manufacturer simply raises the AWP to, say $110. The government now pays the physician 95 percent of $110, or $104.50. The physician still keeps the $70 spread but now the manufacturer receives $34.50, an increase of $9.50. Alternatively, if the manufacturer wished to increase the prescribing physician's revenue, it could increase the physician's spread to $79.50 by continuing to charge him only $25 for the drug. In either case, the increase is at the taxpayers' expense.

The impact of marketing the spread is not limited to the federal treasury. It also affects Medicare beneficiaries to whom such drugs are prescribed. Under Medicare, beneficiaries are responsible for a co-payment of 20 percent of the price that Medicare pays—in the case of prescription drugs, 20 percent of 95 percent of AWP. Thus, if the AWP is $100, the beneficiary's co-payment requirement is 20 percent of $95, or $19. If the doctor only pays $25 to the manufacturer, the patient's co-payment is equal to three-fourths of the amount the doctor pays. In some cases, patients have paid doctors more in co-payments than the drug company charged the physicians.

Two very significant settlements of cases involving these issues illustrate the scale of the problem created when drug companies choose to market the spread. Both cases were first brought to the government's attention by whistleblower suits under the False Claims Act. The first settlement, involving TAP Pharmaceuticals, was announced by the U.S. Attorney in Boston on October 3, 2001. TAP agreed at that time to pay the United States $559 million for marketing the spread on an inflated AWP for Lupron, a prostate cancer chemotherapy drug. TAP also agreed to pay back additional money to states for Medicaid fraud and also to pay the United States a hefty criminal fine.

Then, on June 20 of this year, the second settlement was announced by the U.S. Attorney in Wilmington, Delaware against Astra-Zeneca for doing the same thing for its drug, Zolodex, also a prostate cancer chemotherapy drug. Astra-Zeneca paid $355 million for a number of fraudulent pricing schemes, the largest and most troubling of which was for marketing the spread on Zolodex in the same way as TAP marketed the spread for Lupron.

While I do not have the documents, it has been reported that TAP Pharmaceutical and Astra Zeneca exchanged letters, each accusing the other of what they were doing and demanding the other stop. That is an amusing sidelight to a very serious problem. What is really of interest here is a very malignant incentive to commit fraud. Because Medicare reimbursed on the basis of AWP numbers as reported by the companies, and because the companies sold their drugs to physicians and the physicians were reimbursed by Medicare, the companies saw they could increase their market share by increasing the spread between what they charged the doctors and what Medicare reimbursed the doctors. They did this by inflating the AWP number, effectively using the taxpayers' money to bribe doctors to use their drugs. Thus TAP and Astra-Zeneca apparently entered into a perverse competition to see which could out-fraud the other, with the idea that the company with the most fraudulently inflated AWP would gain the largest market share.

I wish to say in closing that I am not competent to advise this Committee as to how Medicare should pay for drugs. But, I am competent to say that the current system fosters fraud and Congress should take corrective action as quickly as possible.

Thank you again for providing me with this opportunity to present my statement.

Mr. SHAW. Thank you, Mr. Moorman. Mr. Rice.

STATEMENT OF MICHAEL G. RICE, PRESIDENT, UNITED COUNCIL ON WELFARE FRAUD, PHOENIX, ARIZONA

Mr. RICE. Mr. Chairman, Mr. Cardin, on behalf of the UCOWF, thank you for the opportunity to speak to you today regarding child care assistance fraud.

A major goal of UCOWF is to provide maximum efforts towards the prevention, detection, elimination and prosecution of welfare fraud, and to effect recovery of lost taxpayer moneys. As the direction and manner of providing assistance to the needy have changed, our Members have consistently been the first to encounter and address the program integrity aspects inherent in those changes.

The block grants to the States established under TANF were aimed in part in providing assistance to needy families so that children could be cared for in their own homes or in the homes of relatives. Although recognizing child care is essential in welfare to work, Congress limited the percentage of block grants to be used for administrate costs, which include the expense of detecting and investigating fraud and abuse. A child care fraud case is more time-consuming and labor-intensive than investigation of other kinds of welfare fraud. Local agencies are partly reimbursed for fraud unit costs from Federal administrator funds, but they are not permitted to credit child care fraud overpayment recoveries to their fraud funds. As a result, child care fraud programs are given a lower priority than those that provide a monetary incentive.

The cost of providing child care is significant, and a case of child care fraud can result in a substantial financial loss in a very short period of time. The extent of the problem nationwide is still being evaluated, and many States have not kept statistics. Therefore, recently UCOWF conducted a nationwide survey of State program integrity directors. Forty-two States responded. Forty directors were of the opinion that child care fraud posed a problem in their States. Those States that maintain statistics, fraud was discovered in upward of 69 percent of the investigations conducted, with total annual discovered fraud amounts ranging from $10,000 to over $1 million. Eighteen States administratively penalized program-violating child chare recipients, and only eight penalized violating providers.

There is little uniformity in the manner in which child care fraud is addressed by the States apart from the utilization of the criminal justice system. Where disqualification of TANF and food stamp program violators is mandated, no such provision exists regarding child care recipients or, notably, providers. In most States violating providers remain eligible to provide government-paid services.

Child care fraud can be committed by both recipients and providers individually or in collusion with each other. A Rochester, New York, recipient who I prosecuted claimed that her brother was caring for her 11 children. Provider checks were sent in her brother's name to her mother, who cashed them and split the money with the recipient. The brother was in State prison, and her husband was, in fact, residing unreported in the household, and he was caring for the children. Restitution was limited to $77,000 because agency records failed to cover the entire period of the fraud.

A Wyoming provider got $41,600 over 1 and a half years, claiming services for children who were not there and padding the hours for those that were.

A Minnesota woman applied for child care assistance in one county, claiming to support four children on an income of $3,100 a month. In another county, however, she operated an in-home day care center; was paid $854,000 over 6 years. She pleaded guilty to receiving more than $134,000 and fraudulently received child care reimbursements.

The UCOWF asked the Congress to demonstrate its commitment to child care program integrity by requiring all States to prepare a child care fraud control plan which requires at a minimum procedures for recovery of child care overpayments, Federal tax intercepts for child care overpayments, disqualification penalties for child care recipients and providers who have committed an intentional program violation, and establishment of an incentive to promote anti-child-care fraud activity by crediting child care fraud overpayment recoveries to the fraud investigation funds of the individual States.

Child care assistance is the new pot of gold in welfare fraud. It must be ensured that uniform and reasonable criteria are established to provide and receive child care assistance, that applications for assistance in provider status are properly evaluated, that funds are available for thorough investigations and penalties imposed on intentional program violators, and finally, that vehicles are in place for recovery of overpayments.

On behalf of the UCOWF, I thank the Committee for the opportunity and honor of addressing you on this subject.

[The prepared statement of Mr. Rice follows:]

Statement of Michael G. Rice, President, United Council on Welfare Fraud, Phoenix, Arizona

Chairman Thomas, Congressman Rangel, members of the committee: On behalf of the United Council on Welfare Fraud, I wish to express my gratitude for the invitation to provide written and oral testimony for you today and for your concerns on the topic of welfare fraud and abuse, particularly in the area of child care assistance.

About the United Council on Welfare Fraud and the information provided today:

For 32 years the major goal of the United Council on Welfare Fraud (UCOWF) has been to provide maximum effort towards the prevention, detection, elimination and prosecution of welfare fraud in its many forms and to effect recovery of taxpayer monies lost through waste, fraud and abuse in government programs designed to aid the needy. UCOWF's membership currently consists of welfare investigators, administrators, and recovery specialists, as well as fraud prosecutors from 47 states, the District of Columbia and 7 Canadian provinces, establishing a network from Hawaii to Newfoundland.

A primary purpose of our organization has always been the promotion of effective and efficient administration of public welfare. As the direction and manner of providing assistance to the needy have changed over the years, our members have consistently been the first to encounter and address the program integrity aspects inherent in those changes; for despite how well-intentioned and generous a program may be in aiding people truly in need, there will always be those who will try to capitalize on opportunities and cheat the system.

The information I provide to you today has been compiled from a survey of state welfare fraud directors across the United States recently conducted by the United Council on Welfare Fraud and from the submission of anecdotal case experiences and observations by investigators, prosecutors and administrators who have been dealing directly with the problem of child care fraud. I do not presume to speak for

any governmental agency, federal, state or local, I am merely relaying information provided by our members and other interested people who have dealt with this burgeoning problem.

Summary of the problem:

The passage of the ***Personal Responsibility and Work Opportunity Reconciliation Act of 1996*** established block grants to the states for "Temporary Assistance to Needy Families," popularly known as ***"TANF"***, aimed in large part at promoting job preparation and work among needy families and providing assistance to those families so that children could be cared for in their own homes or in the homes of relatives. It was thus clearly recognized that child care was a significant factor behind the "welfare to work" concept underlying the legislation. Additionally, steps were taken to address program integrity issues such as public and nutritional assistance to fugitive felons and parole violators, individuals convicted of drug-related felonies and sanctions were established for intentional violators of means-tested public and nutritional assistance programs. Incentives were provided to encourage the states to pursue delinquent child support payments.

Although recognizing child care as essential to ***TANF*** and creating therewith Title VI, the ***Child Care and Development Block Grants Amendment of 1996,*** Congress also restricted the use of any ***TANF*** block grants to carry out state programs pursuant to ***Title XX*** and the ***Child Care and Development Block Grant Act of 1990.*** A limitation of 15 percent of the ***TANF*** grant to a state was placed on administrative costs. Administrative costs include the expense of detecting and investigating fraud and abuse. Further, while the ***Child Care and Development Block Grants Amendment of 1996*** appropriated monies to be used to establish and fund child care programs, it limited the amount available for administrative purposes to 5 percent of a state's grant and the only penalties created were those to be imposed on the states for improper utilization of the funds allotted to them.

The emphasis on child care accompanying ***TANF*** resulted in an increase in the amount of monies expended by welfare agencies to child care providers of many forms. Not all child care providers are state-licensed day-care centers. A large portion consists of licensed in-home providers and a larger percentage is "informal providers." In Minnesota, for example, "legal non-licensed" providers represented nearly 37 percent of child care providers in 2002, compared to 32.8 percent for licensed centers and 27.6 percent for licensed home providers.

Staff reductions caused by economic conditions and grant restrictions have resulted in insufficient screening of applications to receive and to provide child care services by many social services agencies. Further, the investigation of child care fraud is more time consuming and labor intensive than that of other types of welfare fraud, such as ***TANF*** and Food Stamp fraud cases. Local agencies are reimbursed their fraud unit costs from federal administrative funds and their state share of fraud and non-fraud overpayment collections but they *are not* permitted to credit child care fraud overpayment recoveries to their fraud funds. As a result, child care fraud programs are given a lower priority than those that provide a monetary incentive.

The UCOWF Child Care Fraud Survey:

The cost of providing child care is significant, to say the least, (Virginia's Child Care Program budget for FY 2003 is $115,000,000), and the potential for fraud is high. From my own experience as a welfare fraud prosecutor, I can assure you that a case of child care fraud can result in a substantial loss of taxpayer monies in a very short period of time. The extent of the problem nationwide, while recognized generally, is still being evaluated, but many states have not kept statistics. The United Council on Welfare Fraud, in an effort to reach a better understanding of the extent, nature and impact of child care fraud across the nation, conducted a survey in 2002.

A questionnaire was sent to the state fraud directors of each of the states and the District of Columbia seeking information on whether, in their view, child care fraud was a state problem, the types of child care fraud experienced in the state, if statistics were kept, prosecution was pursued, recoveries made and penalties imposed in cases of child care fraud. Forty-two states responded. The document containing the full list of questions, eleven in all, and the responses is too large to include with my written testimony, however it may be viewed on the organization's website, ucowf.org.

Forty of the 42 state fraud directors polled were of the opinion that child care fraud posed a problem in their states and of the two answering in the negative, one still provided examples of the types of child care fraud that has occurred within its boundaries.

Eighteen states had not been keeping statistics on child care fraud, but of them, several responded that the local county agencies administering the services did maintained fraud databases. In those states that did maintain detailed statistics, fraud was discovered in upwards of 69 percent of the investigations conducted with total annual discovered fraud amounts ranging from $10,000 to over $1 million.

All but three states referred fraud cases for criminal prosecution, with 17 having specific state laws regarding child care assistance fraud. Twenty-three relied on other state statutes to address criminal activity. Thirty-three states pursued administrative recovery of overpayments of child care assistance to recipients, although some could only collect through voluntary repayments, and four were capable of recovering from providers through a reduction in subsequent payments.

Eighteen states administratively penalized program-violating recipients by disqualification or other sanctions; seven undertook disqualification or de-licensing action against violating providers; one state penalized *only* providers but not recipients and the remainder had no penalty provisions or relied on criminal or civil restitution procedures.

An analysis of the results of this survey leads me to the conclusion that there is little uniformity in the manner in which child care fraud is addressed by the states, apart from the utilization of the criminal system. Where ***TANF*** mandates disqualification of program violators, there is no such provision in the area of child care assistance, particularly with respect to violating providers. A non-licensed, or informal, child care provider convicted of receiving fraudulent child care monies, in many states, is still eligible to provide child care services and receive government payments without regard to his or her previous fraud.

The types of fraud observed in the states were evenly divided between recipient (client) fraud and provider fraud, recognizing instances where there was collusion between both parties to defraud the system.

Types of Child Care Assistance Fraud and Various States' experiences:

Child Care Assistance fraud can be committed by both recipients and providers individually or in collusion with each other.

A **recipient** may understate income to the household, rendering the household eligible for services. This can be done by underreporting the amount of hours worked or wages earned by the client, failing to report the presence of a responsible wage earner in the household, falsely claiming residence in the county or falsely claiming a child care expense when none exists. Failing to report a loss of employment or claiming non-existent employment, rendering a client ineligible for child care services also constitutes a fraud on the system.

In one recent Colorado case a client forged her pay stubs reducing the claimed amount of income to her household. As a result she received over $12,000 in child care assistance over 14 months to which she was not entitled.

Two Virginia women failed to report that their husbands were employed and residing in their homes resulting in losses of $16,482.00 and $15,962.00, respectively.

A Minnesota woman falsely reported living alone when her able-bodied husband was, in fact, in the household and collected more than $91,000 in child care assistance over four years.

In another Colorado case, a client claimed residence in one county while residing in another. A recovery of $33,553.00 was established for a two year period.

A Rochester, New York woman, whom I prosecuted, claimed that her brother was caring for her 11 children. Payments were sent in her brother's name to her mother's address. The brother, in fact, had been incarcerated for over 10 years on a rape conviction and her husband was, in fact residing in the household and caring for the children. The loss amount was limited to $77,000 because agency records failed to cover the entire period of the fraud. The illegally obtained money made the client ineligible for the food stamps the family received and the Section 8 housing in which they resided.

Another Rochester woman stole an acquaintance's social security card, established a vendor account using the acquaintance's social security number and her own mother's address. Twenty-seven thousand dollars in child care payments were sent to her mother who signed the checks and gave them to the recipient over a two year period. Free care for five children was provided by the client's mother and her 85 year old grandmother.

In Wyoming, two sisters claimed a third was providing day care for their children when, in fact, the third sister was fully employed and they were not. This resulted in a loss of $6,700 over a period of 14 months.

Similarly, two Virginia clients, employed by the same company, claimed each provided services for the other when, in fact, they worked the same hours. A claim of $36,474.00 was established.

Another Virginia woman failed to report that she had lost her job on three separate occasions, yet continued to send her children to child care each time. The overpayments totaled nearly $4000.

Providers can commit fraud by claiming children who aren't being watched, by misrepresenting the number of hours that services were provided or by charging more to care for government funded children than private pay children. They also engage in collusion with recipients and split payments to which they are not entitled.

A Wyoming provider got $41,600 over 1½ years claiming services for children who were not there and padding the hours for those that were there.

A Colorado provider billed $6,685 for children who had not been in his care for 4 months.

Another Wyoming provider filed claims for children who were not in attendance at a rate higher than that charged to non-child care assistance covered children; a claim was established for $112,800 for a three year period of fraud.

A Minnesota couple is under investigation for taking kickbacks from a child care center that billed the system for over $41,000 from November 2001 through December 2002 under the pretense of caring for the couple's five children.

A California client sent her children to a free child care center and claimed that the services were provided by a family member. The two split $15,900 in illegal child care payments.

Cheats can take both forms. In a particularly egregious case, a Minnesota woman applied for child care assistance, claiming to support four children on an income of $3,100 a month. In another county, however, she operated an in-home day care center and was paid $854,000 over six years. She pleaded guilty to receiving more than $134,000 in fraudulently received child care reimbursements.

Recommendations:

The above is but a smattering of "horror stories" I have compiled from around the nation; I have omitted dozens more. They add up to a tremendous loss of taxpayer monies set aside for legitimate child care purposes and point out the need for adequate checks and balances in the system.

The United Council on Welfare Fraud recommends that, due to the substantial increase in child care funding made available to the state and the growing number of instances of fraud in the Child Care Assistance, Congress should demonstrate its commitment to Child Care program integrity by requiring all states to prepare a child care fraud control plan which, while allowing flexibility to address state-specific needs, requires, at a minimum:

- Procedures for recovery of child care overpayments.
- Federal tax intercepts for child care overpayments.
- Disqualification penalties for child care recipients and providers who have committed an intentional program violation. These penalties would be modeled after and be similar to those formerly in place in the AFDC program (45 CFR 235.112) and currently in place in the Food Stamp program (7 CFR 273.16 [b]).
- Establishment of an incentive to promote anti-child care fraud activities by crediting child care fraud overpayment recoveries to the fraud funds of the individual states.

UCOWF gladly offers its assistance in drafting these changes to existing legislation and regulatory provisions.

Conclusion:

Child Care Assistance has been described by one of our member investigators as "the new pot of gold" in welfare fraud. It must be acknowledged, pursued and prevented. Efforts must be made by both the states and the Federal Government to insure that uniform and reasonable criteria are established to provide and receive child care assistance, that applications for assistance and vendor status are properly evaluated, that funds are available to ensure thorough investigation of suspected cases of fraud and penalties imposed on intentional violators of the program, and that procedures and vehicles are in place for recovery of child care program overpayments.

Again, ladies and gentlemen, on behalf of the United Council on Welfare Fraud, I thank you for the opportunity and honor of addressing you on this subject.

Mr. SHAW. Thank you, Mr. Rice. Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman. Let me thank all of our witnesses for their testimony. I found it very helpful to hear the different problems and the different areas that are under the jurisdiction of this Committee.

Mr. Rice, let me, if I might, start on the child care and on the welfare system. In 1996, Congress made a decision to change the Federal program on welfare. The basic philosophical change was to give the States maximum flexibility, give them a set amount of resources, no longer an entitlement based upon the number of people receiving services, but a predictable funding source that they had discretion to use as they saw fit, basically.

A lot of the child care money comes out of the TANF funds. Although we are very concerned about any waste, fraud or abuse in the system as it relates to child care, it is basically a State resource issue, because if the moneys are not used properly, the moneys could have been used for other purposes.

So, I guess my question to you is, based upon your observations, is it your testimony that States are not doing as good a job as they should in making sure that the funds are properly used? Obviously, they can determine a lot of the eligibility issues. They can also set up their own internal systems, as some States have done—Georgia would be one good example; but is it your testimony that States should be doing a better job in this area?

Mr. RICE. Well, sir, I think there are a number of factors involved here. I think there is a certain naivete among the evaluators. I think there is an entitlement mentality that exists in some States where the moneys are there, and there is little care about going into the program integrity aspects of it and verifying eligibility.

Recent economic conditions have caused a lot of States to reduce their manpower, so that the opportunity isn't——

Mr. CARDIN. They have also reduced the number of people in the programs. My understanding is that the State of Maryland has frozen any new individuals from getting on child care unless they are on welfare.

Mr. RICE. I think, sir, with regards to this particular type of program, with regards to the child care programs, I believe that has increased. I think there have been a fair number of new cases that have come in where people have actually gone to work and have gotten day care. There are a number of types, of different types of day care that can be provided, and a large percentage of them involve informal day care where relatives and other friends are actually taking care of other people's children without——

Mr. CARDIN. My question is, are the States looking into these issues?

Mr. RICE. Yes, sir, they are beginning to look at them now. It has only come up in the last couple of years that we have noticed the increase in the amount of loss in the child care area.

Mr. CARDIN. Thank you. Mr. Burman, the EITC was actually, I think, the first major reform in welfare. We want to make sure that welfare—that work paid, that people could live out of poverty on a paycheck; and I think it has been a very successful program.

We are obviously concerned about any fraud or any waste in any of our programs. I must tell you I have looked at this letter that

the IRS intends to send out to a select group of individuals that they believe, I guess, are higher risk; and the form itself, I don't know what I would think if I received this form. I am somewhat puzzled as to what the reaction would be, as to how I was selected; it is not really spelled out in the letter. The form, I just looked at quickly, I have not looked at the instruction sheet; maybe we expect these people to read these instruction sheets, but I would have trouble filling out this form.

I don't know what—what is your reaction to this effort?

Mr. BURMAN. My reaction is the same as yours. Actually, the American Bar Association tax section produced a long and detailed set of suggestions, one of them was, right at the top of the form to say what is the form, why were you selected. I think Mr. Rangel wrote a letter saying that the IRS should tell people right off that they are not being selected because the IRS thinks they are cheating, that in fact if you fill out the form and you are eligible, they want you to take the credit.

It is complicated. It is confusing. A lot of people that are going to get the form don't speak English. A lot of them are not very well educated. Some of them may have cognitive impairments. A lot of them, the IRS is going have a hard time finding, because low-income people are very transient. I estimate that 100,000 low-income EITC recipients are homeless at one point during the year. If they are when the IRS tries to track them down, they will never even get the form.

Mr. CARDIN. I thank you for that. Mr. Jordan, if I might, I thank you for your work. I think your agency has been extremely helpful in bringing to our attention matters of particularly the—in our health care reimbursement structures. I have heard over and over again from physicians and from durable medical equipment companies that, yes, I understand what you are saying about questionable claims, but in many cases we are trying to get needed services for the people that we are responsible to treat, and that I don't know why you call it fraud or abuse if I try to use creativity to get needed services for a senior who needs particular health care needs.

Durable medical equipment companies point out often that when you compare the cost of a product to what is on the marketplace it doesn't include service, which is part of their operations.

My point to you is this: We don't tolerate the misuse of our system. There is no excuse for misusing the law. The law is the law, and reimbursement should be matched to what is appropriate, but in your work, do you come across areas that if we had more sensitive reimbursement structures, the amount of the mistaken claims might be significantly reduced? Is that part of what you do? If you do or do not, would it be useful if that information was made available to Congress?

Mr. JORDAN. Let me say that when—what we see at the Department of Justice end up being what are called the sick patients, that is, those individuals who are referred to us who have already been through the system, or companies that have been referred to us who have already been examined for—for potential fraud.

On the HHS side, they will look and work with those companies to try to determine whether there is something that amounts to a

paperwork error or a documentation error before coming to us with a case. We take special care to make certain that the fraud cases that are brought are against companies or individuals who have really abused the system; that is, these are folks who claim to have provided services or claim to have provided equipment and simply didn't, or who have gone far beyond what would be called a creative use of the system and have really committed what amounts to intentional, knowing fraud because that is the standard that we must use in order to prove a case in the court.

Addressing the second part of your question with respect to what information could be provided to you that would be helpful, I would suggest that a system, or a reform to the system, should not only address those individuals who commit the most egregious fraud that we see, but the fraud that HHS sees or the problems that HHS or the Office of the Inspector General there sees. They would probably be better able to address that concern than we could at the Department of Justice, since we really see the worst of the offenders.

Mr. CARDIN. That is fair enough. I would urge a sensitivity to try to get the right policy. There is, again, no excuse for fraudulent activities, and there is certainly no excuse for people even trying to game the system that is short of fraud. It is useful if we could get information that would make the system more acceptable to the people who participate; and, therefore, they may be more willing to help us root out those who are committing fraudulent practices. Thank you, Mr. Chairman.

Mr. SHAW. Mr. Brimacombe, you testified about the diversion of jet fuel into the trucking industry. How serious is this question in terms of loss of Federal dollars?

Mr. BRIMACOMBE. With the jet fuel?

Mr. SHAW. Yes, sir.

Mr. BRIMACOMBE. Mr. Chairman, we don't have absolute numbers on it. I know KPMG did do a study, and they identified the potential loss per year of, low end, just under $1 billion.

Mr. SHAW. Repeat that.

Mr. BRIMACOMBE. One billion dollars to a maximum of $4 billion. However, the IRS doesn't have any good figures on that.

Mr. SHAW. Do you think it would be helpful to start taxing it at the refinery rather than at the pump?

Mr. BRIMACOMBE. Mr. Chairman, when we started taxing gasoline at the rack, we substantially decreased the abuses. If that is projected onto jet fuel, it seems like it may alleviate some of the problems.

Mr. SHAW. Thank you. Mr. Moorman, we have—in H.R. 1 we have a demonstration of a new kind of organization to track down fraud and abuse. You mentioned H.R. 1 in your testimony; it is recovery audit firms.

Does your organization support this provision and do you believe that providing a percentage of the recoveries to a firm might prove to be use a useful incentive?

Mr. MOORMAN. Yes, sir. We sent in a letter supporting that. We believe that, like in the False Claims Act, in fields where there were awards for people who do these things, there is a tremendous incentive created. We did note that where the evidence indicates

that people are liable under the False Claims Act they should also be prosecuted under that liability Act, when these recovery auditors have uncovered that liability in the appropriate cases.

Mr. SHAW. I thank you. Mr. Huse, throughout your testimony you highlight the fact that the key to addressing waste, fraud and abuse is often the enhanced use of technology. As the Agency considers its priorities for computer system enhancement, what priorities are programs to deter waste, fraud and abuse given?

Mr. HUSE. I think that the SSA does a good job trying to balance the competing requirements of service and stewardship, Mr. Chairman, and certainly in this aspect they do that.

When you talk about the very expensive systems enhancements that do add to the stewardship side, these have to be balanced against the competing requirements that are similarly there in systems enhancements for service. These are triaged and put in a queue, depending upon their importance. In most instances, service does trump stewardship because Social Security exists to serve as a social insurance entity.

Mr. SHAW. We also know, and we have seen this particularly in SSI and in some of those areas where computer technology is almost nonexistent, that SSA really hasn't come out of the Dark Ages as far as handling some of these filings that are going from desk to desk.

I know we are making strides, studies are being taken. Do you think that we are sufficiently funding the need for updated equipment in tech in the Social Security system?

Mr. HUSE. Based on the budget process this year, it seems that the appropriate investment is being made. Our work indicates that those challenges are important. The Commissioner would be in a better place to tell you whether Social Security has gotten enough funding in its appropriations, but it appears that it has.

Mr. SHAW. Thank you. Mr. Brimacombe, the Committee on Transportation Infrastructure has expressed great interest in this jet fuel. I am a little surprised that the figures you give are as low as they are. Perhaps we should look to see exactly how much tax evasion is taking place when jet fuel is put into vehicles that are on the road and who should be paying these types of taxes. What exactly is jet fuel, and does it go into diesels? Is that where it is used primarily?

Mr. BRIMACOMBE. Mr. Chairman, jet fuel is a kind of kerosene that diesel engines can run on various types of products. Jet fuel is a kind of kerosene that is mixed with diesel. Usually we find that the percentage of jet fuel included in a load of fuel would probably run 10 to 15 percent, sometimes as high as 50 percent.

Jet fuel is blended with regular diesel fuel. That is how we find it on the highways. We actually stop trucks and we conduct fuel fingerprinting, or we go to retail outlets or wholesalers. That is how we discover it.

Mr. SHAW. We will make your testimony available to the other Committee of interest on this to see whether we should try to pursue this with legislation.

I want to thank all of you on the panel for being here, for your patience in staying with us as long as you have, and I thank Mr.

Cardin for sticking with us on this hearing. It is a most important subject.

I think the one thing that is the biggest deterrent against someone paying their taxes is looking out and seeing that the government is wasting the money or that somebody else isn't paying their fair share. I think it is up to this Committee to see that the dollars are spent as wisely as they can, as efficiently as they can; and that everybody does pay their fair share, and that this is done fairly and without prejudice to anybody.

Thank you very, very much. I think it has been a great hearing. We are now adjourned.

[Whereupon, at 1:12 p.m., the hearing was adjourned.]

[Questions submitted from Mr. English and Mr. Foley to Mr. Brimacombe, and his responses follow:]

Question from Representative Phil English to Joseph R. Brimacombe

Question: Has the Administration, in its calculations on these HVUT proposals, explored the cost to tax-compliant companies of complying with the up-front payment mandate and decal proof-of-payment program? What steps would the Administration take to avoid the creation of a black market in HVUT decals?

Answer: We realize that there is a cost/burden for the time value of money that will be imposed by eliminating the installment provisions for the payment of this tax. Under the current system, a taxpayer pays one fourth of the tax for each vehicle per quarter. The amount of the tax per vehicle is based on the gross vehicle weight (GVW). The tax per vehicle ranges from a low of $100 on a GVW of 55,000 pounds to the maximum tax of $550 for vehicles with a GVW of over 75,000 pounds. The maximum impact of this change would be the time value of money for $137.50 for 90 days, $137.50 for 180 days and $137.50 for 270 days. The overall impact would be determined by the applicable interest rate that may be in effect at any given time. We currently have over $50 million in defaulted installment agreements and we believe this is a compelling reason to make a change in the current process.

There will not be a charge for the proof-of-payment decal. The only burden imposed is the task of attaching the decal to the vehicle. Use of the decal should substantially improve compliance and, in addition, greatly reduce burdens for compliant taxpayers. Inspectors will be able to determine through a simple visual examination whether a vehicle is in compliance, sparing truck operators the time-consuming process of producing proof that the tax has been paid.

We are aware that there may be attempts to counterfeit the decals. We are pursuing several possible solutions that will make it easy for us to determine if a decal is counterfeit. These approaches include the use of current technology, use of bar coding and other identification technologies that are widely used in private industry.

Questions from Representative Mark Foley to Joseph R. Brimacombe

Question: What has the IRS done in the past year in exploring advanced technologies that will enable us to recover these lost revenues?

Answer: We are making improvements in the reporting system that tracks fuel distribution. ExSTARS is the information reporting system that enables the IRS to track all fuel transactions that occur within the fuel industry's bulk shipping and storage system—refineries, pipelines, barges, and terminals. It provides tracking capabilities of fuel from the pipeline system to the point of taxation for the Federal Excise Tax at the terminal rack. This information will then be matched by the IRS to fuel sales transactions reported by the terminals and to verify the tax liabilities reported on the quarterly Forms 720.

The IRS has developed a "fuel fingerprinting" technology to combat fuel tax evasion occurring "below the rack"—particularly bootlegging, smuggling, and adulterated fuel through "cocktailing" or blending the product. Fuel fingerprinting is a technique that examines the "chemical fingerprint" of samples taken from retail stations for adulteration or for a mismatch with samples taken from the terminal racks that normally supply those stations. This technology allows for the detection of

untaxed kerosene intended to be used as aviation fuel, "transmix" taken out of pipelines, waste vegetable oils, used dry-cleaning fluids, and other chemicals that may be mixed with diesel fuel and find their way into the tanks of trucks on the road. Fuel fingerprinting provides a more efficient and comprehensive method to monitor compliance compared to traditional audit techniques.

In another example, the IRS is also developing state-of-the-art technology to identify smuggling of motor fuel at U.S. border points of entry and ocean-going vessels and barge traffic over intercoastal waterways. Under existing processes, illegal smuggling activity can only be detected by physically detaining a truck at the border, reviewing the manifest, extracting a sample from the storage tank, and analyzing the sample to determine if the substance matches the description on the manifest. The IRS is working with the Department of Energy's Pacific Northwest National Laboratory (PNNL) to design, develop, and test a new technology called an Acoustical Identification Device (AID) that uses hand-held sonar technology to identify the liquid contents of sealed containers, such as tanker trucks.

We are also testing various "chemical markers" that will assist in our efforts to monitor the use of dyed fuel. We have encountered instances of people attempting to remove the dye by chemical means or hiding the dye by mixing other products with the fuel. The chemical markers are invisible to the eye and cannot be removed from the fuel. Using this technology we will be able to detect misuse of dyed fuel despite all known attempts to remove or alter the dye. The use of these markers would also assist in our attempts to monitor fuel that is smuggled into the country.

Question: How much funding has been set aside for exploration and implementation of these technologies, and when can we expect to see a technology put into use?

Answer: The funding for the development of these technologies is included in the Administration's request for funding in the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA). We are currently using fuel fingerprinting and we are training our personnel and state personnel from California in a prototype deployment of the Acoustical Identification Device (AID). Our plans are to expand the use of the AID to other locations that have a proximity to the Canadian and Mexican borders in FY04. If our budgetary resources permit, we will expand the use of this device to areas of the country that are susceptible to smuggling through water-borne traffic.

Question: What, if any, hurdles remain to resolving the issue?

Answer: We still need certain legislative changes to provide us with additional tools and reporting requirements on the movement of fuel into and within the country. These changes and the funding to implement them are part of the Administration's SAFETEA legislative proposal.

[Questions submitted from Mr. Herger to Messrs. Huse and Rice, and their responses follow:]

Questions from Representative Wally Herger to the Honorable James G. Huse, Jr.

Question: How many dollars are waived each year? Why are SSI overpayment waivers growing faster than overpayment collections? Are waivers appropriate in all cases, in your view? What would you do to tighten this process?

Answer: Table 1 shows the amount of overpayment dollars the Social Security Administration (SSA) waived for each of the last 5 Fiscal Years by program.[1]

[1] The waiver statistics shown in Table 1 were provided by SSA.

Table 1 (in millions)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	5-Year Total
OASDI Overpayments Waived	$159.5	$201.8	$233.5	$260.2	$278.0	$1,133.0
SSI Overpayments Waived	$91.1	$145.2	$194.4	$174.3	$196.7	$801.7
Total Overpayments Waived	$250.6	$347.0	$427.9	$434.5	$474.7	$1,934.7

SSA grants Supplemental Security Income (SSI) overpayment waivers under certain situations when the recipient is not at fault for the overpayment. Recovery of an overpayment may be waived if such recovery

- would be against equity and good conscience,
- impedes effective and efficient administration because of the small amount involved, or
- defeats the purpose of the SSI Program.

We have an audit underway to evaluate SSA's controls over the SSI waiver process and determine whether SSI overpayment waiver decisions were appropriate.[2] We expect this work to be completed and a final report issued by the end of FY 2004. At that time, we can share the results of the audit. Further, we will make appropriate recommendations based on this work, if necessary, to ensure the waiver process is working as intended and SSA is appropriately granting waivers.

We also have a second audit underway assessing the overall picture of SSI overpayments over the last 7 years.[3] This audit includes a review of SSI overpayment amounts—including amounts collected and waived. We expect to issue a report on the results of this audit in the second quarter of FY 2004; and, if appropriate, it will also include recommendations to improve SSA's efforts to identify, prevent, or recover SSI overpayments.

Question: Has Social Security shared its prisoner data with agencies that provide food stamps, unemployment compensation, and veterans and education benefits? Has the 1999 ticket to work legislation kept these other benefits from flowing to prisoners? Do you know how much has been saved in the process?

Answer: Each month, SSA obtains and processes prisoner data from over 5,000 Federal, State, and local correctional facilities to identify and stop Old-Age, Survivors and Disability Insurance (OASDI) and SSI payments to those who are incarcerated and therefore ineligible for benefits under the Social Security Act. SSA's Actuary estimates $4.9 billion in savings for the 9-year period covering Calendar Years 1995 through 2003 because of the suspension of Social Security benefits to prisoners.

SSA shares its prisoner data with other Federal or federally assisted cash, food or medical assistance programs for purposes of determining eligibility. Those agencies include, but are not limited to, the Department of Veterans Affairs; Department of Education; and 50 State agencies administering the food stamp program under the Department of Agriculture. However, we do not accumulate savings attributed to other agencies' use of SSA's prisoner data.[4]

Our most recent report[5] on SSA's prisoner program was issued on July 24,2003, and it can be found on our website at www.ssa.gov/oig/ADOBEPDF/A-O1-02-12018.pdf.

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[2] SSA's Controls Over the Title XVI Waiver Process (A–O6–03–13077).

[3] SSI Overpayments (A–O1–04–24022).

[4] The Department of Veterans Affairs' Inspector General issued a report—Evaluation of Benefit Payments to Incarcerated Veterans (9R3–B01–031)—in February 1999 that included an estimate of $100 million in overpayments to incarcerated veterans. Also, the Department of Agriculture estimated in 1999 that over $50 million a year in food stamps go illegally to convicted felons and prison inmates.

[5] Follow-up Review of Prior O/G Prisoner Audits (A–01–02–12018), July 2003.

Question: Why is SSA piloting a project requiring photo identification for individuals applying for disability benefits? Have there been any results from this? Do you know if other government benefit programs use photo identification to confirm that people claiming benefits are who they say they are?

Answer: SSA is conducting pilot projects wherein it will request photographic identification from individuals filing for Title II and Title XVI disability and blindness benefits in specified geographic areas covered by the pilot projects. In addition, SSA will require that individuals allow the Agency to take their photograph and make these photographs a part of the disability claims folder.

This pilot is being conducted to determine whether photographic identification will strengthen the integrity of the disability claims process by helping to ensure the individual filing the application is the same individual examined by the physician conducting the consultative examination. Specifically, the pilot is to test and gather information in the use of photographic identification to address the issue of complicit impersonation in the disability claims process. Complicit impersonation is accomplished when an individual, posing as the intended claimant, and with the consent of the claimant, responds to a consultative examination appointment to misrepresent the claimant's true medical condition or provides false or misleading information that affects eligibility during interviews with SSA field office employees.

SSA and the Office of the Inspector General have noticed an upward trend in the number of such instances. It has become apparent that we need to strengthen our procedures for identity verification. The photographic identification process should give SSA an economical yet effective means of providing improved identity documents to physicians who conduct consultative examination.

Final rules for this 6-month pilot were published in the Federal Register on May 1, 2003[6]; and the pilot is scheduled to run from June 1 through November 30, 2003. SSA will evaluate the results of the pilot and expand or modify the procedures accordingly.

To our knowledge, the Food Stamp Program—under the U.S. Department of Agriculture—uses photographic identification to confirm that people claiming benefits are who they say they are.

Questions from Representative Wally Herger to Michael G. Rice

Question: In general, once a child care fraud case results in an overpayment and is successfully prosecuted, what percentage of the overpayment is recovered? Are any child care fraud cases rectified without court action or procecution? For the cases you have prosecuted, do you think the penalties available were strong enough?

Answer: At this time most states have not maintained statistics on the percentage of recovery as the local agencies, usually county-administered, are responsible for providing care and payments. Administrative recovery depends on whether the recipient is in receipt of public assistance which can be reduced to recoup the loss. A recoupment, usually anywhere from 10% to 20% of the public assistance grant, is the primary means of recovering overpayments of assistance, either fraud or non-fraud related. Some states, such as Maryland, recover fraud losses at a higher recoupment percentage than non-fraud losses. If the recipient is working, however, the base assistance grant would not be very high and, therefore, the recovery amount would be low and full repayment would take a long time.

If the recipient of the child care is not on assistance, or disqualified from receiving assistance because of the fraud, administrative recovery becomes impossible until such time as they begin receiving assistance again. Counties have resorted to civil judgments and collections and criminal court-ordered restitution, but again, the percentages vary nationwide. Monroe County, New York DSS estimates less than 50% of the fraud losses recovered, while Roanoke City, Virginia claims to obtain full recovery, although that is primarily done through the criminal justice system. Those cases that Roanoke pursues civilly may take years, however. Fraudulent providers are generally not subject to administrative recovery, although Colorado and Wyoming do recover from subsequent payments to the provider. Again, most states do not disqualify providers who have committed an intentional program violation.

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[6] Federal Register, Volume 68, Number 84, Pages 23192 through 23195, dated May 1, 2003 (with an effective date of May 31, 2003).

Whether a case is pursued criminally or administratively depends on the arrangement the agency may have with the local prosecutor. Cases are generally accepted for prosecution based upon the dollar amount of the loss and strength of the proof. While I was prosecuting welfare fraud, my threshold amount went from $5000 down to $1000 over a 6 year period. Child care fraud is an area where the dollar amount of the loss can rise rapidly, so thresholds are met easily. However, from the responses I received from the Board members, the preferred response is administrative action which may be coupled with criminal action. Some states implement disqualification procedures similar to those for Food Stamps and TANF, but not all.

For the cases that I prosecuted, the available penalties were certainly strong enough; the difficulty was in convincing the judges to utilize them. The general judicial feeling in the metropolitan areas in New York State is against incarceration of welfare frauds, generally, and very few of the hundred of defendants I prosecuted were incarcerated. Mostly, the sentence was to probation and restitution. The woman who stole $77,000 through child care fraud over a nine-year period was sentenced to prison for 1⅓ to 4 years, but that was primarily because the amount of the fraud was so great that the judge felt compelled to send her to prison. Cases involving lesser amounts would not result in jail time. This situation is usually different in rural counties and in other parts of the country, however.

Question: Based on the examples cited in your testimony, there are individuals out there devising and implementing schemes to, in effect, take child care money from needy families to line their own pockets. With $11 billion used for child care in fiscal year 2001, even a small percentage of abuse could really add up. Just how widespread do you think fraud is in the child care system? How many dollars are being taken out of the system each year? What is the best way to stop it?

Answer: As I stated in my testimony, 40 of the 42 states responding to the UCOWF survey stated that child care fraud was a problem. The fraud is widespread. One worker from Virginia told me that 40% to 50% of her child care cases involved some sort of fraud. This percentage was echoed by workers in Minnesota. Other states reported lower percentages of overpayments in general, but upward of 60% of those overpayments were fraud-related. The consensus at the State Fraud Directors' meeting last March was that 50% of child care cases involved fraud. These figures, though, are just estimates. In my opinion, when the 1996 legislation provided for child care monies to be available, no one thought about the possibility of fraud in the system and the states weren't ready for it. It wasn't thought to start keeping statistics on child care fraud until it was suddenly realized that it was happening. A dollar amount can't be placed on the losses because of this. A safe educated guess would place the losses in the vicinity of at least one-third of the $11 billion you refer to.

Because child care fraud takes on many forms, there is no one best way to stop it. Part of the problem is in finding and investigating it. This has become more difficult because of the economic downturn which caused layoffs of the investigators whose job it was to prevent losses. Also, the percentage of the TANF block grants created in 1996 which could be used for administrative purposes was limited to 15% of the grant and the amendment providing money for child care limited to 5% for administrative purposes. These "administrative" purposes included investigation funds and front-end, or eligibility, evaluations. Throwing money at a problem has not been a solution I have endorsed in the past, but allowing the states to maintain a portion of the overpayment monies they recover and permitting recovery from violating recipients and providers through income tax return intercepts would fund the investigators and evaluators who could address the problem of eligibility. Couple that with stricter requirements for establishing recipient eligibility and provider accountability and a major portion of the problem would be addressed.

Question: Would you please briefly review the general process an individual goes through to get child care assistance and outline the types of documentation about income, work schedule, number of children, etc. that they might be required to show? In your experience, do you find that most people are truthful? Please also review for us how child care providers become eligible to provide services and be paid with taxpayer dollars.

Answer: Application for child care assistance generally requires the completion of an application outlining the household's size and income. Most states require independent verification of this information through birth certificates and wage stubs; some, however do not. Most states do not require an in-person interview. Applications and recertifications of eligibility are done over the phone, by mail and, in some states, via the internet. This is the area where the problem exists. Until my large case was discovered, the local DSS agency was not verifying the information provided by the recipient family and no steps were taken to validate the claims of eligi-

bility or the existence of the provider. "Front-end" eligibility determinations were being conducted in TANF and Food Stamp claims, but not in child care. Either through naivety or the existence of an "entitlement mentality" on the parts of the administrators of the program, the concept of fraud in that aspect of the system wasn't envisioned. Needless to say, when the $77,000 fraud was discovered here in Monroe County all cases were reviewed and several frauds discovered. Also, in-person application procedures were implemented. Not all states are doing that however.

Most people are truthful, in the opinion of UCOWF's Board members, but some have found that as much as 50% of their clients have shown themselves to be dishonest.

Child care providers may be state-licensed day-care center providers who have complied with state regulations regarding safety, diet, number of staff members, and so forth. These are regularly inspected facilities. Each state has one or more classifications of this type of provider and they are fairly well regulated.

States vary, however, on what New York calls "informal providers" or friends or family members who are retained to watch a recipient's child(ren) while the recipient works or goes to school. In Monroe County, the procedure simply required the provider to obtain a "vendor number" from the county and for the recipient to name the provider on the child care application. Monthly attendance records would be sent in and payments made directly to the vendor. No in-person verification was required. Some states, such as South Dakota, are stricter in requiring proof of qualifications to provide care and receive payment, but others, like Iowa, and Ohio, are like New York. This has led to a number of child care cases involving identity theft.

Question: Are certain states using more aggressive techniques to deter and penalize individuals participating in child care fraud? If so, which states are they and what are they doing? What is the best way for us to encourage states to be more proactive in finding and stopping child care fraud?

Answer: Some states are being aggressive in their approaches to the problem. Arkansas, Maryland, Minnesota, Nebraska and Ohio are among the states that have implemented Administrative Disqualification procedures similar to those in the Food Stamp Program. This addresses the problem of the fraudulent recipient. I do not know of many states that utilize a similar procedure for providers, although to do so would be beneficial as a large percentage of fraud cases involve collusion between recipients and providers and, in many states, a program-violating provider is not sanctioned from being a provider in the future.

Again, an incentive to prevent and pursue child care fraud in the form of retained recovered child care overpayments would permit agencies to hire more investigators and front-end evaluators. Tax return intercepts would assist in effecting these recoveries, as court-ordered restitutions and civil collections recover only so much of fraud losses.

As I inartfully attempted to explain to Congressman Cardin on July 17th, while, in 1996, Congress did provide monies to the states to be used as they deemed necessary to implement the programs, there appears to have been no anticipation of fraud in the child care system and no provision made to address it in addition to fraud in TANF and Food Stamps. The limitations on funds available for administrative purposes restricted investigations in the child care area and little was done to address it until it became recognized as a major problem. While welfare caseloads diminished, child care cases increased, and accordingly, so did child care fraud cases. Economic conditions reduced the number of agency staff to address child care fraud and the problem became bigger. Efforts are being made to combat child care fraud, but the incentives I mentioned are necessary, along with federally required responses to fraud similar to those required under TANF and in the Food Stamp Program.

Thank you for your interest. We in the United Council on Welfare Fraud are honored and pleased that our input was sought. We are always available to collaborate in finding ways to ensure that those who truly need public assistance are the ones who receive it. I include as attachments to the e-mailed version of this response, the UCOWF Child Care Survey results and the responses of five of our members to your questions.

[Submissions for the record follow:]

Statement of the Honorable Gordon S. Heddell, U.S. Department of Labor, Office of Inspector General

In the statement we are submitting for the record, we focus on the Unemployment Insurance (UI) program, and the Black Lung Disability Trust Fund, which are both under DOL's jurisdiction. Our work in both programs over the years has found instances of fraud, waste, or abuse.

Unemployment Insurance Program

The Unemployment Insurance (UI) program is the Department of Labor's largest income maintenance program. This multibillion-dollar program provides income maintenance to individuals who have lost their jobs through no fault of their own. While the framework of the program is determined by Federal law, the benefits for individuals are dependent on state law and are administered by State Workforce Agencies in 53 jurisdictions covering the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, under the oversight of the Department of Labor.

1. A current estimate of the magnitude (in dollars) of waste, fraud, and abuse within the Department's mandatory programs:

- In fiscal year (FY) 2001, the states identified and reported $699 million in actual UI overpayments. Of this amount, the largest single cause ($227 million or about 32%) of detected overpayments was unreported claimant earnings. Other causes for overpayments include a variety of eligibility reasons such as, failing to do a work search, being terminated by an employer for a reason that does not qualify for UI, and not qualifying for the benefit amount received because of insufficient base period wages. For FY 2002, the states identified $908 million in overpayments.
- The Employment and Training Administration's (ETA's) Benefit Accuracy Measurement (BAM) system projected claimant overpayments at $2.45 billion in FY 2001 and $3.4 billion in FY 2002. Of the FY 2001 projected amount, ETA estimated fraud related overpayments to be $580 million while non-fraud overpayments were estimated at $1.865 billion.
- For the one year period ending June 3, 2003, OIG investigations involving the UI program have resulted in 68 indictments, 58, convictions, and $5.3 million in monetary results.

2. The general nature of these problems and how long they have persisted:

- According to ETA's projections, for FY 2001, fraud made up about 25% of the projected overpayments. Fraud was perpetrated through fictitious employer schemes, internal embezzlement, and false claims established through identity theft.
- The balance of overpayments, about 75%, is considered non-fraud overpayments. Such overpayments can occur when a state establishes and pays a claim, only to later discover that the claimant was not eligible for other reasons. Non-fraud overpayments can also occur when a claimant's earnings for a claimed week of unemployment exceed state law minimum earnings.
- ETA has projected unemployment benefit overpayments since 1987. Despite ETA's quality control program, including BAM, the UI overpayment rate has remained steady at between 8–9% for the past 12 years.
- From an investigative perspective, based on recent casework, the OIG is concerned about organized crime fraud activity in the UI program. We have conducted several investigations that illustrate exploitation by organized crime groups of the UI program through the use of identity theft.

3. Illustrative examples of these problems:

- In addition to instances of millions of dollars of overpayments resulting from unreported claimant earnings and a variety of eligibility issues, the OIG continues to investigate fraud within the UI program. Some recent examples include:
  - A Washington state man was sentenced and ordered to pay nearly $700,000 in restitution in connection with UI fictitious employer, private insurance, and credit card schemes he orchestrated for more than 10 years. The investigation revealed that he orchestrated these schemes using multiple identities and fraudulently obtained Social Security numbers. He set up multiple fictitious businesses in Washington state and submitted false quarterly wage reports, enabling him to draw more than $100,000 in UI benefits.

- A New Jersey man who used fictitious companies to file false UI applications was sentenced and ordered to pay back more than $320,000 he fraudulently obtained from the New Jersey UI program.
- A California man filed more than 30 fraudulent UI claims totaling $130,000 using identities of Los Angeles City and County employees stolen from a credit union.
- Thirteen members of a Mexican non-traditional organized crime group were indicted on charges of conspiracy, mail fraud, identity theft, and money laundering in connection with more than $10 million in fraudulent UI claims. The investigation revealed that they defrauded the California, Washington, Nevada, and Arizona Unemployment Insurance programs through the use of at least 3,000 stolen identities obtained from payroll-servicing companies.
- Six members of a Mexican family living in California were indicted on charges of conspiracy, mail fraud, identity theft, and money laundering for defrauding the State of California UI program. The investigation revealed that the family, which constituted a criminal group, opened approximately 100 mailboxes and established several business bank accounts to allegedly launder over $3 million dollars obtained from fraudulent UI checks.

4. What actions are being taken to eliminate or reduce these problems:

- In 1987, ETA implemented a Quality Control program to address federal regulations (20 CFR 602.1) that directs the UI system to implement a Quality Control program. A key component of this program was the BAM system.
- ETA increased the priority of preventing and detecting UI overpayments by establishing a Government Performance and Results Act overpayment measure.
- As stated in question two, ETA has projected unemployment benefit overpayments since 1987. Despite ETA's quality control program, including BAM, the UI overpayment rate has remained steady at between 8–9% for the past 12 years.
- ETA issued an UI Program Letter offering states grants to enhance their state's connectivity to the State Directory of New Hires. The New Hire database with current employment information can detect "unreported earnings" overpayments by matching the paid claims list to the database. Such a cross match can detect unreported earnings far quicker than traditional cross match methods which rely on employer quarterly wage reports.
- Most recently, the Department announced on July 2, 2003, that it awarded $4.8 million in grants to help 41 state workforce agencies implement or enhance systems to prevent and detect fraudulent payments of unemployment insurance benefits. One of the systems will allow state agencies to cross-match UI benefit claims against the state new hire reports; the other system allows electronic data exchange between state UI agencies and the Social Security Administration to help prevent identity theft by individuals filing UI claims.
- The OIG currently is auditing BAM to determine how well it projects overpayments and whether it can be used to point the way to program improvements.
- The OIG periodically sponsors fraud awareness seminars for state UTF program directors and staff to make them aware of fraud problems within the UTF.

5. What additional actions, either administrative or legislative in nature, are required:

- Past GAO and OIG audit reports have acknowledged the potential benefits of New Hire data in UI overpayment detection. Most—but not all—states are using their respective state new hire directories. However, the state directories alone do not afford the states access to nationwide data. Moreover, legislative restrictions currently bar states' access to the National Directory of New Hires maintained by the Department of Health and Human Services. Through connectivity to the National Directory, the states could establish cross match procedures that detect overpayments early, thus preventing future overpayments on the same claim and increasing the likelihood of recovery.

Unemployment Trust Fund Administrative Costs

1. A current estimate of the magnitude (in dollars) of waste, fraud, and abuse within the Department's mandatory programs:

- Another cause of continuing waste affecting the Unemployment Trust Fund (UTF) is the overcharging of the Trust Fund for costs incurred by the Internal Revenue Service (IRS) in collecting and processing employers' unemployment taxes.

- The OIG's March 2003 report estimated that overcharges to the UTF amounted to $174 million for Fiscal Years 1999 through 2002. This occurred because IRS did not have a cost accounting system to equitably recover its costs.

2. The general nature of these problems and how long they have persisted:

- The OIG first reported this problem 15 years ago. In addition, in 1999, the OIG reported that the IRS did not have a cost accounting system to capture actual UTF-related costs and had overcharged the UTF in FYs 1996–1998. While the IRS returned these overcharges to the UTF, ETA was unable to get the IRS to resolve the issues regarding its UTF charging process.
- The OIG recently completed a follow up audit of the IRS's process for identifying administrative costs charged to the UTF. We found that for FYs 1999–2002, the IRS did not have adequate support for these costs. In addition the Treasury Inspector General for Tax Administration (TIGTA) recently issued an audit report, which found that Treasury could not support the expenses charged to the UTF. The Treasury agreed with TIGTA's recommendations.

3. Illustrative examples of these problems:

- Using FYs 1999 through 2002 as an example of IRS overcharges to the UTF, our March 2003 audit report disclosed that the IRS had charged the Trust Fund almost $300 million without adequate support. Using an alternative methodology based on percent-of-revenue-received, we estimated the amount charged should have been $126 million.

4. What actions are being taken to eliminate or reduce these problems:

- The IRS recently proposed an alternative cost recovery methodology. We raised questions with one aspect of this methodology, and we recommended that ETA work with the IRS to address this issue and adopt an acceptable methodology. Using the IRS's proposed methodology, the IRS would have charged only $126 million rather than the nearly $300 million it actually charged.

5. What additional actions, either administrative or legislative in nature, are required:

- We continue to recommend ETA negotiate with the IRS to adopt an acceptable alternative methodology for charging the UTF for the allocable administrative costs, and enter into a Memorandum of Agreement to ensure consistent application of the agreed-upon methodology. IRS should also reimburse the UTF $118 million ($174 million minus $56 million already recovered) in overcharges. ETA and IRS are holding discussions to develop a mutually acceptable methodology.

Black Lung Disability Trust Fund

The Black Lung Disability Trust Fund (BLDTF) provides benefit payments to eligible coal miners disabled by pneumoconiosis when no responsible mine operator can be assigned liability. These benefits, along with administrative and other costs, are chiefly financed by excise taxes from the sale of coal by mine operators.

1. A current estimate of the magnitude (in dollars) of waste, fraud, and abuse within the Department's mandatory programs:

- Outstanding advances to the BLDTF totaled $7.7 billion at the close of FY 2002, up from $5 billion at the end of FY 1996. Of the $7.7 billion in cumulative advances as of the end of FY 2002, only $2 billion had been spent for benefit payments, with the remaining $5.7 billion used to pay interest on past advances. The BLDTF continues to be unable to repay any principal on these advances, and it must borrow to pay the interest.
- For the one-year period ending June 3, 2003, OIG investigations involving the Black Lung program have resulted in 4 indictments, 3 convictions, and $7.1 million in monetary results.

2. the general nature of these problem and how long they have persisted:

- The OIG first reported on the chronic insufficiency of Trust Fund revenues in our March 1997 Semiannual Report.
- The Black Lung Benefits Revenue Act provides for repayable advances to the BLDTF from the U.S. Treasury when Trust Fund resources are inadequate to meet obligations, as continues to be the case. Currently, coal excise taxes are sufficient to pay benefits and administrative costs; however, the fund must continue to borrow from the Treasury to pay the interest due on past advances. The Omnibus Budget Reconciliation Act of 1987 significantly reduces coal excise taxes after the year 2013, exacerbating the deficit. The Department's projections through September 30, 2040, indicate that, when the payment of interest on ad-

vances is taken into account, the Trust Fund will experience a negative cash flow—necessitating more borrowing—in each of the next 38 years, culminating in a projected $49.3 billion deficit by the end of FY 2040.

- From an investigative perspective, our investigations have shown that a problem exists with the fraudulent conversion of deceased claimants' black lung payments by family members and friends. Our investigations have also demonstrated that the Black Lung program is susceptible to fraud by doctors and other medical providers.

3. Illustrative examples of these problems:

- In addition to the outstanding advances and mounting debt to the BLDTF, the following are examples of fraud against the program:
  - A Virginia doctor, who was a provider to the Federal Black Lung Program, was sentenced to nearly six years in jail and fined $42,700 after being found guilty of 427 counts of dispensing narcotics, including Oxycontin, without a legitimate medical purpose. A joint investigation revealed that the doctor was unnecessarily dispensing prescription narcotics to Black Lung claimants. This investigation is part of a larger probe into medical provider fraud in rural Virginia.
  - In another case, two physicians were sentenced for defrauding the Black Lung program of over $1.5 million and were ordered to jointly pay $2 million in restitution. The investigation found that the doctors billed and received payment from the Black Lung program for excessive office visits and unnecessary medical treatments and supplies.

4. What actions are being taken to eliminate or reduce these problems:

- The OIG continues to investigate fraud within the Black Lung Program. Our work has led to the Black Lung program saving at least $4 million through our investigations of medical suppliers' inflated billing of an oxygen supplying device. Medicare paid only a fraction of the cost for the same devise. When the OIG brought this to the Black Lung program's attention, the program immediately instituted a new purchasing policy, which resulted in the savings.

5. What additional actions, of either an administrative or legislative nature, are required:

- Restructuring the BLDTF debt could address the mounting debt caused by the large interest-bearing repayable advances received from the U.S. Treasury. The Department's 2004 budget justification states that the Administration will propose legislation to (1) authorize a restructuring of the BLDTF debt, (2) extend, at the current rate, BLDTF excise taxes set to expire in January 2014, and (3) provide a one-time $2.3 billion appropriation to compensate the General Fund of the Treasury for forgone interest payments.

Statement of David Mucka, Applied Information Sciences, Inc., Greenbelt, Maryland

I want to begin by thanking the Chairman and the Ranking Member for the opportunity to submit testimony on ways to address the problem of waste, fraud, and abuse in government programs. My name is David Mucka, President and Chief Executive Officer (CEO) of Applied Information Sciences, Incorporated (AIS). AIS is an Information Technology (IT) consulting services firm incorporated in the State of Maryland in 1982. As Congress looks for ways to cost-effectively reduce the incidence of fraud, waste, and abuse in federally funded public assistance programs, we would like to share with the Committee our experience in helping state governments to better manage public assistance funds and to maintain the integrity of public assistance programs through the process of tracking and recovering assistance benefit overpayments.

We understand the Committee has primarily focused on finding ways to prevent errors in public assistance programs, and other major government spending initiatives, before they occur. We strongly support these initiatives, however we recommend that the Committee consider broadening its focus to include the subject of overpayment recovery.

Each year, the Federal Government provides billons of dollars in funding to the states for numerous public assistance programs that provide a critical safety net for millions of needy Americans. Given the large sums of monies involved, state govern-

ment agencies are required to maintain significant levels of operations staff to properly manage these programs so they meet the needs of their constituents.

As is the case for most organizations, even the best trained employees will inevitably make mistakes, and the issue of fraud is always present. While it is vital that the Federal Government provide states with incentives to reduce and eliminate benefits determination "errors" (i.e. overpayments, underpayments, or improper granting or denial of benefits) *before* they occur, we think it is also important to define policies and rules that provide states with incentives to aggressively pursue recovery of improper payments due to errors and/or fraud once it has already happened.

A dual track approach of incentives 1) to reduce the frequency and magnitude of improper benefits assistance payments; and 2) to promote the recovery of the benefit overpayments that will inevitably occur affords the Federal Government with the highest opportunity for realizing the "best use" of appropriated funds to meet the intended goals of the specific public assistance programs.

To illustrate this point, we believe our experience supporting the Department of Human Services for the State of Texas in the recovery of benefits overpayments for public assistance programs is a compelling example of how industry and government can partner to significantly reduce fraud, waste and abuse of government funds.

Our Experience Supporting the Texas Department of Human Services (TDHS)

AIS has been engaged with the Texas Department of Human Services (TDHS) since 1993 to develop and enhance an information technology system that assists TDHS staff in the recovery of benefits overpayments to public assistance recipients and providers across a wide range of programs, including such major programs as Temporary Assistance to Needy Families (TANF) and Food Stamps. This system handles benefit overpayment recovery claims that are a result of fraud, recipient error, and/or state agency worker errors, and provides automated support in the notification and collections of overpayment claims.

Since 1995, TDHS employees have used the system to recover over $281 million in overpayments across most major public assistance programs. In particular, we would like to point out TDHS' success recouping Food Stamp overpayments, since statistics in this program are methodically tracked and monitored by the Agriculture Department and therefore can provide a useful case study on the effectiveness of our system.

During the last 8 years, the State of Texas combined Food Stamp Program error rate, which includes both over- and underpayments, has fallen from being well above the national average error rate, to being far below the national average error rate in 2002 (4.85% for Texas, 8.26% nationally).[1] This outstanding performance has earned Texas millions of dollars in incentive bonus funding for its Food Stamps Program from the USDA.

Further analysis of the data in the 2001 GAO Report shows that in FY1999, Texas had a Food Stamp Program overpayment error recovery rate that was more than 3 times better than the national average. Specifically, Texas recovered $24.9 million of the estimated $40.7 million in Food Stamp Program overpayments, yielding a recovery success rate of 61.4%. In contrast, the national recovery success rate for FY1999 was 19.2%, in which $213 million of $1.107 billion in total Food Stamp Program overpayments across all 50 states, District of Columbia, Guam, and the U.S. Virgin Islands was recovered.

Moreover, as shown below, the GAO data reveals that the Texas recovery rate in FY1999 far exceeds the recovery rates of the top 4 states in total food stamp benefits issuance.

State	FY 1999 FSP Issuance	FY 1999 Overpayments	FY 1999 Overpayment Recovery	Recovery Rate
TX	1,255,473,000	40,677,000	24,957,000	61.4%
CA	1,805,881,000	143,026,000	25,513,000	17.8%
NY	1,464,474,000	93,873,000	14,984,000	16.0%
FL	819,257,000	47,435,000	8,162,000	17.2%

[1] *Sources: 2001 GAO Report to Secretary of Agriculture #GAO–01–72 and Congressional Agriculture Subcommittee on Department Operations, Oversight, Nutrition, and Forestry July 24, 2003 Testimony exhibit.*

We believe the success that Texas has experienced in the recovery of Food Stamp overpayments is due in no small part to the information technology system that AIS helped develop and maintains for the TDHS. This system aids in the recovery of overpayments by improving the administration and management of overpayments recoupment in public assistance programs. Specifically, the system:

- Provides state benefits caseworkers with an automated tool to manage the recovery of benefit overpayments. The system supports recovery by either direct restitution (payment) and/or by automated recoupment of benefits through allotment reduction or government payment offsets;
- Strengthens internal accounting controls by automating the establishment of claims, centralizing collections and billings, and providing comprehensive payment and claim histories;
- Provides automated tracking and notification of required communication and correspondence with individuals who have outstanding debts, aiding in the pursuit of repayment;
- Facilitates information sharing between different state and Federal Government agencies, enabling outstanding debts to be deducted from other sources of government money an individual might receive (tax refunds, lottery winnings, other benefits, etc);
- Enhances accounts management by substantially streamlining compliance with federal and state reporting requirements; and
- Improves program integrity by increasing data consistency, completeness and accuracy through an integrated approach to accounts receivable operations, eliminating calculation errors.

The end result of these system improvements is that, in just the first 18 months that our system was in operation in Texas, it enabled the state to completely recoup the cost of development of the system through increased revenue collections, recover $7,068,444 in Food Stamp overpayments, and recover $2,193,251 in AFDC overpayments. Over a 6 year period, the system has assisted in the recoupment of $138 million in Food Stamp overpayments and $40 million in AFDC/TANF overpayments alone.

Our Recommendations to the Committee

Based on our experience working with state officials in Texas, we have made the following observations that we believe would be useful to the committee as it considers specific recommendations to reduce wasteful and erroneous spending in programs under its jurisdiction.

- State caseworkers are hard-working and diligent but need assistance to manage large caseloads involving hundreds of beneficiaries and thousands of dollars in claims.
- Information technology offers Federal and State Governments innovative and cost-effective ways to tackle these problems by offering fully automated personnel support.
- *Let technology do what it does best:* Managing and cataloging large amounts of data.
- *Free human beings to do what they do best:* Making personal contacts and exercising judgment and decisionmaking.
- Tracking down the status of an overpayment is time-consuming and cumbersome if done manually. Automating the overpayment recovery process saves valuable time and ensures that erroneous claims will not fall through the cracks.
- Centralizing billing and collections operations enables caseworkers to better track the status of claims.
- Utilizing information technology to enable communication between state agencies, and between Federal and State Governments, is critical to the success of efforts to recoup overpayments. Coordinating information sharing can also eliminate redundancy and facilitate the resolution of discrepancies.

Conclusion

Given our success in Texas, AIS believes the Federal Government should not only provide states with recommendations on how to reduce errors, but with incentives to invest in information technology systems that assist with the recoupment of overpayments. This investment will likely pay for itself within a short time, and will return needed funds to federal and state treasuries.

Please feel free to contact us if the committee requires further information about AIS, or about our experience in Texas. We would be happy to discuss our experience and views in more detail with the committee.

REDACTED

[redacted]

[redacted]

Wichita Falls, Texas 76310
July 12, 2003

The Honorable Bill Thomas (CA)
Washington, D.C.

Re: Hearing on Waste, Fraud, and Abuse of the Social Security System

Dear Representative Thomas:

I am a retired Texas teacher, and **because you, as Chairman of the House Ways and Means Committee, have announced a hearing on waste, fraud, and abuse of the Social Security system and have requested input, I am writing to you.**

Because of the GPO/WEP, many retired Americans are victims of waste, fraud, and abuse from the Social Security system. I have found personally that the GPO/

WEP laws are cruel and harsh laws which have ruined retirement for me, a retired Texas English teacher, and for many other hardworking, innocent Americans who have paid into the social security system for a lifetime.

We planned responsibly throughout our working years so that we would have adequate retirement, and we counted on receiving all our social security benefits which had been outlined for us over the years in our social security statements. However, upon retirement, we lost our ability to have a financially secure retirement because the GPO/WEP laws put an end to our life time of planning. We retirees paid in but are not receiving!

I believe that all Americans should pay into social security; however, I have had to accept the fact that as a teacher in Texas I was not allowed to pay into social security. Accordingly, I realize that I should not receive social security benefits based on my teacher salary. HOWEVER, I did pay into social security and had my earned my forty quarters and my social security retirement before I started teaching in 1979, yet I can only receive half of these retirement benefits because of the WEP.

In addition, and most cruelly, because of the GPO I am being denied social security spousal benefits from my husband who has contributed faithfully to social security for over 50 years, believing all along that this would help both of us in retirement. However, the GPO has destroyed my husband's plans for my security. I cannot receive any spousal benefits now from him, and should he die before I, I will only be able to draw $21 a month as his widow. The GPO has placed thousands of widows around the country in dire financial circumstances. I do not understand how my government can legally deny me benefits earned by my husband for my benefit, regardless of whether or not I worked—but this was done by the GPO.

I want to call attention to three statements made in your ADVISORY of July 10, 2003:

1. "Misuse of taxpayer funds undermines confidence in government programs, hurts legitimate beneficiaries, and squanders scarce resources." Yes, our confidence in government programs has been underminded. Yes, we as legitimate beneficiaries have been hurt; Yes, the taxes which we paid in for our use are being squandered and spent on others, and we cannot receive our full, earned benefits. All of this happened because of two laws—the GPO/WEP—which were passed hurriedly and without thought of what would happen to the average American.
2. "Many of these programs are approaching 50 years of age or more, and the Committee has a responsibility to ensure that they are meeting the needs of beneficiaries today and tomorrow." No, the social security program is not meeting our needs. We paid into the system but are not receiving and this has left many retired Americans in dismal financial condition. Again, all of this happened because of two laws—the GPO/WEP—which were passed hurriedly and without thought of what would happen to the average American.
3. "The tax dollars that working Americans send to Washington should be used wisely and for their intended purpose." No, the tax dollars that my husband and I and thousands of other Americans sent in are not being used for their intended purpose, which was to help in our retirement years. All of this happened, again, because of two laws—the GPO/WEP—which were passed hurriedly and without thought of what would happen to the average American.

Representative Thomas, I am asking that as you chair this Committee on Ways and Means and as you and your fellow congressmen search for ways to eliminate waste, fraud, and abuse, that you remember that it is not WASTE to give us our rightful benefits, which were taken away by two quietly passed laws which have proven to be unfair.

I also ask that you remember that it is FRAUD on the part of our beloved government to take our money designated for our benefits and then to deny benefits to us, which benefits before 1983 were perfectly legal.

Finally, I ask that you remember that one group of American retirees, those who happened to live in states where they could not pay into social security and those who happened to choose such jobs as teachers, firemen, and other service jobs, are being ABUSED financially even though they or their spouses paid into the system.

Please use your influence to help correct and update the social security system so that American retirees will no longer be denied their earned benefits.

Please help eliminate the waste, fraud, and abuse which these dedicated, tax-paying retirees have had to endure.

Please contact me if you have any questions. I want to help. Even if I won the Texas Lottery, I would still battle for the elimination of the GPO/WEP because these laws are just UNFAIR.

Thank you for all the work you have done for America and its citizens.

Sincerely yours,

Martha Callaway
Retired Texas English Teacher

Statement of Molly K. Olson, Center for Parental Responsibility, Roseville, Minnesota

U.S. Government Exceeds Spending Powers Exacerbating the Federal Deficit Which Is Excessively Burdening the States with Coercive and/or Vague Mandates for the Title IV–D Welfare Program

FACT #1 Title IV–D of the Social Security Act was **meant to provide** collection and enforcement services for **only two specific reasons.** The intent and purpose is clear in all historical government IV–D records; eligibility ends here:

- **Eligibility Standard #1**: ***Reimbursements*** to the Public Welfare agency, to recover welfare cash payments being expended for TANF and other Title IV benefit programs.
- **Eligibility Standard #2**: Protect those who would be ***At Risk*** of going on welfare (TANF), if they didn't receive the child support payment directly from the parent who had abandoned the family in need.

PURPOSE OF THE PROGRAM To ***Lower Cost*** to the Taxpayer

FACT #2 Title IV–D services were meant for "dependent" children only, ***not*** individuals with private cases where there is ***no compelling state interest*** and ***no need for government aid.*** The phrase "dependent child" is a term of art and is defined by Social Security Act as any child who requires government services to self-sustain for their basic needs.

FACT #3 82% of all Title IV–D cases do not comply with the original intent and purpose of the program. Title IV–D collection and enforcement services are currently being ***subsidized by the federal taxpayer*** in cases where there is ***no public interest.*** No eligibility standards are being implemented by the states, causing excessive taxpayer expense for this federally funded program. Participants are fully subsidized for all over 50 services for up to 20 years.

Total *Former* Public Assistance (56%) & *Never Assistance Cases (43%)*	13,995,919 (82%)
Total Public Assistance Cases	3,109,417 (18%)
Total Title IV–D Case Load in U.S.	17,105,336 cases

Source: MN Child Support Performance Report FY 2002 (July 2001–June 2002)

FACT #4 Federal law ***requires no state to conduct means-testing*** for this federally funded welfare program; all 50 States are acting under the ***current misunderstanding*** that the ***Federal Government requires the state*** to ***allow anyone into the program regardless of their income*** and regardless of need. Therefore, federal money is subsequently provided to subsidize those who are fully capable of self-sustaining without government assistance. No other welfare program is absent means testing. This program requires no initial means-testing nor any ongoing verification of need.

CONSEQUENCE OF CURRENT APPLICATION—***Increased and Unnecessary Cost*** to the Taxpayer

Citizen Group Interested in **Family Autonomy** Requests a **Full Investigation** and **Immediate Clarification** by the Federal Government to ensure state **Compliance with eligibility standards** for Title IV–D welfare services for this federally funded program.

Please call to find out more about our 7 years of research. Please acknowledge receipt of this letter and provide our non-profit family organization with an explanation, before August 29, 2003, so we can determine next steps.

Statement of Steve Cloer, Norcross, Georgia

The information presented in this document is my personal submission only and not on behalf of any group or organization.

Taxpayer Waste, Fraud and Abuse

After several years of research on the family, marriage, social policy and legal issues related to the family, this is a brutally candid assessment of one of the greatest areas of social collapse of our age. Today's family law and child support system, coupled with many of the other social policies surrounding male—female relationships results in the government subsidizing the breakdown and eventual collapse of the family. Divorce and "Child" support serves as a major primary support tools to promote single-parent families, resulting in the decay of the cornerstone of our society; an intact, functioning family.

Introduction

We know that today through social science evaluations of the numerous maladies it promotes, fatherless families are one of the most destructive arrangements for children in society.[1] America's fatherlessness crisis is primarily by judicial making with the cooperation of the legions of lawyers and bureaucrats who profit from family destruction. Current child support practices across the country, in nearly every state, promote fraud and abuse. Most of the state practices promote and encourage the same fatherlessness mess to collect child support—under the Trojan Horse of the "best interests of the children" we're subsidizing the most child destructive system in our nation's history. Today's child support system exists to subsidize single-mother households at the expense of their children and society's interest in marriage for the purpose of financial gain by the state as well as those facilitating the creation of this situation such as lawyers, psychologists, case workers, child support recipients, and many others.

There are a number of verifiable examples of serious fraud and abuse by the states in the following areas:

- States fraudulently certifying child support collection practices pursuant to 42 USC 602 *et seq.,* while there is a substantial amount of public information to demonstrate that these certifications are false.
- Refusing to prosecute for FELONY PERJURY in relation to paternity fraud with married (or formerly married) spouses so as not to have to report these births at any time as "out of wedlock". Thereby fraudulently collecting additional bonus monies for compliance under 42 USC 603 *et seq.* (for reducing illegitimate births)
- Perjury in and of itself has been repeatedly held to be a type of fraud in every court (state or federal) in the land. Refusal to prosecute welfare recipients for fraud in paternity actions is a violation of 42 USC 608.
- Lack of the states to "ensure that their application results in the determination of appropriate child support award amounts" pursuant to the requirements of 42 USC 667(a), following the requirements under 45 CFR 302.56(c)(1) and (h).[2]
- Suspending the Non Custodial Parent's (NCP) driver's license even after a petition had been timely filed in violation of 42 USC 666(a)(16) regarding drivers license suspensions.
- Refusing to comply with 45 CFR 303.8 to review and adjust child support obligations downward.
- Refusing to comply with the Federal Consumer's Credit Protection Act and protect a Non Custodial Parent's (NCP's) self support reserve from garnishment.
- Violating Fair Federal Consumer Credit Reporting by not reporting arrearages, so that NCP's are unable to contest them.

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[1] US House Testimony on Child Support and Fatherhood proposals (Hearing 107–38). June 28, 2001, online House version; *http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/6-28-01/record/chillegalfound.htm)*—Father absence, a byproduct of divorce, illegitimacy, and the erosion of the traditional family, is responsible for; filling our prisons, causing psychological problems, suicide, psychosis, gang activity, rape, physical and sexual child abuse, violence against women, general violence, alcohol and drug abuse, poverty, lower academic achievement, school drop-outs, relationship instability, gender identity confusion, runaways, homelessness, cigarette smoking, and any number of corrosive social disorders.

[2] A Georgia trial court judge recently found the state of Georgia had NOT complied with these requirements, and under the Supremacy clause ruled the state's use of the guidelines unconstitutional (See McFall v. Ward, trial court decisions in 02–CV–2287N). This is in no way unique to Georgia, nearly every state in the union has not complied with these provisions. Is this the wrong case cited?

- Refusing to adhere to public record laws, and refusal to produce copies of the non-custodial parent's own records with the child support agency.
- Violating basic principles of law such as jailing non-custodial parents for civil contempt when they do not have the resources to purge—, reinstituting a "debtor's prison".
- Jailing non-custodial parents without providing them with a public defender when there is a threat of jail.
- Denying equal access to an attorney for non-custodial parents as the custodial parents have the attorneys of the state Child Support Enforcement. The non-custodial parents frequently have no attorney, and legal aid will not help.
- Refusal by state courts to allow or enforce basic legal discovery so a true and correct child support obligation could be determined, based on both parents incomes.

Today's practices all across the country are analogous to the circumstances that gave rise to the Civil Rights acts 1 and 2 (later partially codified as 42 USC 1983 through 1986). These protections were necessary because of the widespread abuse by the courts and the entire legal system.[3] Today, it is mainly fathers who are today's political targets, and the data bears out that the majority of these fathers are blacks and minorities.

America's family law courts are no longer about the law, they represent complete perversions of the legal maxims and ideals that American law was founded upon. We have a system which no longer obeys its own laws. The reprehensible evil of being rewarded for one's wrongs, and of punishing the innocent have been firmly entrenched in the state's family courts.

When will federal legislation hold governmental and non-governmental individuals (judges included) personally liable for these abuses as well as the attendant taxpayer fraud and waste? Colonel Mason from the Federal Convention on July 20, 1787 best summed this up asking "Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?"

Draconian enforcement and police powers have been given to the states and Federal Government to persecute parents, for nothing more than being parents and having children. There are NO checks or balances to correct the widespread abuses at all levels of government. Many of these abuses underlie today's crisis of fatherlessness, a crisis almost exclusively of government making through social policies and government programs such as child support enforcement which results in the corrosion of the family.

States exercise an unprecedented power and control over the most intimate details of people's lives. A power and control that Alexander Hamilton repudiated when he said that "a power over a man's subsistence amounts to a power over his will."[4] Free societies repudiate such actions against a man's subsistence. Our Founding Fathers understood well that it was the means to tyranny in government.

Widespread Paternity Fraud promoted by the States

The paternity fraud problem is very serious with indications that paternity tests show that nearly 30% of the fathers named are not the parent.[5] While paternity establishments have hit record levels, in LA County over 70% of those paternity establishments are by default.[6]

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[3] BRISCOE v. LaHUE, 460 U.S. 325, 365 note 31 demonstrating that Congress, when enacting the Civil Rights legislation was hostile to the considerable CORRUPTION of the Judiciary and the Legal system.

Cong. Globe, 42d Cong., 1st Sess., App. 78 (Rep. Perry) ("Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices"); id., at 394 (Rep. Rainey) ("[T]he courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity"); id., at App. 186 (Rep. Platt) (judges exercise their "almost despotic powers . . . against Republicans without regard to law or justice"); id., at App. 277 (Rep. Porter) ("The outrages committed upon loyal men there are under the forms of law. It can be summed up in one word: loyal men cannot obtain justice in the courts . . ."); id., at 429 (referring to "prejudiced juries and bribed judges").

[4] The Federalist No. 79, at 472

[5] American Association of Blood Banks 1999 Annual Report. "Who is daddy and Who is Not, February 25, 2000. See also "In Genetic Testing for Paternity, Law Often Lags Behind Science," New York Times, March 11, 2001.

[6] Los Angeles Times, April 12, 1998, B1.

California has frequently exceeded a 100% compliance rate since welfare reform made it profitable[7] California led the nation in collecting $198 million ABOVE their administration costs for establishing paternity in 1998, which becomes a windfall to the state.[8] Governor Gray Davis of California has demonstrated an AMAZING paternity establishment rate of 123% in 1998, somehow finding some 34,000 paternity establishments in excess of the out of wedlock births! And just how does one exceed a 100% compliance rate and gain more than 100% of administrative costs in a program that does not pay 100% of the administrative costs except by fraud? In fact, a paternity fraud bill made it to the Governor's desk to be signed, in his veto, he FULLY ACKNOWLEDGED THAT HE WAS AWARE OF THE FRAUD THAT WAS TAKING PLACE when he said "I recognize that paternity fraud is a serious issue and has the potential of damaging an individual's livelihood . . .". He also recognized his state's dependence on the Federal Child Support incentive money to CONTINUE THE FRAUD!!

One California CBS television station's promo on paternity fraud noted "[i]t's like you're in a debtor's prison at the hands of the government, in this case the D.A.'s office."[9] California's example is certainly one of the more egregious making it easier to document, yet this type fraud and abuse takes place to some extent in virtually every state in the Nation.

The Boston Globe, a New York Times Company, has condemned the state run child support racket. Commenting on a surprising opinion, the Massachusetts Supreme Judicial Court ignored a mother's perjury then demanded an innocent man pay child support after proof the child wasn't his, refused to correct the matter, and set a precedent promoting perjury and fraud.

> *SHE TOLD HIM he was the little girl's father, and he believed her . . . [W]hen Cheryl was 5 . . . he finally took her for a DNA test. When it confirmed that he wasn't her father, he asked to be released from child support. Now that the truth was known, he argued, it wouldn't be fair to keep making him pay for another man's child.*
>
> *Last week the Massachusetts Supreme Judicial Court gave him its answer:* ***Shut up and keep paying.***
>
> *"The law places on men the burden to consider carefully the permanent consequences that flow from an acknowledgment of paternity," the court held. "He waited too long to challenge his paternity."*
>
> *And what burden, you might wonder, does the law place on women? A burden to tell the truth when asked to identify a child's father? A burden not to trick a young man into forfeiting tens of thousands of dollars that he doesn't owe? A burden not to deceive the courts?*
>
> *Nope, none of the above. To judge from the court's opinion, a woman like Cheryl's mother is under no obligation at all.* ***The justices who decided this case say nothing—not one word—about her dishonesty or the immense hardship she has inflicted on an innocent man. There is no hint that they disapprove of a woman who bears a child out of wedlock, then falsely names a former boyfriend as the father so she can go on welfare.***
>
> ***She may have been the liar, the court seems to believe, but he is the one who is guilty—guilty of not seizing the "opportunity to undergo genetic testing before he acknowledged paternity" and of not having "promptly challenged the paternity judgment" once he suspected he might not be Cheryl's real father***
>
> *None of that gives the justices pause because they are focused on something else . . . His money . . . [Commenting on the need for him to continue paying for someone else's child the reporter noted].* ***In short, it's OK to keep ripping him off because she needs the money.***
>
> ***But the swindle must go on, says the court, because someone else needs his money. In the court's view, he is not a wronged man with a compelling plea for relief. He is an ATM machine.***
>
> *But how the mighty are fallen. There was a time when the Massachusetts Supreme Judicial Court was renowned for its legal brilliance, when it was the court other courts relied on in abandoning unworthy precedents. Today it is a*

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[7] US House Ways and Means Committee, Greenbook, Section 8, CSE. Table 8–20 "Paternities Established", Table 8–21 "Out-Of-Wedlock Births", Table 8–22 "Percentage of Paternities Established".

[8] Table 8–4 US House Ways and Means Committee, Greenbook, Section 8, CSE. "Financing of CSE Program, Fiscal Year 1998" US House Ways and Means Committee, Greenbook, Section 8, CSE.

[9] California CBS Channel 2 News, Special Assignment: "Not The Father" aired Tuesday, February 7, 2001 at 11 p.m

follower, not a leader, hiding behind unjust decisions elsewhere to rationalize injustice of its own.[10]

This precedent encourages the erosion of trust in relationships and marriages that is necessary for these relationships to survive—; if a man practices the Massachusetts prescription for paternity testing on suspicion of the other spouse at child birth, a very stressful time in a relationship, the erosion of trust could destroy marriages and families. On the other hand, if a father does NOT do this, and it is later determined that the mother was unfaithful and/or a perjurer (a FELONY in most states), she is REWARDED WITH PAYMENT FOR SEX. One lawyer, who wishes not to be named for fear of retaliation,[11] has even referred to civil courts dealing with family issues all across the country as "PERJURY PALACES!" To be candid here—; **this is nothing more than legalized prostitution, sanctioned and enforced by the state judicial courts through their contempt and police powers—, under threat of jail for non-compliance. Even much worse is the using of a child, and sometimes the creation of a child, to obtain financial gain—one of the most severe and immoral types of child abuse imaginable!**

The General Accounting Office

The General Accounting Office (GAO) has also found problems with mismanagement of Child Support Funds. "[I]n an audit of the D.C. Superior Court, the GAO found that the court did not properly account for funds in half of its 18 bank accounts, including the child support account. In its October 1999 report to Congress, the GAO concluded there was no assurance that funds collected for child support were appropriately disbursed, nor could the court provide assurance that there were no duplicate payments or misappropriated funds. In other words, even when support payments were withheld from their wages and forwarded to the court, non-custodial parents could still have fallen into the deadbeat category. Worse, the money might not have reached the children for whom it was intended."[12]

Child Support

Howard University Political Science professor Stephen Baskerville,[13] has written an insightful piece on the divorce and child support "industry";

The government claims a crisis of unpaid child support. Leading scholars have declared these claims to be everything from a "myth" to a "hoax." Yet some in the Bush administration seem determined to continue the failed policies of the Clinton years. Health & Human Services Secretary Tommy Thompson recently announced mass arrests of parents he says have disobeyed government orders.

The Clinton administration's "Project Save Our Children" illustrates that more political chicanery is perpetrated in the name of children than any other cause. The secretary has begun a "nationwide sweep" to arrest (what he calls) the "most wanted deadbeat parents." By the government's own figures, however, the "worst of the worst" amount to only 69 fathers worthy of prosecution.

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[10] SJC to paternity victim: Keep paying, chump. Boston Globe, pg 11. Jeff Jacoby, April 30, 2001.

[11] Retaliation against those lawyers who would dare challenge the corrupt system has become routine practice by the Court run bar systems all across the country. For example, Barbara Johnson of Massachusetts is in the midst of disbarment proceedings for daring to publicize the corruption of the Massachusetts courts, Linda Kennedy of Virginia was recently disbarred for not being quiet about PROOF of altered transcripts in court proceedings, Bob Hirschfeld of Arizona was disbarred many years ago for daring to challenge the legal establishment and aggressively represent fathers in custody actions, Ed Truncellito believes he was disbarred for bringing a civil RICO actions against the Texas State Bar for the fraudulent construction of statutes related to no-fault divorce, and the list goes on and on.

[12] Grant, Rennie J.; When the Court Is the Deadbeat. The Washington Post. Wednesday, June 12, 2002; Page A30

[13] Drummond, Daniel. Professor ousted from child-support panel, The Washington Times August 4, 2001. Dissent apparently is not allowed in states when it comes to child support and family preservation. This article outlines how Howard University Political Science professor Stephen Baskerville was ousted from the Virginia Child Support Advisory Panel because of an Op-Ed piece he wrote for The Washington Times. Professor Baskerville said "he was removed from the panel because of his politically incorrect views about child support and its enforcement." Apparently the State of Virginia believes what the US Supreme Court says about free speech in relation to flag burning, pornography, and foul language, but does not believe this free speech extends to press published commentary critical of the child support industry. For a review of Professor Baskerville's piece, please see Appetite for Family Destruction, The Washington Times commentary section, p. B5. June 17, 2001.

Even assuming these few men may be scoundrels, why don't authorities simply arrest them and be done with it? Why all the fanfare from the Federal Government? ***Perhaps because these prosecutions are political.***

"We will find you," President Clinton would intone against fathers. "We will make you pay." In Maryland, government billboards announce, "We're Looking for You, Child Support Violators." No government warns bank robbers or drug dealers that the government is watching them. This is not law enforcement: It is terrorism.

"More notable than any one arrest," we are told, ***is the "message that the administration is sending" that it will use federal agents to enforce divorce. In other words, the aim is not to prosecute lawbreakers but to spread fear.*** *Terrorizing citizens into obeying its orders is not an appropriate role of government in a free society, even when the orders are legitimate.*

In this case, the orders are not legitimate. They are creations of a divorce industry eager to encourage divorce by making it more lucrative. ***A child support "obligation" is simply what judges and bureaucrats decide a father must pay to have his children taken away.***

Most divorces are filed by women (70–80%), usually with no legal grounds. Most obligors have therefore done nothing to incur the imputed obligation, which is set by the same enforcement personnel who collect it. These officials have a financial and political interest in separating children from their fathers, imposing impossible child support burdens, and then arresting parents who inevitably fail to pay. These activities are all being subsidized by the Federal Government in the way of financial incentives and reimbursements to the state pursuant to 42 USC 655, 655a, 658, 658a.

By the government's own account, what is billed as "child support" is little short of plunder. Among those arrested was a man earning all of $39,000 a year and ordered to pay $350 a week for one child, almost two-thirds of his likely take-home pay.

These men have no hope for a fair trial; they have already been pronounced guilty in the media by the Secretary of Health and Human Services, with no platform to reply in their own defense.

The divorce industry has corrupted local government throughout America. Now its poison is reaching up to the highest levels of our government. The administration is soiling its hands in some of the worst sludge left by the Clintons.[14]

In the Georgia 2002 legislative session a bill was under consideration for changes in the child support guidelines, in part to make them adhere to the actual cost of raising a child. As a reaction to this the Marietta Daily Journal reported Assistant Attorney General Nina Edidin stating that; "Georgia will loose millions in child support enforcement if the guidelines are changed". What this statement has effectively exposed is that the current guidelines are so unfair, that it is lucrative for the state to have guidelines that cannot be reasonably met by those who are subjected to them. The unfair guidelines result in financial incentives and necessary child support enforcement efforts that are reimbursed by the Federal Government's Temporary Aid to Needy Families (TANF) funding to the state pursuant to 42 USC 655, 655a, 658, 658a.

My Personal Experience

In my own personal experience with the courts in Gwinnett County Georgia, I have found that established law is generally ignored at will and the courts do as they desire. In one of my own cases, #02–A–9061–6, I filed a modification for child support and alimony in August 2002. The court ignored *all* of my motions, including two motions requesting temporary hearings to provide temporary relief. These motions were never responded to by the court in any way despite their duty to do so within 90 days under O.C.G.A. 15–6–21(b). This is one of the few statutes that identify a violation of this statute by a judge to be an impeachable offense. A review of the court records revealed that this particular court had ruled on motions for temporary hearings in other similar modification cases but the judge, Gwinnett County Georgia Superior Court Judge Fred A. Bishop, refused to do so in my case. In addi-

[14] Baskerville, Stephen; Tommy Thompson's Reign Of Terror. Free Congress Research and Education Foundation, Inc., September 12, 2002. And in deference to the Free Congress Foundation, the article contains a disclaimer stating "This publication is a service of the Free Congress Research and Education Foundation, Inc. (FCF) and does not necessarily reflect the views of the Free Congress Foundation nor is it an attempt to aid or hinder the passage of any bill."

tion to the Georgia statue, the Federal statute, 42 U.S.C. 666(a)(2), requires the state to be expeditious with child support modifications. Needless to say, the resulting delay of my modification put me in a position where my situation grew worse and I fell behind in child support and alimony payments. After seven months from filing this modification action, with no relief, I was incarcerated for civil contempt for failure to pay child support (case 03–A–1899–6).

Although O.C.G.A. 9–11–12 provides 30 days in which to respond to a complaint, the contempt was heard by the court only 24 days after the complaint was filed. I objected to the hearing continuing and requested my 30 days, but Judge Bishop continued with the hearing anyway. If I had been allowed the 30 day period I am entitled to under Georgia law, I would have purged myself of the arrears from resources from my retirement account as well as completed my defensive answer. It is interesting that the Georgia Statutes define the source of child support as coming from income, not retirement accounts, but this method of access to an obligor's additional assets are accomplished everyday in the courts. Additionally interesting is that that a modification can't be heard in seven months after numerous requests to do so but a contempt that will produce income for the state can be heard in about three weeks. A result of this intentional delay was that the state received child enforcement reimbursements for the State from Federal TANF funding pursuant to 42 USC 655, 655a, 658, 658a. If the motions were heard in a timely manner the arrears would not have been as great—and the state would not have received amounts in proportion to the amount of arrears. Is this the operation of justice or an act of abuse to acquire funding for the state at the expense of taxpayers? Regardless of the actual intent of the delay, the result was the acquisition of funds by the state from TANF funding by the unfair manipulations of the process of law in this case.

The most expensive WAR ON FAMILIES, FATHERS, AND MARRIAGE in history

Child support constitutes the most expensive war waged on the family the world has ever known. If we are to accept current claims by politicians that some $100 BILLION dollars in child support is owed (though US House records indicate it may be some $78+ BILLION), then we must look at the corollary to this claim. *How much HAS been paid?*

Approximately 80% of all child support has been paid historically in America.[15] America also has one of, if not the highest rate of child support compliance in the world and the remainder of child support is owed by those who generally are unable to pay.[16] The difference in today's lower compliance rates for child support can be attributed to a number of factors;

- The amount of paternity fraud throughout the United States with judicial refusals to prosecute for FELONY perjury (as it is a FELONY in many states).
- The sheer number and staggering percentage of default judgments in several states.
- **Continued arrearages for deceased obligors, those in jail or prison, and those with wages so low and debt so high that it can never be repaid**

[15] Current Population Reports, Series P–23, No 173 (1989)—Census Bureau data from 1989 indicated that 75 percent of all child support owed is paid. The TOTAL amount of Child Support owed was 14.8 BILLION dollars. Of that amount, 11.1 BILLION had been paid (7.6 BILLION was paid in full, and 3.5 BILLION was partially paid); Non-Custodial Parent's Report of Child Support Payments, Braver, Sanford, Pamela J. Fitzpatrick, and R. Curtis Bay, (1988) presented at the Symposium "Adaptation of the Non-Custodial Parent: Patterns Over Time" at the American Psychological Association Convention, Atlanta, GA, August, 1988. Compared Bureau of Census custodial parents reports (approx. 70% received) with father survey (approx. 90% paid); Judi Bartfeld and Daniel R. Meyer, "Are There Really Deadbeat Dads? The Relationship Between Ability to Pay, Enforcement, and Compliance in Normal Child Support Cases." *Social Service Review* 68 (1994)—95% of fathers having no employment problems for the past five years pay regularly; 81% in full and on time; 1988 Census "Child Support and Alimony: 1989 Series" P–60, No. 173 p. 6–7—90% of fathers with joint custody pay the ordered child support. 79.1% of fathers with visitation rights pay the ordered child support. 44.5% of fathers with no visitation rights pay the ordered child support.

The father of today's child support public policy, his personal exploitation of the system, and the fallacy of his "income shares" model, James R. Johnston, August 1998.

[16] GAO/HRD–92–39FS, January 9, 1992; page 19—According to a 1992 report by the Government Accounting Office, Child Support non-payment is NOT by choice This report showed that 66% of those fathers with delinquent child support obligations were not able to pay, 5% were unable to be located, and 29% were classified as other. These were custodial mother SELF REPORTS (which are likely to be skewed against the party paying child support); Journal of Contemporary Policy Issues, Garfinkle and Klawitter, 1992—after instituting mandatory wage withholding of child support in Wisconsin, 10 pilot counties collected only 2.89% more of what was owed than the ten control counties that didn't garnish.

(as interest continues to accrue in many states ensuring they will NEVER be able to comply).

- Judicial refusal to allow downward adjustments even when obligers are unemployed.
- The refusal of nearly every state in the country to comply with the quadrennial reviews required by 42 USC 667 and provide real economic data for child support awards, thereby relying on inflated and arbitrary "guidelines".
- The intensifying of misandrist (male hating) propaganda by judges, lawyers, feminists, and politicians promoting ruthless "child" support which includes hidden alimony by way of guidelines based on no foundation of what it costs to raise a child but clearly exceeding any reasonable such expense.
- Judicial promotion of fatherlessness and its attendant social disorders by refusing to enforce visitation or custody orders while jailing for a child support order. Even though there is a considerable amount of social studies data indicating that ENFORCING VISITATION ORDERS SUBSTANTIALLY INCREASES CHILD SUPPORT COMPLIANCE RATES! [17]

This last statement is important. It is essentially the crux of the issue. If child support compliance is the goal, there is a considerable amount of research demonstrating compliance is DIRECTLY tied to both parenting time by BOTH PARENTS AND enforcement of visitation orders.

American courts routinely award custody to mothers approximately 85–90% of the time thereby disenfranchising fathers and turning them into child support obligors.[18] Historical data shows about 66%–80% or more of compliance with child support. Yet many politicians harp about a $100 BILLION dollar arrearage amount. If this were true, it would translate into the $100 BILLION representing the remaining 20%–34% of all child support obligations. Therefore, the amount of "child" support that HAS BEEN PAID (for the purpose of "privately" subsidizing single-parent homes) is approximately;

$100 BILLION/34% = **$294,117,647,058** $100 BILLION/20% = **$500,000,000,000**

If we consider the $78 BILLION that the US House indicates is the accurate arrearage, applying the same formula demonstrates;

$ 78 BILLION/34% = **$229,411,764,706** $78 BILLION/20% = **$390,000,000,000**

Somewhere around ¼ to ½ of a TRILLION dollars has been collected JUST IN CHILD SUPPORT! This does not even include the legal fees, property distributions, expert fees, CSE fees, judges, administrators, jail cells for delinquent obligers, police, alimony, taxpayer funded poverty lawyers, prosecutors, costs of maintaining two residences, costs of separation, etc., extracting fees from broken relationships or from destroying families. If it were possible to factor in all of the costs, including the social costs of fatherlessness on destructive social behaviors, this figure could easily be many times higher, possibly exceeding ONE TRILLION DOLLARS!

American government at all levels (state and federal, legislative and judicial) has waged the most ruthlessly brutal and expensive war on fathers and families in the history of the world. The financial costs America's state and Federal Governments are paying to obliterate families and fathers is mind numbing. All of this has been paid for by the American taxpayer!

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[17] "Paying child support, visiting and participating in childrearing decisions are activities that 'go together'. . . Fathers who engage in any one of those three activities are likely to engage in the other two activities perhaps to maintain parallel responsibilities with those fulfilled by fathers who live with their children." (pg. 96, Col. 2, 3, Lines 4–11) Relationships between Fathers and Children Who Live Apart: The Father's Role after Separation—Judith A. Seltzer, University of Wisconsin-Madison, Journal of Marriage and the Family, Vol. 53, No. 1, February 1991.

"Paternal visitation has been found to consistently be positively related to payment of child support" (pg. 134, col. 1, 2, lines 16–18) The Role of Paternal Variables in Divorced and Married Families—Amanda Thomas and Rex Forehand, American Journal of Othopsychiatry, Vol. 63, No. 1, January 1993.

"90.2% of fathers with joint custody pay the child support due." (pg. 7, col. 1, 2, lines 1–2) U.S. Bureau of the Census: 1988.

"79.1 % of fathers with visitation privileges pay the child support due." (pg. 7, col. 1, 2, lines 2–3) U.S. Bureau of the Census: 1988.

See also Daniel R. Meyer, Compliance with Child Support Orders in Paternity and Divorce Cases (Institute for Research on Poverty, Madison, Wisconsin, 1997).

Deena Mandell, Fathers Who Don't Pay Child Support: Hearing Their Voices, 23 Journal of Divorce and Remarriage 85 (1995).

[18] U.S. Dept. of Commerce, Current Population Report 3/99 (P60–196 Child Support For Custodial Mothers and Fathers: 1995), there are 11.6 Million Custodial Mothers (85%).

Child support is our system for replacing fathers with money. Everyone, including mothers, would be better off if we replaced money with fathers. Replace child support with a supporting parent. Children would get the emotional benefit of a father, and the [benefit] of *all* the father's resources."[19] The social costs of fatherless children include: filling prisons, causing psychological problems, suicide, psychosis, gang activity, rape, physical and sexual child abuse, violence against women, general violence, alcohol and drug abuse, poverty, lower academic achievement, school dropouts, relationship instability, gender identity confusion, runaways, homelessness, cigarette smoking, and any number of corrosive social disorders (see footnote 1).

Ron Paul has noted that "[w]ithout the destructive effects of the welfare state, there would be little need for federal programs to promote responsible fatherhood."[20] When will we finally begin to correct "the vast left wing conspiracy?"

The More Important Costs

With the divorce rate rising daily and in the range of 1,000,000 per year, a fourfold increase since 1950, the effects can be seen in the increase of our society's ills. Such increases track the divorce statistics in parallel. Using the 1,000,000 conservative figure, and considering 2.3 children per household, there are 2,300,000 children that are victims of divorce each year. Custody of children is awarded to the mother in 85% of cases. This means the system creates 1,955,000 children per year that will grow up in a household without a father! This translates to over 7,500 children per day the courts remove children from their fathers for each of the 260 days a year courts are in session! The fatherless situation produces this;

- 85% of all children that exhibit behavioral disorders come from fatherless homes (Source: Center for Disease Control)
- 90% of all homeless and runaway children are from fatherless homes (Source: *U.S. D.H.H.S.*, Bureau of the Census)
- 71% of all high school dropouts come from fatherless homes (Source: *National Principals Association Report on the State of High Schools*.)
- 75% of all adolescent patients in chemical abuse centers come from fatherless homes (Source: *Rainbows for all God's Children.*)
- 63% of youth suicides are from fatherless homes (Source: *U.S. D.H.H.S.*, Bureau of the Census)
- 80% of rapists motivated with displaced anger come from fatherless homes (Source: Criminal Justice & Behavior, Vol 14, p. 403–26, 1978)
- 70% of juveniles in state-operated institutions come from fatherless homes (Source: U.S. Dept. of Justice, *Special Report*, Sept 1988)
- 85% of all youths sitting in prisons grew up in a fatherless home (Source: *Fulton Co. Georgia jail populations*, Texas Dept. of Corrections 1992)

The costs to society as a result of a system that encourages broken families and removes fathers by providing taxpayer funding to do so exceeds any amount that can be expressed in dollars.

Policy Considerations

- Federal Child Support programs must be tied more directly to the enforcement of existing court orders for parental access (visitation). Peer reviewed study after study has shown that as much as 90% of the child support is paid when disenfranchised parents have joint custody, and nearly 80% compliance when with access to their children (see footnote 19).
- Child support funding rules must require states to penalize litigants for ignoring the routine perjury all across the country. Not only is it a FELONY in many states, and the ignoring of it technically MISPRISON OF FELONY, it promotes the misuse of both federal and state taxpayer funds. The routine allowance of un-prosecuted perjury in state courts gives incentives for family breakdown and societal disorder by promoting a type of "banana republic best liar wins" legal system—; it is then backed with the full police power of the state for enforcement encouraged and rewarded by financial incentives at the tax payer's expense.

Conclusions

Paternity fraud can no longer be tolerated or funded with federal taxpayer money. When considering the technicalities of paternity fraud, it is a form of repackaged

[19] K.C. Wilson in "Where's Daddy? The Mythologies behind Custody-Access-Support."

[20] Statement of Rep. Ron Paul (R–TX), September 7, 2000. Child Support Distribution Act Of 2000.

prostitution supported and enforced with the police power of the state. Suggesting that there are "common law traditions" for this, as some courts have, is a fallacy. It is little more than an ignorant, or worse yet, intentional misconstruing of maxims of law to promote the fraudulent and immoral collection of taxpayer money at the expense of families and especially children.

The current taxpayer funded child support system does not only encourage taxpayer fraud by the states at the expense of our society's health but also encourages the abuse and atrocities to the family that are a companion element of a system that is depreciating day by day any confidence and faith the American people have in a fair and impartial judicial system and government.

Statement of Bruce Eden, Fathers Rights Association of New Jersey & Mid-Atlantic Region, Wayne, New Jersey

A. *The Waste*

In June of 2003, the State of New Jersey conducted a statewide sweep arresting over 1000 parents allegedly owing child support. These statewide sweeps are conducted through a Cooperative Agreement between the New Jersey Division of Family Development, the New Jersey child support enforcement agency and welfare agency funded for this purpose, and the county sheriffs' departments throughout the State. Based on these agreements sheriffs go out and arrest parents (in 98–99% of all cases the parent is usually the male—gender discrimination fraud) on computer-generated "bench warrants".

Below is the story of the latest New Jersey statewide sweep showing that the arrests are an abject failure, a waste of hard-earned taxpayers' monies, a fraud being perpetrated on taxpayers and innocent people through the violation of their constitutional rights to be protected under the Fourth Amendment of the Constitution for the United States of America, and abuse of the people by the government that is supposed to protect them.

http://www.nj.com/search/index.ssf?/base/news-2/1058683869141900.xml?starled

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Sunday, July 20, 2003

BY JUNE KIM

Star-Ledger Staff

Last month, county sheriff's officers arrested hundreds of "deadbeat parents" over a three-day period known as the "Non-Support Sweep." But while the dramatic operation may have garnered much-needed attention for the problem, results show it is not the most efficient method of collecting money for children of broken homes.

In five counties surveyed by The Star-Ledger, approximately $2,225,240 was owed by 157 people rounded up during the sweeps, but only $71,258 was collected, according to court records. Collection rates varied in the counties surveyed by the paper, but all reported low-yielding results.

In Morris County, 26 people were rounded up. Together, they owed $208,338, but only $14,518 was collected, averaging payments of approximately $558 each. In Union County, 23 people were rounded up. Together they owed $406,811, but only $30,834 was collected, averaging payments of approximately $1,341 each.

County law enforcement receives state funding for the operation based on the amount of debt collected during previous sweeps. The funding reimburses the cost of the sweeps as well as money for child-support operations throughout the year. While money collected during the sweeps may not be significant, state officials believe the biannual raids spur publicity that sparks others to pay. "It's hard to quantify, but we do believe that there is an effect from the raids," said Joe Landers, chief of client and central services in New Jersey's Child Support Enforcement unit. "If there's someone who's teetering, 'Am I going to pay or not,' all of a sudden, some of these people start paying."

The sweep process involves not only the early morning arrests, but also the coordination of municipal law enforcement as well as county probation and court officers. Finding the individuals falls under the jurisdiction of the sheriff's offices, but extracting the money comes down to the courts. "Once we do our job, then it's up to the judge to listen to the story in front of them as to how to handle it," said Middlesex County Sheriff Joseph Spicuzzo. "Obviously there

are circumstances that I don't know about." After being arrested, individuals are given a hearing and are held in jail until 10 percent of the arrears are paid.

But Essex County Sheriff Armando Fontoura said there are cases where people simply cannot afford to pay and keeping them in jail costs taxpayers more money.

"With no one making any payments or restitution, it doesn't make any sense," Fontoura said. "There's the additional burden of housing them, feeding them and taking care of them, which is very expensive for taxpayers." Fontoura sees these cases quite often in Essex County, which has the highest percentage of individuals in poverty in New Jersey.

"In our county, we offer what America offers—the poorest of the poor and richest of the rich. Usually the poorest of the poor are not working, have no prospects for employment or might be on welfare. After awhile we start to spin our wheels," said Fontoura. Sheriff's offices are given the freedom to conduct the raids with methods they feel work best in their county. The Essex County Sheriff's Department does not assign many officers to the raids and instead tries to take a more strategic approach during their sweep.

"We try to be practical and reasonable and direct ourselves to those who might have some ability to meet their obligation," Fontoura said.

The problem seen in New Jersey reflects a national trend. According to 2002 data from the federal office of Child Support Enforcement, two-thirds of those who owe child support earned less than $10,000 last year.

Morris County, on the other hand, has one of the highest median income levels in the state (second only to Hunterdon) and one of the lowest populations of individuals in poverty. Instead of spending money on sending out officers to knock on doors, the sheriff's office has had some success simply calling people at home. During the June raids, 19 of the 26 warrants satisfied in Morris County were for individuals who had turned themselves in after phone calls to their residences.

"It's a more efficient use of our time instead of going all around the county knocking on doors," said Morris County Sheriff Edward Rochford. "We're a different kind of county—one of the most affluent counties in the United States," said Rochford. "And I think that's why we have a little bit of success with the child support."

Along with the raids, however, sheriffs in several counties emphasized the importance of attacking the problem on a daily basis. For some counties, executing child-support warrants while serving warrants on suspects in other crimes is more cost effective.

To help the unemployed with family support obligations, New Jersey's Office of Child Support has established the Benchcard Initiative. The program provides job development skills to help parents meet their child-support payments.

The most successful method of collecting child support is by withholding the amount directly from a parent's paycheck. In fiscal year 2002, the New Jersey Office of Child Support collected $554,940,301 through this method. Child-support payments also are intercepted through unemployment checks, federal and state tax returns, license suspensions and even lottery winnings. In 2002, $639.4 million of the estimated $983.7 million due in support was collected.

However, according to the Office of Child Support, there is approximately $1.9 billion of payments in arrears since the late 1970s, when the office began tracking the data. Some of this debt can be tracked to inefficiencies in the child-support enforcement system, which is working with approximately 296,100 child-support cases.

Probation offices charged with enforcing the payment orders from the court are understaffed and are working with antiquated computer systems from the 1980s, Landers said.

Karen Sims, a single mother of three, has been working with a probation officer since 1993, when she first filed a motion for child-support enforcement. She is owed $55,431.70 in back payments from her ex-husband, but continues working with her case worker despite the frustration.

"He's got his hands tied because he's got so many cases" said Sims, an Old Bridge resident. "He can't say, 'Mr. Sims, we need that dollar today.'"

In the case of South Plainfield resident Debbie Kamen, the frustration built to a point where she began looking for other avenues of help. She approached a private investigator to help find her ex-husband, who owed her $57,766. Private investigator John Carroll agreed to take her case pro bono and tracked down her husband, Jerry Kamen, in North Livingston on July 14. After her long wait, it took four minutes for the Union County court to rule that her husband

must come forward with at least 10 percent of the unpaid child support. As of Friday, unable to come up with the $5,780, Kamen was still being held in jail. Sims, who cannot afford the help of a private investigator, still hopes that her husband will be caught in one of the sweeps. But she's not expecting to see any of the child-support money anytime soon. "I call it my retirement fund. Maybe by the time I retire, I'll get some of it."

June Kim works in the Union County bureau. She can be reached at jkim@starledger.com or (908) 302–1500.

On average most states do not collect child support or minimal amounts by arresting alleged "deadbeat dads". However, the so-called "deadbeat dad" hysteria is nonexistent. In an 8-year longitudinal study done by Dr. Sanford Braver of the University of Arizona, it was found that less than 5% of all child support debtors are true "deadbeats". The rest are unable to comply with onerous orders not based on the reality of costs of raising children, but on the parents' incomes. This method of calculation is derived from former Soviet communist family law and does not comport with our republican form of government. Use of child support guidelines on the basis of Soviet-style income-shares guidelines is treasonous and anti-American. It is a waste of taxpayer's money to force people to pay more than they can and then arrest them and incarcerate them at a cost that ranges between $75 per day to $200 per day on average.

Plus, taxpayers are footing the bill for sheriffs' officers to go out an use overtime, wear and tear on police cars, etc. Based on recent numbers in New Jersey, each county expends $60,000 per month to go out and arrest child support debtors. They rarely ever collect that total amount from those arrested.

B. *The Fraud*

Arresting parents who are child support debtors is an immense fraud. It is a violation of Constitutional Rights, most specifically the Fourth Amendment to the Constitution for the United States of America. Arresting someone for owing a divorce-related child support debt is arresting someone for a "civil" matter. In New Jersey, as in every other state, there are laws that prohibit all law enforcement officers from arresting people in civil matters. Why? Because there is no probable cause that a crime is being committed or has been committed. And, in every case, there is never a sworn affidavit attached to the purported "warrants" that they use to arrest people for child support. There are never any true "warrants" for arresting for child support. They are in fact orders of the court that purport to be made into warrants—all without probable cause or complaining witnesses. Herein lies the abuse.

C. *The Abuse*

Every violation of a fundamentally secured right costs the taxpayers in some shape or form. These violations, in arresting child support debtors, is abusive to those arrested and to the taxpayers footing the bills to run the wasteful child support enforcement bureaucracy and the sheriffs going out and jailing people in a civil matter.

There is no probable cause in a civil matter to arrest. One cannot escape that fact. In New Jersey, it is prohibited to arrest women in a civil matter. N.J.S.A. 2A:17–77(a). Pursuant to the Equal Protection Clause of the Fourteenth Amendment of Constitution of the United States, men cannot be arrested in a civil matter either. Yet, they are. And at great taxpayer expense. This happens all over the country. Whether the matter is deemed civil or the particular State somehow fraudulently converts a civil matter into a criminal matter to jail men for owing child support. By fraudulently converting a divorce/child support matter, which is civil, into a criminal matter, always occurs without the man being read his rights at the time the divorce is initiated. Men are forced into giving up financial information, how much they make, where they work, where they live, and all other kinds of disclosures, without ever being told of their rights to remain silent, rights to counsel, rights to a full and fair hearing before a jury of twelve of their peers of the community, etc., at the inception of the divorce proceedings.

Men are routinely arrested for child support. Since over 95% of all child custody awards go to women and the concomittant number of child support obligations go to men, there is a blatant gender discrimination in this country.

Based on this and the fact there was no probable cause to arrest in a civil matter, and that women cannot be arrested in New Jersey on civil process, a police officer loses qualified immunity to a claim that a facially neutral policy is executed in a discriminatory manner only if a reasonable police officer would know that the policy has a discriminatory impact on men, that bias against men was a motivating factor behind the adoption of the policy, and that there is no important public interest

served by adoption of the policy. For a similar argument, see *Hynson v. City of Chester, Legal Dep't*., 864 F.2d 1026, 1032 (3rd Cir. 1988). If police officers are to be sued for these constitutional violations of persons owing child support, then taxpayers are going to bear the brunt of this.

However, "probable cause" to arrest requires a showing that both a crime has been, or is being committed, and that the person sought to be arrested committed the offense. U.S.C.A. Const.Amend. 4. In child support enforcement matters, no probable cause can exist, because the entire matter arose out of a civil context.

It is asserted that by definition, probable cause can only exist in relation to criminal conduct. It follows that civil disputes cannot give rise to probable cause. See, *Illinois v. Gates*, 462 U.S. 213 (1983)(Test for police officer's sufficient basis for probable cause—did the officer have a sufficient basis to make a "practical, common sense" decision that a "fair probability of crime existed,"—once the officer's actions fail to satisfy this test, it may appear that **no** reasonably objective officer could have believed that probable cause existed to make an arrest); *Allen v. City of Portland*, 73 F.3d 232 (9th Cir. 1995), **the Ninth Circuit Court of Appeals (citing cases from the U.S. Supreme Court, Fifth, Seventh, Eighth and Ninth Circuits) held that "by definition, probable cause to arrest can only exist in relation to criminal conduct; civil disputes cannot give rise to probable cause;** *Paff v. Kaltenbach*, 204 F.3d 425, 435 (3rd Cir. 2000)(Fourth Amendment prohibits law enforcement officers from arresting citizens without probable cause (citations omitted)); New Jersey District Court cases and other nearby district courts, *Santiago v. City of Vineland*, 107 F.Supp.2d 512, 561–62, 564 (D.N.J. 2000); *Hill v. Algor*, 85 F.Supp.2d 391, 397–98 (D.N.J. 2000)(arrest made without probable cause violates the Fourth Amendment); *Rzayeva v. Foster*, 134 F.Supp.2d 239, 248–49 (D.Conn. 2001) **(holding involuntary civil confinement is a "massive curtailment of liberty", is tantamount to the infringement of being arrested and can be made only upon probable cause, citing Vitek v. Jones, 445 U.S. 480, 491, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980);** *Schneider v. Simonini*, 749 A.2d 336, 163 N.J. 336, 361–65 (2000)(detailed explanation of probable cause standard in New Jersey).

In *Schneider*, the New Jersey Supreme Court set the standard for probable cause. It shows us that probable cause to arrest "requires a showing that both a crime has been, or is being committed, and that the person sought to be arrested committed the offense". *Schneider*, 163 N.J. at 363. It was further held that a probable cause determination could only be made if a warrant had a "supporting affidavit, as supplemented by sworn testimony before the issuing judge that is recorded contemporaneously. *Id*. at 363.

It has been held that under the Fourth Amendment to the Constitution for the United States there are two categories of police seizures: (1) A police officer may seize a citizen for a brief investigatory stop if he/she has reason to believe that he/she is dealing with a dangerous, armed individual, regardless of whether he/she has probable cause to arrest the individual for a crime; (2) a seizure which is a full-scale arrest, must be supported by probable cause. To determine whether a seizure has ripened to a full-scale arrest, the courts must consider the "totality of circumstances".

In order to satisfy the requirements of the Fourth Amendment, an arrest must be supported by probable cause to believe that a crime has been committed. **Probable cause can only exist in relation to criminal conduct**. **It follows that civil disputes/civil matters cannot give rise to probable cause**. Over thirty years ago, the United States Supreme Court warned of the danger and the threat to liberty if the requirement of probable cause is not strictly abided by:

> "The history of the use, and not infrequent abuse of the power to arrest cautions that a relaxation of the fundamental requirements of probable cause would 'leave law-abiding citizens at the mercy of the officers' whim or caprice.'" *Wong Sun v. United States*, 371 U.S. 471, 479, 9 L.Ed.2d 441, 83 S.Ct. 407 (1963).

The subject "warrant" is not a legitimate warrant or a legitimate exercise of judicial power. New Jersey statute, N.J.S.A. 40A:14–152, (as well as similar statutes around the country) expressly forbids police officers from arresting people in civil causes:

> *". . . police officers shall have the power to serve and execute process issuing out of the courts having local criminal jurisdiction in the municipality and shall have the powers of a constable in all matters* **other than in civil causes arising in such courts".**

State, county and/or municipal law enforcement officers are only empowered to act for the arrest, detection, investigation, conviction, detention or rehabilitation of per-

sons **violating the criminal laws of the State**. Pursuant to N.J.S.A. 40A:14–152.2 states:

> *"As used in this section, 'law enforcement officer' means any person who is employed as a permanent full-time member of any State, county or municipal law enforcement agency, department, or division of those governments who is statutorily empowered to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the criminal laws of this State and statutorily required to successfully complete a training course approved by, or certified as being substantially equivalent to such an approved course, by the Police Training Commission pursuant to P.L. 1961, c. 56 (C.52:17B–66 et seq.). 'Law enforcement agency' means any public agency, other than the Department of Law and Public Safety, any police force, department or division within the State of New Jersey, or any county or municipality thereof, which is empowered by statute to act for the detection, investigation, arrest, conviction, detention, or rehabilitation of persons violating the* **criminal laws** *of this State."* [Bold-face added]

Further, according to N.J.S.A. 2A:17–77(a) females in this State cannot be arrested on civil process. Under the Equal Protection Clause of the Fourteenth Amendment of the Constitution for the United States, males cannot be arrested on civil process either. Yet, the State of New Jersey, through its county and municipal law enforcement personnel, allow for **gender biased hate crimes** in the arresting of males for owing child support. Males are arrested in 98–99% of all arrests for child support. This statistic has been cited in various newspapers and periodicals throughout the nation during highly publicized statewide child support enforcement raids.

The law is clear. Arresting someone in a civil matter is unconstitutional and unlawful, notwithstanding a fraudulent "Order for arrest warrant" issued by purported Judges allegedly acting as Judges. If a person is arrested on less than probable cause, the United States Supreme Court has long recognized that the aggrieved party has a cause of action under 42 U.S.C. § 1983 for violation of Fourth Amendment rights. *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213 (1967). Law Enforcement officers cannot claim "objective reasonableness" in these actions. The law is clearly established regarding arresting and imprisoning a person in a civil debt matter where there is no probable cause:

1. Harlow v. Fitzgerald, 457 U.S. 800, 818 (there can be no objective reasonableness where officials violated clearly established constitutional rights such as—
   a. United States Constitution, Fourth Amendment (including Warrants Clause), Fifth Amendment (Due Process and Equal Protection), Ninth Amendment (Rights to Privacy and Liberty), Fourteenth Amendment (Due Process and Equal Protection);
   b. N.J. Constitution, Article I, Paragraph 13—Prohibition against Imprisonment for Debt in **any** action;
   c. Allen v. City of Portland, supra, and other U.S. Courts of Appeals citations (probable cause can only exist in the criminal context; it can never exist in civil matters/disputes;
   d. Illinois v. Gates, 462 U.S. 213 (1983)(U.S. Supreme Court held test for police officer's sufficient basis for probable cause—did the officer have a sufficient basis to make a "practical, common sense" decision that a "fair probability of crime existed,"—once the officer's actions fail to satisfy this test, it may appear that no reasonably objective officer could have believed that probable cause existed to make an arrest);
   e. Rzayeva v. Foster, 134 F.Supp.2d 239, 248–49 (D. Conn. 2001) (holding involuntary civil confinement is a "massive curtailment of liberty", is tantamount to the infringement of being arrested and can be made only upon probable cause, citing *Vitek v. Jones*, 445 U.S. 480, 491, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980)];

The "child support warrants" that are used to arrest for child support debtors, are unconstitutional warrants as they do not meet the criteria necessary to pass muster under the Warrants Clause of the Fourth Amendment: (1) It is derived out of a civil matter and, therefore, no probable cause exists for arrest; (2) there are no attached affidavits sworn to under oath by any complaining witnesses. Again, men are never indicted, charged, arraigned, tried or convicted. They are summarily jailed in a civil matter without probable cause. This bodes badly for the taxpayers, notwithstanding they are paying for people to be housed in jails for never committing any real crime, but also, if falsely arrested and falsely imprisoned people start suing the government entities for damages for violations of their secured rights.

The Supreme Court ruled in *Malley v. Briggs*, 475 U.S. 335, 344 (1986), that the mere fact that a judge or magistrate issues an arrest warrant does not automatically insulate the officer from liability for an unconstitutional arrest. "Only where the warrant application is so lacking in indicia of probable cause as to render official belief in its existence unreasonable . . . will the shield of immunity be lost". *Malley* at 344–45.

Where officers in fact know that they are holding an innocent person, even where they have a facially valid warrant for his arrest, plaintiff has a cause of action for false arrest. *Gay v. Wall*, 761 F.2d 175 (4th Cir. 1985).

Furthermore, the law is unclear on civil and criminal contempt. In fact, it is a mess. "The judicial contempt power has had a long but sordid history". Richard C. Brautigam, Constitutional Challenges to the Contempt Power, 60 Geo. L.J. 1513 (1972). In fact the contempt power of the court should be abolished as a biased procedure and tool of government oppression. R. Goldfarb, The Contempt Power 1–2 (1963). The act of holding someone in contempt for owing a civilly-related child support debt is an anathema to the history of our Nation.

The New Jersey Supreme Court, in *N.J. Dept. of Health v. Roselle*, 34 N.J. 331 (1961) eradicated the distinction between civil and criminal contempt and held that all contempts are essentially one in the same. Therefore, if both civil relief (collection of a commercial debt) and criminal punishments (arrest and imprisonment for debt) are imposed in the same proceeding, the "criminal feature of the order is dominant and fixes its character for review". *Hicks v. Feiock*, 485 U.S. 624, 108 S.Ct. 1423, 99 L.Ed.2d (1988); *Nye v. United States*, 61 S.Ct. 810, 813 (1941). Civil contempts or violations of court orders/violations of litigants rights, are civil in name only, entailing what are in reality criminal punishments. *U.S. v. Rylander*, 460 U.S. 752, 757 (1983); *Uphaus v. Wyman*, 360 U.S. 72 (1959).

The New Jersey Appellate Division held in *Lusardi v. Curtis Point Property Owners Assoc.,* 138 N.J. Super. 44, 50 (App.Div. 1975) that there are grave doubts whether a defendant's rights can be adequately protected in a "double-barrelled proceeding" where charges of both contempt and deprivation of private rights are tried in a common proceeding.

Under *U.S. v. Rylander* ignorance of the order or the inability to comply with the order, or as in this case, to pay, would be a complete defense to any contempt sanction, violation of a court order or violation of litigant's rights. In such cases the risk of erroneous deprivation for civil contempt/violation of litigant's rights, from the lack of a neutral factfinder, may be substantial. Under these circumstances, criminal procedural protections such as the right to be notified, right to a pre-deprivation hearing (or in this case, pre-deprivation ability to pay hearing), right to proof beyond a reasonable doubt, right to counsel are both necessary and appropriate to protect the due process rights of parties and prevent the arbitrary and oppressive exercise of judicial power. *International Union, United Mine Workers of America v. Bagwell*, 114 S.Ct. 2552, 2561, 129 L.Ed.2d 642 (1994).

The caselaw history on this subject is extensive. It would be absurd to distinguish criminal and civil incarceration. From the perspective of the person incarcerated, the jail is just as bleak no matter what label used. In addition, the line between civil and criminal contempt, or violations of litigant's rights or violations of a court order, is a fine one, and is rarely as clear as the state would have us believe. If the party does not have the present ability to pay, or if he has paid and is unlawfully jailed for it, he does not have the "keys to his jail". What is nominally a civil contempt proceeding (or in aid of litigants rights enforcement proceeding) is in fact nothing more than a criminal proceeding, with the defendant being punished and not coerced. It is the fact of the incarceration and not the label placed upon the proceeding which determines if someone was unlawfully arrested and imprisoned.

Given the way government goes after child support debtors to fill its coffers, by maximizing federal reimbursement incentive funding, for costs expended and amounts collected, this presents not only a conflict of interest, but fraudulent and treasonous government abuse of power and government oppression.

Every U.S. Court of Appeals that has addressed this issue, has held that child support is a common, commercial (**and civil**) debt subject to all debt collection procedures under the Fair Debt Collection Practices Act. See, *U.S. v. Lewko*, 269 F.3d 64, 68–69 (1st Cir. 2001) (citations omitted) and *U.S. v. Parker*, 108 F.3d 28, 31 (3rd Cir. 1997). Based on this fact, imprisonment based upon a debt is prohibited absent clear evidence of fraud, under every states' constitutions prohibiting Imprisonment for Debt.

New Jersey Constitution, Article I, Paragraph 13:

> "No person shall be imprisoned for debt in **ANY** action, or on any judgment founded upon contract, unless in cases of fraud".

The Supreme Court of New Jersey takes this point one step further in *State v. Madewell*, 63 N.J. 506, 512 (1973):

> "Statutes or ordinances, designed as debt collecting devices under the guise of penal laws, contravene the constitutional prohibition against imprisonment for debt. Thus, the legislature may not circumvent the prohibition by rendering criminal a simple breach of contract, the nonpayment of debt, or the failure to use one's own money for a purpose other than for payment of debts. However, statutes against false pretenses, frauds, cheats, and the like, are sustained as against the constitutional objection that such statutes impose imprisonment for debt, on the theory that one who violates the act is punished for the crime he has committed, although civilly the acts may also constitute a breach of contract or the nonpayment of a debt. (16 C.J.S., Constitutional Law, Section 204(4), p.1011)." [bold, underline and italics added]

Pursuant to the September 1998 amendment to N.J. Court Rule, R. 1:10–3, 2002 Gann Edition, Comment: **"The evident purpose of this amendment is to make clear that enforcement by incarceration was never intended to create a so-called debtor's prison."**

No family court in New Jersey or any other state can be unbiased because they have a financial conflict of interest in the outcomes of child support awards, collections and enforcement of same. That conflict of interest involves the Federal reimbursement and incentive funding to the State for the enforcement and collection of support in order to maximize the funding they receive from the Federal Government to fill their treasuries and to supplement judicial and state employee pension plans. The more child support awarded, collected and enforced upon, the more federal funding the State receives. It behooves State Family Court Judges to award as much as possible, notwithstanding the true costs of raising children. This fictitious awarding of child support obligations based on a fraudulent child support guideline designed by judges, and those who are child support advocates and bureaucrats, creates a fraudulent presumption and conflict of interest. Once this funding is paid to the State, based on overinflated child support awards and collections, it is then forwarded to the general treasury and subsequently into the pension plans of judges, sheriffs and sheriff's deputies, law enforcement officers, politicians and other public servants.

To simplify: If the State Family Courts couldn't tell me how much support I needed for my family and children during the marriage, how can they tell me how much to support them after my divorce? If the State Courts are admitting they are a party to my divorce, then they also are responsible for the support of my family, and are also liable for violations of nonpayment to my family. This is an equal protection violation and a violation of *absolute liberty* rights protected under the Ninth Amendment. This is an equal protection violation and due process violation to use extortion practices and kidnapping for profit and gain to get financial incentives from the state and Federal Government.

The 2001 Cooperative Agreement between the New Jersey Division of Family Development (DFD) and the County Sheriffs' Offices

The 2001 Cooperative Agreement between the New Jersey Division of Family Development and the various County Sheriff's Offices, refers to "Definitions". The terms of "Arrest Services" and "Arrest" are defined.

a. "Arrest Services"—will include all reasonable attempts to apprehend the individual identified in the **bench warrant** and produce the individual before a judge or other specified officer of the court.
b. "Arrest"—will refer to the physical act of taking into custody the individual identified in the **bench warrant**. Such term shall not apply to voluntary surrender to the court or in instances where warrants are vacated.

According to the "Purpose" Section of the Cooperative Agreement:

> The purpose of this Agreement is for the DFD to establish a procedure with the Sheriff's Office for arrest services in those IV–D cases where a **bench warrant** pertaining to child support and paternity matters has been issued by a court of competent jurisdiction.
>
> As per the **bench warrant**, the Sheriff's Officer will take the Non-custodial parents into custody for the purpose of establishing paternity and support obligations including health insurance coverage and for payment of arrearages owed.

As can be seen by the Cooperative Agreement, it is nothing more than a debt collection device, using law enforcement personnel in the capacity of debt collection

agents with guns. No probable cause can be found and no sworn affidavit or affirmation is used as **bench warrants** are issued directly from the bench in these civil matters. The use of bench warrants presumably is a method to "streamline" arresting people in a summary proceeding for child support and circumventing the First, Fourth, Fifth, Sixth, Seventh, Ninth, Thirteenth (Anti-Peonage Amendment) and Fourteenth Amendments to the United States Constitution and the New Jersey Constitution, Article I, Paragraph 7 (Prohibition Against Unlawful Searches and Seizures) and Article I, Paragraph 13 (Imprisonment for Debt prohibition).

The New Jersey Appellate Division held in *Lusardi v. Curtis Point Property Owners Assoc.,* 138 N.J. Super. 44, 50 (App. Div. 1975) that there are grave doubts whether a defendant's rights can be adequately protected in a "double-barrelled proceeding" where charges of both contempt and deprivation of private rights are tried in a common proceeding.

Also, based on this and the fact there is no probable cause to arrest in a civil matter, and that women cannot be arrested in New Jersey on civil process, a law enforcement officer loses qualified immunity to a claim that a facially neutral policy is executed in a discriminatory manner only if a reasonable officer would know that the policy has a discriminatory impact on men, that bias against men was a motivating factor behind the adoption of the policy, and that there is no important public interest served by adoption of the policy. See, *Hynson v. City of Chester, Legal* Dep't., 864 F.2d 1026, 1032 (3rd Cir. 1988) on the discrimination argument.

As part of the Duties and Functions of the Sheriff's Office, the Cooperative Agreement states that: "All pertinent information shall be submitted to authorized personnel and entered onto the State Criminal Information Center (SCIC) system." Since the matter emanates from a civil matter, how does one get put into the "CRIMINAL" information system without having ever committed a crime?

The Cooperative Agreement goes on and states:

> "As per the procedure outlined in Attachment B of this Agreement, the Sheriff's Office shall submit detailed reports pertaining to arrest services on a quarterly basis in order to obtain payment for services. Payment for services shall be based on the collection performance standards specified in Attachment B."

As part of the Duties and Functions of the Sheriff's Office, and Part III Performance Standards, the Sheriff's Office will participate in two (2) statewide coordinated raids per year. These raids involve the arrest of non-custodial parents in which men make up 98–99 percent of the "arrestees". This is "gender profiling", "gender biased discrimination" and a "gender biased hate crime" in that it violates the Equal Protection Clause of the Fourteenth Amendment.

Based on the foregoing, the child support enforcement bureaucracy is an abject failure, a massive waste of taxpayer's hard-earned monies (in the billions of dollars), perpetrates government abuse and government oppression against innocent citizens, creates an unconstitutional class of outlaws which are comprised of almost entirely of male parents, and perpetrates fraud to collect child support debts at the point of a gun, in order to maximize profits for the states and its support enforcement bureaucracies.

The taxpayers in this country would be best served if the government stopped its fraudulent, abusive and oppressive anti-male/anti-family practices that it uses to create child support obligors and child support debtors under communist-Soviet style child support guidelines, eliminated the entire child support enforcement bureaucracy, and took the billions of dollars saved from eliminating the bureaucracy and sent it in the form of child support checks to the recipients in the same manner it sends out Social Security checks.

Statement of Malcolm Hatfield, M.D., Franksville, Wisconsin

My child support assessment is not based on economic data and represents fraud. Attachments:

Franksville, Wisconsin 53126
March 25, 2003

Ms. Susan E. Pfeiffer
201 E. Washington Ave
E200, DWD
Madison, WI 53703

Dear Ms. Pfeiffer:

This is written to summarize my opinion given in today's public hearing regarding the DWD's child support proposed guidelines. I limited my talk solely to high income payers. I first defined high income payers as having a combined income of over $50K per year . . . I defined the word combined as being both parents. I made the following 4 points:

1. There is no economic data to support their assumptions for all levels of income above the $50k threshold. As the income of one or both parents increases, the disparity between the economic data and proposed obligation increases. In addition, the majority of States and all of our neighboring States have guidelines that are clearly different, with the disparity increasing significantly as combined income increases. There is no economic data to support this discrepancy.
2. Once a parent "wins" primary custody, there is no mandatory work provision for the custodial parent (CP) and therefore, the custodial parent with a high income non-custodial parent (NCP) is not only allowed to receive a windfall profit, but also is allowed to forgo his/her obligation to provide for their half of the financial obligation to their children.
3. The assumptions do not address the significant tax advantages that the CP has, which are especially beneficial in the high income case. This includes head of household filing status and child care credit as well as other tax breaks. High income NCP's are not allowed any of these tax advantages.
4. Lastly, there is no allowance made when the CP is allowed to move out of State for the high income NCP to voluntarily decrease his/her child support obligation when he/she must take a lower paying job to move to be close to his/her kids. High income NCP cannot obtain high income jobs anyplace or anywhere. Current proposal forces NCP's to face possible felony charges (due to federalization of child support enforcement) and deadbeat parent status merely because he/she wants to live near their kids.

I summarized my comments by stating that these and current guidelines give strong disincentive for high income parents to raise their kids in Wisconsin because they can and will lose their kids through no fault of their own. They are then forced to pay outrageous amounts of child support that is not based on economic data and is not in keeping with neighboring States. This serves as a windfall profit for the CP and harms children because the windfall profit is inversely proportional to the amount of time the kids spend with the NCP. Kids need and deserve a strong relationship with BOTH parents, regardless of income.

Sincerely,

Malcolm Hatfield, MD

Franksville, Wisconsin 53126
July 28, 2003

Senator Carol Roessler
8 South
Madison, WI 53702

RE: CR03–22, the DWD 40 administrative rule change proposal.

Dear Senator Roessler:

I was unable to attend the hearing on July 22 regarding this proposed change in child support. My husband did attend the DWD's public hearing in Milwaukee and made the attached comments. The DWD completely ignored his testimony.

Malcolm's ex-wife filed for divorce in Racine County in 1993. They have a daughter named Mary who is now 14. She currently lives in Illinois with her mother, because Racine County Family Court allowed her to move. In 2000, we married. My daughter Dana is 2 years younger than Mary. Since 1993, Malcolm has been assessed $5,123.00 per month in child support. He has paid over $600,000.00 to date. This is paid to a physician mom for one child. He has fought a tremendous uphill battle since 1993 so that he can be a father to Mary. Each and every time he asks for more time with Mary, he is first served with a subpoena to show his tax return, with the implication that they will demand more support, and soon thereafter, another false allegation of abuse arises. Malcolm's drop off/pick up time with Mary serves as a useful time to serve him with this subpoena. On the other hand, Dana has a liberal parenting relationship. Her dad pays $400 per month in child support. This is used for fixed expenses. Dana is well adjusted and is thriving. Mary was hospitalized in 2001 with inflammatory bowel disease. Her bone age was over 2 years delayed, and her height and weight for age were below the 5th percentile. She is committed to 2 prescription medications until she is 20 years old. She clearly

needs a father and is not flourishing. What is more important to a child? Money or a father?

Ironically, the DWD recommends lowering child support for low income payers. They justify this by saying that child support serves as a wedge between children and their parents. Why isn't this true for all incomes? I would like to see the department lower the income threshold to a level more representative of just what it takes to raise a child for Wisconsin families. My husband and I support the provision of AB 250/SB 156 for parents with combined incomes over $4000.00 per month. We also support the DWD proposal for low income payers because we share their opinion that child support serves as a wedge between parents and their children. Please do not hesitate to contact us if you have any questions.

Sincerely,

Jeanie Hatfield, MEPD

Statement of Torm L. Howse, Indiana Civil Rights Council, Whitestown, Indiana

My name is Torm L. Howse, President, of Indiana Civil Rights Council, and a resident of Indiana, and I have a "Win-Win Plan" for the State of Indiana, which I believe will also be good for all other States and our Nation, as follows:

We need new legislation outlawing the awarding of sole child custody, which is mostly to women, except in cases of abuse and/or neglect, and, instead, enact legislation for joint child custody and the elimination of child support, mandating that each parent take care of their own financial needs when the child is with him or her. The family-friendly legislation, combined with serious welfare reform, will turn the state budget around, so that all other desperately-needed services will have funding again.

Indiana currently spends about 40% of its entire annual budget—a whopping FOUR BILLION DOLLARS every year—on welfare hand-outs to continually do little more than "band-aid" the myriad of devastation that still echoes from the fallout of sole-custody divorce, long after the dust settles upon a court's closed files.

While a portion of welfare money is honestly spent on the true needs, the majority can be phase-transferred into sorely-needed funding for such things as: education, including teacher salaries, and increasing the number of teachers; health care, including family-friendly partnerships with medical service providers, and increased support for the elderly; public safety, by increasing the visibility, strength, and tools of firefighters, police, and EMTs; public transportation, including development and expansion of rail and monorail systems, in combination with any restructuring of busing—even adding popular city-city and suburban routes; fighting drug abuse more efficiently, with better technology and more personnel; and creation of new jobs, because of all of the above, and other incentives.

In fact, there can easily be enough savings realized by serious welfare reform to invest in all of the above, in other programs, and to LOWER TAXES in various ways—like property and income taxes, for example, and providing NEW TAX CREDITS that are designed to promote and maintain stable, healthy families—the backbone of any SUCCESSFUL ECONOMY.

One quick look at our Indiana budget reveals the simple truth: if we reform welfare a mere 25%, we've already permanently fixed our approximate $1 Billion deficit—without having to touch anything else. And, any reform we achieve past that (which should not be too difficult) is literally "money in the bank" to be put to profitable use.

Only by facing the problem honestly, can the problem be truly fixed. When you begin to really understand the horrific financial nightmare that the aftermath of divorce wreaks upon society in general (and, therefore, the government, and therefore—ultimately—upon the individual taxpayer), not to mention the actual damage itself, then you will surely wonder why we haven't practically started a civil war or something, to get the problem fixed TODAY . . .

Your belief about welfare may be that it is basically a never-ending handout to those that refuse to get off their duffs, and work to support themselves. You would be partially right, and this situation definitely is an important, widespread problem that must be dealt with, using permanent measures for abusers of the system.

However, the constant drains upon welfare come from several sources, and most of those sources are the direct result of the mortal blows that divorce weighs heavily upon our population, especially based and rooted in the fundamental problem of awarding sole custody of children to mothers—a national average of some 90% of

the time, versus about 5% sole custody to fathers, and only about 5% awarded as true joint custody.

Consider the following facts:

1. The continuing annual reports from the federal National Clearinghouse on Child Abuse and Neglect Information ("missing kids on milk cartons") consistently document that 60–62% of all murders of children, 17 years old and under, is committed by single mothers—more than all other different classifications of perpetrators combined.
2. The continuing reports from numerous Federal and State Government agencies have been documenting—for many years—that children raised by single mothers are several times more likely to be drug abusers, suicidal, homosexual (think "AIDS" . . .), high school dropouts, violent criminals, criminals in general, imprisoned, pregnant while teenage, repeating the domestic violence cycle, homeless runaways, and etc.—serious problems that COST TAXPAYERS A LOT OF MONEY, every single day. Think about all the different welfare, and even other, programs it takes to "combat" and treat these many problems we have created, by allowing the awarding of sole custody to women 90% of the time in divorce—and thereby, fatherless children—for any reason . . . even no reason (i.e., "no-fault" divorce).
3. The massive costs of administering (single mother) welfare hand-outs, combined with the actual staggering costs of the various forms of welfare themselves (TANF, Medicaid, food stamps, and etc.), including the whopping 40% of Indiana's annual budget, and not to even mention the enormous amount of welfare fraud experienced by government, are single-handledly responsible for financially destroying America and its working-class citizens, as evidenced by the present, overwhelmingly critical budget crises in virtually every state in the union. Moreover, there exists a viciously repeating cycle of welfare dependence, inevitably taught to young girls by these welfare single mothers themselves.
4. Long-term studies show and prove that high amounts of child support attract, induce, and encourage mothers to divorce, and fuel the nationally destructive trend of the rampant, large-scale breakup and breakdown of American families.
5. Sometimes, women involved in a legal custody dispute for children will falsely accuse the fathers of various things—even false abuse allegations—to gain an "upper edge" in order to secure that child custody, but with the real motive being to rape the father for child support, to advance and support her lifestyle, while simultaneously robbing the financial "breath" out of him to fight back (attorneys = $$), and maybe even to sabotage his ability to afford an occasional "visit" with his own children—that is, if she even allows him to see them, at all.
6. The financial strength to stay alive, in the face of child support, triggers many men to resort to various methods of crime—just to exist—and which also eventually costs taxpayers even more, by paying for prison spending increases, and other losses to society by the effects of drug abuse, or whatever cause and effects go with a given criminal activity.
7. And, if fathers can't keep up with child support payments, they are put in jail or prison—further eroding our taxbase, and insanely causing taxpayers to foot an even higher share.
8. Propaganda about "deadbeat dads" is just like the media's frenzy over airplane crashes—as travel by air is actually statistically far safer than travel by automobile, so the percentage of "deadbeat moms" is much higher than that for fathers . . . and, the vast majority of child support orders against men are crippling amounts, levels that are unethical, immoral, and that actually violate the limits of written law.
9. Even more importantly, fathers have absolutely equal constitutional rights to custody of their children.

The ongoing, national, overwhelming practice of typically awarding sole custody of children to mothers is: 1) illegal under federal (constitutional) law; 2) destroys children with nazi-concentration-camp efficiency; 3) wipes out society tangibly, FINANCIALLY, and needlessly; and 4) is BAD BUSINESS FOR AMERICA.

Ironically, the State of Indiana is way behind the times, and itself. In 1973, the Hoosier State became the first to pass any legislation that even suggested the possibility of joint custody of children. Tragically, that's about as far as it ever went, while over the past decade, several states have finally figured out, through years of studies, that most soaring costs to the financial, moral, and physical health of society could be directly traced back to the breakdown of the family . . . It doesn't

take a rocket scientist to understand that the real strength, security, and prosperity of America is directly linked to the same stability factors of the average American family.

Recently, over the past several years, states like Wisconsin, Kansas, Louisiana, Pennsylvania, and others passed laws making equal and full JOINT CUSTODY of children the standard to be applied in divorce, separation, and similar actions regarding kids. Guess what happened? No longer able to expect "default" control of the children, and without the guaranteed "second income" (child support . . .), actions for divorce involving children—agreed by most experts as being filed by mothers some 70–80% of the time—rapidly plummeted in rate, marriages survived, families remained intact, children retained the guidance and support of their fathers in their lives, crime dropped, youth in trouble dropped, court caseloads dropped, bankruptcies dropped, drug abuse dropped, suicides dropped, child abuse and neglect dropped, and, needless to say: THE AMOUNT OF TAXPAYER DOLLARS NEEDED FOR WELFARE DROPPED. Doesn't INDIANA want the same for its families, finances, and future? Doesn't AMERICA want the same for its families, finances, and future?

Statement of Keith McLeod, Richmond, Virginia

Introduction

Thank you for the opportunity to address the Committee on Ways and Means about waste, fraud, and abuse. The waste and abuse I wish to raise is child support enforcement, per Title IV–D of the Social Securities Act, administered by the Office of Child Support Enforcement (OCSE) of the Department of Health and Human Services (DHHS).

For my figures and information I draw upon the e-book my company publishes, The Multiple Scandals of Child Support [KC Wilson, Harbinger Press, Richmond, VA, 2003]. It is thoroughly researched and verified; all facts, figures, and citations in this brief are fully provided and expanded upon there. It is submitted with this brief as Exhibit A. [http://harbpress.com]

The Problems

There are a very large number of problems with child support enforcement as practiced by DHHS. They are:

1) There was never a problem with child support compliance.

There is a problem with poverty in the US, and denial of it.

While over 30% of American children and their single mothers live in poverty, what is the state of the fathers? While enforcement has been enacted without any study of them (problem 3, below), limited studies suggest that the same number of fathers are just as poor. For instance, the Urban Institute found that at least 23% of non-custodial parents live below the poverty line[1], so probably the majority of those not paying simply can't. They can barely support themselves.

If those poor single mothers married the fathers of these children, the same number of children would still be just as poor. There is a problem with poverty in America, from which men equally suffer.

Men in poverty are being used as scapegoats for an array of political agendas. One is to avoid admitting to systemic problems of income distribution and poverty in our economy, less politically acceptable to admit and address. Child support enforcement is blaming poverty on the poor which has never proved effective, and is not proving so now.

2) Now, there is a problem with child support compliance.

The two decades of child support enforcement have seen a steady decline in child support payments using all measures except one. This has occurred during the economic boom of the 1990s, so imagine what is happening now, whose figures will not be available for 5 years.

Appendix A of this brief provides all Census Bureau data on compliance, in charts and tables in consistent, 1999 dollars. In 1978 the average child support paid was $3,098.55. In 1997 it was $2,527.79, a fall of 18%.

[1] Elaine Sorensen & Chava Zibman, "Poor Dads Who Don't Pay Child Support: Deadbeats or Disadvantaged?" Urban Institute, Series B, No. B–30, April 2001.

From 1983 to 1991, the percentage of the total of child support owed that was paid, fell from 70.4% to 67.1%. The formula for these values was then adjusted in 1992, but the downtrend still shows since then.

Urban Institute researcher Elaine Sorensen, in a Washington Post article published June 1, 1999, admits, "The sad fact is that children living with single mothers are no more likely to receive child support today than they were two decades ago." [2]

If anything, child support enforcement has proven counter-productive: a waste of money and effort only resulting in tens of thousands, possibly hundreds of thousands of more men in jail, driven to suicide, driven from their children, and/or hopelessly in debt, each year.

Child support is being used to avoid the issue of poverty.

3) There has never been a study on the target: fathers who are not paying child support.

Not Congress, nor DHHS, nor OCSE, nor any government body has ever commissioned or performed any study on the target and imagined reasons for these measures. Five billion federal dollars a year (the OCSE budget), plus billions more by the states, are spent on something with no definition.

The only knowledge about them is inferred by other Federal Government data. The Census Bureau only polls custodial parents, never non-custodial ones. The Urban Institute's studies extrapolate data from the Department of Agriculture and DHHS. Yet billions are spent persecuting these unknown members of society every year.

Who are they, what are their circumstances, and what are their stories? What percentage are actually capable of compliance with their orders? (Indications are that this number may be as low as 10%, but there is no authoritative source.) While the poor cannot pay, why are those who can pay not doing so? Is it a protest because the mothers, courts, and social agencies do not allow or protect meaningful involvement with their children? Have they new families they are protecting? Have they legitimate complaints that are being ignored, meaning we are trying to solve the wrong thing or just not all the right things in their full context?

We are spending billions of dollars each year on something we know little about but have many assumptions.

4) The 1986 Bradley Amendment to Title IV–D forbids any reduction of arrearage or retroactive reduction for any reason, ever.

This reinforces the approach that inability to pay is no excuse. Needless to say, there are endless stories of men who are now crushed by a debt they will never be able to pay because they were:

In a coma.
A captive of Saddam Hussein during the first Gulf War.
In jail.
Medically incapacitated.
Lost their job but were confident of another so did nothing until it was too late.
Did not know they could not ask for retroactive adjustments and waited too long.
Cannot afford a lawyer to seek adjustment when adjustment was warranted.
Wouldn't use the legal system even if they could, feeling it alien from their world, so don't ask for a reduction when the legal establishment expects them to.

Some say this measure is a violation of due process and cruel and unusual as it removes the use of human discretion from dealing with individual cases. (Not to mention removing human compassion.). But non-custodial fathers do not have the money to fight a constitutional case.

One way or another, this is an abuse.

5) The return of debtor's prison.

A common "solution" for non-payment is jail. Since the Federal Government only tracks numbers of people in jail for one year or more there are no reliable figures for how many men are in jail at any point in time, or in one year, for child support non-compliance. There they can hardly pay debts, and, indeed, their debt mounts, plus the incarceration adds to the cost to taxpayers.

This despite the fact that in 1798, John Adams signed into law the elimination of debtor's prison. But wanting to send "bad men" to jail for child support, irrespective of its paying no money but incurring pure cost, is why many want failure to

[2] Elaine Sorensen, "Dead-Broke Dads," Washington Post, June 1, 1999.

pay child support added to criminal law, even though it is clearly a civil matter. This is a national hysteria.

The use of jail is also an abuse and a waste of still more millions of tax dollars, for no benefit to anyone. It is only blood-lust.

6) States hire consulting firms to act as administrator of their child support program. These companies set child support awards in individual cases, then are paid on the amount they collect, a clear conflict of interest.

Policy Studies Inc. is one of three companies in this business and its worst offender. Either the state or county will hire them as administrator of their child support system, which means they adjudicate default child support awards. (Called administrative awards, they are made without the alleged father present, after minimal effort to find him.)

This firm is then paid on the basis of collections, meaning they have a vested interest in making awards as high as possible irrespective of facts and circumstance. Not only does Policy Studies Inc. act as administrator, but it hires itself out to the states as consultants to develop the state guidelines. Again, a conflict of interest.

Three Supreme Court rulings have found that no one can be considered an objective adjudicator where much of the revenue that pays them comes from that over which they adjudicate.[3]

7) Child support agencies are not regulated as financial intermediaries.

State child support agencies are financial intermediaries. They create and manage accounts of assets on behalf of private citizens Financial intermediary are normally strictly regulated and subjected to disciplined accounting and auditing practices.

Not these. They may be audited every 3 years by OCSE, only for compliance with federal regulation, not financial fidelity.

Needless to say, the cases of errors and failure to correct them are legion. They include having the money but not paying it to the custodial parent; not registering receipt of money and taking legal action against those who are fully paid; as well as failure to act when they could. In the October 22, 2000 Free Lance-Star, Cathy Dyson reported that $560 million had been collected but not distributed. OCSE said that was only 4% of what they administer. Had any other financial institution made a 4% error, they would be shut down.

This government bureaucracy not only solves nothing but creates difficulties for those who used to get regular payments.

8) OCSE was set up to recover welfare payments that had been made to mothers, from the fathers, to reduce the cost of welfare.

But as the table below shows, the OCSE budget itself has rarely been met by its collections, so is making welfare cost more.

Table 4: Paying for Welfare

Yr.	OCSE Expenditures ($ Billions)	TANF Collections ($ Billions)
1991	1.8	2.0
1992	2.0	2.3
1993	2.2	2.4
1994	2.6	2.5
1995	3.0	2.7
1996	3.0	2.8
1997	3.5	2.8
1998	3.6	2.6
1999	4.0	2.5
2000	4.5	2.6

[3] Tumey v. Ohio, 273 U.S. 510 (1927), Ward v. Monroeville, 409 U.S. 57 (1972), and Gibson v. Berryhill, 411 U.S. 564 (1973).

9) Family law is a state jurisdiction. Federal involvement in child support is justified by a nexus between it and welfare, but this has been stretched beyond all reason.

One could theoretically argue that if all child support was paid there would be fewer people on welfare. If you look only at aggregate numbers it makes sense, but is an example of what economists call the fallacy of composition. (What holds true at one scale does not at another. Looking at aggregates and composites masks micro-level realities.)

It is only true if all fathers can, in fact, pay whatever amount is assigned, but they are resisting and just need to be forced. But evidence strongly suggests that the majority who are not paying cannot pay at all. The failure of this theory is shown by item 8, above. Very little is collected from poor fathers and there is no evidence that what is collected was any more than was previously being paid. It is just going to the government now instead of under the table to individual mothers who would still need welfare with or without the meager child support payments.

Still, in the late 1980s OCSE performed a legal slight of hand. The nexus with state jurisdiction over family matters like divorce was federal welfare, but there was increasing political pressure to show higher returns, which could only be done by adding non-welfare cases to their docket and become collection agent for the middle and upper classes. During the years that followed this move they kept claiming they were collecting more child support than ever before, only because they were collecting it, it was no longer going directly to the mothers. As we have seen, less child support was actually being paid, and government intervention may itself be one of the reasons.

To justify this expansion, a departmental memo to state agencies declared that all mothers (some 80% of adult women in the US) are potential welfare recipients, hence fall under their jurisdiction.

Government policy holds an unflattering perception of American women. And why are not all men as much in danger of going on welfare?

This is an abuse of many things (like equal protection, state jurisdiction, etc.) and justified a budget increased from $2 billion to $5 billion without increasing child support compliance by the rich any more than by the poor.

OCSE is not only ineffective, but very expensive. The hidden costs beyond the OCSE budget include: state governments pay at least 35% of the costs of administering child support enforcement; other government agencies are incurring costs such as the State Department in collecting bank account balances and employment records, and reporting all applications for passports; the even more crowded jails. There is also new cost to companies in reporting accounts and new hires, with no evidence of benefit to anyone except the government bureaucrats.

10) All divorce fathers are monitored and regulated as though criminals.

On what basis, and to what end?

Conclusion: Fixing the Wrong Thing

One statistic the Census Bureau is careful to include in many of its new releases on child support compliance figures is an 87% to 90% compliance rate when there is joint custody.

One must wonder if child support enforcement is one of those misguided social hysterias that are causing more harm than they are solving exactly because we are, yet again, addressing the wrong thing; the wrong end of the stick. Perhaps government policy should change to ensuring any child's family remains intact irrespective of what happens between its parents. (Whether its parents are married, divorced, or never married, the child's family are the same people and allowed normal parental roles unless a clear and present danger from one can be proved. Current policy is to intervene upon divorce to prevent one parent from parenting.)

At the very least, and as a first step if only to stop the carnage, we advocate the repeal of Title IV–D. It is counter-productive and costing a fortune, not only in money but human toll to both children and fathers.

APPENDIX A

Child Support Compliance Data

The Census Bureau has surveyed custodial households every 2 years since 1978 to provide an independent reading on their state. (Independent of other agencies and the figures meaningful to them.)

These are all their child support compliance figures, only as reported by the recipients themselves, converted to consistent 1999 dollars. (There is no survey of non-custodial parents and what they claim to have paid. There was one academic study that suggested there are different versions about how much is both owed and paid. Still, using only these numbers can show trends, if not accurate absolute amounts.)

There is an anomaly in the data that must be understood. For the 1993 survey and thereafter, one question was changed to include arrearage in the tally. That is, "How much were you owed last year" was changed to "How much were you owed last year plus was already in arrears." (Arrearage should have been tallied separately.)

Therefore, there is a blip that is marked on all charts. It does not effect the average payment values, but does effect the others. Even still, a consistent down-trend is clear, except for the number of custodial parents getting all child support.

1999's data was only released in October of 2002. That's how long it takes to gather and release it.

For the years 1978 to 1999 there are charts for:

- Number of cases having child support orders, and the number of cases (claiming to get) all, and all or some, child support. This shows the rising case load and absolute values that are converted into percentages in the following charts.
- Average child support due and average amount received.
- Percent of custodial parents receiving some of their child support, and percent receiving all.
- The unemployment rate, from the Department of Labor. This allows visually accounting for economic conditions over those decades. One would expect child support payments to rise during low unemployment, but by how much? What we find is, during extremely good times, maybe a slight rise in only the custodial parents getting all their ordered child support. Other measures of compliance continued to fall.

The charts are followed by a table showing the raw numbers, including their conversion to 1999 dollars.

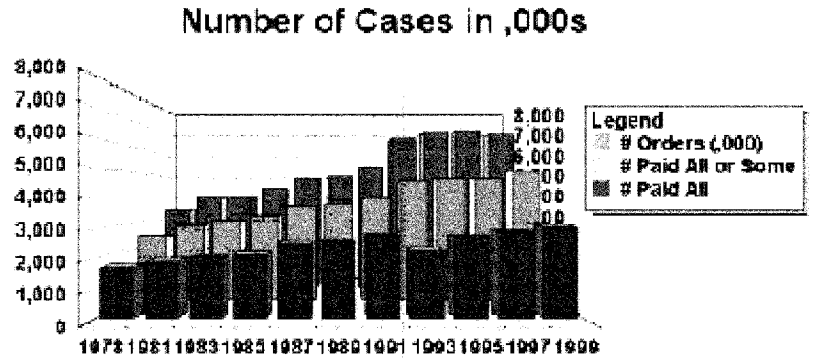

Chart 1: Number of Cases

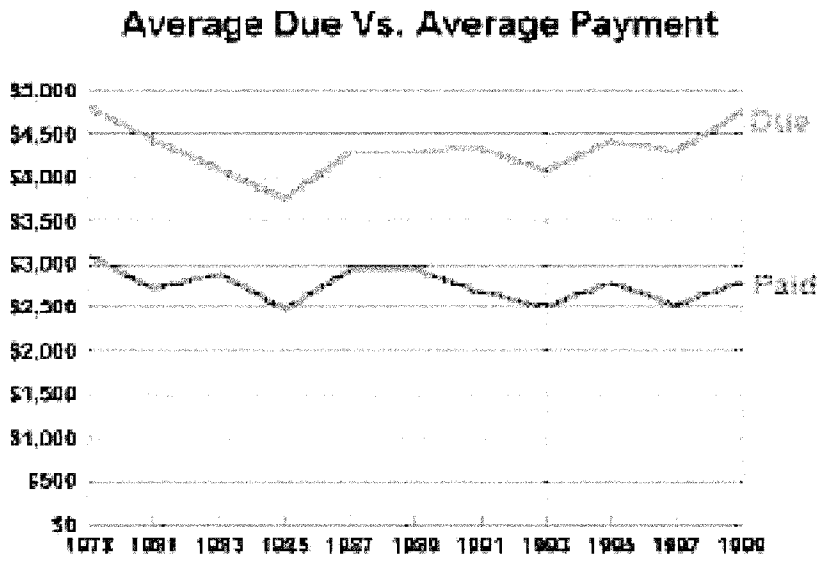

Chart 2: Average Due Vs. Average Payment

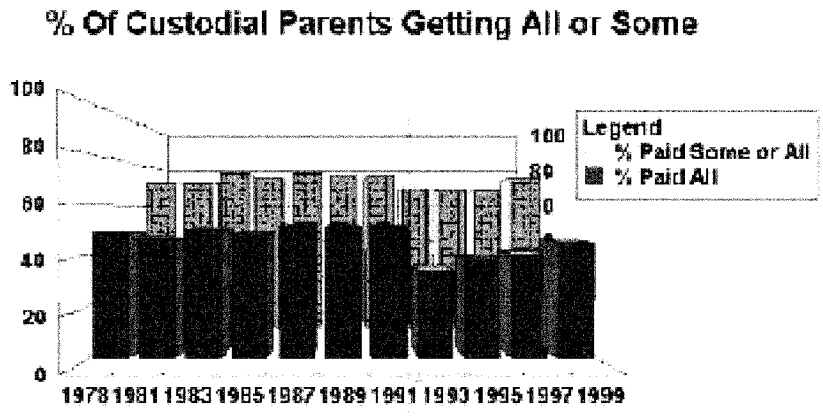

Chart 3: Percent Getting All or Some

Chart 4: Unemployment Rate

		# Court Orders (,000)	Total Due ($ Billions)	Avg Due ***	Total Paid ($ Billions)	Avg. Payment	All 4 Amts' Yr's $	Rebased CPI–U–R, 1989 = 100	Re-rebase CPI–U–R From 1989 to 1999
*	1978	3,424	12.6	$3,679.91	8.1	$2,370.00	1989	55.6	1.3074054342
*	1981	4,043	13.7	$3,388.57	8.4	$2,080.00	1989	73.9	1.3074054342
*	1983	3,995	12.5	$3,128.91	8.8	$2,215.00	1989	81.6	1.3074054342
*	1985	4,381	12.6	$2,876.06	8.3	$1,892.00	1989	87.8	1.3074054342
*	1987	4,840	15.9	$3,285.12	10.9	$2,247.00	1989	92.5	1.3074054342
*	1989	4,953	16.3	$3,290.93	11.2	$2,252.00	1989	100.0	1.3074054342
	1991	5,326	17.7	$3,323.32	11.9	$2,227.00	1991	108.9	1.3074054342
**	1993	6,685	23.9	$3,575.17	14.7	$2,203.00	1993	114.6	1.3074054342
**	1995	6,966	28.3	$4,062.59	17.8	$2,555.00	1995	120.2	1.3074054342
**	1997	7,006	29.1	$4,153.58	17.1	$2,440.00	1997	126.2	1.3074054342
**	1999	6,791	32.3	$4,756.30	19.0	$2,791.00	1999	130.7	1.3074054342

*All $ values reported in 1989 $s by US Census.
**Census added past due amounts. Previously, only tracked amounts due that year.
***From 1993, "Avg Due" is NOT the amount of the child support award since it includes past due.

	Avg Due In 1999 $s
1978	$4,811.13
1981	$4,430.24
1983	$4,090.76
1985	$3,760.17
1987	$4,294.99
1989	$4,302.59
1991	$4,344.93
1993	$4,078.70
1995	$4,418.85
1997	$4,303.02
1999	$4,757.77

	Total Due ($ Billions)			Total Paid ($ Billions)							
	In 1989 $s	In 1999 $s	% Change From '78	In 1989 $s	In 1999 $s	% Change from '78	% Paid All	# Paid All	% Paid All or Some	# Paid All or Some	% of Total Due, Paid
1978	12.6	16.5	0.00	8.1	10.6	0.00	48.9	1674	71.7	2455	64.3
1981	13.7	17.9	8.73	8.4	11.0	3.70	46.7	1888	71.8	2903	61.3
1983	12.5	16.3	−0.79	8.8	11.5	8.64	50.5	2017	76.0	3036	70.4
1985	12.6	16.5	0.00	8.3	10.9	2.47	48.2	2112	74.0	3242	65.9
1987	15.9	20.8	26.19	10.9	14.3	34.57	51.3	2483	76.1	3683	68.6
1989	16.3	21.3	29.37	11.2	14.6	38.27	51.4	2546	75.2	3725	68.7
1991	16.3	21.2	29.00	10.9	14.3	34.91	51.5	2743	75.2	4005	67.1
1993	20.9	27.3	65.52	12.8	16.8	58.36	34.1	2280	69.0	4613	62.7
1995	23.5	30.8	86.86	14.8	19.4	82.82	39.0	2717	68.4	4765	63.0
1997	23.1	30.1	83.01	13.5	17.7	67.28	40.9	2865	67.4	4722	58.8
1999	24.7	32.3	96.14	14.5	19.0	79.47	45.1	3063	73.7	5005	58.7

Average Payment		
In 1989 $s	In 1999 $s	% Change From '78
$2,370.00	$3,098.55	0
$2,080.00	$2,719.40	−12.24

Average Payment		
In 1989 $s	In 1999 $s	% Change From '78
$2,215.00	$2,895.90	– 6.54
$1,892.00	$2,473.61	– 20.17
$2,247.00	$2,937.74	– 5.19
$2,252.00	$2,944.28	– 4.98
$2,045.00	$2,673.64	– 13.71
$1,922.34	$2,513.28	– 18.89
$2,125.62	$2,779.05	– 10.31
$1,933.44	$2,527.79	– 18.42
$2,135.42	$2,791.87	– 9.9

Statement of Theresa Klubertanz, National Association of Disability Examiners, Madison, Wisconsin

The National Association of Disability Examiners (NADE) commends the Committee on Ways and Means for focusing public and congressional attention on *"Waste, Fraud and Abuse"* within the many programs under the Committee's jurisdiction and appreciates the opportunity to present our perspective on this topic.

WHO WE ARE

NADE is a professional association whose mission is to advance the art and science of disability evaluation and to promote ongoing professional development for our members. The majority of our members are employed in the State Disability Determination Service (DDS) agencies and are responsible for the adjudication of claims for Social Security and Supplemental Security Income (SSI) disability benefits. However, our membership also includes personnel from Social Security's Central Office, its Regional Offices and its Field Offices. Included among our members are claimant advocates, physicians, attorneys, and others. The diversity of our membership, combined with our immense program knowledge and our "hands on" experience, enables NADE to offer a perspective that is both unique and reflective of a pragmatic realism.

THE PROBLEM

While it is our firm belief that the vast majority of applicants are not out to defraud these programs, every disability examiner is aware of at least some level of questionable activity on the part of some applicants and/or their representatives. The disability programs are labor intensive and can be difficult to administer. Both medical eligibility and exact payment amounts are determined by complex rules and regulations which can foster an environment for waste from inside the programs and fraud and abuse from outside the programs. Our unique perspective and expertise provides insight into these problems and allows us to offer solutions.

PROGRAM INTEGRITY AND THE DISABILITY CLAIMS PROCESS

For the past decade, SSA has attempted to redesign the disability claims process in an effort to produce a new process that will result in more timely and more accurate decisions. The Agency's success in this endeavor thus far has been minimal. NADE believes that the key to program integrity lies in the basic design of the claims process itself. One of the most important challenges facing the Commissioner of Social Security is the development and subsequent implementation of an effective and affordable disability claims process that will necessarily take into consideration

the need for fair and timely decisions and the need for the American public to have confidence that only the truly disabled are awarded benefits. *The basic design of any new disability claims process should ensure that the decisions made by all components and all decision-makers accurately reflect a determination that a claimant is truly disabled as defined by the Social Security Act.* In previous correspondence with the Commissioner of Social Security and in previous testimony before Congress, NADE submitted a practical proposal for a new design of the disability claims process which we believe ensures that the decisions made by all components and all decision-makers accurately reflect a determination that the claimant is truly disabled as defined by the Social Security Act. We believe that this proposal is both cost effective and is fair to the claimant and taxpayer (NADE testimony presented before the Subcommittee on Social Security on May 2, 2002 and June 11, 2002). For the convenience of this Committee, we have included a copy of our proposal for a new disability claims process as an attachment to this testimony.

Securing the necessary medical, vocational and lay evidence to assess claimant credibility and fully document a claimant's subjective complaints and then accurately determine the degree of functional restrictions is currently a complex, time-consuming process. It will be made even more so in the future with increased focus on functionality in the medical listings. SSA and the Congress must realize the tremendous impact that increasing the need to assess claimant function will have for decision-makers in terms of time and resources. NADE is not opposed to such inclusion but the necessary resources must be provided to adequately cover the additional time and personnel that will be necessary to evaluate claims. The failure of SSA and/or the Congress to address the need for additional resources will lend itself to the development of waste, fraud and abuse in these programs.

Pain and fatigue are legitimate restrictions that can affect an individual's ability to work. As a result, their severity is often the deciding factor in the decision as to whether disability benefits should be awarded. Unfortunately, the lack of any objective method to measure the severity of these symptoms creates opportunities for fraud and abuse. Knowledgeable, well-trained and experienced staff is required to investigate and accurately assess the severity of symptoms such as pain and fatigue. There has been insufficient training of current staff to consider potential fraud and there has been too little attention devoted to the need to retain experienced staff, especially in the DDSs where turnover has been high, so as to not only provide the level of customer service that claimants have a right to expect, but also to provide for a front-line defense against fraudulent claims.

PROGRAM INTEGRITY AND QUALITY ASSURANCE

Program integrity requires accurate and consistent disability decisions from all components in the adjudication process. An effective quality assurance process provides an effective deterrent to mismanagement and fraud in the disability programs. NADE believes that SSA must incorporate a more uniform quality assurance process into the basic disability claims process to ensure program integrity. Program integrity and public confidence is undermined by a quality assurance process that concludes that the disability decisions made by the DDSs to deny benefits are correct but then offers the same conclusion for ALJ decisions that reverses these decisions.

The decision regarding an individual's eligibility for disability benefits should be objective and unbiased. For that reason, NADE has long supported equal federal quality assurance review of both allowed and denied claims at all levels of the adjudicative process. We are concerned with recent SSA and congressional initiatives to require pre-effectuation reviews in 50 percent of State agency allowances of SSI adult cases, "in order to correct erroneous SSI disability determinations . . ." *NADE does not believe that the increased review of DDS allowance decisions represents an appropriate use of scarce resources.* We question the rationale for increasing the federal quality review rate for DDSs, a component that allows approximately 40% of initial claims, while there is no such corresponding review of decisions made at the Administrative Law Judge (ALJ) level, a component that allows approximately 65% of claims. We are not aware of any study that evaluates the end result of claims appealed to the Administrative Law Judge level that were initially allowed by the DDS but later denied after the claim was returned by the federal quality review component. Anecdotal evidence suggests that many of these claims are eventually allowed during the appeals process. We recommend that such a study be authorized. We believe that data from such a study would support the argument that increased federal quality reviews of DDS allowance decisions are not cost effective and actually serve to undermine public confidence in the disability program.

Targeting DDS allowances sends a message to the DDSs to deny more claims, forcing claimants to "pursue their claims to the ALJ level." This "message" only serves to increase the appeal rate and the overall administrative costs of the pro-

gram. In addition, if the review concludes the DDS allowance to be correct, the review process itself delays payment to disabled citizens who are frequently in dire financial straits.

PROGRAM INTEGRITY AND PROCESS UNIFICATION

We believe that the decision as to whether a claimant is disabled and unable to perform any work for which their age, education, and past work experience may qualify them is a medical decision made within parameters that have been defined by law and SSA regulations. As such, these decisions should be made only by those especially trained to make such decisions. Claimants and/or their representatives could possibly present a convincing argument that the claimant is more disabled than is really the case when the individual making the disability decision is not properly trained. Administrative Law Judges receive little medical training but are expected to make decisions as to whether a medical condition is or is not disabling. We believe that the potential for misrepresentation of the severity of a claimant's medical condition is greater at this level and we believe that the high allowance rates by ALJs are partly a reflection of their lack of medical training. Consequently, NADE supports requiring similar medical training for all decision-makers at all components in the disability claims process.

Efforts launched by SSA in the past decade to bring DDS and ALJ decisions closer together have been largely unsuccessful. Process unification was the cornerstone of this effort. Decision-makers in the DDSs and OHA were brought together in 1996 for joint training. However, SSA's failure to follow up on this training initiative in the years since has eroded any potential benefits that may have been derived. NADE believes that such joint training is critical to the ultimate success of anti-fraud efforts and we concur with the opinion expressed by the Social Security Advisory Board that: "The most important step SSA can take to improve consistency and fairness in the disability determination process is to develop and implement an ongoing joint training program for all . . . disability adjudicators, including employees of the State disability determination agencies (DDSs), Administrative Law Judges (ALJs) and others in the Office of Hearings and Appeals (OHA), and the quality assessment staff who judge the accuracy of decisions . . ." (Social Security Advisory Board report, August, 1998, p.19)

PROGRAM INTEGRITY AND THE DEFINITION OF DISABILITY

The General Accounting Office (GAO) has testified that federal disability programs represent an example of a disconnect between program design and today's world. For that reason, it has placed modernizing federal disability programs on its high risk list ". . . in recognition of the transformation these programs must undergo to serve the needs of 21st century America."

In previous correspondence and in testimony presented before the Subcommittee on Social Security, NADE has stated:

NADE does not support changing the definition of disability at this time. Fundamentally, we believe that:

- All who are truly disabled and cannot work should receive benefits
- Those who can work but need assistance to do so should receive that assistance, including comprehensive, affordable health care coverage and medical services
- Vocational Rehabilitation and employment services should be made readily available and claimants and beneficiaries should be properly educated as to the availability of such services and receive needed assistance in their efforts to take advantage of them

SSA's definition of disability has proven to be a solid foundation for a program that has become characterized by increasingly complex changes in its rules and administrative procedures. We believe that, with the expectation of a significant increase in the number of initial claim filings in the coming years while, at the same time, the level of institutional knowledge within the disability program will decrease significantly, this foundation is needed more than ever. *However, we also believe that it is critically important that disabled individuals who have the capacity to return to work, should be identified as early in the process as possible and given the assistance necessary that will make it possible for them to return to work. We acknowledge that this may require changing the definition of disability.* However, any change in the definition will have significant ramifications, not only for those applying for benefits, but also for those who are processing those applications. It is essential that the impact of any changes be fully researched and evaluated. Because of the diversity of our membership and our "hands on" experience, we believe that NADE is in the best position to recognize and assess the potential impact of any

proposed changes in the definition. We offer our expertise to any governmental agency to which Congress would assign the task of researching and evaluating the impact of proposed changes in the definition of disability.

INITIATIVES TO COMBAT FRAUD AND ABUSE

We believe that the resources required to provide for increased pre-effectuation reviews would be better spent at the beginning of the process to ensure that quality information is obtained from the claimant during the initial disability interview. These resources would then be better utilized in ensuring quality throughout the disability decision-making process.

We also believe that a more effective use of resources to ensure program integrity would be to increase the number of Cooperative Disability Investigation (CDI) units which, since the first CDI units became operational in 1998, have allowed SSA to avoid improper payments of nearly $159 million. Rather than sending a message to the public that encourages appeals and increases administrative costs, the message sent to the public would be that it is not worth the risk to try to defraud the program.

CDI units effectively utilize the combined strengths and talents of OIG, disability examiners and local law enforcement, offer a visible and very effective front-line defense for program integrity and serve as a visible and effective deterrent to fraud. Our members have a unique opportunity to observe and assist in the process of detecting fraud and abuse within the disability program. SSA's Inspector General, Mr. James Huse, Jr. has attributed the success of the CDI units to investigate fraud allegations to the efforts of, ". . . those most qualified to detect fraud—DDS adjudicators." NADE supports the continued expansion of the CDI units to combat fraud and abuse in the disability program.

An experienced disability examiner can be one of the most effective deterrents to fraud and abuse. NADE urges Congress and SSA to take the necessary action to ensure that the experience level in the DDSs can be maintained. Adequate resources should be allocated to the DDSs to reward experience and maintain a highly knowledgeable, well-trained, and fully equipped staff.

In addition to providing adequate staff and other resources for administration of the disability program, NADE supports the immediate suspension of benefits in CDR claims where the DDS proposes a cessation of benefits because the claimant has failed to cooperate or cannot be found. Currently, claimants can subsequently appeal these decisions and elect to continue receiving benefits under the benefit continuation provisions. By failing to initially cooperate with the DDS, claimants can continue receiving benefits for many years beyond the time period in which their medical condition made it impossible for them to continue working. Rewarding this type of behavior is hardly beneficial to ensuring program integrity and severely interferes with the proper conduct of the CDR process.

CONCLUSION

NADE supports the removal of SSA's administrative budget from the domestic discretionary spending caps. Congress would continue to retain oversight authority of SSA's administrative budget but it would not have to compete with other programs for limited funds. Removal of SSA's administrative budget from the domestic discretionary spending caps would allow for the growth necessary to meet the increasing needs of the baby boomer generation for SSA's services while allowing the Agency to expand its anti-fraud efforts to ensure program integrity.

NADE is opposed to increased federal quality reviews for DDS Title XVI (SSI) allowance decisions and encourages that these federal quality reviews include an equal percentage of allowance and denial decisions. We also strongly encourage that an equal percentage of allowance and denial decisions made by Administrative Law Judges should be subjected to a federal quality review. To reduce the possibility that claimants may misrepresent the severity of their medical condition at an ALJ hearing, NADE supports increased medical training for administrative law judges and we support having an official representative at these hearings to explain the DDS decision and to pose and address questions and other issues for consideration by the ALJ in making their determinations.

NADE believes that the efforts undertaken by SSA and supported by Congress to combat fraud and abuse are cost-effective and also provide valuable protection to the victims of those who purposely attempt to defraud the program. For this reason, we support the expansion of the CDI units and we support increasing the penalties for unintentional and intentional acts of fraud.

Maintaining program integrity is a vital part of effective public administration and a major factor in determining the public's view of its government. The Social

Security Administration must provide more direction in the development of anti-fraud policies and these policies should reflect pragmatic reality that will make them enforceable. SSA must recognize that more direct guidance is needed from its top levels of management if fraud and abuse are to be effectively curtailed. SSA should be given the congressional support necessary to make the appropriate changes that will recommit the Agency to its primary purposes of stewardship and service.

NADE Proposal for New Disability Claims Process

1. Intake of new disability claims at the Social Security Field Office would not be significantly altered from the current practice with the following exceptions:

   a. Greater emphasis would be placed on the inclusion of detailed observations from the claims representative.
   b. The claimant would be provided with a clear explanation of the definition of disability by the claims representative. The definition would also appear on the signed application.
   c. SSA's web site should clearly indicate that this is a complex process that would be better served if the claimant filed the application in person at the Field Office.
   d. Quality review of the Field Office product would be added to demonstrate SSA's commitment to build quality into the finished product from the very beginning of the claims process.
   e. SSA's outreach activities would combine education with public relations. The Agency's PR campaign would remind potential claimants of the definition of disability with the same degree of enthusiasm as the Agency's efforts to encourage the filing of claims.
   f. Greater emphasis would be placed on claimant responsibility.

2. DDS receipts the new claim and assigns the claim to a disability examiner. The Disability Examiners initiates contact with the claimant to:

   a. The Disability Examiner will verify alleged impairments, medical sources and other information contained on the SSA–3368.
   b. The Disability Examiner will provide a clear explanation of the process and determine if additional information will be needed.
   c. The Disability Examiner will inform the claimant of any need to complete additional forms, such as Activities of Daily Living questionnaires.

3. Expand the Single Decision Maker (SDM) concept to:

   a. Include more claim types
   b. Allow more disability examiners to become SDMs
   c. Standardize national training program for all components of the disability process
   d. Establish uniform criteria for becoming SDMs
   e. Standardize performance expectations for all components of the disability process

4. If the initial claim is denied by the DDS, the denial decision will include an appeal request with the denial notice that the claimant may complete and return to the DDS.

   a. The requirement for a clear written explanation of the initial denial will remain a major part of the adjudicative process.
   b. Process Unification rulings should be reexamined and, if necessary, modified to clarify how the initial disability examiners should address credibility and other issues.
   c. Claimant responsibility will be increased in the new process

5. The denied claim will be housed in the DDS for the duration of the period of time the claimant has to file an appeal. During this period of time, claims could be electronically imaged (with adequate resources—this would further the electronic file concept).

6. The appeal of the initial denial will be presented to the DDS. Upon receipt of the request for an appeal, the claim will be assigned to a new disability examiner. Under this proposal:

   a. This appeal step would include sufficient personal contact to satisfy the need for due process.

b. The appeal decision, if denied, would include a Medical Consultant's signature.
c. The decision would include findings of fact.
d. There would be a provision to include an automatic remand to DDS on appeals for denials based on failure to cooperate.

7. The record should be closed at the conclusion of this appeal (including allowing sufficient time for explanatory process before the record closes).
8. Appeal to the Administrative Law Judge must be restricted to questions of law rather than de novo review of the claim.

a. The DDS decision needs to have a representative included in the hearing to defend the decision.
b. There must be an opportunity to remand to DDS but such remand procedures must be carefully monitored to prevent abuse and remands should only occur for the purpose of correcting obvious errors.

9. There needs to be a Social Security Court to serve as the appeal from OHA decisions.

a. The Social Security Court will serve as the final level of appeal.
b. The Social Security Court will provide quality review of ALJ decision.
c. The Appeals Council would be eliminated, limiting the total number of appeal steps within SSA to three. Appeals beyond the ALJ level would be presented to the Social Security Court.
d. The Social Security court would be restricted to rendering only a legal decision based on the application of the law.

This proposal is submitted to SSA following the unanimous vote of NADE's Board of Directors on February 23, 2002 to endorse this design for a new disability claims process.

Explanation of New Disability Claims Process Proposed by NADE

NADE considered various alternatives to the current disability claims process before deciding on this process as representing the hope for a claims process that truly provided good customer service while protecting the trust funds against abuse. It was our intent to develop a vision for what the total program should look like and not just the DDS piece of the puzzle. We believe in the concept of "One SSA" and our proposal is submitted based on the belief that all components within the disability program should be united in the commitment to providing good customer service at an affordable price. Quality claimant service and lowered administrative costs should dictate the structure of the new disability program.

The critical elements identified in the NADE proposal are:

- The expansion of the Single Decision Maker concept to all DDSs and expanding the class of claims for which the SDM is able to provide the decision without medical or psychological consultant input. Continuing Disability Review cases (CDR's) and some childhood and mental cases can easily be processed by SDMs.
- More early contact with the claimant by the DDS to explain the process and to make the process more customer friendly. The Disability Examiner is able to obtain all necessary information while clarifying allegations, work history, and treatment sources. The claimant is educated about the process so they know what to expect.
- Housing the initial claim folder on denied claims in the DDS pending receipt of an appeal of that denial. This will effectively eliminate significant shipping costs incurred in transporting claims from the DDS to the Field Office and then back to the DDS. Costs of storage in the DDSs would be significantly less than the postal fees incurred by SSA in the current process. Housing the claims at the DDS instead of the Field Offices could save as much as $20 per claim in shipping costs. It will also reduce processing time by eliminating a hand-off.
- Closing the record after the appeal decision is rendered. NADE believes that closing the record prior to any subsequent ALJ hearing is critical to generating consistency, providing good customer service, restoring public confidence and reducing the costs of the disability program. Without it, there will continue to be two programs, one primarily medical and one primarily legal, with two completely different outcomes. We are unclear as to the degree of personal contact that would be required to satisfy the due process requirement at this appeal level and would defer to SSA the decision as to how much contact is needed and how the requirement could be met. Is a face-to-face hearing necessary or can a phone interview suffice? Even the former, conducted in the DDS, would

be substantially less costly than the current hearing before the ALJ. The DDS hearing would allow the claimant to receive a much more timely hearing than the current process allows. NADE also believes that the role of attorneys and other claimant representatives would be significantly diminished as the opportunity for reversal of the DDS decision would be lowered substantially. The DDS hearing would be an informal hearing, lessening the impact attorneys have at this level.

- NADE believes that the current 60 day period granted to claimants to file an appeal should be reexamined in light of modern communication and greater ability of claimants to file appeals more quickly. Reducing the time allowed to file an appeal would produce cost savings to the program and aid the claimant in obtaining a final decision much more quickly.

The additional costs incurred by the DDSs in this new process would be paid for from monies reallocated from OHA and from the cost savings created by less folder movement between the DDSs and the Field Offices. Political decisions will have to be made to reallocate these funds and these decisions will not be popular. Because of turf guarding by the various components within SSA and a general unwillingness to accept change, NADE believes that the victim in past efforts to develop a comprehensive disability claims process has been the claimant. The question must be asked, "Who do we serve, ourselves or the claimant?"

NADE envisions a claims process that would reinforce the medical decision made by the DDS and limit the OHA legal decision to addressing only points of law. NADE believes this proposal would produce a high level of consistency for the disability decisions rendered by the DDSs while significantly reducing the opportunities for OHA to reverse DDS decisions. This would help restore public confidence in the system, provide good service to the claimant and reflect good stewardship since the entire process should prove to be less costly than prototype or the traditional process. The decision as to whether a claimant is disabled would rightfully remain primarily a medically based decision. Claimants who appeal the DDS decision to an ALJ would be entitled to hire legal counsel if they wish. SSA would have an official representative at any such hearing to define the merits of the DDS decision. Unless the law was incorrectly applied, the DDS decision would be affirmed. Any appeal of the ALJ decision would be made to the Social Security Court and either side could appeal.

The proposal is predicated on the assumption that sufficient staffing and resources would be made available to the DDSs. It is also predicated on the need for SSA to clearly define the elements that will satisfy the process unification initiatives. It is critical that SSA should provide clarification of what steps must be followed and provide the funds necessary or modify these rulings in accordance with practical experience.

The current prototype experiment was begun in ten states nearly four (4) years ago. Although this process has since been modified and the claimant conference portion of this experiment abandoned, it still continues in force for those states affected. Clearly, an exit strategy for those states involved in this experiment must be developed quickly and a new disability claims process put into place nationwide that will avoid the ongoing necessity of SSA having to operate two distinctly different disability programs. Significant training and reallocation of resources will be needed. Therefore, it is imperative that decisions are made as soon as possible as to what course of action is deemed acceptable.

Thank you.

Statement of Michael Lorsbach, On Point Technology, LaGrange, Illinois

As a 27 year veteran of Unemployment Insurance adjudication and fraud investigations, I deeply appreciate your continuing efforts to resolve issues of waste, fraud and abuse of the Unemployment Insurance (UI) program. In my discussions with UI agency staff, I can definitely state that the impact of the House Committee on Ways and Means taking responsibility for aggressively resolving these issues has been dramatic. In years past I have heard comments referring to programs to combat UI fraud as "window dressing" or more cleverly "an island off the coast of UI". But you have turned the tide. It seems everyone now is discussing how to increase program integrity and reduce fraud and abuse.

Secretary Chow recently announced the release $4.8 million "aimed at long-standing overpayment problems and is part of an aggressive departmental plan to address fraud, waste and abuse in the unemployment insurance system." This money

has been earmarked for auditing UI claims and payments against New Hire (Report of Hire) files and against Social Security Administration files. An additional grant was also made available for other special detection activities.

The state UI agencies and in particular their Benefit Payment Control (BPC) units, which are responsible for the detection, processing, and collection of improperly paid benefits, are much abuzz with discussions of where the fraud lies and how to detect it. There are discussions about data mining and finding fraud in many places. Presentations have been made at UI conventions on the presence of organizations dedicated to defrauding the program. The DOL grants will result in the discovery of new and expanded sources of fraud.

But while fraud *detection* is one of the hottest topics in UI, there is as of yet little attention being given to the myriad additional steps required before the problem can be solved. Detecting potential overpayments is not difficult, nor is the detection of potential fraud. However, an overpayment is not an overpayment and a fraud is not a fraud until a determination has been made according to state law; how this long and often complex traversal from potential to actual is handled will determine whether efforts to achieve a successful program to control fraud and abuse will ultimately succeed or fail.

At the beginning of the process, use of intelligently developed detection algorithms ensure that investigations of potential fraud achieve the highest possible success rate. Considerable historical data exist which are studied in order to constantly improve the selection process. Cross-matching of benefits with wages has been employed for decades to detect overpayments and fraud. As new weapons, such as New Hire matching and Social Security Number verification are brought into the battle, experience gained over the years becomes critical to making these detection techniques as accurate as possible.

Despite being armed with the assurance that the potential cases detected are those most likely to yield overpayments, the effort founders unless resources exist to carry the investigations forward. Any BPC manager across the nation would agree that the number of fraud determinations made could be easily doubled if only they had the resources to investigate and adjudicate more of these cases. However, the process is not simple and can be incredibly labor intensive. Information must be elicited from employers, with multiple requests for the same information often required. The returning data must be expertly interpreted. Claimants and employers are sent notices and determinations. Interviews might be scheduled and conducted. All case activity must be tracked, with reports sent regularly to management to ensure efficiency. And, most complex of all, each adjudication issue must be resolved in accordance to state law. Even cases detecting the smallest of overpayments—or no overpayment at all—require that adjudication be conducted. In fact, using the New Hires registry or the SSA match to stop benefits before the occurrence of an overpayment could well result in some of the most complicated adjudication of all.

In this day and age, adding resources almost always means enhancing a computer system, not hiring additional staff. However, a significant number of states are still using a variation/rewrite or modification of a system distributed to the states in 1974 by the Employment and Training Administration. In some states this system collapsed during Y2K and nothing has replaced it. A system which efficiently automates significant portions of the fraud overpayment detection and determination processes will enable a state to realize dramatic increases in the amount of overpaid benefits detected and ultimately returned to the Trust Fund.

Solutions exist. It has been State proven that a six fold increase in overpayment detection and processing, with no increase in staff, is a perfectly realistic goal. The adjudication process that commonly takes from one to two hours per case can be automated so that over 50% of cases are completely computerized with another 35% of cases taking 10 minutes or less. The return on investment for such software is in excess of 100% per month. It was in 1974 that the ETA last funded software upgrades to attack the problem of unemployment insurance fraud and abuse.

You have states' attention. The DOL has redesigned state goals establishing integrity and the reduction of fraud and abuse as a priority. The states are now working on how to implement this policy. Adjudication case management software is the final step in the solution to reducing fraud and abuse in the unemployment insurance program.

Thank you for this opportunity to respond to your inquiry.

Statement of Margaret Paul, Redlands, California

As a school psychologist in an inner city area with an estimated 84% poverty rate, I routinely get pressured by parents to label their children as handicapped. In many cases, this is not done so they can help their children with their disability, but so the family can get their "crazy money". If a child is getting a monthly check because he cannot read, then what is the motivation in helping him improve his reading? Many times the parent does not want to hear about the results of their child's evaluation as much as they want "some papers" to help get SSI. It would be a far better idea for school-aged children to receive some sort of vouchers for counseling or tutoring or equipment which could be obtained at authorized centers. I am concerned that we are not only wasting some of our funds this way, but also that it promotes the creation of children who are labeled handicapped early in life and who are encouraged to continue to qualify as such by their dependence at an early age on "the system".

Let me also clarify that there are many families of disabled children that truly need and use SSI appropriately. These are the families that would do anything to help their children be functioning members of society and able to live independently. I can assure you that they would not mind that some of the SSI benefits would be in the form of vouchers so as to maximize their benefits, because they are the ones that access tutoring, counseling, etc. and do not consider the money a paycheck.

I know it is difficult to implement change. However, I wish there was some way to require parents of school aged children who want and eventually receive SSI benefits to document what they are actually doing with the money that is to be used for their child's handicapping condition. Another option (which I am inclined to believe is happening somewhat due to increased parental demand and some threats) would be to tighten the criteria and amount of money a child receives; i.e. a mild articulation disorder does not qualify for a monthly check.

Thank you for your attention.

Statement of William L. Spence, Ben Lomond, California

It's been noted in California, at least, that the child support enforcement program—among all governmental activities—is second only to the public school system in terms of the number of children whose lives it touches.

Supporting one's children financially and nurturingly is a solemn duty commanding the highest priority: first for parents as individuals, and second for the community as a social and institutional matrix—and when it must at times take a more involved interest. Sadly it is only one of several fronts on which the nation is in too great a measure currently failing its children.

Current child support policy, federal and state—both shaped overarchingly by federal law and regulations under Title IV–D of the Social Security Act—is based in significant part on serious misconstruals of problem areas and misdiagnoses of root causes, occasioned in part unfortunately by the distorting effects of short-sighted concerns which have all along been accorded inordinate influence in its construction.

The California 'Collectibility Study' (E. Sorensen et al., *Examining Child Support Arrears in California,* March 2003, http://www.childsup.cahwnet.gov/pub/reports/2003/2003-05collectbility.pdf) is the most comprehensive and probing investigation of its kind to date: it makes clearer than ever what's long been suspected, and paints a picture differing sharply from that that has animated federal policy. Daddy Warbucks is as rare as the condor: instead most chronically-in-arrears child support obligations have been assessed arbitrarily against individuals who have never been financially productive at the level presupposed; in consequence the bulk of casework and enforcement actions are counterproductive: being not only of little assistance but perversely creative of additional, very much un-needed impediments to responsible parenthood.

Moreover, and in particular—but by no means exhaustively—we note:

- The federally mandated professional and driver's license suspension programs have been vastly over-zealously implemented—often to absurd effect.
- In California, and by hearsay in most or all states, the required periodic state guideline reviews have been largely dishonestly conducted; in particular the important charge to examine the economic aspects of child rearing has received at best token observance: guidelines remain as they were set, often hastily and to satisfy political exigencies, when the federal requirement to have one was first imposed.

- Cost reimbursement, and especially the performance incentive formulae, instill a narrow focus on short-term, aggregate collections that almost certainly reduce long-run benefits to many children, and encourage neglect of the often-neediest cases in which the parent's financial prospects promise little in terms of distinction for efficiency to the agency.
- Federal caseworker training, and operations and practices guidelines appear to have contributed to the fostering of a culture of marginalization, denigration, and abuse of "noncustodial" parents, that's highly inappropriate and unbecoming to a responsible governmental agency.

In my view rather urgent Congressional action is in order; thank you for affording me the opportunity to express it.

Statement of James D. Untershine, Long Beach, California

Jim Untershine previously submitted "Family Law Design Review" to the Ways and Means Committee on 07–04–01, during the Welfare and Marriage Hearings.

Jim Untershine holds a BSEE from Mississippi State University and has 13 years experience in feedback control system design while employed by Northrop/Grumman Electronics Division. Mr. Untershine was the Responsible Engineer for the Platform Stabilization and Angle Measurement subsystems used on the B2B bomber, as well as the Attitude subsystem used on the Peacekeeper missile. Mr. Untershine is currently using the Heisenberg Uncertainty Principle and the teachings of Henry David Thoreau (civil disobedience) to expose Family Law in California as the exploitation of children for money and the indentured servitude of heterosexual taxpayers who dare to raise children in this country. (see Appendix Two: "Family Law Baseline", page **10**).

Summary

The Legislature must realize the ways and means by which implements of our own creation are being used as a weapon of mass destruction against our nation's families by organizations that are funded by the US taxpayers.

- The common denominator regarding welfare reform is reducing the number of custodial parents who cannot financially support their children.
- The common denominator regarding violence in our schools and communities is giving the children an authority figure other than teachers or law enforcement.
- The common denominator regarding anything involving church or state is, and forever shall be, our children.
- Promoting "Healthy Marriage" will not be effective in states that financially reward custodial parents (CP) for separating the children from the family breadwinner.
- Promoting "Responsible Fatherhood" will not be effective in states that are allowed to profit by denying custody of the children to the family breadwinner to maximize the cash flow between parents.
- Promoting "Employment of Custodial Parents" will be devastating in states that are allowed to profit by ignoring federal protection of noncustodial parents from employer discrimination due to family law proceedings or judgements to interrupt the cash flow between parents.[1]
- Promoting "Accountability" will not be effective in states that are allowed to profit by allowing state Child Support Enforcement (CSE) agencies to (see Appendix Two: "Family Law Baseline", page **10**):
    - Ignore civil and criminal court orders regarding child support obligations imposed on noncustodial parents (NCP).
    - Ignore filings for enforcement by other CSE agencies regarding child support obligations involving the same children.

[1] USC 42 666 b6D—Provision must be made for the imposition of a fine against any employer who—

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State disbursement unit in accordance with this subsection.

- Ignore court ordered cash transfers from the NCP made directly to the CP.
- Elicit fraudulent amounts of money from NCPs using the US Postal Service.
- Deprive the rights and privileges of NCPs without due process of law across counties, across states, and across oceans.

Welfare System

The welfare system implemented in this country is designed to provide the taxpayer a diminished level of accountability regarding assistance paid to families. Housing subsidies and food stamps that are paid for by the taxpayers can only be used for one purpose, which protects the taxpayers from consumer fraud.

The maximum welfare benefit, provided to families for all states, is reported by the Committee on Ways and Means in Table 7–9 of the 2000 Green Book. The welfare benefits provided by each state are intended to reflect the cost of living in that part of the country. A custodial parent with 2 children could receive welfare benefits as low as $490/month in Alabama or as high as $1,101/month in Alaska (See Figure One: "TANF & Food Stamps", page **7**).

Welfare benefits provided to families across all states, provides the baseline for the cost of raising children. The baseline could be made more accurate if all purchases made by the parent could be itemized and scrutinized to increase taxpayer accountability regarding how their money is spent to support each family (see Appendix One: "Custody Free Child Support", page **9**).

Family Law System

The Family Law system implemented in this country is designed to provide the children with financial support due to the absence of the only parent financially capable of supporting the children. Money paid directly to the CP to support the children represents a projected schedule of restitution that is awarded to the children resulting from the damages incurred by the Family court.

The child support guidelines that specify child support awards demanded of noncustodial parents for all states can be obtained from AllLaw.com (except New Hampshire and Vermont). The child support guidelines demanded by each state are intended to reflect the cost of raising children in that part of the country. A custodial parent with 2 children could receive child support payments as low as $660/month in North Carolina or as high as $1,760/month in California (see Figure Three: "AllLaw.com Child Support Guidelines", page **8**).

ATTENTION: Table 8–2 of the 2000 Green Book entitled "AMOUNT OF CHILD SUPPORT AWARDED BY STATE GUIDELINES IN VARIOUS CASES" is completely erroneous and must be removed, corrected, or enforced. Table 8–2 is a desperate attempt by the Institute for Family and Social Responsibility (FASR) to portray Indiana as the most aggressive child support guideline in the nation. California leads the nation demanding 40% of an NCP's net income for 2 children but is only reported to demand 18% by FASR (see Figure Four: "FASR Child Support vs AllLaw.com", page **8**). FASR is paid by the taxpayers to act as the clearinghouse for CSE statistics and is based out of the University of Indiana at Bloomington.[2]

Family courts have become the delivery vehicle for family destruction, targeting heterosexual taxpayers who dare to raise children in this country. The confidence game that is perpetrated on a "deep pockets" parent involves a "bait and switch" scam regarding due process. The family law system deprives both parents of federally mandated rebutability by forcing both parents to battle for custody. Parents are only allowed to prove to the Family court that the children would be better off with someone else.

The profits made by CSE agencies across the nation can be ascertained to a certain degree of accuracy. The profits made by the Family court is completely invisible regarding attorney fees, custody evaluation specialists, expert witnesses, psychiatrists, and other Family court agencies that thrive on obstructing justice to guarantee further litigation at the expense of the family.

Federal law demands that states review their child support guideline every 4 years, to verify compliance with the federal mandate that allows the state to practice Child Support Enforcement (CSE). Child support guidelines are established by states with the assistance of independent entities that are free to subvert the federal laws to insure the state profits from the exploitation of children for money.

ATTENTION: Policy Studies Inc. (PSI) of Denver, CO was paid by California to perform the 4 year review of the state's child support guideline in 2001 at the be-

[2] Institute for Family and Social Responsibility (FASR), 1315 10th St, Bloomington, IN, http://www.spea.indiana.edu/fasr/

hest of the Judicial branch.[3] PSI was paid by California to investigate the accounting practices of Los Angeles CSE in 2001 at the behest of the Executive Branch.[4] PSI claims to have provided consultation to 49 states, Canada, Australia, Puerto Rico, the Virgin Islands, and Mongolia. PSI aspires to "do socially useful work, have fun, and make money", while attempting "to create an environment where employees can take risks without being punished for their mistakes".[5]

Child Support Enforcement System

The CSE system implemented in this country is designed to provide the taxpayers a diminished level of accountability regarding assistance paid to families that could have been paid for by a parent with the ability to pay. Housing subsidies and food stamps that are paid for by the taxpayers are reimbursed by a noncustodial parent, which protects the taxpayers from welfare fraud.

CSE agencies in every state are paid incentives by the taxpayers for collecting back child support from noncustodial parents. The back child support collected by a state can force the taxpayers to pay as much as 10% of the collection depending on the state's administration costs.[6]

Child support arrearages owed by noncustodial parents are reported by the Office of Child Support Enforcement (OCSE) in Table 76 to total $84 billion across all states in 2000 and is an increase of $8.5 billion from 1999. If all the noncustodial parents miraculously paid off all the child support arrearages, the taxpayers would be forced to pay a total of $8.4 billion in incentives to the respective states who allowed this condition to exist.

The Federal mandate forbids states to forgive any part of a child support arrearage, which usually grows with 10% per annum interest. The longer it takes to collect it, the larger the child support arrearage grows, and the larger the incentive a state earns.

The worst case scenario would involve an NCP that never pays a dime in child support, and is charged 10% per annum interest. After 18 years, the interest alone would equal 95% of the back child support owed.[7] When the current child support charges stop, the child support arrearage increases by adding 10% of the 18 year back child support owed every year.

Aside from the interest driving the child support arrearage up, the child support guideline imposed on NCPs by each state determines the maximum 18 year back child support owed. The taxpayers are forced to pay an incentive on money collected that is over and above the welfare benefits that would be paid to a family for 18 years.

The spirit of the law that begged the creation of welfare reform was to keep families off the welfare roles, not to empower the state to insure a tax-free windfall for custodial parents (CP) and ripping off the US taxpayers to do it. Since the CP is not required to account for the money paid to support the children, the only method by which an NCP or the state can insure the children receive support is to allow the family to remain on welfare.

Child support guidelines that exceed the state's maximum welfare benefits will serve to help the NCP fall behind in payments, while setting the pace for an exorbitant incentive from the taxpayers when the NCP is finally forced to pay years later.

To demonstrate the distinction between the "Welfare Plus" and "Welfare Only" child support guideline philosophies, the distribution of collections follow.

Welfare Plus—Assume that a state's child support guideline exceeds the state's welfare benefits, and the family received welfare for 18 years.

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[3] Judicial Council of CA, *Child Support Guideline Review 2000", Chapter 3, Exhibit 3–13, "Monthly Child Support Order", $369 for 1 child, $662 for 2, $921 for 3.

[4] Greg Krikorian, LA Times, 06–03–01, "County Child Support Program's Accounting Under Scrutiny by State", "Services: Inflated figures could affect funding statewide. A private firm is hired to examine the system"

[5] Policy Studies Inc. (PSI), 999 18th St, Denver, CO, http://www.policy-studies.com/about/about—intro.htm

[6] USC 42 658 (c)—Incentive payments to States

[7] I_{18} = Interest accrued after 18 year child support arrearage

Let CS = Child support owed, n = Increments per year, t_n = Time increment, I_y = Interest per annum

1) NCP = $[1 + I_y * (t_n + n)/(2*n)]*t_n*CS$

2) $I_{18} = I_y*(t_n + n)/(2*n)$ when n = 1 inc/yr, t_n = 18yrs, I_y = 10%/yr

2) $I_{18} = (0.1)*(18+1)/(2*1)$

2) $I_{18} = 0.95$

1) NCP = $[1 + (0.95)]*(18)*CS$

- The state recoups their 30% share of the welfare owed collection and then deducts the state's "Welfare Plus" incentive before distributing the remainder to the US taxpayers.
- The amount distributed to the CP includes the back child support owed, minus the welfare owed, plus the interest on the back child support owed, plus the interest on the welfare benefits that the family received from the US taxpayers.

Welfare Only—Assume that a state's child support guideline is the same as the state's welfare benefits, and the family received welfare for 18 years.

- The state deducts their 30% share of the welfare owed collection and then deducts the state's "Welfare Only" incentive before distributing the remainder to the US taxpayers.
- The amount distributed to the CP includes the interest on the welfare benefits that the family received from the US taxpayers.

California will pay a maximum welfare benefit of $988/month to a family with 3 children, while demanding an NCP to pay 50% of net income ($2,200/month for NCP earning $52,800/year). If a family remained on welfare for 18 years, the distribution after collection would be:

	Welfare Only	Welfare Plus
CP	$202,738	$713,232 [8]
ST	$105,637	$156,686 [9]
US	$107,771	$ 56,722 [10]
NCP	$416,146	$926,640
	44% 18yr net income	98% 18yr net income

Comparing the distribution of collections between the two child support guideline philosophies, it can be seen that the "Welfare Plus" scheme allows the CP to receive a $510,494 increase courtesy of the NCP, while allowing California to receive a $51,049 incentive increase courtesy of the US taxpayers.

Some greedy states will fraudulently exaggerate the welfare owed since there is no summary of welfare benefits paid to the CP. California refuses to adopt a federally approved accounting system which allows the state to fraudulently assault CPs,

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[8] CP = Custodial parent share of child support arrearage collections
Let CS = W*(1 + A), where A = (CS/W—1) and W = maximum welfare benefit
1) NCP = $(1 + I_{18})*(1 + A)*t_n*W$
3) CP = $[A + I_{18}*(1 + A)]*t_n*W$
Let CS=W=988/mo=11,856/yr, A=0, I_{18}=0.95, t_n=18yrs
3) CP = [0 + (0.95)*(1 + 0)]*(18)*(11,856)
3) CP = $202,738
Let CS=2,200/mo, W=988/mo=11,856/yr, A=[(2,200/988) − 1]=1.23, n=1 inc/yr, t_n=18yrs, I_y=10%/yr
3) CP = [1.23 + (0.95)*(1 + 1.23)]*(18)*(11,856)
3) CP = $713,232

[9] ST = State share of child support arrearage collections
Let X=30% of welfare owed as state's contribution, and Y=10% state collection incentive
1) NCP = $(1 + I_{18})*(1 + A)*t_n*W$
4) ST = $[X + Y*(1 + I_{18})*(1 + A)]*t_n*W$
Let CS=W=988/mo=11,856/yr, I_{18}=0.95, A=0, t_n=18yrs,
4) ST = [(0.3) + (0.1)*(1 + 0.95)*(1 + 0)]*(18)*(11,856)
4) ST = $105,637
Let CS=2,200/mo, W=988/mo=11,856/yr, I_{18}=0.95, A=[(2,200/988)—1]=1.23, t_n=18yrs
4) ST = [(0.3) + (0.1)*(1 + 0.95)*(1 + 1.23)]*(18)*(11,856)
4) ST = $156,686

[10] US = US taxpayer share of child support arrearage collections
Let X=30% of welfare owed as state's contribution, and Y=10% state collection incentive.
1) NCP = $(1 + I_{18})*(1 + A)*t_n*W$
5) US = $[(1-X) - Y*(1 + I_{18})*(1 + A)]*t_n*W$
Let CS=W=988/mo=11,856/yr, I_{18}=0.95, A=0, t_n=18yrs
5) US = [(1 − 0.3) − (0.1)*(1 + 0.95)*(1 + 0)]*(18)*(11,856)
5) US = $107,771
Let CS=2,200/mo, W=988/mo=11,856/yr, I_{18}=0.95, A=[(2,200/988)—1]=1.23, t_n=18yrs
5) US = [(1 − 0.3) − (0.1)*(1 + 0.95)*(1 + 1.23)]*(18)*(11,856)
5) US = $56,722

NCPs, and the US taxpayers. California loses $150 million in federal participation every year for the ability to commit financial fraud.[11]

Taxpayers may feel that our legislators should have predicted this inevitable problem of skyrocketing child support arrearages. However, our legislators at the state and federal level are being told that the child support guideline in their state is less than the welfare benefits. California legislators have been misinformed by Policy Studies Inc (PSI) of Denver, CO,[3] while the Ways and Means Committee have been misinformed by the Institute for Family and Social Responsibility (FASR) of Bloomington, IN. (see Figure Four, page **8**).

The US taxpayers are richly rewarding states (that impose an outrageous child support guideline) for perpetuating welfare, encouraging divorce, provoking domestic violence, and driving the only parent capable of financially supporting the children into financial insolvency.

Welfare Solution

Problem Identification

- California reports 26% of all female homicide victims were killed by their spouse.[12]
- States are paid incentives to impose child support obligations on men who are not the father of the child in question.
- Child support guidelines imposed on NCPs are erroneously reported to legislators at the state and federal level.
- States are paid incentives to impose outrageous child support guidelines on NCPs to insure Child Support Enforcement (CSE) involvement.
- States are paid incentives for collecting child support arrearages that exceed the welfare received by the custodial parent (CP).
- CPs are paid the interest accrued on money that never existed as well as the interest on the welfare benefits they received from the US taxpayers.
- Children have no legal right to the money ordered for their support even after they no longer reside with the CP.
- Money received by the CP that is not spent to support the children represents tax-free income and is a form of tax evasion

Damage Control

- Paternity test all children that are the subject of child support orders.
- Release all victims of paternity fraud from child support obligations without denying them contact with the children they chose to mentor.
- Release all NCPs currently being incarcerated for failure to pay if it is obvious they couldn't pay if they wanted to.
- Restore all licenses to NCPs who are supporting children regardless of whether they are making payments to CSE.

Corrective Action

- Perform paternity establishment upon the birth of any child in this country.
- Implement the "Custody Free" child support system (see Appendix One, page 9).
- Audit each state to establish the actual financial demands being imposed on NCPs pursuant to the state's child support guideline.
- Audit each state's family code to verify compliance with the federal mandate with regard to protecting NCPs paying child support from employer discrimination prior to CSE involvement.[1]
- Assign redundant "Watchdog" agencies to verify statistics that are intended to provide legislative visibility of the effects of the laws on their constituents.
- Homicide statistics in each state must relate victims and assailants who are the biological parents of the same child, regardless of whether they are married.

Level of Involvement

- Identify independent entities that are paid by state taxpayers to poison the antidote to the welfare disease that has been prescribed by our Legislature.
- Identify independent entities that are paid by US taxpayers to cover up the effects of an out of control family law system to our Legislature.

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[11] CA Governor's Budget Summary 2002–03, "Health and Human Services", CSA, pg 191

[12] CA Dept. of Justice—"Homicide in California—2000", Chart 15, "Gender of Victim by Relationship of Victim to Offender"

- Identify Secretaries that have sabotaged the intent of the federally mandated child support guideline review by "silencing or eliminating all advocates of change amongst those who advise legislation".[13]
- Identify Judicial bodies who knowingly allow the misapplication of the federal law to provide the means to exploit children for money.
- Identify Attorney Generals who refuse to enforce laws uniformly throughout their state.
- Identify state Governors who advocate paternity fraud for profit.[14]

[13] Daniel Drummond, Washington Times, 08–04–01, "Professor Ousted from Child Support Panel", "HHS Secretary Rossiter dismissed political science professor Stephen Baskerville from the 2001 Virginia Triennial Child Support Guideline Review panel"

[14] Jasmine Lee, Daily Breeze, 09–28–02, "Davis vetoes tests to ID dads", "PATERNITY: Men forced to support children not their own say bill would have offered relief. They vow to fight on"

Figure One.—

TANF & Food Stamps Benefits

Source: Table 7–9 Green Book

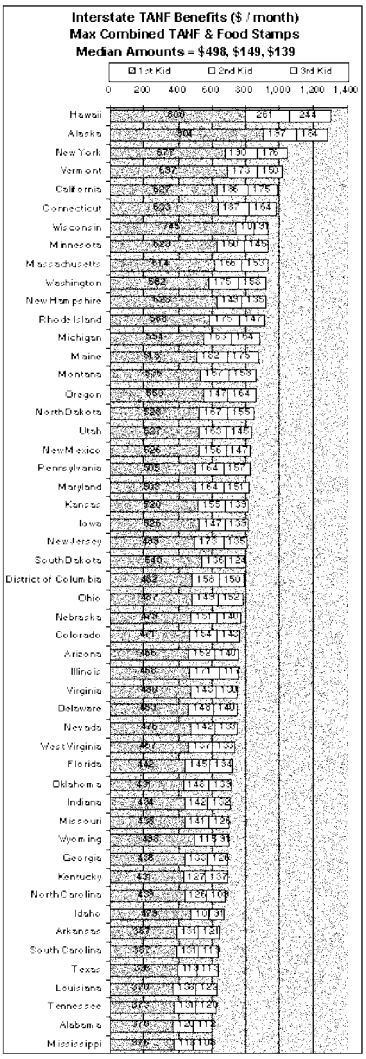


Figure Two.—

TANF Benefits vs Child Support Awards

Source: Table 7–9 Green Book

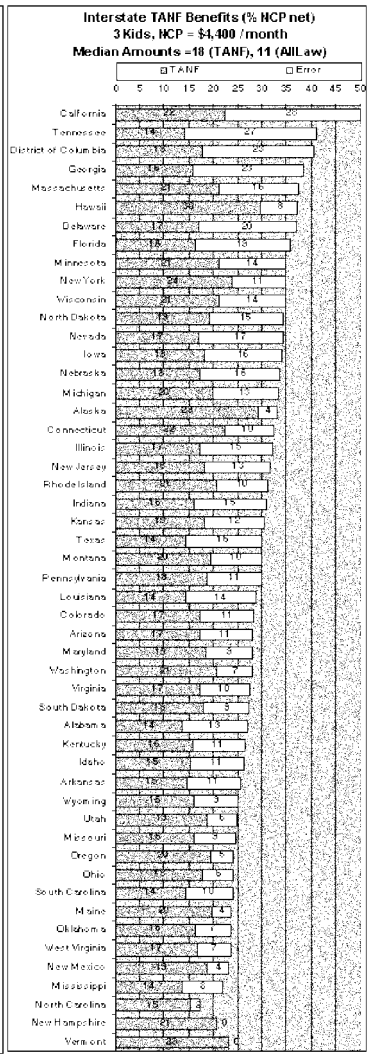


Figure Three.—

AllLaw.com Child Support Guidelines

Source: AllLaw.com

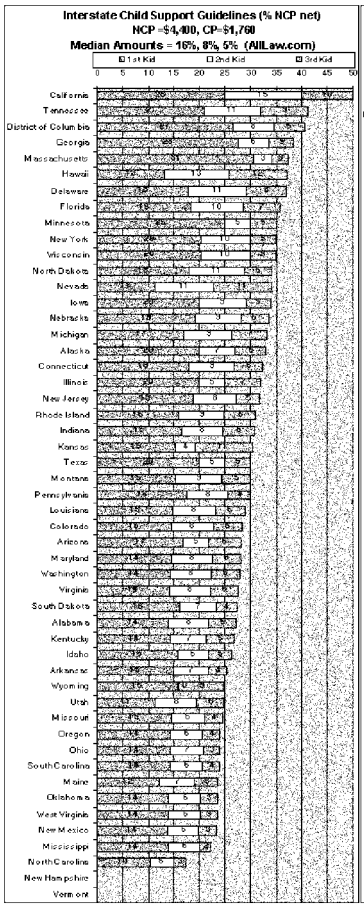
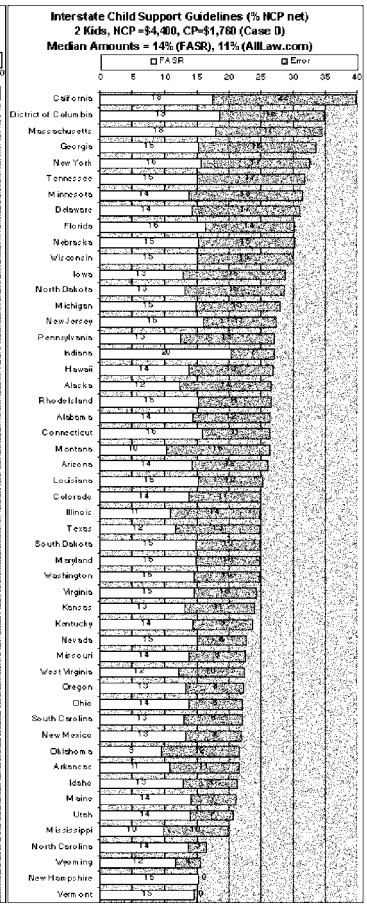


Figure Four.—

FASR Child Support vs AllLaw.com

Source: Table 8–2 Green Book, AllLaw.com



Appendix One: Custody Free Child Support

Source: James Untershine

"Custody Free" child support is "Welfare Reform" and is designed to allow parents to remain financially solvent, but it also serves to remove the motivation for separation. It not only provides accountability of money paid to support the children for a particular family, it also provides data that can be used to estimate the cost of raising children for a family of this type. Since either parent can access the money set aside to support the children, then it really doesn't matter who has custody, provided the money is being spent to support the children.

A family that is functional before separation should be allowed to function after separation. Developing a history of a particular family's costs of raising children will eliminate any surprises after separation. The following credit card account can be set up by parents upon the birth of their child, rather than waiting until after separation.

Cardholders—Parents and/or Children.

Depsitors—Parents, Employers, Health Insurance Providers, and Government Agencies.

Summary Recipients—Parents, Arbitrator, and Government data gathering Agencies.

Charges—Credit Card Company itemizes all authorized charges and charges back any unauthorized charges to the offending cardholder. Point of Sale (POS) software can allow itemization of all purchases to be charged to the account rather than the transaction total.

Restrictions—Parents and Arbitrator enter into an agreement of authorized charges intended to support the children. The contributions of each parent may be decreased if funds exceed a certain level or can be rolled over to a college fund account.

Authorized Charges—The purpose of the "Custody Free" account is to establish a baseline for expenditures in supporting the children. Food, Clothing, School Supplies, etc will be included as authorized charges. Rent, Utilities, Services, etc can be agreed upon by the parents as well as any other expenses that they may deem necessary. A case of beer, a carton of cigarettes, or a crate of condoms would be charged back to the offending cardholder, thereby increasing the contribution amount for that cardholder.

The Arbitrator—The Arbitrator is not necessarily the Family Court, or Child Support Enforcement. The Arbitrator could be a recognized representative from the Credit Card Company, Church, Employer, School, or any Privatized Agency. The Arbitrator will be responsible for resolving any issues regarding funds not deposited into the account as agreed, or disputes regarding inappropriate charges, or if it appears that the children are naked and starving. The Arbitrator can allow welfare money to flow into the account to make up for unemployment of a parent or other irregularities that may threaten continuity of child support. The Arbitrator can issue actions against employers who fail to make scheduled contributions and act immediately to protect a parent from employer discrimination regarding child support withholding.

Government Agencies—Government Agencies that may make deposits to the account include Welfare, Unemployment Insurance, Disability Insurance, Internal Revenue Service, etc. Government Agencies that receive the Account Summary are data gathering agencies (US Census, USDA, etc) that would only have visibility as to the statistics regarding a family of this type, rather than who this family actually is.

"Roll it up" Parenting—In the event of separation the family residence stays intact and one parent resides there until they have to "Roll it up" and stay somewhere else. The children continue to reside at the family residence and the parents take turns residing with them. The parenting rotation will be agreed on by the parents or ordered by the Arbitrator. Dad doesn't have to relocate his workshop, garden center, or workout equipment, and Mom doesn't have to recreate her culinary empire, or abandon her masterpiece of interior design. The kids keep their room, their toys, their friends, and continue to go to the same school.

The "Separation Station"—Parents who must "Roll it up" may choose to stay at the state of the art housing complex, subsidized by the taxpayers and those who have been ordered to pay restitution resulting from their exploitation of children for money. With a "Gold Club" on one side and a "Chippendales" on the other, this sprawling oasis is guaranteed to provide the means by which a parent can "sow their wild oats" in the name of "getting it out of their system". This "Club Med" for parents will allow them to discover what they have been missing, or realize what

they took for granted. Classes available to "Roll it up" parents include relationship, parenting, sex therapy, and anger management, as well as career counseling, job training, and job placement services. For the more extreme cases there is drug rehabilitation, psychotherapy, and jail.

Appendix Two: Family Law Baseline

Source: James Untershine

The data that follows is a report generated by a database of evidence that was obtained by a California NCP refusing to negotiate with a Family Law system holding hostages (ie. Never lie, never say no, never instigate issues, never refuse hostage release, never run away, and never pay). Full discovery available upon request.

Data suggests that both Los Angeles and Monterey CSE agencies await child support arrearage to reach $70,000 before requesting NCP to appear in criminal court. Los Angeles County CSE waited 666 days while Monterey County CSE waited 1,264 days.

Defendant = James D. Untershine
LBSC = Los Angeles County (Long Beach) Superior Court, Case #ND019431
NGESD = Northrop Grumman Electronic Systems Division, Employee #76724
LAMC = Los Angeles County Municipal Court, Case #9CR04751
MCSC = Monterey County Superior Court, Case #0020776

ID_	Date	Milestone	StepDate	Stepstone	Step
	1995				
577	02-01-95	Separation (LBPD)	12-20-80	Marriage (Defendant)	5,156
195	02-07-95	Restraining Order (LBSC)	02-01-95	Separation (LBPD)	6
200	02-22-95	Separation Petition (LBSC)	02-01-95	Separation (LBPD)	21
197	02-22-95	Custody Order (LBSC)	02-01-95	Separation (LBPD)	21
205	05-09-95	Wage Assignment (LBSC)	02-01-95	Separation (LBPD)	97
090	05-09-95	Evaluation Order (LBSC)	02-01-95	Separation (LBPD)	97
	1996				
278	03-24-96	UIO Benefits Req (NGESD)	05-09-95	Wage Assignment (LBSC)	320
265	10-04-96	Employment Term (NGESD)	05-09-95	Wage Assignment (LBSC)	514
	1997				
012	04-17-97	Enforcement Req (LACBFSO_DA)	10-04-96	Employment Term (NGESD)	195
	1998				
223	11-24-98	Dissolution Marriage (LBSC)	02-01-95	Separation (LBPD)	1,392
	1999				
023	02-12-99	Appearance Req (LACBFSO_FSR)	04-17-97	Enforcement Req (LACBFSO_DA)	666
262	03-12-99	Support Establish (LBSC)	02-01-95	Separation (LBPD)	1,500
193	03-12-99	QDRO Requested (LBSC)	02-01-95	Separation (LBPD)	1,500
101	03-26-99	Arrest Warrant (LAMC_080)	02-12-99	Appearance Req (LACBFSO_FSR)	42
002	07-31-99	Enforcement Req (MCDA)	10-04-96	Employment Term (NGESD)	1,030
001	07-31-99	Credit Report (MCDA)	10-04-96	Employment Term (NGESD)	1,030
183	08-12-99	Incarceration (Defendant)	03-26-99	Arrest Warrant (LAMC_080)	139
330	08-28-99	Credit Report (LACBFSO_NCP)	10-04-96	Employment Term (NGESD)	1,058
104	09-15-99	Plea Entered (LAMC_080)	08-12-99	Incarceration (Defendant)	34
105	09-16-99	Incarceration Release (LAMC_080)	08-12-99	Incarceration (Defendant)	35
220	10-14-99	Enforcement Req (MCSC)	10-04-96	Employment Term (NGESD)	1,105
007	11-09-99	Support Req (MCDA)	10-04-96	Employment Term (NGESD)	1,131
172	11-15-99	QDRO Completed (NGBS)	03-12-99	QDRO Requested (LBSC)	248
	2000				
400	01-29-00	Hostage Released (Complainant)	02-01-95	Separation (LBPD)	1,823
307	02-22-00	License Suspended (BWI)	10-04-96	Employment Term (NGESD)	1,236
	2001				
525	03-15-01	Sentencing (LAMC_271)	09-15-99	Plea Entered (LAMC_080)	547
406	03-30-01	Probation (LAMC_271)	09-15-99	Plea Entered (LAMC_080)	562
438	08-13-01	License Suspended (CADMV)	10-04-96	Employment Term (NGESD)	1,774
478	11-14-01	Probation (LAMC_271)	09-15-99	Plea Entered (LAMC_080)	791
483	12-20-01	Credit Report (LACBFSO_DA)	10-04-96	Employment Term (NGESD)	1,903
	2002				
486	01-01-02	Credit Report (LACBFSO_DA)	10-04-96	Employment Term (NGESD)	1,915
548	01-04-02	Wage Assignment (LACBFSO_DA)	02-01-95	Separation (LBPD)	2,529
495	01-26-02	Wage Assignment (MCDCSS)	02-01-95	Separation (LBPD)	2,551
526	03-15-02	Complaint Rs In Req (Defendant)	01-15-02	Audit Requested (CADAG)	59
561	04-04-02	Wage Assignment (LACBFSO_DA)	02-01-95	Separation (LBPD)	2,619
544	05-03-02	Complaint Invest (LACBFSO_NCP)	03-15-02	Complaint Rs In Req (Defendant)	49
546	05-08-02	State Hearing Req (Defendant)	05-03-02	Complaint Invest (LACBFSO_NCP)	5
583	05-08-02	Incarceration (LAMC_080)	03-26-99	Arrest Warrant (LAMC_080)	1,139
543	05-13-02	Incarceration Release (LACJ)	05-08-02	Incarceration (LAMC_080)	5
559	06-12-02	Complaint Invest (CADSS_SHO)	03-15-02	Complaint Rs In Req (Defendant)	89
654	06-26-02	Hostage Released (Complainant)	02-01-95	Separation (LBPD)	2,702
615	12-19-02	State Hearing Dec (CADSS_SHO)	05-08-02	State Hearing Req (Defendant)	225
	2003				
656	03-31-03	Appearance Req (MCDA)	10-14-99	Enforcement Req (MCDA)	1,264
658	04-25-03	Arrest Warrant (MCDA)	03-31-03	Appearance Req (MCDA) 25 3,005	71,523

Statement of Bill Wood, Charlotte, North Carolina

A personal submission not on behalf of anyone else and these are my own views.

ROOTS OF THE AMERICAN CULTURE AND COMMUNITY IN DISARRAY

Political leaders, religious leaders, conservatives, families (especially fathers), judges, and interested lawyers, along with the vast majority of Americans who believe in ideals of family and country must understand that open WAR HAS BEEN DECLARED ON THEM AND THIS COUNTRY. And it's coming from many of the institutions that our taxes are funding and supporting! In terms of financial and human costs this war on America has been the most destructive war in America's history.

> When Nikita Kruschev banged his shoe on the table and declared, 'We shall destroy you from within' during the infamous "Kitchen Debate"—he knew what he was talking about.
>
> [Comparing the culture of the 50's to that of 1998] violent criminal offenses have exploded upward by 700%. Premarital sex among 18 year olds has jumped

from 30% of the population to 70%. Tax rates for a family of four have skyrocketed 500%, consuming a fourth of their income. Divorce rates have quadrupled. Illegitimate births among black Americans has soared—from approximately 23% to more than 68%. Illegitimacy itself has jumped from a nationwide total of 5% to nearly 30% nationwide—a rise of 600%. Cases of sexually transmitted diseases have risen 150%. Teen age pregnancies are up by several thousand percent and teen suicides have risen by 200%. Between 1950 and 1979—serious crime committed by children under 15 has risen by 11,000% . . .

Most Americans would agree that our society has changed for the worst over the last 30 years." [i]

While there has been progress in moving people off of the welfare rolls and into work, welfare still exists and many commentators note it exists to promote the breakdown of the family. A myriad of today's social ills can be traced to the breakdown of the family and the undermining of marriage. Some of the testimony about the devastation of American families as a result of today's culture war can be seen in several pieces of testimony I have submitted to the Human Resources Subcommittee:

- US House Testimony on Welfare Reform Reauthorization Proposals, H.R. 4090. April 11, 2002, 109 citations or references—consequences of welfare practices on the family unit, and exploration of the 1996 welfare reform bill's requirements for strengthening families and marriage (http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/4–11–02/records/billwood.htm)
- US House Testimony on Teen Pregnancy prevention PRWORA, Public Law 104–193 (Hearing 107–48). November 15, 2001, 43 citations and references—effects of fatherlessness and divorce on teen pregnancy. (http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/11–15–01/Record/wmwood.htm)
- US House Testimony on Child support and Fatherhood proposals (Hearing 107–38). June 28, 2001, 83 citations or references—Social consequences of failed divorce and child custody policies (http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/6–28–01/record/chillegalfound.htm)—Father absence, a byproduct of divorce, illegitimacy, and the erosion of the traditional family, is responsible for; filling our prisons, causing psychological problems, suicide, psychosis, gang activity, rape, physical and sexual child abuse, violence against women, general violence, alcohol and drug abuse, poverty, lower academic achievement, school drop-outs, relationship instability, gender identity confusion, runaways, homelessness, cigarette smoking, and any number of corrosive social disorders.
- US House Testimony on The "Hyde-Woolsey" child support bill, HR 1488 (Hearing 106–107, pages 94–103). March 16, 2000, 75 Citations.

Concerning problems with nearly every state's child support guidelines. Along with this testimony, I have written legal briefs for the Federal District Court on the unconstitutionality of Ohio's custody laws, a legal brief opposing psychology in the courtroom, and am developing an extensive historical review of the rise of our current "family" law system. During several years of research, a disturbing common thread continues to appear, tracing it back to its origins, it led to one Antonio Gramsci.

THE PERSONAL IS THE POLITICAL

In 1926, an Italian communist named Antonio Gramsci ended up in Mussolini's prison after a return from Russia. While there, he wrote his "prison notebooks" and they laid out a plan for destroying Western faith and culture. His plans included ways to undermine and discourage Westerners through the intentional collapse of the existing social structure from within.

Gramsci advocated not only Marxist class warfare, which was economically focused, but also social and cultural warfare at the same time. His theories and the "slow march through the culture" (or institutions) which he envisioned to destroy the West are enshrined in current American social policy. His theories surrounding "hegemony" and a "counter-hegemony" were designed to destroy Western social structure and overthrow the "West" from within.

Hegemony, as defined by Gramsci is that widely accepted system of values, morals, ethics, and social structure which holds a society together and creates a cohesive people. Western social structures holding society together (i.e. "the hegemony")

[i] King, Jennifer. Who are the Real Radicals? Rightgrrl, December 1998. A brief exposition of Antonio Gramsci http://www.rightgrrl.com/jennifer1.html

include: authority, morality, sexual restraint, monogamous marriage, personal responsibility, patriotism, national unity, community, tradition, heredity, education, conservatism, language, Christianity, law, and truth. His theory called for media and communications to slowly co-opt the people with the "counter-hegemony" propaganda message.

> ". . . Hegemony operates culturally and ideologically through the institutions of civil society which characterises mature liberal-democratic, capitalist societies. These institutions include education, the family, the church, the mass media, popular culture, etc." [ii]

Through a systematic attack of these institutions he termed the "slow march through the culture," Gramsci theorized that once these institutions were sufficiently damaged the people would insist on an end to the madness allowing totalitarian control of the Western world. A similar form of these theories was tried before America by the National Socialists (Nazis) headed by Hitler.

Many of the Gramscian Marxist Communist ideals have been implemented in government, education, and law. In practice, women have become the vehicle deceived and used in this quest to tear down and destroy Western culture. This has been done by enlisting their help in ripping apart marriage and the traditional family.

> Since economic Marxism was a failure, Gramsci reasoned that the only way to topple . . . Western institutions was by, what he called, a "long march through the culture." He repackaged Marxism in terms of a . . . "cultural war" . . .
>
> "Gramsci hated marriage and the family, the very founding blocks of a civilized society. To him, marriage was a plot, a conspiracy . . . to perpetuate an evil system that oppressed women and children. It was a dangerous institution, characterized by violence and exploitation, the forerunner of fascism and tyranny. Patriarchy served as the main target of the cultural Marxists. They strove to feminize the family with legions of single and homosexual mothers and 'fathers' who would serve to weaken the structure of civilized society."
>
> . . . [A]nother cultural Marxist (George Lukacs) brought the Gramscian strategy to the schools . . . As deputy commissioner in Hungary . . . his first task was to put radical sex education in the schools . . . it was the best way to destroy traditional sexual morality, and weaken the family. Hungarian children learned . . . free love, sexual intercourse, and the archaic nature of middle-class family codes, the obsolete nature of monogamy, and the irrelevance of organized religion which deprived man of pleasure. Children were urged to deride and ignore . . . parental authority, and precepts of traditional morality. If this sounds familiar, it is because this is what is happening in our public . . . schools.
>
> . . . Under the rubric of 'diversity,' its hidden goal is to impose a uniformity of thought and behavior on all Americans. The cultural Marxists, often teachers, university professors and administrators, TV producers, newspaper editor and the like, serve as gatekeepers by keeping all traditional and positive ideas, especially religious ideas, out of the public marketplace.
>
> Herbert Marcuse was largely responsible for bringing cultural Marxism to the United States . . . He believed that all taboos, especially sexual ones, should be relaxed. "Make love, not war!" was his battle cry that echoed through ivy-covered college campuses all over America. His methodology for rebellion included the deconstruction of the language, the infamous "what does 'is' mean?" which fostered the destruction of the culture. By confusing and obliterating word meanings, he helped cause a breakdown in the social conformity of the nation, especially among the . . . young of America . . .
>
> Marcuse said that women should be the cultural proletariat who transformed Western society. They would serve as the catalyst for the new Marxist Revolution. If women could be persuaded to leave their traditional roles as the transmitters of culture, then the traditional culture could not be transmitted to the next generation.
>
> What better way to influence the generations than by subverting the traditional roles of women? The Marxists rightfully reasoned that the undermining of women could deal a deadly blow to the culture.
>
> If women were the target, then the Cultural Marxists scored a bullseye . . . Women have traded the domestic tranquility of family and the home for the power surge of the boardroom and the sweaty release of casual sex. Divorce

[ii] Strinati, Dominic (1995), An Introduction to Theories of Popular Culture, pg. 168–169. Routledge, London.

> court statistics, wife and child abandonment, abortion and even spousal murder can be laid at [the feminists] doorstep to a large degree.[iii]

Careful study and review shows that Gramscian Marxist Communism encompasses today's "feminist" movement.[iv] Feminism's goals are to use women to undermine and destroy the culture by abandoning marriage and by not carrying on the critical task of "transmitting the culture" to the next generation. Today's feminists use women to advance the destruction of women, children, and families while convincing them they are somehow a "victim" of the patriarchal structure. And the patriarchal structure is nothing but Orwellian NewSpeak for the social structures and institutions that have kept Western civilization together long before the social decay we see today.

America's socialists and communists make no pretenses about their goals to promote the destruction of a cohesive society by advancing a welfare state and the complete breakdown of the family. Socialists have openly adopted the "counter hegemony" taught by Gramsci which is designed to destroy Western culture. "[T]he stronger the 'counter-hegemonic' strength of unions and left parties, the stronger the welfare state . . . When we argue for 'decommodifying' (i.e., taking out of private market provision) such basic human needs as healthcare, childcare, education, and housing, we have in mind a decentralized and more fully accountable welfare state then [sic] exists in Western democracies."[v] This statement comes from one of the MANY American college professors indoctrinating students today. As noted by William Gregg in the New American:

> Writing in the Winter 1996 issue of the Marxist journal *Dissent*, Michael Walzer enumerated some of the cultural victories won by the left since the 1960s:
>
> - "The visible impact of feminism."
> - "The effects of affirmative action."
> - "The emergence of gay rights politics, and . . . the attention paid to it in the media."
> - "The acceptance of cultural pluralism."
> - "The transformation of family life," including "rising divorce rates, changing sexual mores, new household arrangements—and, again, the portrayal of all this in the media."
> - "The progress of secularization; the fading of religion in general and Christianity in particular from the public sphere—classrooms, textbooks, legal codes, holidays, and so on."
> - "The virtual abolition of capital punishment."
> - "The legalization of abortion."
> - "The first successes in the effort to regulate and limit the private ownership of guns."
>
> Significantly, Walzer admitted . . . these victories were imposed upon our society by "liberal elites," rather than . . . "by the pressure of a mass movement or a majoritarian party." These changes "reflect the leftism or liberalism of lawyers, judges, federal bureaucrats, professors, school teachers, social workers,

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[iii] Borst, William, Ph.D. American History. A Nation of Frogs, The Mindszenty Report Vol. XLV–No. 1 (January 2003) Cardinal Mindszenty was imprisoned by the Nazi's and later by the Communists in Hungary. Online version can be seen at http://www.mindszenty.org/report/2003/mr_0103.pdf

[iv] "Marxism and Feminism are one, and that one is Marxism" Heidi Hartmann and Amy Bridges, The unhappy marriage of Marxism and Feminism.—opening page of Chapter 1, Toward a Feminist Theory of the State. **Catharine A. MacKinnon**, 1989, First Harvard University Press (paperback in 1991)

"Sexuality is to feminism what work is to Marxism . . ." —Toward a Feminist Theory of the State. **Catharine A. MacKinnon**, 1989, First Harvard University Press. Page 3

Feminism, Socialism, and Communism are one in the same, and Socialist/Communist government is the goal of feminism.—Toward a Feminist Theory of the State. **Catharine A. MacKinnon**, 1989, First Harvard University Press. Page 10

"Our culture, including all that we are taught in schools and universities, is so infused with patriarchal thinking that it must be torn up root and branch if genuine change is to occur. Everything must go—even the allegedly universal disciplines of logic, mathematics, and science, and the intellectual values of objectivity, clarity, and precision on which the former depend." A quote from Daphne Patai and Noretta Koertge, "Professing Feminism: Cautionary Tales from the Strange World of Women's Studies" (New York, Basic Books, 1994), p. 116

[v] Schwartz, Joseph. Toward a Democratic Socialism: Theory, Strategy, and Vision. Joseph Schwartz, a member of the National Executive Committee of the Democratic Socialists of America, teaches political science at Temple University.

journalists, television and screen writers—not the population at large," noted Walzer . . . [T]he left focused on "winning the Gramscian war of position."

Cultural commentator Richard Grenier [notes Gramsci formulated] "the doctrine that those who want to change society must change man's consciousness, and that in order to accomplish this they must first control the institutions by which that consciousness is formed: schools, universities, churches, and, perhaps above all, art and the communications industry. It is these institutions that shape and articulate 'public opinion,' the limits of which few politicians can violate with impunity. Culture, Gramsci felt, is not simply the superstructure of an economic base—the role assigned to it in orthodox Marxism—but is central to a society. His famous battle cry is: capture the culture."

Gramsci recognized that the chief [obstacles] impeding . . . the triumph of Marxism were . . . those institutions, customs, and habits identified by Washington and the other Founding Fathers as indispensable to ordered liberty—such as the family, private initiative, self-restraint, and principled individualism. But Gramsci focused particularly on what Washington described as the "indispensable supports" of free society—religion and morality. In order to bring about a revolution, Gramsci wrote, **"The conception of law will have to be freed from every remnant of transcendence and absoluteness, practically from all moralist fanaticism."** [vi]

Gramsci's Marxist communist philosophy, with its goal and aim to completely destroy "Western" civilization is best summed up in the feminist phrase "THE PERSONAL IS THE POLITICAL!"

FAMILY LAW, CHILD SUPPORT, AND WELFARE FROM MARXISM?

Many people would be shocked to learn that much of the current "family law" system we have today, which is at the heart of so much of our modern social upheaval and America's "welfare state," was born in the Soviet Union. Still more shocking would be the revelation that when the Soviet Union discovered its system was a disastrous failure, it instituted serious reforms in the early 1940's to try to restore the family and the country. The Soviets made these changes when fatherlessness (which included children from divorced fathers) reached around 7 million children and their social welfare structure (day cares, kindergartens, state children's facilities, etc.) was overburdened. Yet in America, some studies suggest that we are approaching 11 or 12 million such children. All the while, the social and financial costs of welfare and fatherlessness are just now gaining more widespread attention. America's fatherlessness crisis is primarily by judicial making with the cooperation of the legions of lawyers and bureaucrats who profit from family destruction which rips America apart.

Unfortunately, the Soviet reforms came too late and never brought about the extent of social reconstruction that would have allowed recovery from its self-inflicted social destruction. It was unable to stave off its widely celebrated collapse when the Berlin wall came down. Even though the Soviets tried in vain to restore the social values they had worked so hard to eradicate, America only pays "lip service" to much-needed massive social reform. Serious social reform has been largely absent from political debate. On the other hand, the systematic deconstruction of all of the social values that had made our nation great is being pursued passionately as one of our nation's primary socio-political goals.

"Family law" is one of the key tools of the "counter-hegemony" which is used to advance the social welfare state through the promotion of the social structural collapse of America. The early Soviet system focused on personal happiness and self-centered fulfillment with its roots in class warfare. When it was determined that this type of class warfare directed at the family was a complete failure, the Soviets worked quickly to restore the traditional nuclear family in the 1940's. Shortly after this, the NAWL (National Association of Women Lawyers) began their push for adopting these failed Soviet policies in America.[vii] America's version of "family law" has adopted much of the early Soviet failed version of class warfare, while adopting new and more insidious Gramscian versions with gender, cultural, and social warfare components.

[vi] Grigg, William. Toward the Total State. **The New American Vol. 15, No. 14. July 5, 1999. http://www.thenewamerican.com/tna/1999/07–05–99/vo15no14_total.htm**

[vii] Selma Moidel Smith, A Century of Achievement: The Centennial of the National Association of Women Lawyers, pg 10. (1999); See also ABA's Family Law Quarterly, 33 Fam. L.Q. 501, 510–511. Family Law and American Culture—Women Lawyers in Family Law, Section B. *The Crusade for* No-Fault Divorce. (Fall, 1999)

> When the Bolsheviki came into power in 1917 they regarded the family . . . with fierce hatred, and set out . . . to destroy it . . . [O]ne of the first decrees of the Soviet Government abolished the term "illegitimate children" . . . by equalizing the legal status of all children, whether born in wedlock or out of it . . . The father of a child is forced to contribute to its support, usually paying the mother a third of his salary in the event of a separation . . . At the same time a law was passed which made divorce [very quick] . . . at the request of either partner in a marriage . . .
>
> [Marriage became a game where it] was not . . . unusual . . . for a boy of twenty to have had three or four wives, or for a girl of the same age to have had three or four abortions. [T]he peasants . . . bitterly complained: "Abortions cover our villages with shame. Formerly we did not even hear of them."
>
> Many women . . . found marriage and childbearing a profitable occupation. They formed connections with the sons of well-to-do peasants and then blackmailed the father for the support of the children . . . The law has created still more confusion because . . . women can claim support for children born many years ago.
>
> . . . Both in the villages and in the cities the problem of the unmarried mother has become very acute and provides a severe and annoying test of Communist theories.
>
> . . . Another new point was that wife and husband would have an equal right to claim support from the other . . . The woman would have the right to demand support for her child even if she lived with several men during the period of conception; but, in contrast to previous practice, she or the court would choose one man who would be held responsible for the support. Commissar Kursky seemed especially proud of this point because it differed so much from the "burgeois customs" of Europe and America.
>
> Another speaker objected to the proposed law on the ground that some women would take advantage of its liberal provisions to form connections with wealthy men and then blackmail them for alimony.[viii]

The Federal Government continues to participate by paying the states incentives encouraging them to practice these draconian Soviet style, anti-family, child destroying policies. What a frightening use of our "tax dollars at work" to undermine and destroy the social order of America. Even going so far as to pay incentives on a slightly reformed version of Article 81 of The Russian Family Code. This was promoted in the United States by Irwin Garfinkel as "The Wisconsin Model" for child support and welfare reform. "The Wisconsin Model then became a center-piece for the national child support and welfare reform movement." [ix]

ADOPTING THE FAILED SOVIET ATTEMPT TO DESTROY THE FAMILY

Instead of our constitutionally guaranteed "Republican form of government," we now have a thoroughly entrenched Marxist Communist judiciary in the civil court system masquerading as "family law." America's family law courts are no longer about the law, they represent complete perversions of numerous legal maxims and common law traditions that American law was founded upon.[x] These abandoned maxims represent the "hegemony" of American culture and historical tradition in civil family matters. The reprehensible evil of being rewarded for one's wrongs, and of punishing the innocent have been firmly entrenched in the state's family courts.

No-fault divorce, "the child's best interests," and other components of family law in America were imported from the worst of the Soviet family law system. For example from a 1975 Louisville Law School review:

> "Few members of the American legal community are aware of the fact that the Soviet Union has had, for some period of time, what can be described as

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[viii] The Atlantic Monthly; July 1926; The Russian Effort to Abolish Marriage; Volume 138, No. 1; page 108–114.

[ix] **The Child Support Guideline Problem**, Roger F. Gay, MSc and Gregory J. Palumbo, Ph.D. May 6, 1998.

[x] *Jus ex injuria non oritur.* 4 Bin 639—A right cannot arise from a wrong; *Lex nemini operatur iniquum; nemini facit injuriam.* Jenk. Cent. 22.—The law works injustice to no one; does injury to no one; *Lex deficere non potest in justitia exhibenda.* Co. Lit. 197.—The law cannot be defective in dispensing justice; *Lex non deficit in justitia exhibenda.* Jenk. Cent. 31.—The law is not defective in justice; *Commodum ex injurie sue non habere debet.* Jenk. Cent. 161.—No man ought to derive any benefit of his own wrong; *Lex non favet delicatorum votis.* 9 Co. 58.—The law favours not the vows of the squeamish; *Nemo punitur sine injuria, facto, seu defalto.* 2 Inst. 287.—No one is to be punished unless for some injury, deed, or default; *Legis constructio non facit injuriam.* Co. Lit. 183.—The construction of law does no injury; *Nemo punitur sine injuria facto, seu defalto.* 2 Co. Inst. 287.—No one is punished unless for some wrong act or default

a no-fault divorce legal system . . . [A]t a meeting with a group of Soviet lawyers in 1972, one of them asked, 'Is it for a long time that you (California) have that system?' When informed of the January 1, 1970 effective date of the California law she remarked, 'I think it is the influence of our law . . . [T]here are a number of similarities between Soviet and California divorce laws that suggest a "borrowing" or a remarkable coincidence.' (pg 32)

"For the Bolsheviks, with their Marxist disdain for religion, the influence of the ecclesiastical authorities over the family was an outrage. Since the family represented the major institution through which the traditions of the past were transmitted from generation to generation, the new regime had to destroy the old bourgeois notions of the family and the home. There was also a very urgent practical reason for disassociating family relations from the influence of the religious authorities . . . [T]he first task of the new regime in relation to the family was to break the power of the church and the husband." (pg 33)

"Birth alone was declared the basis of family ties, and all legal discrimination against illegitimate children was abolished . . . Early Soviet policy was intended to attack these evils [of "patriarchy"] and to transfer the care, education and maintenance of children from home to society. This would mean the end of the family's socialization functions, and would remove the child from the conservative atmosphere of the patriarchal family to a setting that could be entirely controlled by the regime." (pg 34)

The Soviet press reported in the mid-thirties that promiscuity flourished . . . juvenile delinquency mounted, and statistical studies showed that the major source of delinquents was the broken or inattentive home . . . Additional public homes for children were established, and propaganda campaigns sought to persuade the public that a strong family was the most communistically inspired one. (pg 38, 39)

There was also the matter of seven to nine million fatherless and homeless children, according to Russian estimates of the early twenties. In derogation of Marxist ideology, the state had been unable to assist single mothers, and there existed almost no children's homes, nurseries or kindergartens. Because of more pressing tasks and limited personnel and material resources the state had not been able to fulfill the conditions Engels had specified for extrafamilial facilities. (pg 40)

More seriously, anti-family policies were leading to a situation where many children in the first Soviet urban generation simply lacked the kind of socializing experience to fit them intellectually or emotionally to the new society the regime was attempting to build, with its emphasis upon self-discipline and control, perseverance, steadiness, punctuality and accuracy. While the family influence had been undermined, extrafamilial agencies had failed to provide a workable substitute, leaving the child prey to the noxious and deviant influences of "the street." (pg 41)[xi]

The US Library of Congress Country Studies on Romania also shows direct parallels noting;

"Family law in socialist Romania was modeled after Soviet family legislation . . . [I]t sought to undermine the influence of religion on family life. [Previously] the church was the center of community life, and marriage, divorce, and recording of births were matters for religious authorities. Under communism these events became affairs of the state, and legislation designed to wipe out the accumulated traditions and ancient codes was enacted. The communist regime required marriage to be legalized in a civil ceremony at the local registry prior to, or preferably instead of, the customary church wedding.

Because of the more liberal procedures, the divorce rate grew dramatically, tripling by 1960, and the number of abortions also increased rapidly. Concern for population reproduction and future labor supplies prompted the state to revise the Romanian Family Code to foster more stable personal relationships and strengthen the family. At the end of 1966, abortion was virtually outlawed, and a new divorce decree made the dissolution of marriage exceedingly difficult.

INDOCTRINATING LAWYERS AND JUDGES TO DESTROY AMERICA

Gramsci wrote, **"The conception of law will have to be freed from every remnant of transcendence and absoluteness, practically from all moralist fanaticism."** Law schools across America teach Gramscian "critical theory" as well

[xi] No-Fault Divorce: Born In The Soviet Union? University of Louisville School of Law, Journal Of Family Law. Vol. 14, No. 1 (1975). ppg. 32–41

as other communist ideals. A Westlaw or Lexis search reveals not just dozens, but hundreds and hundreds of legal articles, law reviews, and other materials on feminism, homosexuality, and various forms of Gramscian class "victimology."

> "The revolutionary forces have to take civil society before they take the state, and therefore have to build a coalition of oppositional groups united under a hegemonic banner which usurps the dominant or prevailing hegemony." [xii]

Today's Gramscian Marxists have numerous "oppositional groups" headed by lawyers and promoted by judges and bureacrats. They advance such "counter-hegemonic" (culturally corrosive and culturally destructive) positions as homosexuality, abortion, the complete FRAUD of the non-existent "separation of church and state," the (it only applies to destroying marriage and relationships) Violence Against Women Act, "outcome based education," and the fictitious "global warming." They passionately HATE the initiatives that undermine their attempts to destroy America such as Title IX reform, Faith based initiatives, the 300 million for marriage, vouchers and accountability for education reform, and the Ten commandments along with ANY other reference to a moral Judeo-Christian code, and private property rights.

High profile court rulings openly display this Gramscian Marxist theory in practice: the attack on the pledge of allegiance, the ACLU suing Judge Roy Moore over the Ten Commandments, and the recent Lawrence v. Texas pro-homosexual ruling. At the root of all of these rulings and many others is a violation of the judge's oath to uphold the constitution. That constitution says that we have a Republican form of government, NOT a socialist or communist form.

CONCLUSION

Today's Marxist Communists operate in law, government, religion, media, entertainment and education. They use Orwellian NewSpeak with words such as "tolerance" which actually means intolerance of things that prevent the destruction of all social structures and societal "norms". Gramscians preach the religion of division, class warfare and social warfare while spouting their hatred of anything traditional, conservative, moral, or values centered—their battle cry is "the personal is the political." They want all of Western culture completely destroyed and centralized government control erected in the place of the structure they seek to tear apart and discard. The fruits of the culture war they have engaged on America can be seen in the corrosive remnants of broken families, broken children, filled prisons, and a host of other ills underwritten by America's taxpayers.

Those who deeply care about this country and our constitution must fearlessly engage in this culture war—; the war for America's heart and soul. It's not too late yet. There is still a critical mass and majority of Americans who are not ready for the horrors of the type of communism or national socialism that Gramscians promote. No form of Marxism or communism (even its most radical form of National Socialism) has ever survived without totalitarian control. If the support were there for these Marxist Communists and National Socialists, history has shown that they would not hesitate to attempt a forceful or violent overthrow of American government.

"If the family trends of recent decades are extended into the future, the result will be not only growing uncertainty within marriage, but the gradual elimination of marriage in favor of casual liaisons oriented to adult selfishness. The problem . . . is that children will be harmed, adults will probably be no happier, and the social order could collapse." [xiii] "In his book, The American Sex Revolution, Harvard sociologist Pitirim Sorokin reviewed the history of societies through the ages, and found that none survived after they ceased honoring and upholding the institution of marriage between a man and a woman."[xiv] Marcus Tullius Cicero, in a speech in the Roman senate recorded by Sallust said;

> "A nation can survive its fools and even the ambitious. But it cannot survive treason from within. An enemy at the gates is less formidable, for he is known and he carries his banners openly against the city. But the traitor moves among those within the gates freely, his sly whispers rustling through all alleys, heard in the very halls of government itself. For the traitor appears no traitor; he speaks in the accents familiar to his victim, and he wears their face and their garments and he appeals to the baseness that lies deep in the hearts of all men.

[xii] Strinati, Dominic (1995), An Introduction to Theories of Popular Culture, pg. 169. Routledge, London.

[xiii] David Popenoe, "Modern Marriage: Revisiting the Cultural Script," Promises to Keep, 1996, p. 248.

[xiv] Linda Bowles. Damage for the Children. June 13, 2000. Worldnet Daily online.

He rots the soul of a nation; he works secretly and unknown in the night to undermine the pillars of a city; he infects the body politic so that it can no longer resist. A murderer is less to be feared. The traitor is the plague."

POLICY IMPLICATIONS

Gramsci's "march through the culture" can be turned back once the roots and methods are known. Recognizing the foundations of the current class and culture warefare, promoted in many levels of government, law, religion, media, and education provides relatively easy answers to solve these problems and to turn back the tide of the curruption and desturction.

- Institute non-coercive national unity and patriotism in public policy. The national unity issue destroys the divisive class warfare while reviving patriotism helps to restore some of the "hegemony" the Marxists so passionately hate.
- Mandate abstinence training in schools for states to receive health funds. Stop allowing the natural inhibitions of children to sexual advances to be torn down by the current trend of pro-sexual education brought to them by their teachers who are also authority figures.
- Conservative politicians should take some of their campaign time and effort to tap into and lobby for more than just money. Conservatives must lobby large businesses to partner with inner city churches and schools to create programs of opportunity in disadvantaged areas. This takes the race baiting and class warfare issue away from the left, and gets socialist government programs out of the involvement in people's lives.[xv]
- Tie clear mission statements to EVERY government program and agency which include: promoting traditional marriage and family, restoring national pride, reducing divorce, reducing illegitimacy, promoting abstinence, and encouraging strong morals and values. Force a public debate on these issues and it will destroy the liberal Marxist establishment. Ever since welfare reform the liberal establishment has been slowly crumbling. Press the issues and accelerate their demise.
- CAREFULLY identify several congressional staff members who have a proven track record of being pro-family, with proven integrity, and have shown a level of frustration over today's social problems. Assign them to a special research project to study Gramsci's version of Marxist communism and how it has been implemented in America. Publish their reports and develop strategies based on those reports. (And if the lefties cry "McCarthy," let the public debates begin! An honest reading of McCarthy's record completely vindicates him and exposes them!)
- Press the Judiciary committee to amend Title 18 of the US Code to create provisions stating that no state or federal judge shall have any form of immunity whatsoever for engaging in actions which produce or promote taxpayer fraud. For any such act or acts, they shall be subject to both criminal prosecution and they shall be subject to suit in their personal capacity. Let the judges and lawyers scream about "independence" and then insist that they must interpret "independence" to mean that they should be free to break the law and commit fraud against the taxpayers of the United States.
- If Title 18 cannot be amended, then insert the provisions under Title 42 related to the Public Health and Welfare.
- End taxpayer funding of PBS. Expand libel and slander laws to include distortions, manipulations, or unbalanced reporting in television and cable news programs. Let the trial lawyers have a field day with the liberal media.
- Codify in the USC the mission of senior level bureaucrats and their guiding principles with explicit provisions noting personal liability for not adhering to these provisions. Codify the requirement for annual reports by heads of agencies demonstrating how they have complied with these requirements. For example:
  - Make the HHS Director's mission something like "to work to restore traditional marriage and family while reducing the number of single-parent and broken families who need to collect welfare or child support." Make it a mandatory reporting requirement on how this mission is being fulfilled.

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[xv] A similar program which has been very successful is DAPCEP (the Detroit Area Pre-College Engineering Program http://www.dapcep.org/). The difference is that a program to undermine Gramsci should have BOTH parent's involvement as its centerpiece. While it would be ideal if they were married, requiring BOTH parents is a start in the right direction.