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HEARING ON IMPACTS OF BORDER SECURITY AND IMMIGRATION ON WAYS AND MEANS PROGRAMS

HEARING

BEFORE THE

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

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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HEARING ON IMPACTS OF BORDER SECURITY AND IMMIGRATION ON WAYS AND MEANS PROGRAMS

WEDNESDAY, JULY 26, 2006

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

The Committee met, pursuant to notice, at 2:00 p.m., in room 1100, Longworth House Office Building, Hon. Bill Thomas (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
July 19, 2006
FC–25

CONTACT: (202) 225–1721

Thomas Announces Hearing on Impacts of Border Security and Immigration on Ways and Means Programs

Congressman Bill Thomas (R–CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing to review the impact of current and proposed border security and immigration policies on programs in the Committee's jurisdiction. **The hearing will take place on Wednesday, July 26, 2006, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 2:00 p.m.**

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:

Immigrants to the United States are an essential part of the fabric of our nation. They contribute to our economy and participate in our society in countless ways as they work, pay taxes, raise their families, and utilize many of the same public services and benefits that are available to all Americans.

However, lax border security and inadequate enforcement of immigration laws has contributed to a substantial increase in illegal immigration. Since the last major immigration reform legislation was enacted twenty years ago—the Immigration Reform and Control Act of 1986 (P.L. 99–603)—the estimated number of illegal immigrants in the United States has nearly quadrupled, from 3.2 million in 1986 to 12 million in 2006. Illegal immigration and proposals to address it affect our Nation's benefit programs, health care costs, and tax system.

Under current law, immigrants living in the United States are required to pay taxes; however, illegal immigrants may not obtain benefits from many entitlement programs or utilize certain tax advantages. For non-citizens living legally in the United States, access to many benefits is restricted, based on their immigration status. Therefore, legislative proposals that would legalize certain illegal immigrants or increase legal immigration would result in increased spending for Social Security, Medicare, other benefit programs, and for refundable tax credits, including the Earned Income Tax Credit. These legislative proposals would also increase revenue from taxes paid by new immigrants who start working in the United States or newly-legalized immigrants who want to come into compliance with the law.

The lure of employment opportunities in the United States has long been acknowledged as a significant incentive for immigration. Enforcing the law prohibiting employers from knowingly hiring illegal workers is essential to securing our borders. Many Federal agencies play a role in identifying unauthorized work or penalizing employers who hire illegal immigrants, including the Social Security Administration (SSA) and the Internal Revenue Service. Some legislative proposals would require employers to check the SSA and the U.S. Department of Homeland Security databases to verify employees' identifying information and employment eligibility, and would expand data sharing between agencies to improve enforcement of immigration laws. Although these proposals would assist in bolstering workplace enforcement if enacted, they would also place administrative burdens on employers and the

SSA. In addition, these proposals affect the privacy of tax information and could discourage voluntary tax law compliance.

In announcing the hearing, Chairman Thomas said, "Our first priority is to secure our borders and enforce our laws. Next, we must carefully consider how proposals to modify immigration policy, including those that would legalize millions of illegal immigrants, would affect Social Security and other benefit programs, our health care system and tax revenues. The actions we take today will have a profound impact on America's economy and society, and we must take the time to do it right. We need a comprehensive, long-term solution that recognizes the important role immigrants play in our society and economy, while ensuring there is respect for the rule of law."

FOCUS OF THE HEARING:

This hearing will focus on the effect of immigration and border security-related proposals on the costs and administration of certain entitlement programs within the jurisdiction of the Committee on Ways and Means (including Social Security, Supplemental Security Income, Medicare, Temporary Assistance for Needy Families), and the effect on tax revenues and compliance.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "*109th Congress*" from the menu entitled, "*Hearing Archives*" (*http://waysandmeans.house.gov/Hearings.asp?congress=17*). Select the hearing for which you would like to submit, and click on the link entitled, "*Click here to provide a submission for the record*." Once you have followed the online instructions, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You ***MUST REPLY*** to the email and ***ATTACH*** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business Wednesday, August 9, 2006. **Finally**, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item 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. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

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

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission 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. Good morning. Actually, it tells you where I've been and what I've been doing. Good afternoon.

Time flies when you're having fun. I apologize for starting the hearing just a few minutes late, but the subject matter, I think, is important because the Committee will examine the impact of immigration on programs in this Committee's jurisdiction. This hearing is part of a broader effort to enact meaningful immigration reform that clearly begins at our borders.

The House and the Senate approved very different immigration bills in recent months. Both bills contain an important issue in the Committee's jurisdiction, namely, the system by which employers would verify the employment eligibility of their employees. The Senate bill also includes other provisions within the jurisdiction of this Committee.

Today what we're going to try to do is to begin with a broad look at the effect of illegal immigration and its impact on our Committee jurisdiction to focus on modifying whatever proposals we deal with, to be able to maximize those agencies and Departments that are going to need to administer whatever it is that the House and the Senate finally agree to do.

The last time, and some folks weren't here, the last time Congress addressed immigration reform was in the eighties, and it was clear that, because of what I believed to be fundamental flaws in the legislation, ultimately that effort did not stem the tide of illegal immigration, and produced, I believe, certain adverse effects that, through experience, we don't want to repeat.

Clearly there were unanticipated consequences at time. What we're going to try to do through these and other hearings is to minimize the chance of that occurring. So, here we are again considering how to reform our laws, and how to better enforce our borders, and at the same time, insure our economy. This, I assume, is a point that people will not argue, that our economy has a sufficient workforce to maintain the country's economic growth.

It goes without saying that this country was built by immigrants, with enormous contributions from Native Americans. Today, still, immigrants are a critical part of our Nation's history and our economy, and, frankly, I would say they are an important part of our psyche, in terms of a land of opportunity.

Part of the problem, though, is that a Nation State can't really be a Nation State if it cannot provide external security and internal order. The internal order starts at the border. Our inability to enforce the security of our own laws has contributed to a significant increase in illegal immigration. The amount of that increase is, in large part, in question, and it's obvious, overwhelmingly, illegal immigrants come here because they want to work.

Ultimately, in dealing with Mexico, for example, the solution is to create an economic environment in Mexico, so that the citizens

of that country come here to visit because they want to, not because they have to. Some of them even pay taxes. Some of them are, frankly, exploited. Frankly, some of them exploit America's public programs. One of the things we want to examine is try to get facts out of an awful lot of myth that exists in terms of who uses resources and to what extent.

All of these are issues that should be examined. We obviously have to strike some kind of a balance that understands the role of immigrants. It will go so far as to examine the current laws in which immigrants are legally admitted, as well as dealing with issues trying to address illegal immigration.

Respect for the law is extremely important, but good stewardship of public benefit programs is as important, as well. This general hearing is hopefully going to produce either some additional Subcommittee hearings or more focused hearings on the part of the full Committee in the direction of those areas of jurisdiction of the Subcommittees that would allow us to shed some light.

With that, I recognize the gentleman from New York, Mr. Rangel, for any opening statement he may wish to make.

Mr. RANGEL. Thank you, Mr. Chairman.

First of all, when you talked about the contributions of immigrants and Native Americans, you excluded the slaves, which, in some of our opinions, without that free labor, the economy—the country and the economy could not have survived. I know——

Chairman THOMAS. Chairman. Yield?

Mr. RANGEL. Yes?

Chairman THOMAS. He's absolutely correct, and the Chair appreciates the correction.

Mr. RANGEL. Thank you. When I heard that we were going to join the rest of the House Committees to talk about border security, I could not think that you could have been as creative as you are now.

So, with this distinguished panel, may not have much to do with the political issue of border security, but it will be helpful for us to determine the impact of the various bills that are being debated in the House and the Senate. One bill, of course, will just build a fence, and the sum concept is just to have low-cost labor to come in, in order to help out the recreational, and the entertainment, and the agriculture Committees, and, I guess, others. Others is a combination of both.

So, I guess we will find out from each of you what would the economic impact be on the programs under your jurisdiction. Mr. Everson, I am concerned with how we're going to tax whichever group of people are allowed to become legal, and also concerned as to whether or not immigration policy, as it exists today, whether or not is there's any investigation of those people that hire illegals on a large scale.

I have the impression that we are really inviting people to come into the United States by giving them jobs. Know where they work and what they do, and we know how essential that service is. Knowing how sharp the Internal Revenue Service (IRS) is in trying to get illegals to pay taxes, I'd be interested to know what effort, if any, is ever made to determine from employers whether or not the employees are illegal, or should they be paying taxes, and then

what would happen if they did come in under one of the programs, whether we could get some taxes from them if they had this quasi-legal position.

So, this is going to be very, very interesting, and I thank the Chair for his imagination. I was really prepared to deal with terrorists crossing the borders, but this may be more substantive, even though it won't have anything to do with border security, to find out just where the Administration is on all of this, and what the impact is going to be, and, perhaps, get some of your recommendations and suggestions as to which one of the programs you might think would be best for America as you see it. I yield back the balance of my time, Chairman Thomas.

Chairman THOMAS. Thank you, gentleman. I do want to remind my colleague from New York that, although these hearings shouldn't be used for personal reasons, the Chairman voted "No" on the House bill, and I believe the structure of the Senate bill is not implementable the way it's structured. If we are honestly going to address the issue, I think we have to examine the contents of the House bill and the Senate bill to make sure that when we act we act in a way that we can actually address the problem, instead of some kind of a political response to a very real human and economic problem.

I just want to put it on that basis, because it was very difficult, as you might imagine, for the Chairman of the Committee on Ways and Means to vote "No" on the House proposal. So, I understand, and I don't mean this in a totally pejorative sense, a degree of cynicism on the part of folks in terms of what we're doing. As far as I'm personally concerned, I'm looking for answers, and this hearing is structured, and I think other hearings may need to be structured if we can't get some answers out of this hearing, to be able to move forward in trying to resolve this issue, since so much of the impact of the question does hit the jurisdiction of this Committee.

Gentleman from New York.

Mr. RANGEL. I think you may have answered it, but I think you're joining with me in saying that this panel could help clarify, for members that are here, as to which one of the pending bills or concepts would be best for the country, after we hear their answers.

Chairman THOMAS. My goal, primarily, would not be to try to pick between pieces of legislation, one of which I expressed in a vote that I thought was flawed, and, I've just indicated verbally to you, the other one probably doesn't work, either.

I want to hear from the people who are responsible for implementing programs about the impact of illegal immigration on those programs, what they might have as a response to dealing with some of those issues, but also beginning to address the more fundamental conflict that we have in this system, where we're to a very great degree schizophrenic, as the gentleman from New York indicated, in which we say we're not supposed to hire illegals, but, frankly, as the President said over and over again, especially in certain industries, we can't function without illegals, and I think that's schizophrenic.

I think we have to be honest in addressing what options we have in front of us that are real, that will assist us in moving forward

in as humanitarian way as possible in resolving the fact that the United States does not have control of its borders.

Mr. RANGEL. Thank you.

Chairman THOMAS. Thank you. I want to thank the panel for being here, and I hope that additional response, if you weren't quite clear on what we wanted to do, was to begin a process, which, as I said, may require additional hearings, and, in large part, relying on what you have to say, may indicate where we have to go.

The first member, and I'll just go from our left to your right, Hon. Wade F. Horn, Assistant Secretary for Children and Families, U.S. Department of Health and Human Services; Hon. Julie Myers, Assistant Secretary for U.S. Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS); Hon. Mark W. Everson, Commissioner, IRS; the Hon. Jo Anne Barnhart, Commissioner, Social Security Administration (SSA); and my friend Tom Gustafson, Deputy Director, Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services.

We will have a second panel following this panel. Your testimony has been submitted and made a part of the record, and you may address us in any way you see fit in the time that you have. We'll start with you, Mr. Horn, and then we'll just move across the panel.

STATEMENT OF THE HONORABLE WADE F. HORN, ASSISTANT SECRETARY FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. HORN. Thank you, Mr. Chairman. Mr. Chairman, Mr. Rangel, and Members of the Committee, I am very pleased to appear before you today to discuss benefits to immigrants under the Temporary Assistance for Needy Families (TANF) program.

The TANF program, as you know, is a $16.5 billion block grant program designed to provide temporary assistance to those in need and to help move recipients to work.

Eligibility of immigrants for TANF is restricted by broader provisions in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) that cover the eligibility of non-citizens for a public benefit. Under the statute, eligibility for Federal TANF welfare benefits is limited to a select group of legal immigrants.

These qualified immigrants consist of lawful, permanent residents, asylees, refugees, aliens paroled into the United States for at least 1 year, aliens whose deportations are being withheld, aliens granted conditional entry, Cuban and Haitian entrants, and aliens who, or whose children or parents, have been battered or subjected to extreme cruelty in the United States by a member of their household. Victims of severe forms of trafficking and certain family members also are eligible to the same extent as refugees.

States must verify that the applicant or recipient of a Federal TANF welfare benefit has the necessary qualified immigration status to ensure eligibility for the benefit. Moreover, under PRWORA, most legal immigrants entering the country on or after August 22, 1996 are barred for their first 5 years as a qualified alien from receiving any Federal TANF means-tested welfare benefit.

Legal immigrants who are eligible to receive Federal TANF assistance under these statutory provisions comprise a very small

portion of the TANF population. Our most recent data, for fiscal year 2004, show that eligible, qualified immigrants make up only about 2.1 percent of the total recipient population of 4.8 million individuals.

For lawful, permanent residents who immigrated through a family member or through employment with a close relative, the sponsor must sign a legally enforceable Affidavit of Support. If the sponsored lawful permanent resident applies for a Federal TANF welfare benefit after expiration of the five-year bar, the State must consider or deem the income and resources of the sponsor and sponsor's spouse as available to the lawful permanent resident when determining eligibility for the payment of the benefit.

Under most circumstances, this requirement would result in a determination of ineligibility for TANF benefits. Moreover, in signing the Affidavit, the sponsor agrees to assume liability for the non-reimbursed cost of any Federal TANF welfare benefit that the sponsor or lawful permanent resident actually receives.

States can assist aliens who are not lawfully present in the United States in two very limited ways. First, States may use their Federal or State funds to help with the cost of providing any noncitizen with an emergency non-cash benefit necessary for the protection of life or safety. Second, States may use their own State funds to provide a particular welfare benefit, but only if the State has enacted a law after August 22, 1996 that allows for such eligibility. To my knowledge, no State has passed such a law.

However, certain parents of children born in the United States, including both legal immigrants who have not satisfied their five-year waiting period and undocumented aliens, can and do apply for TANF assistance on behalf of their U.S. citizen children. In fiscal year 2004, a national total of 426,098 families were classified as child-only assistance cases for the parent in the household, meaning that only the needy child and not the parent, received assistance. About 35.6 percent of these cases included parents of unknown citizenship or alien status. Given that the parent or other caretaker relative is neither an applicant nor a recipient, the State is not required to verify his or her citizenship or immigration status.

Of course, States may use their own funds to provide State-funded TANF assistance to an immigrant family who is subject to the five-year bar. So, for example, if a legal immigrant subject to this bar gave birth in the United States, then the State could provide assistance to the U.S. citizen child using Federal TANF funds, and provide the mother's share of assistance using State funds.

I hope my testimony helps to clarify the treatment of immigrants and undocumented aliens under the TANF program, and I look forward to your questions.

[The prepared statement of Mr. Horn follows:]

Statement of The Honorable Wade F. Horn, Assistant Secretary for Children and Families, U.S. Department of Health and Human Services

Mr. Chairman, Mr. Rangel, and members of the Committee, I am pleased to appear before you today to discuss the policy regarding provision of benefits to immigrants under the Temporary Assistance for Needy Families (TANF) program.

The TANF program is a $16.5 billion block grant program to provide temporary assistance to those in need and to help move recipients to work. Since the enact-

ment of the original welfare reform law in 1996, welfare rolls for families have declined by 57 percent. The most recent caseload numbers show that 1,870,039 families remain on the TANF rolls. In fact, there are fewer families on welfare than at any time since 1969.

It is worth noting that the immigrant eligibility restrictions are not part of the TANF law or unique to the TANF program. Rather, the restrictions are free-standing provisions that cover the eligibility of non-citizens for a public benefit, and were originally enacted via title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and subsequent amendments. The statutory provisions for the TANF program simply refer to these "special rules relating to the treatment of certain aliens."

Currently the statute limits eligibility for Federal TANF welfare benefits to a select group of legal immigrants. These "qualified" immigrants consist of: lawful permanent residents, asylees, refugees, aliens paroled into the United States for at least one year, aliens whose deportations are being withheld, aliens granted conditional entry, Cuban/Haitian entrants, and aliens who (or whose children or parents) have been battered or subjected to extreme cruelty in the U.S. by a member of their household. Victims of severe forms of trafficking and certain family members also are eligible to the same extent as refugees. Thus, the law does not permit States to provide Federal TANF assistance to all non-citizens, even if the non-citizen otherwise meets the State's TANF program eligibility requirements. States must verify that the applicant or recipient of a Federal TANF welfare benefit has the necessary qualified immigration status to ensure eligibility for the benefit.

Under PRWORA, however, most legal immigrants entering the country on or after August 22, 1996 are barred for their first five years as a "qualified" alien from receiving any Federal TANF means-tested welfare benefit. The following qualified aliens are exempt from the 5-year bar: refugees, asylees, an alien whose deportation is being withheld, Cuban/Haitian entrants, Amerasians, and veterans, members of the military on active duty, and their spouses and unmarried dependent children.

Legal immigrants who are eligible to receive Federal TANF assistance under these statutory provisions comprise a very small portion of the TANF population. Our most recent data, for FY 2004, show that eligible "qualified" immigrants make up about 2.1 percent (100,800) of the total recipient population of approximately 4.8 million individuals.

Moreover, for lawful permanent residents who immigrated through a family member or through employment with a close relative or for a firm in which the relative owns at least 5 percent, the sponsor must sign a legally enforceable Affidavit of Support. If the sponsored lawful permanent resident applies to receive a Federal means-tested TANF welfare benefit after expiration of the 5-year bar, then the State must consider, or "deem" the income and resources of the sponsor and sponsor's spouse available to the lawful permanent resident when determining eligibility for and payment of the benefit. This deeming requirement lasts until the sponsored immigrant becomes a citizen or has 10 years (40 qualifying quarters) of work covered by the Social Security Administration. Under most circumstances this requirement would result in a determination of ineligibility for TANF benefits.

In signing the Affidavit, the sponsor agrees to assume liability for the non-reimbursed cost of any Federal means-tested TANF welfare benefit that the sponsored lawful permanent resident actually receives. In some situations, the family may still be eligible to receive a TANF benefit. This is because each State may formulate its own methodology, including any applicable disregards, for determining the amount of income and resources of the sponsor and the sponsor's spouse to deem to the sponsored lawful permanent resident. Thus, if the sponsored individual receives a Federal means-tested TANF welfare benefit, the TANF agency may seek reimbursement from the sponsor by following the procedural requirements given in the Department of Homeland Security, U.S. Citizenship and Immigration Services' regulations.

States can assist aliens who are not lawfully present in the U.S. (undocumented aliens) in two very limited ways. First, States may use their Federal or State funds to help with the cost of providing any non-citizen with an emergency non-cash benefit necessary for the protection of life or safety. Examples of non-cash benefits include soup kitchens, shelters for the homeless and victims of domestic violence, child protective services, and crisis counseling. Second, States may use their own State funds to provide a particular welfare benefit only if the State has enacted a law after August 22, 1996 that allows for such eligibility. To my knowledge, no State has passed such a law.

However, certain parents of children born in the U.S., including both legal immigrants who have not satisfied their five-year waiting period and undocumented aliens, can and do apply for TANF assistance on behalf of their U.S. citizen chil-

dren. Because the child is a U.S. citizen, the child may receive Federal TANF benefits to the same extent as any other U.S. citizen. In fiscal year 2004, a national total of 426,098 families were classified as child-only assistance cases with a parent in the household, meaning that only the needy child, and not the parent, received assistance. About 152,000 or 35.6% of these cases included parents of unknown citizenship or alien status. The parents or caretakers of these children may be legal but unqualified immigrants, qualified immigrants subject to the 5-year bar on receipt of Federal TANF assistance, or undocumented aliens. Because the parent or other caretaker relative is neither an applicant nor a recipient, the State is not required to verify his/her citizenship or immigration status.

Of course, states may use their own funds to provide State-funded TANF assistance to an immigrant family member who is subject to the 5-year bar. So, for example, if a legal immigrant subject to this bar gave birth in the United States, then the State could provide assistance for the U.S. citizen child using Federal TANF funds and provide the mother's share of assistance using State funds.

In closing, I appreciate the committee's interest in this topic. I hope my testimony clarified the treatment of legal immigrants and undocumented aliens under the TANF program. I would be happy to answer any questions.

Mr. MCCRERY. Thank you, Mr. Horn. Ms. Myers.

STATEMENT OF THE HONORABLE JULIE MYERS, ASSISTANT SECRETARY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. MYERS. Thank you. Ranking Member Rangel, Members of the Committee, I appreciate the opportunity to discuss with you what ICE is doing to enhance worksite enforcement.

As we're all well aware, the magnet of employment fuels illegal immigration. Accordingly, worksite enforcement is a top priority for the Department and the Administration. With this in mind, the Administration has proposed a comprehensive overhaul of the employment verification and employer sanctions program in the Immigration and Nationality Act (INA) (P.L. 82–414) as part of the President's call for comprehensive immigration reform.

Already, as the enforcement arm in this area, we are attempting to apply a key lesson learned from the 1986 bill. The enactment of the Immigration Reform and Control Act (IRCA) (P.L. 99–603) placed the focus of enforcement on administrative employer sanctions. As a result, employer audits typically resulted in serving businesses with a Notice of Intent to Fine. Egregious violators of the law viewed the resulting, low and often mitigating fines as simply a cost of doing business, and therefore the system did not serve as a true, economic inducement for them to change their business model. Today, however, ICE has begun to change the culture of illegal employment by pursing the most egregious employers of illegal workers. We're educating the private sector to institute best hiring practices and garnering its support in identifying systemic vulnerabilities. Of course, a large part of our effort continues to focus on preventing access to critical infrastructure sectors to prevent terrorism.

Just to be clear, we're finding that most employers want to do the right thing. Sometimes they just need more assistance or more help on how to follow the rules. With this in mind, we have stepped up our efforts to educate employers about best hiring practices.

In fact, just this morning, we launched a new, voluntary program aimed at strengthening overall hiring practices in the workplace.

This program is called the ICE Mutual Agreement between Government and Employers (IMAGE), and this emphasizes enhanced employer compliance through corporate due diligence, training, and sharing of best practices.

This program provides employers ways to prevent immigration violations. It also answers the need or the call that we've heard for clear standards of good conduct for employers by asking them to take certain reasonable steps, including reviewing employee documents, using the electronic verification system, and retaining all documents relevant to their employee's eligibility to work. ICE has also provided additional training and tools on its website to help all employers avoid violations.

As I mentioned, part of our approach also includes supporting felony charges, and not just the traditional misdemeanor worksite violations under section 274(a) of the INA. Let me give you some examples of what I mean by that.

In April 2006, ICE conducted the largest such worksite enforcement operation ever undertaken. This case involved IFCO Systems. In that case, we executed nine Federal arrest warrants, eleven search warrants, and forty-one consent search warrants at IFCO worksite locations throughout the United States. In addition, ICE agents apprehended over 1,100 unauthorized workers, and charged nine employees at IFCO with conspiracy to transport, and harbor unlawfully, illegal aliens for financial gain.

In another recent worksite case investigation in Baltimore, Maryland, owners of three restaurants, who were really abusing illegal aliens, treating them poorly and harboring them in an apartment above their house, pled guilty to conspiracy to commit alien harboring and conspiracy to gain in monetary transactions with criminally derived property. At the end of the day, they forfeited over a million dollars.

Now under the old Immigration and Naturalization Service ways, they would have been fined approximately $4,000 to $30,000, and that's even before the fines were mitigated. We believe that charging criminally these most egregious employers who hire undocumented aliens will create the kind of deterrence that previous enforcement efforts did not generate. We are also identifying and seizing the assets that employers derive from knowingly employing illegal workers, in order to remove the financial incentive to hire unauthorized workers and to pay them substandard wages.

We are also working with the Department of Justice and other agencies, including the SSA, to crack down on the widespread use and acceptance of fraudulent identification documents. To that end, we've launched, throughout the country, taskforces, document and benefit fraud taskforces, that really target these efforts.

What more do we need? We need several things. First, we need more regulated access to Social Security no-match data; second, a new and improved process for issuing civil fines; and third, more resources, as requested in the President's 2007 budget.

We're working diligently to partner with industry and to solve this problem, and I look forward to answering your questions on this important issue. Thank you.

[The prepared statement of Ms. Myers follows:]

Statement of The Honorable Julie L. Myers, Assistant Secretary, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security

CHAIRMAN THOMAS, RANKING MEMBER RANGEL AND MEMBERS OF THIS COMMITTEE, it is an honor for me to testify before you today on what the Department of Homeland Security and U.S. Immigration and Customs Enforcement (ICE) are doing to enhance worksite enforcement of immigration laws.

INTRODUCTION

Worksite enforcement is a top priority for the Department and the Administration. In a recent speech before the U.S. Chamber of Commerce, the President said, "A comprehensive reform bill must hold employers to account for the workers they hire. It is against the law to hire someone who is in the country illegally. Those are the laws of the United States of America, and they must be upheld." While the border attracts substantial attention, we must expand our focus if we are going to bring illegal immigration under control. A comprehensive solution is necessary because illegal immigrants are living and working throughout the nation, in every state and in many different industries. With this in mind, the Administration has proposed a comprehensive overhaul of the employment verification and employer sanctions program in the Immigration and Nationality Act as part of the President's call for comprehensive immigration reform. With its extensive authorities and experienced investigators, ICE is qualified to carry out this comprehensive reform and is already achieving great success in the investigation and prosecution of employers engaged in the hiring of illegal aliens.

Among the DHS law enforcement agencies, ICE has the most expansive investigative authority and the largest force of investigators. Our mission is to protect our Nation and the American people by targeting the people, money and materials that support terrorist and criminal activities. The men and women of ICE accomplish this by investigating and enforcing the nation's immigration and customs laws. Working throughout the nation's interior, together with our DHS and other federal counterparts and with the assistance of state and local law enforcement entities, ICE has begun to change the culture of illegal employment across the country by pursuing the most egregious employers of illegal workers. ICE is educating the private sector to institute best hiring practices and garnering its support in identifying systemic vulnerabilities that may be exploited to undermine immigration and border controls. A large part of our worksite enforcement efforts focuses on preventing access to critical infrastructure sectors and sites to prevent terrorism and to apprehend those individuals who aim to do us harm.

In short, our agents and investigators are enforcing the immigration laws of this country on a daily basis. However, if we do not make greater strides in this area, immigrants will continue to risk their lives for the prospect of a well-paying job in this country, often by turning to smugglers who exploit and force them to live in the shadows once they arrive.

LESSONS FROM THE 1986 IRCA

ICE knows the shortcomings of the IRCA and I believe it will be beneficial to provide a quick historical review of worksite enforcement under this Act.

To varying degrees and during specific time periods, the immigration investigators focused on worksite violations by devoting a large percentage of its investigative resources to enforce the administrative employer sanctions provisions of IRCA. The resulting labor-intensive inspections and audits of employment eligibility documents only resulted in serving businesses with a Notice of Intent to Fine (NIF) or a compliance notice. Issuing monetary fines that were routinely mitigated or ignored had little to no deterrent effect. Not only were the results far from effective, the process involved endless attorney and agent hours in discovery and litigation to adjudicate and resolve cases. Egregious violators of the law viewed the fines as just a "cost of doing business" and therefore the system did not serve as a true economic inducement for them to change their business model.

Moreover, while IRCA required employers to review identity documents demonstrating employment eligibility, its compliance standard rendered that requirement meaningless and essentially sheltered employers who had hired unauthorized aliens. Under the 1986 law, an employer could comply with the eligibility verification process so long as the document evidencing the employee's authorization to work reasonably appeared to be genuine. Employers were not required to verify the validity of a document and were not required to maintain a copy of the documents that they reviewed. The ability of the employer to rely on the facial validity of a single document and the lack of any available evidence regarding the document routinely prevented the government from proving that the employer knew the em-

ployee was not authorized to work. Thus, the law should reasonably require the employer to review and retain copies of relevant documents and information obtained during the verification process, as well as during the subsequent employment of a worker. It should also not allow unscrupulous employers to be "willfully blind" to highly questionable documents or other facts indicative of unauthorized status.

Another detrimental result of the documentation compliance standard established under IRCA was an explosive growth in an increasingly profitable false document industry catering to undocumented workers seeking employment.

A NEW APPROACH TO WORKSITE ENFORCEMENT

ICE's current worksite enforcement strategy is a comprehensive layered approach that focuses on how illegal aliens get to our country, the ways in which they obtain identity documents allowing them to become employed, and the employers who knowingly hire them.

The ICE worksite enforcement program is just one component of the Department's overall Interior Enforcement Strategy and is a critical part of the Secure Border Initiative. A thorough and comprehensive worksite enforcement program is paramount to DHS's goal of changing the culture of illegal employment in the United States. To that end, the Administration has outlined a proposal that would give DHS the tools it needs to effectively enforce employment immigration laws.

Worksite enforcement incorporates a multitude of investigations and crimes, as illustrated below. Using this approach, ICE worksite investigations now support felony charges and not just the traditional misdemeanor worksite violations under Section 274A of the Immigration and Nationality Act. Let me give you some examples to explain what I mean.

Of course, a key component of our worksite enforcement efforts targets the businesses and industries that deliberately profit from the wholesale employment of illegal aliens. In April of 2006, ICE conducted the largest such worksite enforcement operation ever undertaken. This case involved IFCO Systems, a Houston-based company. ICE agents executed 9 federal arrest warrants, 11 search warrants, and 41 consent searches at IFCO worksite locations throughout the United States. In addition, ICE agents apprehended 1,187 unauthorized workers at IFCO worksites. This coordinated enforcement operation also involved investigative agents and officers from the Department of Labor, Social Security Administration, the Internal Revenue Service, and the New York State Police. The criminal defendants have been charged with conspiracy to transport and harbor unlawful aliens for financial gain (8 U.S.C. Section 1324 and 18 U.S.C. Section 371), as well as fraud and misuse of immigration documents (18 U.S.C. 1546).

In a recent worksite enforcement investigation in Baltimore, Maryland, owners of three restaurants pled guilty to conspiracy to commit alien harboring and conspiracy to engage in monetary transactions with criminally derived property; a fourth owner pleaded guilty to employment of illegal aliens. The defendants also agreed to forfeit to the United States approximately $1.1 million in assets. Historically, agents were tasked with carrying out worksite enforcement investigations by utilizing administrative tools. In similar criminal investigations, agents typically would have conducted a Form I–9 inspection to determine whether the employer was in compliance with IRCA. If investigators identified unauthorized workers in the course of the inspection, an enforcement operation would often follow. Upon apprehension, the workers' statements would serve as evidence of possible "knowingly hired" violations. Under this old way of doing business, the fine imposed on the owners of the restaurants would have ranged from approximately $4,000 to $33,000 before mitigation.

Worksite enforcement includes critical infrastructure protection. Just last month, an ICE investigation apprehended 55 illegal aliens working at a construction site at Dulles International Airport. Effective homeland security requires verifying the identity of not just the passengers that board the planes, but also the employees that work at the airports.

Worksite enforcement combats alien smuggling. In the last few months, we have made arrests at employment agencies that served as conduits between the criminal organizations that smuggle illegal aliens into this country and the employers that willfully employ them.

Worksite enforcement also combats human trafficking. As the result of worksite enforcement actions, ICE has dismantled forced labor and prostitution rings, be it Peruvian aliens in New York or Chinese aliens in Maryland. The common threads are the greed of criminal organizations and the desire of aliens to come here to work. Human trafficking cases represent the most egregious forms of exploitation, as aliens are forced to work and live for years in inhumane conditions to pay off the debt they incur for being smuggled into the country.

Worksite enforcement involves financial crimes, commercial fraud, export violations, and trafficking in counterfeit goods. ICE enforcement efforts use our legacy authorities to fully investigate these offenses that involve the employment of illegal aliens to promote and further these other crimes. As an example, earlier this month ICE agents in Florida arrested two individuals pursuant to an indictment charging them with operating an illegal money service business in violation of Title 18, United States Code, Section 1960. This investigation discovered that local construction companies were utilizing an illegal money service business to pay illegal aliens for construction work.

By careful coordination of its detention and removal resources and its investigative operations, ICE is able to target the organizations unlawfully employing illegal workers, as well as detain and expeditiously remove the illegal workers encountered. For example, in a recent case in Buffalo, New York, involving a landscape nursery, 34 illegal workers were apprehended, detained and voluntarily repatriated to Mexico within 24 hours.

This sends a strong message to both the illegal workers here and to foreign nationals in their home countries that they will not be able to just move from job to job in the United States once ICE shuts down their employer. Rather, they will be detained and promptly deported.

Another recent example of our worksite efforts occurred in May of 2006, when 85 unauthorized workers employed by Robert Pratt and other sub-contractors for Fischer Homes, Inc., were arrested as part of another ICE-led joint federal, state and local investigation. In this case the targets of the investigation knowingly harbored, transported and employed undocumented aliens. Five supervisors were arrested and charged with harboring illegal aliens. (8 U.S.C. Section 1324).

What impact will this have? Criminally charging employers who hire undocumented aliens will create the kind of deterrence that previous enforcement efforts did not generate. We are also identifying and seizing the assets that employers derive from knowingly employing illegal workers, in order to remove the financial incentive to hire unauthorized workers and to pay them substandard wages.

To be clear, the magnet of employment is fueling illegal immigration, but the vast majority of employers do their best to comply with the law. With this in mind, ICE has developed a voluntary corporate outreach program aimed at strengthening overall hiring practices in the workplace. This outreach program will emphasize enhanced employer compliance through corporate due diligence, training and sharing of best practices. This program provides employers ways to prevent immigration violations in their and work toward changing the culture of tolerance for those who employ illegal workers. The program will answer the need for clear and reasonable standards of good conduct for employers by asking them to take certain reasonable steps, including reviewing employee documents, using the electronic verification system and retaining all documents relevant to their employees' eligibility to work. Employers who are shown to have hired a significant number of unlawful aliens in a year, notwithstanding these tools to verify employee eligibility, should be presumed to have knowingly hired these individuals. We also need to ensure that employers cannot use contract arrangements to separate themselves from complicity in the illegal hiring of their contractors, which can be accomplished through a tightening of the rules. ICE has provided additional training and tools on its website to help employers avoid violations.

Just as a chain is only as strong as its weakest link, the employment process cannot permit the widespread use and acceptance of fraudulent identification documents. Accordingly, in April 2006, Deputy Attorney General Paul McNulty and I announced the creation of ICE-led Document and Benefit Fraud (DBF) Task Forces in 11 major metropolitan areas. These task forces focus on the illegal benefit and fraudulent document trade that caters to aliens seeking illegal employment. The DBF Task Forces are built on strong partnerships with entities such as U.S. Citizenship and Immigration Services, the Social Security Administration, the U.S. Postal Inspection Service and the Departments of State, Justice and Labor. The Task Forces identify, investigate and dismantle organizations that supply identity documents that enable illegal aliens, terrorists and other criminals to integrate into our society undetected and obtain employment or other immigration benefits.

The House and Senate have both passed immigration legislation this Congress that include provisions authorizing a mandatory electronic employment eligibility verification system (EEVS) for all seven million U.S. employers. An Employment Verification Program managed by U.S. Citizenship and Immigration Services that includes all U.S. employers, monitoring and compliance functions, and a fraud referral process, can help deter and detect fraud by both employers and employees. As currently envisioned, EEVS will include robust systems monitoring and compliance functions that will help detect and deter the use of fraudulent documents, imposter

fraud, and incorrect usage of the system by employers (intentionally and unintentionally). EEVS also will promote compliance with correct program procedures. USCIS will forward enforcement leads to ICE, and the monitoring unit will scrutinize individual employers' use of the system. It also will conduct trend analysis to detect potential fraud. Findings that are not likely to lead to enforcement action (e.g., the user has not completed training) will be referred to compliance officers for follow-up. Findings concerning potential fraud (e.g., Social Security numbers being run multiple times and employers not indicating what action they took after receiving a final non-confirmation) will be referred to ICE worksite enforcement investigators. It is essential that DHS have the authority to use information arising from the Employment Verification Program to enforce our Nation's laws, including deterring and prosecuting fraud, and identifying and removing criminal aliens and other threats to public safety or national security.

NEW TOOLS

ICE has made substantial improvements in the way we investigate and enforce worksites.

DHS supports several of the additional tools contained in pending legislation, and we look forward to working with Congress as it considers comprehensive immigration reform, including proposals to enhance worksite enforcement.

NO-MATCH

The Administration has sought the authority to have additional access to Social Security Administration no-match data to improve immigration enforcement. Greater access to no-match data would provide important direction to ICE investigators to target their enforcement actions toward those employers who have a disproportionate number of these no-matches, who have reported earnings for multiple employees on the same number and who are therefore more likely to be engaging in unlawful behavior.

Additionally, provisions in current legislative proposals regarding document retention by employers, including evidence of actions taken by employers to resolve employment eligibility issues (e.g., SSA no-match letters), are crucial to worksite enforcement criminal prosecutions. Asking employers to retain documents for at least as long as the statute of limitations for these crimes is simply common sense.

PROPOSED MODEL OF FINES AND PENALTIES

Although criminal prosecution of egregious violators is our primary objective in worksite cases, a need exists for a new and improved process of issuing fines and penalties that carry a significant deterrent effect and that are not regarded as a mere cost of doing business. Only with a strong compliance program, combined with issuance of meaningful penalties, will the United States have an effective worksite enforcement program.

The Administration has proposed a streamlined administrative fines and penalties process that gives the DHS Secretary the authority to administer and adjudicate fines and penalties. We would further purpose a penalty scheme that is based on clear rules for issuance, mitigation, and collection of penalties.

As I have outlined in my testimony, ICE has made great strides in its worksite enforcement program and its efforts are part of a comprehensive strategy that focuses on several different layers of the problem simultaneously, including smuggling, document and benefit fraud, and illegal employment.

ICE agents are working tirelessly to attack the egregious unlawful employment of undocumented aliens that subverts the rule of law. We are working more intelligently and more efficiently to ensure the integrity of our immigration system.

Our responsibility at ICE is to do everything we can to enforce our laws, but enforcement alone will not solve the problem. Accordingly, the President has called on Congress to pass comprehensive immigration reform that accomplishes three objectives: strengthening border security, ensuring a comprehensive interior enforcement strategy that includes worksite enforcement, and establishing a temporary worker program. Achieving these objectives will dramatically improve the security of our infrastructure and reduce the employment magnet that draws illegal workers across the border, while eliminating the problems created by the 1986 law.

ICE is dedicated and committed to this mission. We look forward to working with this Committee in our efforts to secure our national interests. I hope my remarks today have been helpful and informative. I thank you for inviting me and I will be glad to answer any questions you may have at this time.

Mr. MCCRERY. Thank you, Ms. Myers. Mr. Everson.

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

Mr. EVERSON. Chairman McCrery, Ranking Member Rangel, and Members of the Committee, I appreciate the opportunity to appear before you today to discuss the impact of immigration issues on tax administration.

Let me first say that comprehensive immigration reform is a national priority. I say that as a former deputy commissioner of the Immigration and Naturalization Service. I understand firsthand the importance of a system of immigration that functions effectively. In fact, I oversaw the implantation of the Immigration Reform and Control Act. This included both the amnesty and the enforcement elements of that law.

As commissioner of Internal Revenue, I am also sensitive to the interaction between the immigration system and the tax system. At the IRS, our job is to make sure that everyone who earns income within our borders pays the proper amount of taxes, whether that income is legally obtained, and whether the individual is working here legally. If someone is working without authorization in this country, he or she is not absolved of tax liability.

The Subcommittees on Oversight and Social Security have held two hearings over the past 3 years on issues associated with Individual Tax Identification Numbers (ITINs) and the mismatch of SSNs and W–2 information. At those hearings, I testified about our Individual Taxpayer Identification Number (ITIN) program.

Last year, over 2.5 million tax returns were filed that included an ITIN for at least one person listed on the return. To date, in calendar year 2006, we have received 1.6 million new applications for ITINs. That's up 25 percent from this time a year ago. The IRS estimates that for tax periods 1996 to 2003 that the income tax liability for ITIN filers totaled approximately $50 billion.

Of the 231,000,000 W–2s filed in Tax Year 2004 file, approximately 223,000,000 had matching names and SSNs. After analysis, there were about 7.9 million W–2s with no valid name and SSN match.

There are two interesting aspects to the data mismatches. The first is geographical. Over 50 percent of the mismatches are found in four States: California, Texas, Florida, and Illinois. California has by far the greatest number of mismatches, totaling 2.3 million or approximately 29 percent of the mismatch total. The second is economic. Based on IRS' own analysis, about 75 percent of all mismatched W–2s report wages of less than $10,000.

Concerning employers, the SSA had no enforcement power and cannot impose penalties on employers for failure to correct SSN mismatches. The IRS, however, does have enforcement power, and can assess penalties. Under Section 6721, we may impose a $50 penalty on an employer for each W–2 or Form 1099 that omits or includes an inaccurate SSN, unless the filer shows reasonable cause for the omission or inaccuracy.

From a tax compliance perspective, violations of these provisions are generally identified as part of an overall employment tax examination. We would not ordinarily institute an examination against

an employer solely on the basis that he or she had reported a high number of mismatches. This is a function of both resources and the fact that the employer can easily demonstrate that he or she has performed the due diligence required under the law.

Turning to the pending immigration legislation, we are well aware that both the Senate and House have adopted bills that take different approaches to addressing this issue. It is neither my role, nor my desire, to express a preference for either version. I merely wish to offer some observations concerning tax administration.

The one common approach in both the House and Senate immigration bills is the requirement that employers verify the work eligibility of potential employees with DHS from information provided by the SSA. The Senate bill amends section 6103 of the Internal Revenue Code, relating to the privacy of taxpayer information, and requires SSA to send to DHS the identities of employers who, among other things, have a significant number of SSN mismatches.

The Senate bill also allows aliens unlawfully present in the United States to adjust their status to legal, permanent resident status, if they meet certain criteria. These include demonstrating payment of any liability for Federal taxes owed during the required pre- and post-enactment periods of employment. The IRS is mandated to cooperate with aliens by providing documentation to establish the payment of all Federal taxes required.

We are continuing to study the provisions of the Senate bill but, based on what we have examined so far, we do have some concerns. However, I am confident that as we progress toward the goal of comprehensive immigration reform, we can iron out these potential issues. Thank you.

[The prepared statement of Mr. Everson follows:]

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

Introduction

Chairman Thomas, Ranking Member Rangel, and Members of the Committee, I appreciate the opportunity to appear before you this afternoon to discuss the impact of immigration issues on tax administration.

I would like to do three things this afternoon. First, I wish to try to frame the issues, at least from an IRS perspective. Second, I want to discuss in more detail how the IRS handles the mismatching of Social Security Numbers (SSN). And, third, I want to offer some comments on the pending legislation from the perspective of tax administration.

Framing the Issues

Perhaps the most difficult part of these issues is framing them properly and understanding fully the different, yet sometimes complementary, roles performed by the Social Security Administration (SSA), the U.S. Department of Homeland Security (DHS), and the Internal Revenue Service (IRS).

We at the IRS support and appreciate the jobs being done at SSA in maintaining and protecting the Social Security Trust Funds and at DHS in enforcing our immigration laws, but our function is tax administration. Our job is to make sure that everyone who earns income within our borders pays the proper amount of taxes, whether that income is legally obtained and whether the individual is working here legally If someone is working without authorization in this country, he/she is not absolved of tax liability. Instead of an SSN to file a tax return, that person frequently uses an Individual Taxpayer Identification Number (ITIN).

An ITIN is a tax processing number issued by the IRS. It is a nine-digit number that always begins with the number 9 and has a 7 or 8 in the fourth digit, e.g. 9XX–7X–XXXX.

IRS issues ITINs to foreign individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible for an SSN. ITINs are issued regardless of immigration status because non-citizens may have U.S. tax return and payment responsibilities under the Internal Revenue Code.

The Oversight and Social Security Subcommittees have held two hearings over the past three years on issues associated with ITINs and the mismatch of SSNs on W–2s. At those hearings, I talked about our ITIN program. It is important to understand that the ITIN program is bringing taxpayers into the system. Last year over 2.5 million tax returns were filed that included an ITIN for at least one person listed on the return. In calendar year 2006, so far we have received 1.6 million new applications for ITINs, up 25 percent from this time last year. Since 2004, to obtain an ITIN most applicants must attach a tax return to establish a return filing requirement.

We estimate that for tax periods 1996 to 2003 that the income tax liability for ITIN filers totaled almost $50 billion.

Comprehensive immigration reform—including border security, interior enforcement, and a temporary worker program—is a top Administration priority. The Administration believes that worksite enforcement is critical to the success of immigration reform. Further, as immigration laws are enforced, the Administration believes that comprehensive immigration reform also requires us to improve those laws by creating a temporary worker program that rejects amnesty, relieves pressure on the border, and provides a legal means to match willing foreign workers with willing American employers to fill jobs Americans are not doing.

As the Commissioner of the IRS, it is not my role to advocate public policy changes. However, as a former Deputy Commissioner at Immigration and Naturalization Service, I am sensitive to the need for a system of immigration that functions effectively and I am particularly sensitive to the interaction between the immigration system and the tax system. I recognize that comprehensive immigration reform can have positive impacts on tax administration. For example, the creation of a temporary worker program will likely result in additional taxpayers entering the system.

IRS's Role in the Mismatch Program

Each year, employers send their W–2s and W–3s to the SSA by February 28 (or March 31 if filed electronically). SSA processes the forms and then attempts to reconcile any mismatches. They then send the information to the IRS on a weekly basis. IRS culls out any unusable records as well as any W–2s that are not related to the current tax year. For Tax Year (TY) 2004, the resulting IRS file contained more than 231 million W–2s from the SSA.

This represents a decline of approximately 6.5 percent from the corresponding file for TY 2000. We are considering this and other employment-related trends as part of our ongoing study of the standards used to distinguish between employees and independent contractors. The decline in the number of W–2s has been accompanied by a corresponding decline in the number of mismatches that could not be reconciled.

Of the 231 million W–2s in IRS's TY 2004 file, approximately 223 million had matching names and SSNs. Some of these matches resulted from SSA's successful use of techniques for resolving mismatches. For the balance of approximately 8 million TY 2004 W–2s for which there was no valid match, IRS used several additional methods to match the numbers. We were able to match approximately 60,000 more names with SSNs, leaving about 7.9 million W–2s where there is no valid name and SSN match.

To help correct SSN mismatches, the SSA sends letters to employers, employees and self-employed individuals asking that they take steps to match the names with the SSNs. These letters go only to certain employers. First, letters are sent to employers who submit a wage report containing more than 10 Forms W–2 that SSA cannot process. In addition, employers who file more than 2200 W–2's, more than one-half of one percent (1/2 percent) of which represents mismatched forms, also receive the letters. In TY 03, the SSA sent over 121,000 such letters to employers, inquiring about 7.2 million invalid W–2s. There is no letter sent to the employers for the other 0.7 million mismatches

There are two interesting aspects to the data on mismatches. The first is geographical. Over 50 percent of the mismatches are found in four states, California, Texas, Florida and Illinois. California has by far the greatest number of mismatches totaling nearly 2.3 million, or approximately 29 percent of the mismatch total.

The second is economic. Based on IRS' own analysis, about 75 percent of all mismatched W–2s report wages of less than $10,000. If we focus only on those mismatched W–2s with no withholding, the percentage increases to 90 percent. Only

about 2 percent of all W–2s with invalid SSNs report wages greater than $30,000. In fact, the average wage for all mismatches is only about $7,000 annually. Bear in mind, that many employees receive more than one W–2 in a tax year, so these numbers may not reflect an individual's gross income.

From a tax administration perspective, we know that for TY 2004 there were approximately $53 billion in wages reported on W–2s with invalid SSNs, with about a quarter of that amount, or $13.3 billion, on W–2s with no withholding. About 56 percent of the $53 billion came from W–2s reporting wages between $10,000 and $30,000.

On the high end, only about 1 percent of the wages ($0.5B) were reported on mismatched W–2s showing wages in excess of $100,000. Thus, this analysis shows that the worker population causing W–2 mismatches represents the lowest wage earners who likely have little or no tax liability.

Legal Requirements for Employers

It is important to point out that SSA has no enforcement power and cannot impose penalties on employers for failure to correct SSN mismatches. IRS, however, does have enforcement power and can assess penalties. Therefore, it might be helpful if I walk you through our current legal authority.

Under section 6041 and 6011 of the Internal Revenue Code (IRC) employers and other payors must include correct SSNs or Taxpayer Identification Numbers (TINs) on form W–2 reporting wages or salaries paid to employees.

Under section 6721, we may impose a $50 penalty on an employer for each W–2 or 1099 that omits or includes an inaccurate SSN/TIN unless the filer (employer, other payor, etc.) shows reasonable cause for the omission or inaccuracy. The maximum penalty for any employer or payor in a calendar year is $250,000. If the violation is deemed to be willful, the fine is the greater of $100 or 10 percent of the unreported amount per violation, with no maximum.

From a tax compliance perspective, violations of these provisions are generally identified as part of an overall employment tax examination. We would not ordinarily initiate an examination against an employer solely on the basis that he/she had reported a high number of mismatches. This is a function of both resources, and the fact that the employer can easily demonstrate that he/she has performed the due diligence required under the law.

Specifically, Section 6109 places the burden on the employee or the payee to provide the employer or payor with an accurate SSN or TIN. This is an important distinction because the employer can have any penalty imposed for failing to include an accurate SSN or TIN on the return abated, if the employer made an initial and, if necessary, annual request that the payee provide an accurate SSN/TIN. He can also have the penalty abated if he establishes that due diligence was otherwise used, such as by obtaining a statement from the employee under penalties of perjury that the SSN or TIN is accurate.

As you can see, what is important here is that the employer or payor makes a request, or repeats a request, for an accurate SSN or TIN. If the employer does, he/she has performed due diligence and has reasonable cause to believe the SSN or TIN is correct. Because the reasonable cause and due diligence standard in section 6724 is relatively easy for employers to meet, it has been virtually impossible to sustain a penalty assessed against an employer under section 6721.

When I testified last February before your Oversight and Social Security Subcommittees, there were some questions as to whether we were utilizing our enforcement authority. I indicated then that we had surveyed nearly 300 companies with high mismatch rates. I also indicated that we intended to look more carefully at 48 of those companies that failed to respond to that survey.

We have now begun those investigations and I can tell you that what we have found thus far is consistent with what we found from our survey. The companies tend to be from three industries: Agriculture, janitorial and temporary workers. The employees are low wage earners, and we have found no other employment tax violations in 90 percent of the companies we have examined. From a tax administration standpoint, these companies do not constitute a target rich environment.

Pending Legislation

We are well aware that both the Senate and House have adopted bills that take different approaches to addressing the immigration issue. It is neither my role nor my desire to express a preference for either version. I merely wish to offer some observations and concerns about how each of the bills would affect tax administration.

Having a strong immigration policy that includes border security, interior enforcement, and a temporary worker program is critical to our future.

As I indicated earlier, many illegal aliens, utilizing ITINs, have been reporting tax liability to the tune of almost $50 billion from 1996 to 2003. In TY 2004, we had 2.5 million ITINs filed with nearly $5 billion in tax liability. That is why comprehensive reform is so necessary. It will allow these taxpayers as well as others who are not currently filing to become a more active part of our economic system. Failure to enact comprehensive reform could have negative consequences for tax administration if procedures are imposed on employers and employees that have the effect of driving certain economic activities "underground."

The one common approach in both the House and Senate immigration bills is the requirement that employers verify the work eligibility of potential employees with DHS from information provided by the Social Security Administration. The Senate version of the bill does this by requiring DHS to create a verification system with the cooperation of SSA. The House bill essentially takes the discretionary process that is already in place under the Basic Pilot Program, which is administered by DHS with the help of SSA, and makes it mandatory.

The Senate bill goes much further. It amends Section 6103 of the Internal Revenue Code relating to the privacy of taxpayer information and requires SSA to send to DHS the identities of employers who, among other things, have a significant number of employee/SSN mismatches. The bill restricts disclosure only for the purposes of establishing and enforcing participation in the system and complying with various laws.

The Senate bill, under what it calls the "Earned Adjustment" program, also allows aliens unlawfully present in the U.S. to adjust their status to legal permanent resident status if they meet certain criteria, including continuous residence in the U.S. during the previous 5 years, employment in 3 of those 5 years, and employment for at least the next 6 years. It appears that, the Earned Adjustment applicants would not be allowed to adjust status until they had demonstrated "the payment" of any liability for Federal taxes owed during the required pre- and post-enactment periods of employment. The IRS is mandated to cooperate with aliens by providing documentation "to establish the payment of all [Federal] taxes required".

We are continuing to study the provisions of the Senate bill, but based on what we see thus far, we do have some concerns. For example, to the extent that applicants for earned adjustment will make requests for prior tax payments from IRS, that will require IRS to divert resources from current functions.

In addition, is important to consider that while we can, upon request, currently provide any taxpayer, including those who have filed using ITINs, a transcript of their tax return records, we do not verify the accuracy of their tax returns or the information the taxpayer has submitted. Accordingly, we are not now equipped to provide any taxpayer, including aliens, with documentation to establish payment of all Federal taxes.

In addition, if the alien has filed using multiple SSNs that were not assigned to him and later with an ITIN, it is possible that a single alien could request multiple transcripts. From a disclosure perspective, we would be reluctant to provide a single taxpayer with multiple taxpayer records upon request.

We have other administrative concerns with provisions of the Senate bill, but we are confident that as we progress toward the goal of comprehensive reform that we can iron those out.

Conclusions

We appreciate Mr. Chairman, the tough policy choices that you and other Members of Congress must make on the tough issue of immigration, and we realize that tax administration may be a small factor in those policy considerations.

As the agency responsible for collecting and administering the more than $2 trillion that we use to fund the government, we will play whatever role Congress deems appropriate.

We urge, however, that any change in the current tax system encourage the type of behavior that we desire from both employees and employers. We are collecting some taxes in these areas and with comprehensive reform we hope we can collect even more.

Similarly, imposing requirements that the IRS verify the accuracy of tax payments by aliens would challenge our ability to maintain our current level of service and enforcement.

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

Mr. MCCRERY. Thank you, Commissioner Everson.

Commissioner Barnhart. If you could, turn your microphone on.

STATEMENT OF THE HONORABLE JO ANNE B. BARNHART, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION

Ms. BARNHART. Mr. Chairman and Members of the Committee, the President has proposed a comprehensive approach to immigration reform that addresses the need to secure our borders, enforce worksite employment practices, and address the economic issues of immigration. This approach calls for the creation of a true, temporary-worker program that allows individuals to achieve legal status by paying their taxes, learning English, and gaining employment in our society.

Within this context, I appreciate your invitation to appear before you to discuss how and when we assign SSNs and issue Social Security cards to non-citizens, as well as issues relating to benefit eligibility for non-citizens. My written testimony describes in some detail our current responsibilities and activities to safeguard the integrity of the Social Security system, including the work we perform with the DHS and the IRS.

Currently, as required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, we provide DHS extensive information about every non-work SSN where earnings were reported. Non-work SSNs are issued to individuals who are not authorized to work in the United States but who have a valid reason for obtaining a SSN. These cards include the legend, "Not Valid for Employment."

Social Security is also an integral part of the DHS Basic Pilot program, which allows employers to verify both the SSNs and work-authorization status of persons they hire. Of course, we continue to provide SSN verification services to employers, including our web-based SSN Verification System (SSNVS).

Currently we have the authority to use information from W–2s only for the purposes of determining eligibility for and the amount of Social Security benefits. The Administration supports allowing disclosure of this data in the interests of national security and for law-enforcement purposes.

At SSA, we have a proven performance record, and can and will do what we are called upon to do. This year alone, we will process over 6.7 million claims for benefits, process almost 245,000 Medicare Part D subsidy applications, make decisions on over 575,000 hearings, issue 18,000,000 new and replacement cards, process 265,000,000 earnings records for workers' earnings, handle approximately 59,000,000 transactions through our 800 number, serve 42,000,000 visitors at our field offices, and process millions of actions to keep beneficiary and recipient records current and accurate, as well as conducting 1.6 million continuing disability reviews, and over 1,000,000 non-disability Supplemental Security Income re-determinations.

I have worked closely with the Social Security and Subcommittee on Human Resources in our efforts to improve service, most notably through the Disability Service Improvement initiative, and related improvements to the disability process. I know that the Committee is well aware of the challenges we face at SSA.

The President's budget for FY 2007 proposed an increase in SSA's administrative budget of 4.2 percent over the enacted level for this year. House and Senate appropriators have proposed reductions of $200,000,000 to $400,000,000 in the President's budget request for SSA administrative costs. From my perspective as Commissioner, I am concerned that these reductions will jeopardize our ability to improve service and eliminate backlogs, even without new responsibilities.

Before I close, let me say, again, SSA is ready, willing, and able to do its part to provide support for DHS and its immigration enforcement activities. The men and women of Social Security are dedicated, hard-working, and productive public servants who will do everything they can to carry out SSA's responsibilities, whatever they may be.

I want to publicly thank this Committee for your support for SSA and its programs over the years. I look forward to continuing to work with you as we serve the American people.

[The prepared statement of Ms. Barnhart follows:]

Statement of The Honorable Jo Anne B. Barnhart, Commissioner, Social Security Administration

Mr. Chairman and Members of the Committee:

The President has proposed a comprehensive approach to immigration reform that addresses the need to secure our borders, enforce worksite employment practices, and address the economic issues of immigration. This approach calls for the creation of a true temporary worker program that allows individuals to achieve legal status by paying their taxes, learning English and gaining employment in our society.

Within this context I appreciate your invitation to appear before you to discuss how and when we assign Social Security numbers and issue Social Security cards to non-citizens, as well as issues relating to benefit eligibility for non-citizens. In my testimony today, I will describe SSA's current responsibilities and activities to safeguard the integrity of the Social Security system, including our work with Department of Homeland Security (DHS) and the Internal Revenue Service (IRS).

Currently, as required by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, we provide DHS extensive information about every "nonwork SSN" where earnings were reported. "Nonwork SSNs" are issued to individuals who are not authorized to work in the U.S. but have a valid reason for obtaining an SSN. These cards include the legend, "Not Valid for Employment".

SSA is also an integral part of the DHS Basic Pilot program which allows employers to verify both the Social Security numbers and work authorization status of persons they hire. Of course, SSA continues to provide SSN verification services to employers, including our web-based Social Security Number Verification System (SSNVS)

SSA currently has the authority to use information from Forms W–2 only for the purpose of determining eligibility for and the amount of Social Security benefits. The Administration supports allowing disclosure of this data in the interests of national security and for law enforcement purposes.

At SSA, we have a proven performance record and can and will do what we are called upon to do. But I would be remiss if I did not mention that, as this Committee well knows, every new responsibility we are given, without adequate funding, will affect our ability to provide our core mission service to the American public.

This year alone, we will process over 6.7 million claims for benefits; process almost 245,000 Medicare Part D low income subsidy applications; make decisions on over 575,000 hearings; issue 18 million new and replacement Social Security cards; process 265 million earnings items for workers' earnings records; handle approximately 59 million transactions through SSA's 800-number; serve 42 million visitors to our field offices; process millions of actions to keep beneficiary and recipient records current and accurate; and conduct 1.6 million continuing disability reviews (CDR's) and over 1 million non-disability Supplemental Security Income (SSI) re-determinations.

I have worked closely with the Social Security and Human Resources subcommittees in our efforts to improve service, most notably through the Disability Service

Improvement initiative and related improvements to the disability process. I know that this Committee is well aware of the challenges we face.

From my perspective as Commissioner of Social Security, I am concerned that reductions of $200–$400 million in the President's budget request for SSA administrative costs that have been proposed by the House and Senate appropriators would jeopardize our ability to improve service and eliminate backlogs, even without new responsibilities. I might note that the President's budget for FY 2007, and for the past few years, included modest increases in SSA's administrative budget.

ENUMERATION AND BENEFITS FOR NON-CITIZENS

Enumeration of Non-Citizens

Under current law, Social Security numbers can be issued to non-citizens when they are lawfully admitted to the United States for permanent residence, if they are otherwise authorized to work in the United States, or, under limited circumstances, where an individual is not authorized to work, but has a valid need for an SSN.

The vast majority of original Social Security cards are issued to United States citizens, or to permanent resident non-citizens. Since these individuals are authorized to work without restriction in the United States, these cards show only the name and SSN of the individual and can be used as evidence of authorization to work in the U.S.

However, cards issued to non-citizens who are not authorized to work (at the time of application for a Social Security number) or who are only temporarily authorized to work bear one of two legends describing work authorization status at the time the card was issued: "Not Valid for Employment" or "Valid for Work only with DHS Authorization".

"Not Valid for Employment"

Initially, SSA issued the same type of Social Security card to everyone, whether or not the individuals were authorized to work. In 1974, SSA began assigning SSNs for non-work purposes, but the cards were not specifically annotated. Beginning in May 1982, SSA started issuing cards printed with the legend "Not Valid for Employment," often referred to as nonwork SSNs," to non-citizens not authorized to work. This was due to the increasing need for individuals to have SSNs for nonwork purposes (e.g., to receive payment of a government benefit, to open a bank account, or to get a drivers license) and concerns that such individuals might use the SSN for unauthorized work. With this restrictive legend appearing on a card, employers were able for the first time, to determine whether the individual to whom the card was issued was authorized to work. Of course then as now, an employer could not rely on the Social Security card alone to establish that the person presenting the card was the person to whom the SSN was assigned. The Social Security card is not, and never has been, an identity document, which is why it must be presented in conjunction with an identity document to prove work authorization under immigration law.

In October 2003, I significantly tightened the rules for issuing nonwork SSNs. No longer do we issue SSNs to non-citizens just so they can obtain a driver's license. Instead, SSA only issues such an SSN when 1)a Federal statute or regulation requires an SSN to receive a particular benefit or service to which an alien has otherwise established entitlement; or 2) a State or local law requires an SSN to get public assistance benefits to which the legal alien without work authorization has otherwise established entitlement and for which all other requirements have been met. This action reduced the number of "nonwork SSNs" we issue each year from 72,000 to 15,000.

"Valid for Work Only with DHS Authorization"

Beginning in September 1992, SSA began issuing cards with the legend "Valid for Work Only with INS Authorization" to non-citizens lawfully in the United States with temporary authorization to work. This legend has been changed to "Valid for Work Only with DHS Authorization" to reflect the change from "INS" (the Immigration and Naturalization Service) to "DHS." In these cases, employers must examine other acceptable documentation for the employment eligibility verification process (Form I–9), normally the non-citizen's DHS documentation.

In Fiscal Year (FY) 2005, SSA issued approximately 5.4 million original cards. Of these, 4.3 million were issued to U. S. citizens. Approximately 1.1 million cards were issued to non-citizens with temporary or permanent work authorization and fewer than 15,000 cards were issued to aliens not allowed to work.

Social Security Benefits for Non-Citizens

As you know, current law explicitly prohibits the payment of benefits to individuals in the United States who are not lawfully present here. A non-citizen who is outside the United States can be paid benefits only if he or she meets the applicable statutory requirements.

Impact of the Social Security Protection Act of 2004 (SSPA)

Under SSPA, Social Security benefits are not payable on the record of a non-citizen worker unless the worker was authorized to work in the United States when the worker was issued a Social Security number, or any time thereafter. (This change became effective with regard to workers who were issued an SSN on or after January 1, 2004.) Consequently, a non-citizen worker must meet this requirement to become eligible for benefits, or for the worker's family members to become eligible for benefits as dependents or survivors of the worker.

Nonpayment Provisions

The alien nonpayment provision (section 202(t) of the Act) provides for nonpayment of benefits to aliens who are absent from the United States for more than 6 consecutive calendar months, unless they meet one of several exceptions in the law that permit payment to continue. The primary exception is that the alien beneficiary is a citizen of a country which has a social insurance system of general application and which pays benefits to eligible United States citizens while they are outside that country.

Benefits that have been stopped because the beneficiary is outside the United States will resume when the beneficiary has returned to the United States and has remained here in lawful presence status for one full calendar month and will continue until the beneficiary is absent from the United States for longer than six consecutive calendar months.

In addition, in many cases, aliens entitled to dependents' or survivors' benefits must also meet a U.S. residence requirement to be paid outside the United States. The dependent or survivor beneficiary must have resided in the United States for five years, during which time the family relationship on which benefits are based must have existed. This five year residence requirement can be removed for dependents or survivors who are citizens or residents of a country with whom the United States has a totalization agreement.

Other Events That Result in Nonpayment of Benefits to Non-citizens

The Social Security Act prohibits the payment of Social Security benefits to alien workers (and their dependents or survivors, in certain cases) who are removed from the United States under specific provisions of the Immigration and Nationality Act.

Crediting Unauthorized Work Towards Social Security Benefits

There have been a number of proposals to eliminate Social Security credit for earnings that are posted to a noncitizen's record during periods when the person is not authorized to work. You may recall that when the SSPA was enacted, consideration was given to a similar proposal, which ultimately was not included in the law.

We understand the rationale behind this proposal. However, to administer such a change, we would have to know exactly which periods in the past a person was authorized to work and not authorized to work. We defer to DHS on the specifics of availability of data, but we understand that DHS does not have the data readily available at this time to reconcile earnings and work status.

"HARDENING" THE SOCIAL SECURITY CARD

As you are aware, the expertise of counterfeiters and the wide availability of state-of-the-art technology make it increasingly difficult to develop and maintain a Social Security card that cannot be counterfeited, despite best efforts to guard against such incidents. Therefore, SSA will continue to evaluate new technology as it becomes available to determine if additional features should be included.

As provided in the IRTPA, we, in consultation with the Secretary of Homeland Security formed an interagency task force to establish requirements for improving the security of Social Security cards and numbers. Because current law requires the card to be printed on banknote paper, the taskforce was limited to consideration of improvements to this type of card. In addition to representatives from SSA and DHS, the task force included representation from the Federal Bureau of Investigation, the Department of State and the Government Printing Office. I share Congress' concern about the security of the Social Security card and am committed to doing what I can to make improvements in this regard. The taskforce has completed its work and I provided this Committee with a report a few days ago on how its

recommendations can be implemented. We have decided to delay moving forward with the production of the improved Social Security card pending resolution of the immigration reform debate because the final law may include provisions that affect the Social Security card.

Although not proposed by the Administration, creating a different kind of Social Security card has been suggested by some members of Congress. The immigration and welfare reform legislation passed in 1996 required us both to conduct a study and to develop a report on different methods for improving the Social Security card process, including prototypes of several kinds of new cards. This report, "Options for Enhancing the Social Security Card," was issued in 1997.

We know from the 1997 effort that should SSA be required by Congress to replace all SSN cards the main costs associated with replacing the current SSN card are those associated with reinterviewing individuals and reverifying documents, while the additional costs of the card itself—even with additional security features—are minimal. Thus, the feasibility of a "hard" card depends on who would receive it over what period of time.

The most important factor affecting the total cost is the requirement to verify the identity of the person applying for the card and, in the case of non-citizens, determining the immigration status and work authorization. Other factors must be taken into account as well. For example, the cost of equipment that might be needed in SSA field offices to work with the new cards and the cost to SSA to notify number holders who might need to obtain a new SSN card would have an impact on total outlays.

Currently, most original SSNs (and cards) for United States born individuals are issued through the Enumeration at Birth (EAB) process in which parents apply for their child's SSN at the hospital as part of the birth registration. The vast majority of replacement SSN cards, and a relatively small number of original SSN cards for U.S. born individuals, are issued by SSA field offices where evidence is reviewed and verified. The majority of original SSN cards issued through SSA field offices are for individuals who recently arrived in the United States and whose immigration status permits assignment of an SSN.

Last year, we estimated that a card with enhanced security features would cost approximately $25.00 per card, not including the start-up investments associated with the purchase of equipment needed to produce and issue this type of card. According to estimates made last year, reissuance of all new cards for the 240 million cardholders over age 14 would cost approximately $9.5 billion. We know that, since we made that estimate, the cost of issuing SSN cards has increased by approximately $3.00 per card due to new requirements for additional verification of evidence, so we anticipate an increase in the total cost estimate when we update our figures to reflect current dollar costs. I hasten to add that the Administration is not seeking to replace all cards. The number of workers who would have to obtain a new card varies from proposal to proposal.

Currently, each year staff of the agency devotes approximately 3,300 work years of effort to the SSN card issuance process. Because of the need to interview everyone receiving a new card, and examine original documents, last year's estimate indicates that we would need an additional 67,000 work years to issue everyone a new card. This would require hiring approximately 34,000 new employees if we were required to complete the work within two years and 14,000 new employees to complete the work in five years. As noted, this estimate assumes replacing cards for 240 million individuals, which the Administration has not proposed. An approach that would mandate new tamper resistant cards to be issued only during the normal course of initial issuance and reissuance would involve significantly less additional costs. For a phased approach that limited new cards to only the approximately 30 million people who change jobs at least once during a year and the additional five million young people reaching age 14, the cost would be approximately $1.5 billion per year, using last years cost numbers.

SSA HELPS IDENTIFY UNAUTHORIZED WORKERS

SSN Verification Services

Over the years, we have worked to offer employers alternative methods to verify SSNs. One of those methods is the Employee Verification Service (EVS). EVS is a free, convenient way for employers to verify employee SSNs. It provides employers with several options depending on the number of SSNs to be verified. For up to five SSNs, employers can call SSA's toll-free number for employers (1–800–772–6270) weekdays from 7:00 a.m. to 7:00 p.m. Eastern Standard Time. Employers may also use this number to get answers to any questions they may have about EVS or to request assistance. In FY 2005, SSA responded to nearly 1.5 million calls.

Employers also have the option to submit a paper listing to the local Social Security office to verify up to 50 names and SSNs. In addition, employers may use a simple registration process to verify requests of more than 50 names and SSNs or for any number of requests submitted on magnetic media. Currently, almost 17,000 employers are registered for this verification service.

To further increase the ease and convenience of verifying employee SSNs, we developed the Social Security Number Verification Service (SSNVS). After obtaining a PIN and password in a simple registration process, employers can use the internet to get immediate verification of the accuracy of employees' names and SSNs. This service was expanded to all employers in June 2005.

I announced the nationwide rollout last year at the SSA sponsored National Payroll Reporting Forum, and we continue to promote SSNVS. For example, an article on SSNVS appeared in the SSA/IRS Reporter that is sent to over 6.6 million employers. It was also featured in the SSA wage reporting email newsletter, W2News. We have also highlighted SSNVS in our many speaking engagements before the employer community. There is a special section on SSA's website for employers that highlights and explains the use of SSNVS. This site recently ranked third in the American Customer Satisfaction Index survey, which asks users to rate the content, usefulness and functionality of applications on both public and private sector sites. Through SSNVS, we processed over 17 million verifications for 21,000 employers in the first six months of 2006.

Basic Pilot

As I mentioned earlier, employers in all 50 states may participate in the Basic Pilot program, an ongoing voluntary program in which SSA supports the Department of Homeland Security (DHS) in assisting employers confirming employment eligibility for newly hired employees. Participating employers register with DHS to use the DHS' automated system to verify an employee's SSN and work authorization status. The information the employer submits to DHS is sent to SSA to verify that the Social Security number, name, and date of birth submitted match information in SSA records. SSA will also confirm U.S. citizenship, thereby confirming work authorization; DHS confirms current work authorization for non-citizens. DHS will notify the employer of the employee's current work authorization status. In December 2004, the Basic Pilot was expanded to all 50 states. As of July 17, 2006, DHS and SSA had signed agreements with over 10,000 employers, representing about 36,000 employer sites. For FY 2005, SSA received approximately 100,000 Basic Pilot queries each month. So far, for FY 2006, SSA is receiving an average of 150,000 Basic Pilot requests a month. In June 2006, we received over 182,000 queries.

In 2005, through the EVS, SSNVS, and Basic Pilot programs, we estimate we provided a total of 67 million employer verifications, up from 62 million in 2004.

Earnings Suspense File (ESF)

The Earning Suspense File is an electronic holding file for W–2s (wage items) that cannot be matched to the earnings records of individual workers. It does not represent nonpayment of Social Security payroll taxes, nor is it a repository for actual wages.

There are approximately 255 million wage items in the ESF through Tax Year (TY) 2003, the last year for which data is available. This represents about $519.6 billion in wages. That sounds like a large number, but during that period, we have successfully recorded $73.8 trillion in wages, or more than 99 percent of the total.

SSA does not have data on the number of wage items in the ESF that are attributable to unauthorized work by non-citizens. SSA's source of information about earnings is the Form W–2, and there is no citizenship or immigration status information on that document. While some percentage of name and SSN mismatches are attributable to fraud by unauthorized workers, such mismatches also can occur for a variety of other reasons, including typographical errors, unreported name changes and incomplete or blank SSNs.

No-Match Letters

As you know, SSA processes wages reported by employers on Forms W–2. We pass this information on to the Internal Revenue Service for income tax purposes, and we record the earnings to each worker's account so that they are considered in determining eligibility for benefits and the level of benefits to be paid.

We send "no match" letters to employers who submit more than 10 wage items when more than 0.5 percent of the items in a wage report consist of an SSN and name combination that does not match our records. The employer 'no match' letters include a list of up to 500 SSNs submitted by the employer in wage items that SSA could not post to a worker's record. In 2005, we sent approximately 127,000 em-

ployer 'no match' letters, which covered 7.3 million mismatched records. For privacy reasons, the letter lists only the SSNs, not the name/SSN combination.

The only source of information that SSA receives about a taxpayer's employer and earnings is tax return information on the Form W–2. We receive and process this information as an agent for the Internal Revenue Service. Use of and disclosure of tax return information is governed by section 6103 of the Internal Revenue Code. SSA currently has the authority to use this information only for the purpose of determining eligibility for and the amount of social security benefits. The Administration supports allowing disclosure of this data in the interest of national security and law enforcement purposes.

CONCLUSION

Before I close, let me say again, that SSA strongly supports the President's comprehensive immigration reform approach and is ready, willing, and able to do its part to provide support for DHS in its immigration enforcement activities. The men and women of Social Security are dedicated, hardworking, and productive public servants who will do everything they can to carry out SSA's responsibilities, whatever they may be.

I want to publicly thank this Committee for your support for SSA and its programs over the years. I look forward to continuing to work with you as we serve the American people.

Thank you again for the opportunity to appear before you today. I look forward to working with you, and will be happy to answer any questions you may have.

Mr. MCCRERY. Thank you, Commissioner. Dr. Gustafson.

STATEMENT OF THOMAS A. GUSTAFSON, PH.D., DEPUTY DIRECTOR, CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. GUSTAFSON. Chairman McCrery, Representative Rangel, thank you for inviting me to speak with you about the Centers for Medicare and Medicaid Services' effort to assist hospitals and other providers that provide healthcare to the uninsured, particularly to undocumented immigrants. I am going to concentrate on two provisions that are of particular interest in this area.

The first is the Emergency Medical Treatment and Labor Act (EMTALA) (P.L. 99–272), which requires hospitals to address any person seeking emergency care, regardless of the payment method or citizenship status of the individual. The Second is Section 1011 of the Medicare Modernization Act (MMA) (P.L 108–173), which provides a million dollars over 4 years to help hospitals and other providers with the burden for caring for undocumented immigrants.

EMTALA was designed to insure that people who request treatment for emergency medical conditions will receive appropriate screening and emergency treatment, regardless of their ability to pay. The law creates obligations for hospitals in connection with individuals making these requests. These obligations do not vary by whether the individual is a citizen.

CMS's regulations implementing EMTALA require that hospitals with dedicated emergency departments provide an appropriate medical screening examination to any person who comes to the hospital emergency department and requests treatment or examination of a medical condition. The same requirement relates to any person who presents on hospital property, even in areas other than the emergency room, requesting evaluation or treatment of an emergency medical condition. If the examination reveals an emer-

gency medical condition, the hospital must also provide either necessary stabilizing treatment or arrange for an appropriate transfer to another medical facility.

EMTALA applies to all Medicare participating hospitals with dedicated emergency departments, and applies to all individuals who present requesting examination or treatment of a medical condition, not just those who receive Medicare benefits. Hospitals with specialized capabilities also have a responsibility under EMTALA to accept appropriate transfers, regardless of whether the hospital has a dedicated emergency department.

A hospital that violates EMTALA may have its ability to participate in Medicare terminated and may be subject to civil money penalties of up to $50,000 per violation. The law also provides a private right of action against a hospital that violates EMTALA.

Hospitals are also required to maintain lists of physicians who are on-call for duty after the initial examination to provide necessary stabilizing treatment. Hospitals have discretion to develop their on-call lists in a way that best meets the needs of their patients requiring services required by EMTALA. Under CMS's regulations, EMTALA does not apply after an individual has been admitted for in-patient hospital services.

In order to provide a detailed review of how EMTALA is implemented, the MMA required us to establish a technical advisory group (TAG), which has already met four times, and which has a very active set of Subcommittees, is taking a detailed look at EMTALA policies and procedures, including both CMS's regulations and the interpretive guidance outlining hospitals' responsibilities.

This TAG includes hospital, physician, and patient representatives, and I sit on it as the CMS's senior representative. Its report is expected in October of 2008.

Turning now to Section 1011, this provision—under this provision, Congress provided a total of $1 billion, $250,000,000 a year, over 4 years, to help hospitals and certain other providers cover their otherwise unreimbursed costs of providing emergency services for undocumented immigrants, which could include some of the costs resulting from the EMTALA provisions I just spoke of.

Payments are made directly to eligible providers, which include hospitals, qualifying physicians, and ambulance providers. The Centers for Medicare and Medicaid Services (CMS) established guidelines for determining who is eligible for these benefits, and providers are responsible for making these determinations.

Section 1011 provides funds for 2005 through 2008. Each year, two-thirds of the $250,000,000 allocated, or $167,000,000 is allocated across the States, based on their relative percentages of undocumented immigrants. All 50 States and the District of Columbia are eligible for this pot of money.

The remaining $83,000,000 is allocated to those six States that have the highest number of undocumented apprehensions in each fiscal year. The payments are made to the extent that the care was not otherwise paid for. Thus, if an individual has Medicaid, for instance, the payments would be taken into account in making the Section 1011 payments. In fiscal year 2005, CMS made payments in excess of $58,000,000 to providers under this section. Since ap-

proximately $192,000,000 allocated in FY 2005 was not paid, CMS rolled these excess funds over to be used into FY 2006.

This concludes my remarks, and I'll be happy to answer any questions that you may have.

[The prepared statement of Mr. Gustafson follows:]

Statement of Thomas A. Gustafson, Ph.D., Deputy Director, Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services

Chairman Thomas, Rep. Rangel, thank you for inviting me to speak with you about the Centers for Medicare & Medicaid Services' (CMS) efforts to assist hospitals that provide health care to the uninsured, particularly undocumented immigrants. Use of medical services by undocumented immigrants has been a long-standing issue for hospitals, especially those located along the U.S.-Mexican border. Federal law requires hospitals to medically screen and provide stabilizing treatment or an appropriate transfer to any person seeking emergency care, regardless of payment method or citizenship status. This obligation has added to the level of uncompensated care provided by hospitals, prompting Congress to include a provision in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) to help certain hospitals recover some of their costs for providing this care to undocumented immigrants. In addition to providing the funding appropriated by the MMA, CMS recently issued guidance to the States as part of the implementation of the Deficit Reduction Act of 2005 (DRA), which requires Medicaid applicants who declare they are citizens to document their citizenship.

Federal Reimbursement of Emergency Health Services Furnished to Undocumented Immigrants

Under Section 1011 of the MMA, Congress appropriated a total of $1 billion to help hospitals and certain other providers cover their otherwise un-reimbursed costs of providing emergency services required under the 1986 Emergency Medical Treatment and Labor Act (EMTALA) to undocumented immigrants. Generally, under EMTALA, hospitals with emergency departments that participate in Medicare must medically screen all individuals who present to the hospital's dedicated emergency department seeking treatment, and must provide stabilizing treatment or an appropriate transfer to any individual requiring emergency care. Section 1011 provides for direct payments to eligible providers for EMTALA-related care to undocumented immigrants that was not otherwise reimbursed. Eligible providers include hospitals, qualifying physicians, and ambulance providers, and may also include Medicare critical access hospitals (CAHs) and Indian Health Service facilities (whether operated by the Indian Health Service or by an Indian tribe or tribal organization). For purposes of the section 1011 program, physician and ambulance providers need not be enrolled in the Medicare Program. Providers may also qualify for payment under this program for emergency care furnished to immigrants who have been paroled into the United States for the purpose of receiving health care services and to Mexican citizens who have temporary permission to enter the United States. For purposes of section 1011, CMS does not require hospital staff to ask patients directly about their citizenship or immigration status. Instead, CMS developed a Provider Payment Determination information collection form that instructs providers to ask or research some basic questions (e.g., whether the patient is enrolled in Medicaid) and request some documentation (e.g., a border crossing card, foreign passport). It is the provider's responsibility to make a reasonable determination of patient eligibility based on that information.

Section 1011 provides funds for FY 2005 through FY 2008, with $250 million appropriated per fiscal year. Each year, two-thirds of this $250 million, or $167 million, is allocated to the States based on their relative percentages of undocumented immigrants. The remaining $83 million is allotted to the six States with the highest number of undocumented immigrant apprehensions for each fiscal year. In FY 2005 and FY 2006, Arizona, Texas, California, New Mexico, Florida, and New York were the six states determined to have the highest number of undocumented immigrant apprehensions.

Although funds under section 1011 are allocated on a State level, CMS makes payments directly to providers. These payments are made from each State's allocation and these payments to providers are subject to a proportional reduction if the total amount allocated is insufficient to provide full reimbursement to each provider based on the law's payment formula. This pro-rata reduction ensures that some amount is paid for every provider that makes a qualifying payment request (claim).

Payments under section 1011 may only be made to the extent that care was not otherwise paid for (through insurance or another source). Funds are State-specific, and any unused portion allocated in one year may be rolled over to the State's allocation for the following year for use by that State.

For FY 2005, CMS made payments in excess of $58 million to providers under section 1011. Since approximately $192 million allocated for FY 2005 was not paid to providers, those excess funds were rolled over to be used in FY 2006.

To help hospitals and other providers utilize the funding available under section 1011, CMS contracted with TrailBlazer Health Enterprises in July 2005 to administer the program. CMS and TrailBlazer have worked together to develop systems for provider enrollment, claims processing, and payment. TrailBlazer, which processes these claims on a quarterly basis, also conducts outreach and training sessions and maintains a Web site, listserv, and customer service telephone line to update providers on any developments regarding the section 1011 program.

EMTALA

As previously mentioned, under EMTALA hospitals have obligations to any individual, regardless of citizenship, who requests treatment for a medical condition. EMTALA was designed to ensure that people will receive appropriate screening and emergency treatment, regardless of their ability to pay.

CMS' regulations implementing EMTALA require that hospitals with dedicated emergency departments provide an appropriate medical screening examination to any person who comes to the hospital emergency department and requests treatment or examination of a medical condition. They also require that these hospitals provide an appropriate medical screening examination to any person who presents on hospital property requesting evaluation or treatment of an *emergency* medical condition. In both cases, a request may be made by another individual on behalf of the person for whom examination or treatment is sought or a request can be considered to have been made if a prudent layperson believes that based on the behavior of the individual an emergency medical condition exists. If the examination reveals an emergency medical condition, the hospital must also provide either necessary stabilizing treatment or arrange for an appropriate transfer to another medical facility.

EMTALA applies to all Medicare-participating hospitals with dedicated emergency departments and applies to all individuals who present requesting examination or treatment of a medical condition, not just those who receive Medicare benefits. Hospitals with specialized capabilities have a responsibility under EMTALA to accept appropriate transfers regardless of whether the hospital has a dedicated emergency department. A hospital that violates EMTALA may have its ability to participate in Medicare terminated and may be subject to civil penalties of up to $50,000 per violation. An individual who has suffered personal harm and any hospital to which a patient has been improperly transferred and that has suffered a financial loss as a result of the transfer are also provided a private right of action against a hospital that violates EMTALA.

Hospitals also are required to maintain lists of physicians who are on call for duty after the initial examination to provide necessary stabilizing treatment. Hospitals have discretion to develop their on-call lists in a way that best meets the needs of their patients requiring services required by EMTALA.

Under CMS' regulations, EMTALA does not apply after an individual has been admitted for inpatient hospital services, as long as the admission is made in good faith and not in an attempt to avoid the EMTALA requirements.

Section 945 of the MMA required the Secretary of Health and Human Services to establish a technical advisory group (TAG) to review EMTALA policy, including the regulations and interpretive guidance outlining hospitals' responsibilities under EMTALA. This TAG, which includes hospital, physician and patient representatives, has already met 4 times. The TAG will complete its deliberations and submit a report of its findings and recommendations to the Secretary by October 2008.

Conclusion

Thank you again for this opportunity to discuss CMS' efforts to assist hospitals that provide health care to undocumented immigrants. I would be happy to answer any questions you might have.

Mr. MCCRERY. Thank you, Dr. Gustafson.

Ms. Myers, I talk to employers occasionally about this issue of verification of eligibility to work, and they often express frustration

with the current law that governs their ability to determine whether a prospective employee is, in fact, eligible for employment in the United States. The DHS and SSA kind of jointly operate the Basic Pilot program, which, as I understand it, is designed to help employers verify eligibility to work. Can you describe for us the current law with respect to what tools are available to employers to verify eligibility for work, and how, if at all, the Basic Pilot program alters that for those employers who volunteer for the program?

Ms. MYERS. Thank you, Chairman McCrery. The Basic Pilot program is a voluntary program that's administered jointly by SSA and the United States Citizenship and Immigration Services at the DHS, not ICE. The Basic Pilot, we believe, helps provide employers with some tools for verifying that employees, when they bring in documents, can know whether or not the employee is legally entitled to work here. What it doesn't do is, if someone is using my name and SSN and provides those documents, that can't tell you that, so it's not a perfect system, but it is one step.

One of the reasons that we launched the IMAGE program today is that we believe there are other things that employers can do to try to protect themselves from being tricked by individuals who might want to come in and provide them with false documents. Those are some of the best practices, which we've placed on our website. Those include such things as making sure that the individuals who are reviewing I–9's actually have training, that you conduct an internal audit twice a year to make sure that the individuals who are reviewing I–9s know what they're doing. You also can work with ICE in other ways to make sure that you are complying with the law.

We realize the Basic Pilot is not the entire solution, and that's why we're working with other law enforcement agencies in cracking down on the problem of document fraud. We've established these taskforces throughout the country to go after franchises like the Castorena franchise that had locations in many cities, really document mills, that were providing false documents to employers. So, those are some of the tools that we're using to help guide employers who want to follow the law.

Mr. MCCRERY. So, it's my understanding that the Administration believes that a mandatory program like the Basic Pilot program ought to be in place eventually for employee verification; is that correct?

Ms. MYERS. Yes. Yes, Chairman.

Mr. MCCRERY. I suppose that means that you all have reached the conclusion that the Basic Pilot program works and that it actually facilitates identification of potential employees who are, indeed, eligible for employment in the United States, and also the converse, would help identify those people who are not eligible for employment in the United States, who are seeking employment. Is that right?

Ms. MYERS. We do believe it had—the Basic Pilot program and a mandatory electronic employer-verification system has some value. Now it's not a panacea. It can't be looked at as the only thing, as the only tool for employers or as the only way that we're going to weed out illegal immigration, but we have seen it has

value. For example, in some employers, we hear examples that if they advertise that they're using Basic Pilot, illegal aliens don't come in to apply because they know that the employer is using Basic Pilot, that their documents are going to be checked. So, there are some things like that that are helpful, but certainly, Basic Pilot is not a perfect tool. I would defer to Commissioner Barnhart as well, if she has anything to add on the Basic Pilot program.

Mr. MCCRERY. Well, I think the key question here is, because I know Commissioner Barnhart, she and I have talked about this before, and there are added costs to the SSA for administering their end of the Basic Pilot program. So, I guess the question we need to broach here is, is the added advantage that we're getting from the Basic Pilot program worth the added expense that we're paying through administrative costs at the DHS and the SSA. Commissioner Barnhart, do you have any——

Ms. BARNHART. As you know, Mr. Chairman, what the Basic Pilot does is it verifies the name, SSN, and the date of birth. We also provide a death indicator, and then the citizenship status as we know it. If they're not American citizens, it goes back to DHS to verify the current work authorization status of the individual.

The bulk of the work that is done through Basic Pilot, in terms of verifications, I think 92.5 percent were handled by SSA last year, and only 7.5 percent, I believe, had to be deferred to DHS for their follow-up. So, I do think it's a tool, if you look at the way that the number of employers using Basic Pilot has increased. We have over 10,000 employers who are using it now. That's an increase over the past. We have approximately 36,000 employer sites around the country using it. So, I think employers are looking for any tool that could be available and helpful to them, and they do like it.

They're also using our SSN Verification System, which, as you know, matches name and SSN, and doesn't go as far as citizenship, but does at least give a preliminary indicator of whether the individual is presenting appropriate and accurate information for purposes of the W–4 that they complete.

Mr. MCCRERY. Thank you, Commissioner. Mr. Rangel.

Mr. RANGEL. Thank you so much, Mr. Chairman. I don't know what this has to do with pending immigration legislation, but I have to admit it is very informative, and I'll take my questions wherever the testimony leads me.

I want to thank IRS for the great job that you do over the years, for the thankless work that you do. There was some implication from Secretary Myers, and you, Commissioner, that this enforcement of existing law as it relates to undocumented workers—I don't—you said something about——

Mr. EVERSON. Yes, sir. I think what you are probably responding to is the enforcement penalties in this area. What Secretary Myers was referring to, are the——

Mr. RANGEL. No, no, no. I don't want to talk about what she's talking about. I want to talk about you saying that illegal workers are liable for taxes.

Mr. EVERSON. Yes.

Mr. RANGEL. There was some vague implication that you're going after the worker and the employer. Someone gave me this

saying that we got between 11,000,000 and 12,000,000 illegals, unauthorized population, that two-thirds of them have been in the country for 10 years or less, that 30 percent of them—where is it now?

The industries that they work in: the hotel industry, the agricultural industry—oh, here it is, here. Seven million of the workers out of the labor force of one-hundred forty-eight legal, and one-third of the unauthorized workers are in service occupations. Nineteen of the illegals employed in construction and extractutive (sic); fifteen in production, installation, and repair; four percent in farming. That's not very—then we have percentages in cleaning and all the service industries: butcher, food, landscaping.

The President has implied that if we got rid of all the illegals, it would have an outstanding negative economic impact on these industries, and that's why we have to do something to legalize them. That means that we know where they are, where they're working, the industries, and what the political position is. We not only cannot want to deport them, but we can't afford to deport them. We can't do and we can't afford to do it.

Now how does the IRS fit into this? You know where they are. You know where they're working. You know the industries. Are you suggesting that you're enforcing the tax laws, as relates to illegal workers in the United States of America?

Mr. EVERSON. Sire, what I have said, and perhaps I wasn't as clear as I should have been, is that the tax laws do not distinguish between status as a citizen, a legal resident, or as an illegal undocumented worker.

Mr. RANGEL. No, I know the law. I want to talk about—ask you, are you——

Mr. EVERSON. We try to get the taxes——

Mr. RANGEL. Are you attempting to enforce the law as it relates to illegal workers in the United States of America?

Mr. EVERSON. No, we are trying to enforce law as it relates to the tax obligations of illegal workers in this country.

Mr. RANGEL. Let's try it again. Are you going after illegal workers who don't pay taxes in the United States of America?

Mr. EVERSON. Yes, we do, sir. We have, in this country, an absolute obligation to pay your taxes.

Mr. RANGEL. I know the obligation, but——

Mr. EVERSON. That doesn't matter whether you're here legally or illegally.

Mr. RANGEL. Are you going after employers who hire illegal workers, who don't take taxes away from these illegals?

Mr. EVERSON. They are subject to the same scrutiny that other employers are subject to.

Mr. RANGEL. Commissioner, I know they're subject to, but do you have any statistical data—can you give me any idea of the number of cases that you've gone after. All of this statistics and the President of the United States—no one challenges you can go to any restaurant, chain of restaurants, chain of hotels, agriculture, landscaping, we know where the illegals are. Could you tell me what percentage of the estimate of illegals that you've prosecuted for none-payment of tax?

Mr. EVERSON. I can give you one statistic that I think will answer your question and, perhaps, rebut the inference that we're singling this population out. When you look at our——

Mr. RANGEL. I don't want you to rebut it. If you know they're illegal, why rebut it, if they have a legal——

Mr. EVERSON. Let me give you one statistic.

Mr. RANGEL. Sure.

Mr. EVERSON. The audit rate for all individuals is a little less than one percent. If you look at the audit rate for non Earned Income Tax Credit (EITC) claimants with an income under $25,000, that is point-one-two (.12) percent. In other words, we are doing very little in that area in contrast to a 5 percent audit rate for people who have a million dollars of income or more. These people are not being singled out. That's because at the level that we're talking about, and if you look at the mismatched W–2s, as I indicated, three-fourths of them are for amounts of $10,000 or less. The ramification of all that is, we tread very lightly in this area because it does not generate a lot of money.

Mr. RANGEL. Okay, but I will you could send me something as soon as you can. If we know that—do you really believe that illegal aliens generally are paying tax, Federal taxes?

Mr. EVERSON. Well, it's a very difficult thing to estimate, but, as I indicated, this year, so far, we've received 2.6 million returns that have an ITIN on a return. Now that can be an ITIN for a dependent or for a spouse, but probably there are 2 to 3 million illegals who are paying taxes out of the general consensus, of about 7 million you mentioned in the workforce. So, clearly, there is a very significant contribution of tax by that population, sir.

Mr. RANGEL. Thank you for your leniency, Mr. Chairman.

Mr. MCCRERY. You're quite welcome, Mr. Rangel. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman. I'd like to start with Dr. Horn. I have an interesting question, I think. In your testimony, you provide, correctly so, that the TANF payments are paid on behalf of the child, if the child is an American, regardless of whether the parents are illegal or not, they'd be entitled to some TANF payments.

Also, under the Welfare Reform Law, certain work is required in time-limited welfare reform. How do you work this out where somebody is an illegal and is required—having work requirements with regard to a condition of receiving TANF payments?

Mr. HORN. If the adult is an undocumented immigrant, then they are not eligible for an adult assistance payment under any circumstance, and they are not covered under the work requirement. So, in cases where an illegal immigrant has a U.S.-born, citizen child, that benefit is paid on behalf of the child, but the adult is not eligible for Federal payment.

Mr. SHAW. Oh, the child is not eligible for Federal——

Mr. HORN. The Child is, but not the parent, if the child is a U.S. citizen.

Mr. SHAW. Where do you pay the TANF funds?

Mr. HORN. Payment goes to the family.

Mr. SHAW. To the illegals?

Mr. HORN. The check, since children generally don't have bank accounts, goes to the parent.

Mr. SHAW. That's interesting. Mr. Everson, I—listening to the exchange that you had with Mr. Rangel calls to mind a bill that, I think, Mr. English has filed, and that is a question—and which I think I'm a cosponsor, and that is a question of matching SSNs with employees with regard to the W–2 forms that are filed for these employees. The question is what effect would it be to tell the employer that unless they can come up with a legitimate SSN, that they would not be able to deduct from their income tax the cost of the labor payments made to illegals.

Mr. EVERSON. I think that this could be enforced, Congressman, but we need to consider that carefully. I would suggest that the real trick here is to get comprehensive reform so that we dry up the demand and the flow of illegals into the country.

If that's not done, a provision like that could have a real impact where businesses decline to organize in the legal sector. Businesses would then go into the underground economy where they don't pay taxes at all. They're then not paying the employment taxes; they're not paying the income taxes. So, I'd be very careful before we did something like that, sir.

Mr. SHAW. That's interesting, and the—I would assume, though, that most of the illegals don't really reach the point where they have any income tax liability.

Mr. EVERSON. I think that's probably, by and large, true, I talked about the billions that do come in, but if you look at all those mismatches that I mentioned before, the preponderance of them is for amounts below $10,000. Right now it takes about $8,000 as a single filer before you have any tax obligation, and $16,000 if you're filing jointly, so you're right. A lot of folks are under that limit.

Mr. SHAW. Commissioner Barnhart, I, for some time—and I think we've talked about this, maybe, over the years. It's been a very great concern of mine that somebody can be amassing Social Security payments under, really, a false number that they have made up, and actually, in many cases, is part of identity theft, and then they can come back, if they were legalized and had a legal SSN, they could come back then and claim the moneys that they they've paid in under an assumed name or quite—due to fraud and identity theft of another. Do you think we ought to reevaluate that position, and, exactly what—it seems basically wrong to me to allow somebody to enjoy our Social Security system who has actually defrauded the system for so many years, and then going back and claim the benefits of the fraud that they have perpetrated on the system, as well as, in some cases, the employer.

What would be the effect of changing this policy? How much money is out there that's estimated that would be forfeited in the event we were to change this policy?

I think the situation over at the Senate was pretty much tracking a lot of the law that's already on the books in their immigration bill.

Ms. BARNHART. Yes. Mr. Shaw, as you know, there have been several changes made relative to the issue of who can collect Social Security benefits. In the 1996 legislation, it was required that you had to be legally present in the United States to collect benefits.

The Social Security Protection Act (SSPA) (P.L. 108–203) that went through this Committee required that anyone who was issued a SSN after on or after January 1, 2004, had to have been work authorized at some point or the earnings that they had accrued would not count toward Social Security benefits.

The difficulty that we run into in looking back and trying to discern whether the person was work authorized or not work authorized is that, to the best of my knowledge, there is no electronic database or file where it chronicles a person's status for specific periods of time. For example, a person could come into the country legally and be working, and then become not authorized to work, and therefore be in an unauthorized status, and then come back into being in an authorized status again.

It's my understanding, and I would defer to Ms. Myers, but my understanding is that the DHS does not, in an automated fashion, track that data longitudinally, and so it's not readily available for us to go back and make determinations at Social Security about which portion of earnings were earned during a work-authorized period and which portion of earnings were earned under an unauthorized period.

In the case of just strict identity theft—and I described that instance that I did because I believe that's what you were talking—I believe that was the——

Mr. SHAW. Yes, ma'am.

Ms. BARNHART. —but I just want to point out that in the case of strict identity theft, misuse of a SSN is a felony, and we would refer that to our Inspector General for investigation and prosecution.

Mr. SHAW. Would the Senate bill have changed that?

Ms. BARNHART. The Senate bill——

Mr. SHAW. Senate Immigration bill.

Ms. BARNHART. My understanding is that the Senate Immigration bill does not change the requirements currently on the books related to who is eligible to receive Social Security and not eligible to receive Social Security. Rather, what it does is, it gets into making more people potentially eligible.

Mr. SHAW. Thank you.

Mr. MCCRERY. Mr. Stark.

Mr. STARK. Thank you, Mr. Chairman. Secretary Myers, in your enforcement of these immigration and customs laws, do you use informants?

Ms. MYERS. Yes, we do.

Mr. STARK. My opponent has suggested a program of offering bounty payments to citizens for turning in undocumented workers or illegal residents. Would you—would the Administration support that? Would you support that idea?

Ms. MYERS. Well, Congressman, we certainly are looking at, kind of, all creative ideas at this point, in order to insure——

Mr. STARK. Have you considered bounty payments?

Ms. MYERS. We have not specifically considered so-called bounty payments. There are certain occasions——

Mr. STARK. Mr. Everson, you use rewards in collecting——

Mr. EVERSON. We do, sir. We have a whistleblower program. You're right.

Mr. STARK. I doubt if you get many people in the five and 10 percent bracket getting turned in, but you may. With your experience, would offering bounties to the average citizen help you or be useful in this kind of enforcement?

Mr. EVERSON. I don't want to get into that if I can avoid it. Chairman Grassley is a very strong advocate of expanding the whistleblower program, and we're working to do that. Perhaps where you apply that is toward the top end, sir.

Mr. STARK. That's what I thought, too. One other idea that my opponent has that I, as far as I know of any—I guess I could ask Dr. Horn. He suggested that we revoke the citizenship of all the children who were born here of illegally resident parents, and I'm not a lawyer, but I'm not sure that, short of a Constitutional amendment, that would be possible. Is anybody here a lawyer? Who's a lawyer?

Are you a lawyer, Mr. Everson? I don't think that's Constitutional, do you?

Mr. HORN. I'm a psychologist, not a lawyer.

Mr. EVERSON. I believe that would require a Constitutional amendment, sir.

Mr. STARK. Thank you very much. Now, Secretary Myers, you're familiar with both the Senate and the House bill?

Ms. MYERS. Yes, sir.

Mr. STARK. Which do you prefer, and which would be more helpful in your work?

Ms. MYERS. We enforce the law, and whatever law is passed, that's the law——

Mr. STARK. I'm asking, you're a professional law-enforcement person. We have two bills we're discussing, we may compromise between them. I'd like to know which of the bills would be more useful to you in fulfilling your duties.

Ms. MYERS. Well, there's certain core things that we need in order to be more effective in enforcing, particularly, the Worksite Enforcement Law. One, we believe, would be more regularized access to the Social Security no-match data.

Mr. STARK. Which bill does that better? I'm——

Ms. MYERS. Well, sir—the Administration, I think, has worked very closely. We would be happy to continue to work on that, because——

Mr. STARK. Let me try—is anybody else, Commissioner Everson? Between the bills—Secretary Barnhart, in Social Security, which bill would make your job easier? I'm not—I don't think we'll get either one in as it stands, but I'm curious which one would help you more.

Ms. BARNHART. From my perspective, Mr. Chairman, Social Security doesn't get involved, as Mr. Everson said earlier in his opening remarks, Social Security doesn't get involved in strict enforcement of immigration law. So, from my perspective, both bills address the issue of Basic Pilot in terms of expanding the current Basic Pilot to make it mandatory to all employers. In addition, the Senate bill would include more elements.

What I'm mainly concerned about is making sure that wages that are reported to Social Security are credited accurately to the

appropriate SSN. This goes back to the question that I was asked——

Mr. STARK. Dr. Gustafson, one of the concerns in the bill, the House bill, that the Senate bill doesn't have is that there's a—that the emergency-room workers who help illegal residents or aliens might be arrested for providing care that, under EMTALA, they're required to provide. Have you looked into that part of the House bill? Would you have any comment on that?

Mr. GUSTAFSON. Not in any depth, sir.

Mr. STARK. Pardon?

Mr. GUSTAFSON. We have not looked at that provision in any depth.

Mr. STARK. You're familiar with it?

Mr. GUSTAFSON. It has been called to our attention recently, sir.

Mr. STARK. Do you think it would help?

Mr. GUSTAFSON. I think we would have to voice concern about a provision which interfered with the public health role of America's hospitals, sir.

Mr. STARK. Thank you, Mr. Chairman.

Mr. MCCRERY. Mr. Herger.

Mr. HERGER. Thank you. Commissioner Barnhart, just following up on some questioning that Congressman Shaw asked earlier, do you have any estimates of the number of children receiving Supplemental Security Income (SSI) benefits whose parents are in the United States illegally?

Ms. BARNHART. No, sir. I do not. I can tell you that approximately 1,000,000 children receive SSI disability benefits. Unfortunately, for purposes of answering your question, we don't capture whether or not the children are American citizens because they were born here but their parents are here illegally. We don't capture that kind of data.

Mr. HERGER. Secretary Horn, your testimony notes that in 2004, about 152,000 TANF child only included parents of unknown citizenships. That is an alarming figure. Is this group a rising share of the welfare caseload? If so, what, if anything, can we do through future TANF policy reforms to address this issue?

Mr. HORN. If you look at the number and the percentage of cases in which a child is receiving a benefit and residing with a parent who is not receiving a benefit, and where the parent is either of unknown citizenship or alien status, back in 1996, there were about 160,000 such cases, and in 2004, there were 152,000. So, in terms of absolute number, compared to the last year of Aid to Families with Dependent Children (AFDC), the number has gone down, although, if you compare it to 2000, the number was about 91,000 in 2000, and currently it's 152,000. So, it depends on what your comparison year is.

If you look at the percentage of those cases, in 1996, under the last year of AFDC, it was 16 percent of all child-only cases, and in 2004, it was 18 percent. If you compare to 2000 instead, it was 12 percent in 2000 and 18 percent in 2004. So, if your comparison is to the last year of AFDC, the number has gone down, certainly, but if you compare to 2000, the number and the percentage has gone up.

Mr. HERGER. Is that considering the fact that our caseload has gone down by 60 percent since 1996?

Mr. HORN. If you look at the overall number of child-only cases on the caseload, the number has stayed relatively constant since the enactment of TANF, but the percentage has grown pretty dramatically for the entire category of child-only cases. In 1997, there were about 900,000 child-only cases, and in 2004, there were 864,000. As a percentage of the total caseload, however, the percentage of child-only cases has grown from 21 percent to 44 percent. Now not all of those child-only cases are in the category that we're discussing. A lot of them are residing with a parent who is on SSI, and some of them are residing with parents who are in sanction status, so it depends on which category of child-only cases you're thinking about.

Mr. HERGER. Does welfare—again, Dr. Horn, does the welfare system now expect illegal alien parents to work for these benefits or otherwise place a time limit on them?

Mr. HORN. Illegal aliens are not eligible to receive a cash assistance payment.

Mr. HERGER. Again, referring to the children who are receiving them, who have been born in the United States, even though their parents are illegal, they are legal, and if those children are receiving, are the parents working?

Mr. HORN. Child-only cases, regardless of the status of the adult, at least until recently, the adult was not subject to the work requirement. That has changed for some categories of child-only cases with the publication, in late June, of our interim final TANF regulation, but we still did not include, as being subject to the work requirement, parents of child-only cases who are either immigrants under their five-year bar for receipt of benefits, or illegal immigrant parents.

Mr. HERGER. Thank you.

Mr. MCCRERY. Mr. Johnson.

Mr. JOHNSON OF TEXAS. Thank you, Mr. Chairman. Ms. Barnhart, following up on the Chairman's earlier question, do you have the ability to have instantaneous confirmation of someone with a SSN.

Ms. BARNHART. Mr. Johnson——

Mr. JOHNSON OF TEXAS. Turn on your mic, please.

Ms. BARNHART. Thank you. Mr. Johnson, what we have is the ability for an employer, through our SSN Verification System, to get a pin and password to be able to sit down on a web-based system, plug in Jo Anne Barnhart and my SSN and instantaneously it comes back that either it's a match or it's a no-match.

Now that does not say, going back to a point Ms. Myers made earlier, that I'm actually Jo Anne Barnhart. It can't do that, but it can say that the name and the number match, but not necessarily that the individual who provided that name and number to the employer in this instance is actually——

Mr. JOHNSON OF TEXAS. Yes, it could be a false number, but it matches whatever the name is?

Ms. BARNHART. Correct. It does.

Mr. JOHNSON OF TEXAS. Okay. You coordinate with them on that, with ICE?

Ms. BARNHART. Yes, we do. That is part of what we do. In addition to the SSNVS program that is available to all employers on a voluntary basis, we also work through the Basic Pilot with the DHS.

Mr. JOHNSON OF TEXAS. Okay. You got a non-work alien file, I think, that tracks earnings. Is that true?

Ms. BARNHART. We do have a non-work alien file.

Mr. JOHNSON OF TEXAS. With a non-work SSN. If the Congress were to pass a new law stating, "only earnings from citizens or those with a green card were to be credited to Social Security," is there any way to go back to previous years and make sure that no wages paid to illegals would ever be credited with Social Security benefits?

Ms. BARNHART. That would be extremely difficult, Mr. Johnson. As I was discussing with Mr. Shaw earlier, the issue for us is that there is no longitudinal database that tracks a person's work authorization status at specific points in time. So, for example, let's say that I was here illegally in this country working, and then I went through whatever channels are necessary to go through, got sponsored, and I became a work authorized individual. It is my understanding that the database at DHS actually overwrites and then says, "As of today, July 26, I am now work authorized and in this country legally." So, the data that would be necessary to go back and say, "that work authorization just started that day, and anything prior to was unauthorized," to the best of my knowledge does not exist. I would invite Ms. Myers to talk about it.

Mr. JOHNSON OF TEXAS. Okay. You do know that they're earning wages and you apply them to Social Security?

Ms. BARNHART. We do know that they're earning wages, and if the name and SSN match our files, we apply it to Social Security.

Mr. JOHNSON OF TEXAS. Okay. Do you coordinate with IRS on those wages?

Ms. BARNHART. The coordination that takes place with IRS is actually done through our no-match. Every year, when we receive wage reports, which are the W–2s that are submitted with a summary W–3, we record those. The IRS, and Mr. Everson can obviously describe what they do better than I can, but we actually provide IRS with the information on the W–2s, and if we end up with a name and SSN that doesn't match our records, we let them know, and if they can determine the correct SSN from their tax return file, then they contact us.

Mr. JOHNSON OF TEXAS. Well, what happens if you don't get a match?

Ms. BARNHART. If we don't get a match it goes into the earnings suspense file, something that's been in existence since 1937.

Mr. JOHNSON OF TEXAS. Yes.

Ms. BARNHART. There are approximately 255,000,000 items in the earnings suspense file. Not dollars, but wage items that could not be attributed to a correct earnings record.

Mr. JOHNSON OF TEXAS. Do you now coordinate with ICE on those kind of items?

Ms. BARNHART. We send to the DHS information on the non-work SSNs where wages were earned in the non-work alien file.

Mr. JOHNSON OF TEXAS. Okay, let me ask——

Mr. EVERSON. If I could add something to that. This gets to the nub of the issue on section 6103. Those 8,000,000 mismatches or so, are taxpayer information. It's generated off a W–2. A W–2 is taxpayer information, so this is what the Administration is proposing would be addressed through the mandatory verification system, a change to 6103 that would allow what you're talking about to happen, sir.

Mr. JOHNSON OF TEXAS. Thank you. One quick question for Dr. Gustafson, does CMS have an understanding as why there was money left over in 2005 for section 1011 funding; and was it a lack of education on the providers' part or were hospitals reluctant to verify status of citizenship; and what were the main barriers?

Mr. GUSTAFSON. Not all of the money was expended in 2005. As you indicated, that rolls over to be available in 2006. We believe that the principle thing to point to here is that this was a new program, so that we were getting up and running, providers were enrolling in it, everybody was getting used to the new business. We have no evidence I could provide you indicating any reluctance on the part of providers to participate.

Mr. JOHNSON OF TEXAS. Thank you, sir. Thank you, all of you. Thank you, Mr. Chairman.

Mr. MCCRERY. Thank you, Mr. Johnson. Mr. Levin.

Mr. LEVIN. Thank you. Welcome. Welcome to all of you. Ms. Barnhart, I think there was a Social Security Actuary estimate on the Senate bill. Are you familiar with that?

Ms. BARNHART. Yes, sir. I've read that estimate. It was done by our independent actuary. Yes, sir.

Mr. LEVIN. So, why don't you briefly tell us what it said about the impact in terms of the solvency of the fund.

Ms. BARNHART. The actuary's memo that was provided to Chairman Grassley explained that, due to significantly increased revenue, because of the temporary worker program provided for in the S. 2611, the exhaustion date would actually be moved out two years, from 2040 to 2042.

Mr. LEVIN. Thank you. Also, we were talking about the child-only cases, and you mentioned the availability of SSI. I think the record should be clear. If the child is illegal, there's no benefit, right? There has to be legality of somebody, is that correct?

Mr. HORN. Yes. It's complicated. There are different categories of child-only cases. One category is that the parent is a legal immigrant, a qualified immigrant, who is under the five-year bar from receiving assistance, and the child is a U.S. citizen and getting assistance. Another category would be a U.S. citizen-born child, whose parents are here illegally, and therefore ineligible for a cash benefit. There are other categories. One of them is that the parent is on SSI and the child is receiving a benefit.

My assumption is to get SSI, you have to be a U.S. citizen yourself, as an adult. Is that correct?

Ms. BARNHART. Actually, the limitations on SSI to non-citizens became extremely strict after the 1996 legislation. Absolutely, Wade. The fact of the matter is that unless you are a legal citizen, you really don't get SSI, except in very, very limited circumstances, for example, in the cases of certain refugees or asylees.

Mr. LEVIN. I just though the record should be totally clear on that. Let me ask you another question about the Senate bill. Would guest workers be entitled to any benefits under the Senate bill. Does anybody know that?

Ms. BARNHART. What I can tell you is that depending how the Congress decides to deal with that, workers who earn credits and who pay into Social Security would be entitled to benefits under Social Security, unless the legislation decided to change that.

Right now, generally if you earn money working in this country, your employment is covered under Social Security, and you pay taxes into Social Security, then you are covered by Social Security.

Mr. LEVIN. Have you looked, though, at the guest worker provision in the Senate bill?

Ms. BARNHART. Not specifically to that degree, Mr. Levin, but I'd be happy to do that and provide a response for the record.

[The response of Ms. Barnhart follows:]

The effect on Social Security benefits of a temporary worker program would depend on the details of the ultimate provision. The SSPA provided that, in determining whether a noncitizen qualifies for benefits, the noncitizen must be authorized to work when his or her SSN was issued or anytime thereafter. The requirement applies to SSNs issued after December 2003.

Thus, if Congress establishes a temporary worker program and provides for the issuance of work-authorized SSNs to temporary workers, any earnings that they have in covered employment would be used in determining their eligibility for, and the amount of, their Social Security benefits. Of course, to qualify for Social Security benefits, the worker would need enough in credited earnings to be insured.

Mr. LEVIN. Good. Dr. Horn, you're the psychologist, so I won't ask you a legal question.

Just so we're clear again, the child-only cases, so what percentage of the overall beneficiaries relates to child-only cases? Just give us a—because you talked about the increase, but in terms of the total workload, what proportion is involved with child-only cases?

Mr. HORN. The total category of child-only cases, as a percentage of the total TANF caseload in 2004, is 44 percent. That is not the same thing as the percentage of child-only cases where the adult is an illegal or a qualified immigrant under the five-year bar. That's a much smaller percent.

Mr. LEVIN. So, it's clear, what's the number of cases, now, of people on TANF?

Mr. HORN. The number of families on TANF, in 2004, was 1.98 million. Of that, 864,000 are child-only cases. If you subtract out families with non-parent care givers and those who are in sanction status, that number drops from 864,000 to 426,000, and, within the 426,000, 152,000 have either a parent who is a qualified alien who is ineligible—usually that means they're under the five-year bar for assistance—or they could be an illegal alien.

Mr. LEVIN. So, it's out of a total of how many it's how many?

Mr. HORN. So, out of 1.98 million, the number of cases in which the child is receiving a benefit while residing with a parent who is either of unknown citizenship or alien status is 152,000. So, out of 1.98 million, that category is 152,000.

Mr. LEVIN. Thank you.

Mr. MCCRERY. Just to clarify, Commissioner Barnhart, on Mr. Levin's question about non-citizens receiving Social Security benefits. They have to be here legally in order to claim Social Security benefits and to collect Social Security benefits, isn't that correct?

Ms. BARNHART. Absolutely, sir, I interpreted Mr. Levin's question as speaking specifically to people who would be authorized as temporary workers under the Senate bill.

Mr. MCCRERY. Yes, I think he was. I just wanted to make it clear that people who are not here legally, even though they may have paid Social Security taxes, cannot collect Social Security benefits unless they subsequently become legal workers or citizens here.

Ms. BARNHART. That is absolutely true as passed in the Social Security Protection Act a few years ago.

Mr. MCCRERY. Thank you. Mr. Lewis.

Mr. LEWIS OF KENTUCKY. Thank you, Mr. Chairman. Ms. Barnhart, as we have been discussing, most illegal aliens work but many granted amnesty under the Senate bill may be disabled or otherwise unable to support themselves in this country, and many may seek benefits under programs under our jurisdiction, like the SSI and Social Security disability, welfare checks. How would the amnesty program affect the eligibility of formerly illegal aliens for SSI and Social Security programs?

Ms. BARNHART. Thank you, Mr. Lewis. Obviously, it would depend ultimately on the specifics. Just to generally try to answer your question, even if you had an increase in the number of lawfully present aliens, it wouldn't necessarily have a big effect on the SSI Program or Social Security because people still have to qualify under the existing rules of the program. For example, in Social Security, in order to receive retirement benefits you have to have 40 quarters of work or the equivalent of 10 years. So, simply looking at automatically legitimizing the person's presence in the United States does not guarantee that. Further, there is the additional provision that the Chairman just referenced from the Social Security Protection Act, which requires that person to have a legal SSN or a SSN issued prior to 2004in order to be able to collect benefits.

Mr. LEWIS OF KENTUCKY. Okay, thank you. I yield back my time. Thanks.

Mr. MCCRERY. Mr. Foley.

Mr. FOLEY. Thank you very much. A couple of questions, either to Internal Revenue or Social Security, I have inquired to some employees, who appear to be obviously working in our area, however I don't believe they are using an accurate number. When I asked the question because I was curious how they cashed paychecks, how they were paid by their employers, and one of them said, "Well, we all use one number, five or seven of us use one number in order to facilitate to our payments. So, we use a SSN belonging to another individual." How is it the Service cannot determine if there are many entries into a person's payroll record, five different jobs, it would seem physically or humanly impossible to have five simultaneous jobs but that is apparently how they are working the system in order to receive a paycheck.

Ms. BARNHART. Well, I would defer to Mr. Everson to give details about how W–2 information is reported but from my knowledge W–2's do not express the time period in which the earnings

were accrued other than the year. So, it is possible. We do have individuals who have multiple W–2's for perfectly legitimate reasons. They may work for a contractor. They may work all over the place. There are a number of circumstances under which it is perfectly plausible that the individual does have multiple W–2's. Individuals change jobs more and more. The current generation changes jobs way more than say the Boomers did or our parents before us.

Mr. FOLEY. Let me understand, so you are saying that the W–2 would reflect the aggregate payments over the course of the year, not individual payments?

Ms. BARNHART. Well, what it doesn't say is that Jo Anne Barnhart earned these from January to March of 2006. What it says is these were the earnings that were paid to her by this employer for tax year 2006. So, we cannot discern from the information reported to us that they were concurrent earnings to get to what I believe your initial question was.

Mr. FOLEY. Well, and I am trying to figure out on a weekly basis as they report their Social Security payments, the payments on a quarterly basis, the employer, whoever that happens to be. There is no cross system that shows inputs from employers collected from employees that then verify where those two?

Mr. EVERSON. If maybe I could get in here, sir. There are approximately 230-plus million W–2s that are issued each year for about 150 million employees. That indicates that the typical employee gets more than one W–2. That is the first point I would make. As I have indicated, there are about eight million mismatches a year, largely associated with this population of folks working illegally. Within that, it is very likely that there is a higher multiple people working in more than one job. Part of the problem you have here is that all that information flows into us after the work takes place because we don't get the W–2s from SSA until several months after the end of the calendar year. In many instances this population is—if you look at these employers, their total employee turnover is more than 100 percent of employees during the course of the year. So, trying to get the currency on this, which is what the Administration is really suggesting, with the upfront verification is much more effective than trying to track it down afterward because of the nature of this population.

Mr. FOLEY. I guess ultimately if five people are using the same number, then one person is going to have a more plentiful Social Security check at the end of their working?

Mr. EVERSON. Let me make a comment as to the tax then defer to my colleague. This is a problem where there is identity theft. We estimate that approximately 30,000 returns a year come in from identity theft. That is where my name and SSN is being used by somebody else. So, to us it appears that there are multiple wages coming in on my account. If there is just a mismatch, our systems screen that out so that if someone is using my SSN but not my name, I am not going to be dinged by the Service.

Ms. MYERS. If I could just add there, we have found on some case by case occasions that W–2's are useful. In the IFCO case, which is the case I cited in my opening example, it actually came to our attention because the illegal aliens were ripping up their W–2's. Another employee said, "Why are you doing that?" They said,

"We don't need those. We are not paying taxes." So, five to seven individuals posting against one number may not be the big thing. In cases where we have hundreds, two hundred, those are the kinds of things that often come to our attention through other means and are very useful in building a case.

Ms. BARNHART. I would just add from Social Security's perspective, if there are seven people who somehow happen to come up with a name/number combination that is a legitimate number issued to a person who is authorized to work, when that person receives their statement from us, which we provide to all workers over age 25 every year, approximately 2 months before their birthday, it shows the earnings for each of the preceding years. We urge people obviously to read the statement, pay attention to it, and we find that people actually do from the surveys we do. So, I obviously know how much I earned in a particular year, and I could look and if I all of a sudden saw enormous amounts of earnings because these seven people had my name and number, then I would know that individuals were using my number, and I would be able to contact SSA and we would sort through that.

Mr. EVERSON. It might help you get a loan though.

Mr. FOLEY. That was the irony of it all is who is going to end up reporting the excess income if they don't have a tax penalty, they will simply have a more aggregate of a Social Security check at the end of their working years. So, it just seems a system fraught with problems.

Ms. BARNHART. What we do at the end of—say this situation would continue throughout a person's work year, odds are when they come to apply for benefits, going back to the Chairman's point, they would not be eligible because they are probably still residing illegally in this country, which would make them de facto ineligible for benefits. If, in fact, they did have a work authorized SSN, we would go through and actually do what we call unscramble the earnings, and we do this with some degree of regularity. Sometimes it is for purely legitimate reasons, a woman gets married and changes her name but forgets to tell Social Security and her employer reports earnings under her married name. There are all kinds of reasons why earnings end up being scrambled. We would actually make the individual provide information from the employer, wage stubs proving that they had earned those earnings. It is quite a process that some people must go through in order to show that past earnings that were recorded on a number used by many were actually theirs for purposes of determining the benefit.

Mr. MCCRERY. Dr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. Article 14 of the Constitution says that, "All persons born in the United States are citizens and no law shall make or enforce any law which will abridge the privileges of immunities." Now, you have heard questions asked here about how do the children of illegals get TANF benefits as though there is something wrong with that, as though there was something wrong. Well, I would like to expand this a little bit. Let me give you a specific example. Tommy Clark came over from Ireland for a visit to his brother in Boston, stayed on, got a job, laid bricks. The first year he paid his income tax on his ITIN. The next year he paid his ITIN, paid his ITIN for 10 years. Then,

well, he married Mary Quinn along the way and they had two little boys, Sean and Locklin. Then Tommy was killed on the job. Would his children be eligible for survivor benefits under Social Security?

Ms. BARNHART. I would have to have a little more information about whether or not——

Mr. MCDERMOTT. Whatever you want to know I can make it up.

Ms. BARNHART. Was he legally working in this country at the time that he was making payments?

Mr. MCDERMOTT. No, he was an illegal.

Ms. BARNHART. He never had a work authorized SSN?

Mr. MCDERMOTT. He never had a SSN. He used an ITIN the whole time.

Ms. BARNHART. He used an ITIN the whole time. For purposes of the children, were they born in this country?

Mr. MCDERMOTT. The children were both born here, one in Boston, Mass General.

Ms. BARNHART. I think the difficulty would be in the fact that the individual based on the Social Security Protection Act provisions, would not have had a legally authorized to work SSN. I would have to check on that, Mr. McDermott, just to be sure before giving you a definitive answer.

Mr. MCDERMOTT. Are you saying, Mr. Everson, that you keep a record? He pays taxes on his wages, he pays the payroll taxes, doesn't he? He pays Social Security and pays Medicare, right?

Mr. EVERSON. What you are getting to is the divergence under the law between treatment for Social Security benefits and your income tax obligations, sir.

Mr. MCDERMOTT. You just left me hanging out in the middle of a divergence, what does that mean?

Mr. EVERSON. It means while the information is collected and shared between the two agencies, that just because you paid your income taxes, that doesn't entitle you to Social Security benefits.

Mr. MCDERMOTT. If you put money into an account, you have done your 40 quarters of work. I worked him for 10 years.

Mr. EVERSON. Sure.

Mr. MCDERMOTT. So, he has his 40 quarters done. It is all recorded by you and she has got the data, right? You sent it over to her.

Ms. BARNHART. I would have the data based on the W–2s that are reported, the employer wage reports that were posted against that individual's number. You indicated that in this case that the individual you are presenting here wouldn't have a work authorized SSN.

Mr. EVERSON. There would be a mismatch here, sir. This is what we are getting to—because Mr. Clark wouldn't have used his ITIN at his employer. He would have used a false SSN in order to have been hired.

Ms. BARNHART. So, his wages would go into our earnings suspense file, Mr. McDermott.

Mr. MCDERMOTT. Why didn't you give that information to the Homeland Security people and get him thrown out of the country? How could an Irish immigrant last 10 years in this country and

you not give his name to her and boot him? If he is using a false SSN, isn't somebody going to pick that up?

Mr. EVERSON. Well, again, the basic presumption is the protection, the absolute privacy of the tax return information. Right now it is not shared with DHS in order for them to go find this person and to use your word "boot" him. That is what is the nub of the issue. That needs to be considered because there will be a tax administration impact on changing section 6103, albeit with the goal of having better protection and better workforce enforcement.

Ms. MYERS. If I could just add, sir, something I believe is interesting in this situation as well. This whole notion of reporting when someone is not work authorized and so forth, based on our reviews that we do, at any given point in time about 36 percent of the people who are not work authorized at the time that the no match is initially discovered, meaning when the wage report is filed, either in February or March of each year, about 36 percent eventually become work authorized and are work authorized within that year. So, the situation changes quite a bit, and I think that also elaborates on some of the complexities that you are speaking about, Mark.

Mr. MCDERMOTT. Doesn't the employer have to fill out an I–9 as well and you are supposed to go collect them. Do you go and collect all the I–9's from all the employers?

Ms. MYERS. No, the employer keeps those on file so we do not go—we audit them and do investigations.

Mr. MCDERMOTT. How often do you audit? This guy is working for 10 years for a construction company and you haven't audited his company in 10 years?

Ms. MYERS. Well, certainly we have a number of challenges, we only have about 5,700 agents in the entire country who not only do work site but also do criminal aliens, who do custom violations, who do kind of a number of things. We are really increasing our work site efforts, and we are targeting the most egregious employers.

Mr. MCDERMOTT. How do you increase them? You don't have any more people.

Ms. MYERS. We have increased them by trying to do it smarter because we used to just focus on the I–9 audits, and we found at the end of the day that sometimes people would have their paperwork clean but it wasn't good paperwork. So, we focus on using confidential informants, using other sources, working with other leads to develop cases.

Mr. MCDERMOTT. What does it mean to have your paperwork clean but it isn't clean? That sounds political to me a little.

Ms. MYERS. Certainly, Congressman, if you owned a construction company and you had six employees and you had all their documentation listed on the I–9's, it was actually us and in fact you knew that. That would be the kind of problem that we would see where sometimes the I–9 paperwork is fine but in fact we have reason to know that the employer actually knows that they are not hiring me, they are hiring the individual that you named.

Mr. MCDERMOTT. Does the I–9 have my SSN or something on it so I know that—I am the employer, how do I know that this person is illegal?

Ms. MYERS. Well, certainly there are challenges for the employers and so that is why we are providing them with best practices. So, for if I came into you and I said I was Wade Horn. I said I was Wade Horn, and I claimed to be a Caucasian man with a moustache but I looked just like me, and I gave you my documents, you filled it out. If you didn't look askew at that, that is a problem. Now if I came in and said I was Julia Smith, you might not have any reason to know based on the documents, based on a fake document I presented to you and so that is why we use things in addition to just looking at I–9's, which can be very helpful to bring cases. What we do is we work with employees who act as whistle blowers. We got a good case the other day from a congressman in Pennsylvania who had heard that down in one of the grocery stores in North Carolina there were a lot of illegal aliens employed there. We actually conducted an investigation and made some arrests there. So, we use kind of a wide variety of sources and then we are bringing criminal cases. We are just not focusing on small fines. It used to be we would fine people $150 and today that is not enough to keep employers from going out and hiring other illegal aliens. What is enough is if you bring a criminal charge against them where they could be subject to spending years in prison or forfeiting ill-gotten assets.

Mr. MCDERMOTT. One second to say what is puzzling to me is I look at your work site enforcement data from 1999 to 2003 and you went from 192 cases—182 cases down to four this year. It sounds like you are doing less to me. I yield back the balance of my time.

Mr. MCCRERY. I will give Ms. Myers a chance to respond to that.

Ms. MYERS. I appreciate that. That is actually the notice of intent to fine, the civil fine structure, which we found to be not effective. We actually would like to have a more robust civil fine structure that is in the Senate bill, it is something we think would be helpful. This year we are actually up over 445 criminal arrests, and we have apprehended over 2,700 illegal aliens. So, we think we have made great progress in the area since ICE was formed.

Mr. MCCRERY. Mr. Brady.

Mr. BRADY. Well, first I hope Mr. McDermott will accept our condolences to the family, the widow and the son of the imaginary couple that you have.

Mr. MCDERMOTT. They got good benefits.

Mr. BRADY. There are a lot of emotional issues tied to the discussion about the temporary worker program. If I could ask Commissioner Barnhart first, trying to get a little handle on the Social Security impact. If I understand it right, under current law those who work here illegally, once they are legalized can claim benefits for work done illegally as long as they can prove through documents that they worked, is that correct?

Ms. BARNHART. They actually have to have an authorization to work, a Social Security card that indicates authorization to work. We provide Social Security cards with no legend, just your name. We provide a legend that says, "Valid for Work with DHS Authorization," or "Not Valid for Employment." The not valid for employment category, we only provide less than 15,000 of those a year

and they are largely so people can take advantage of programs like those that Dr. Horn operates because they are State or Federal programs that require a SSN and card in order to be eligible for the programs.

Mr. BRADY. So, under current law they cannot go back and claim benefits if they are here illegally working, have filed under multiple cards, for example, and then later are legalized? I am just trying to understand it.

Ms. BARNHART. Well, if they are later legalized, and they have a SSN that was issued with authorization to work, then, yes, they can. They absolutely can because the fact of the matter is that we credit the wages to their SSN and use those wages in the calculation of their Social Security benefit since the law does not distinguish in that sense. What SSPA says is you have a work authorized SSN issued on or after January 1, 2004 in order to receive benefits.

Mr. BRADY. Under the Senate bill, and they have sort of a three-tiered path to citizenship, but for those who end up working here legally, do they then have a claim for past Social Security benefits earned under—if they have a Social Security card, whether it is a legal document or a multiple fraudulent document? I am just trying to understand if they have the claim——

Ms. BARNHART. Again, that would fall into that unscrambling of earnings. If in fact they had earnings while they were working illegally, odds are they were posted to a false SSN or an incorrect SSN. Those would fall into the mismatch category that Mr. Everson and I have been describing, and if that were the case, it would require unscrambling those earnings. We would not simply accept their personal attestation that, gee, I was working there and these are my earnings. I dare say that happens in very few cases because most individuals don't keep wage stubs and W–2's, particularly if they are working illegally. As you pointed out, oftentimes people try to destroy W–2's now who are here illegally because it is not to their advantage to have them.

Mr. BRADY. If the Senate bill were eventually to become law, there are different estimates in how many would end up being legalized. I don't know if it is five million or eight million or 12 million. Does SSA have any range of estimated costs to Social Security of what those past benefits may add up to? I know there are a whole bunch—it depends on what the final product would be obviously, but have you looked at or do you have experience and in past cases, what do those past claims tend to be?

Ms. BARNHART. I don't believe we have but I would be happy to check for you, Mr. Brady. What we have looked at in terms of that legislation is the workload that would be required assuming the majority of those individuals do not have legitimate SSNs. So, for example, if they were legalized and they all of a sudden needed to get a SSN, would we likely be having to issue 6,000,000 new numbers, 9,000,000 new numbers, 12,000,000 numbers. We have looked at that in the context of the fact that we now issue approximately 17,000,000 a year—usually 12,000,000 replacement numbers and 5,000,000 original numbers. So, obviously it would add fairly dramatically on a short-term basis to our, what we call, enu-

meration workload if in fact all those individuals needed Social Security cards.

[Ms. Barnhart's response follows:]

Attached is a memorandum from the Social Security Administration's Chief Actuary that provides information on the cost effects of the Senate-passed immigration reform bill (S. 2611). The estimates reflect the total cost of both the additional benefits that would be paid and the additional revenue to the trust funds (due to an increase in net immigration). As indicated in the memorandum, the net effect would be to reduce the long range deficit from the estimated level of 2.02 percent of taxable payroll under current law to roughly 1.88 percent of payroll.

I would like to point out that this memorandum also includes information on the cost effect of a possible amendment to the Senate bill (amendment Number 3985 by Senator Ensign) that would stipulate that a worker assigned a valid SSN after enactment would not be credited with earnings for Social Security benefit purposes for years prior to being assigned the SSN. The Chief Actuary indicates that the effect of this amendment is estimated to be a relatively small reduction in total benefits, possibly negligible.

SOCIAL SECURITY
Office of the Chief Actuary

July 24, 2006

The Honorable Charles E. Grassley
United States Senate
Washington, DC 20510

Dear Senator Grassley:

In your letter of May 26, 2006, you requested short and long-term analysis of the effect of S. 2611, the Comprehensive Immigration Reform Act of 2006 as passed by the Senate, on the Social Security program. In addition, you requested an estimate of the effect of enactment of this bill on the estimated cost of a potential totalization agreement with Mexico. Finally, you requested a separate analysis of Senator Ensign's amendment #3985, assuming it were included in final legislation in a conference agreement. The preliminary estimates and analysis described in this letter reflect the careful work of Chris Chaplain and Alice Wade of the Office of the Actuary with the help of material provided to us by Steve Robinson of your staff. Being preliminary, these estimates are undergoing further analysis and may be subject to change in the future.

Summary Effects of S. 2611 on Social Security

The principal components of S. 2611 are establishment of a new guest worker program, expansion of some of the existing limits on annual legal immigration, and special provisions for achieving legal permanent resident status for many individuals who have been living in the United States without authorization. In addition, the bill includes provisions for extra border security (fences/agents) as well as an employment verification system. All estimates reflect the intermediate assumptions of the 2006 Trustees Report.

We estimate the total net effect of the enactment of S. 2611 as passed by the Senate would result in increases in net immigration that would improve the long-range OASDI actuarial deficit by roughly 0.13 percent of payroll. This would reduce the long range deficit from the estimated level of 2.02 percent of payroll under current law to roughly 1.88 percent of payroll. The effect of enactment on the annual balance of the OASDI program would rise gradually to about 0.35 percent of payroll in 2035, as the accumulating numbers of new immigrants are added to the workforce. Thereafter, the effect on the annual balance of the program would decline to a fairly stable 0.18 percent of payroll by 2070, as the initial new immigrants age into benefit eligibility under the OASDI program. For 2080, the annual deficit would be reduced from 5.38 to about 5.20 percent of payroll.

Over the short term period through calendar year 2016, OASDI net cash flow would be expected to improve by about $27 billion. Including interest effects, this change would reduce the federal debt held by the public by an estimated $30 billion at the end of 2016. The first year of negative cash flow is estimated to remain at 2017. And, the year of OASDI combined trust fund exhaustion is projected to be delayed two years from 2040 to 2042. Finally, the projected long-range open group unfunded obligation is projected to be reduced from $4.6 to $4.4 trillion.

More Detailed Analysis of S. 2611

Guest Worker Provision

The guest worker provision of the bill would permit entry into this country of up to 200,000 workers per year beginning 2007, plus dependents of the workers. The term for the guest workers would be three years with the opportunity for one renewal for an additional three years. Continued residence in the country under this provision would require continued employment. Individuals under the guest worker program for four years could apply for legal permanent residence. If sponsored by the employer, then legal permanent status could be applied for immediately.

We estimate that 200,000 individuals will begin participating in the guest worker program each year. Of these we estimate that about 140,000 would be workers who would not otherwise have entered the United States. Including their dependents, we estimate an additional 308,000 individuals entering the country each year under the guest worker provision. Of these, we estimate that about two-thirds, or 200,000 individuals would, about 4 years after entry, on average, achieve legal permanent residence (LPR) status, facilitated by the expansion of the employment based visa limits in the bill. Of those who achieve LPR status, we assume about 25 percent will later emigrate back to their home country, leaving a net increase in legal immigration of 150,000 individuals per year, starting about 2011. The other 108,000 guest workers and dependents newly entering the country are assumed to return to their home country within 6 years of entry to the United States without achieving LPR status.

The additional 60,000 guest workers added each year are assumed to be individuals who are already in the country or who would have entered the country on an other (not legal permanent resident) basis in the absence of this provision. These workers and their dependents are assumed to total 132,000 each year and are further assumed to result in about 60,000 additional net legal immigrants about 4 years after becoming guest workers, principally through the expansion of the limit on earnings-based visas in the bill. However this attainment of LPR status would have no net effect on our projected total immigration because they are simply assumed to transfer status from other residents to LPR.

The overall net increase in immigration represents about half of the long-range effect of the bill, or about 0.06 percent of taxable payroll. Through 2016, this provision is estimated to improve the OASDI net cash flow by about $11 billion.

Employment Based Visa Limits

Under the bill, the current limit on employment based visas (for LPR status) would be increased from 140,000 per year to 650,000, including dependents of employed immigrants. The allocation would also be changed to place greater emphasis on unskilled workers. We do not assume that the entire difference would be filled. In the discussion of guest workers above, we identify two types of immigration that would qualify under this provision.

Family Sponsored Preference Limits

The current effective annual limit on family sponsored preference immigration is 226,000. This legislation would increase the limit to 480,000, or an increase of 254,000. We assume that this increased limit would be fully met. However, we also assume that about 20 percent (50,000) of this number would be individuals who would otherwise enter or remain in the United States on an other (not legal permanent resident) basis. Thus, on an ongoing basis, this provision is estimated to increase gross immigration by 204,000, and by 153,000 on a net basis (assuming emigration from this group will tend to be about 25 percent of the level of immigration.) This net effect on immigration represents about half of the long-range ultimate effect of the bill and thus would result in an increase in the actuarial balance of roughly 0.06 percent of payroll. Through 2016, this provision is estimated to improve the OASDI net cash flow by about $11 billion.

Blue Card Provision

This provision would allow legal permanent resident status for up to 1.5 million undocumented agricultural workers over the 6-year period after bill enactment. We assume that many of those who would attain legal permanent resident (LPR) status under this provision would have entered the United States in the absence of this provision, as undocumented residents. We assume that about 350,000 individuals who achieve LPR status under this provision either (1) would have stayed in this country on an other (other than legal permanent resident) basis in any case, or (2) would have emigrated subsequently, and still would. However, we project that an additional 620,000 immigrants would enter the country during the period 2012 through 2014, with 25 percent assumed to emigrate from the United States in the future. This leaves an additional 465,000 net legal immigrants. This provision is estimated to have a negligible effect on the long-range actuarial balance. Through 2016, this provision is estimated to improve the OASDI net cash flow by about $2 billion.

Special Provisions for Those Currently in the U.S. Without Authorization

This provision would provide the opportunity to apply for legal permanent resident status for unauthorized individuals with 2 or more years of residence in the U.S. at the time of enactment of the bill. This so-called "amnesty" provision is intended to provide an enhanced opportunity

for the up to 12 million individuals currently thought to be residing in the U.S. on an unauthorized basis. However, the requirements under this provision present a considerable challenge to those who might apply.

For those who have resided in the U.S. for 5 or more years at enactment, documentation of employment would be required for at least 3 of the last 5 years. In addition, total fines/fees of $2,750 would be assessed, and any unpaid taxes from prior employment would have to be paid. Employment for 6 years after enactment would also be required. If these conditions are met, and the individual has a working use of English, then legal permanent residency can be granted, but not before any pre-enactment backlogs of applications for LPR status have been resolved. No numerical limits would apply for LPR status for this group.

Requirements for those who have resided in the U.S. for 2 to 4 years at enactment would be similar, but to apply for legal permanent residency status, these individuals would be required to first return to their home country. No numerical limits would apply for this group to achieve LPR status with employment-based visas.

Due to the strict requirements of this provision, we believe that use of it would be somewhat limited. We estimate that about 1.8 million individuals resident in the U.S. at least 2 years at the time of enactment would achieve legal permanent residence (LPR) status under these provisions. This group would have no effect on the overall population because they either (1) would have remained in the United States in any case, or (2) would have left the country subsequently in the absence of this provision, and still would. These individuals represent a change of status from other (other than legal permanent resident) status to legal permanent status as a result of this provision. In addition, we estimate that this provision would result in a net addition to the Social Security area population of about 440,000 individuals by their achieving legal permanent residence status in 2013, and an additional 73,000 doing so in each year 2014 through 2017. Consistent with our usual assumption, 25 percent of these individuals would be expected to emigrate to their home country in the future. In the absence of this provision it is assumed that all of these workers would have emigrated from the United States and their dependents would either have emigrated or not have come to the United States. This provision is estimated to have a negligible effect on the long-range actuarial balance. Through 2016, this provision is estimated to improve the OASDI net cash flow by about $2 billion.

Border Security (fences/agents) and Employment Verification

The bill provides for fences and other security measures along the border with Mexico as well as additional agents to reduce unauthorized immigration. In addition, the bill provides for an electronic employment verification system to assist employers in determining the legal status of employees. Given that the above provisions of this bill are being assumed to reduce the ultimate level of net other immigration by one third, from 300,000 to 200,000 per year, we assume that it may be difficult to reduce this net flow and their employment much lower. (The net inflow of other immigrants has averaged over 500,000 per year since 1990.) For this reason we assume that these provisions will have a negligible effect on the financial status of the OASDI program.

Effect of S. 2611 on Potential Totalization Agreement with Mexico

The memorandum dated March 10, 2003 from Chris Chaplain provided the latest estimate for a potential totalization agreement with Mexico. A potential agreement has been considered between the two governments but awaits full consideration by the executive and legislative branches of the federal government. Based on the best available information, such an agreement is expected to have a negligible effect on the OASDI actuarial balance (less than 0.005 percent of payroll), based on the intermediate assumptions of the 2003 Trustees Report. The memorandum cited above indicates that the effect over the first 5 years after implementation should be expected to be a net cost to the OASDI program of about $551 million. The precise details of such an agreement should it be finalized are not yet clear. Thus, the estimate provided here is to be considered preliminary.

Should S. 2611 become law before a totalization agreement is effected with Mexico, then the net cost of such an agreement will be increased somewhat due to interaction between the effects of these two changes. S. 2611 would be expected to increase the number of Mexican citizens who would earn between 6 and 39 quarters of coverage under the OASDI program and thus potentially qualify for a totalized U.S. benefit. While this effect is expected to be small, the fact that the cost of a totalization agreement is just short of rounding up to 0.01 percent of payroll in the long run means that after enactment of S. 2611 the estimates cost of a totalization agreement with Mexico would then round to 0.01 percent of payroll.

Ensign Amendment Number 3985

The Ensign amendment was in fact considered in the Senate and was not adopted. However, your question relates to the possibility that this amendment could be added to the bill in a conference committee.

The Ensign amendment would stipulate that a worker assigned a valid social security number (SSN) after enactment not be credited with earnings for social security benefit purposes for years prior to being assigned the SSN. The effect of this provision is estimated to be a relatively small reduction in total benefits, possibly negligible.

Sincerely,

Stephen C. Goss

Stephen C. Goss
Chief Actuary

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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

May 26, 2006

Mr. Stephen C. Goss
Chief Actuary
Social Security Administration
6401 Security Blvd.
Baltimore, MD 21235

Dear Mr. Goss:

As Chairman of the Committee on Finance, I'm writing to request a short and long-term analysis of S. 2611, the Comprehensive Immigration Reform Act of 2006, as recently passed by the Senate.

This legislation would dramatically alter current U.S. immigration policy through the legalization of an estimated 12 million illegal aliens; a significant increase in the level of legal immigration; a temporary guest worker program; and a mandatory employment verification system.

As the Senate moves toward a conference with the House, it would be exceeding helpful to have a better understanding of the potential impact this legislation would have on the Social Security program.

I would also like to request an updated analysis of the pending totalization agreement with Mexico, specifically in light of the proposed guest worker program.

Finally, the analysis of S. 2611 and the totalization agreement should include a separate estimate of Senator Ensign's amendment #3985 (attached), assuming it is included in the final conference agreement.

Sincerely,

Chuck Grassley

Charles E. Grassley
Chairman

Mr. BRADY. Okay. May I ask how big is the suspension file for the no match dollar wise?

Ms. BARNHART. The suspense file is 255,000,000 separate items, in other words wage reported items, and it totals $519.6 billion. What is important is to make the point that is wages and that taxes have been paid. So, in other words for those 255,000,000 instances of individuals where the wages did not match—their name and SSN did not match, those wages when you add them up total $519.6 billion.

Mr. BRADY. Is that cumulative?

Ms. BARNHART. Absolutely, from 1937—I believe that is through tax year 2003.

Mr. BRADY. Any idea how much each year that is running?

Ms. BARNHART. I didn't bring that information with me, but I could certainly—in terms of the dollar value, I could certainly get you that. I think it is around 1.3 percent of all earnings each year-end up in the earnings suspend file.

[The information follows:]

Wage item entries added to the Earnings Suspense File for TY 2003 totaled $57.8 billion.

Mr. BRADY. All right, thanks, Commissioner. Sorry, I ran over time, Mr. Chairman.

Mr. MCCRERY. Mr. Lewis.

Mr. LEWIS OF GEORGIA. Thank you very much, Mr. Chairman. Mr. Chairman, I apologize that I had to be out of the room for a moment, a little more than a moment. I heard each member of the panel's testimony. Commissioner Everson, it is good to see you here, and I know that my colleague, I believe Mr. Johnson touched on this issue while I was out of the room, but I want to be sure I follow-up on some discussion that we had when you testified earlier this year.

Mr. EVERSON. Yes.

Mr. LEWIS OF GEORGIA. I think back in February.

Mr. EVERSON. Yes, sir.

Mr. LEWIS OF GEORGIA. You testified before the Subcommittee on Oversight. I think that was a joint Committee, Social Security and Oversight. During that hearing, the DHS was seeking broader access to taxpayers' return information, which would require an amendment to Tax Code section 6103. You testified then, and I think you made it plain and somewhat clear, that giving this information, turning this information over to the DHS in your words would have a chilling effect on participation in the tax system and that everyone should have their eyes wide open before agreeing to such a proposal. Do you care today to discuss your concern about giving DHS access to tax return information?

Mr. EVERSON. Certainly, sir, and thank you for your welcoming words. I believe you have correctly quoted me but you have left out a part.

Mr. LEWIS OF GEORGIA. Oh, what did I leave out?

Mr. EVERSON. I advocated this sharing, but I said that there are times when concerns over tax administration can give way to a national imperative. My point then, and my point now is that we, and particularly this Committee, which has jurisdiction over the tax laws, needs to have its eyes wide open that we are changing this very important element of privacy as to return information.

Let me just read you what the President said just 2 days ago. He said, "Congress is now considering legislation on immigration reform. That legislation must be comprehensive. All elements of the problem must be addressed together or none of them will be solved at all." I believe what I said in February, and what I believe today, is that we need to solve all the elements of this problem. My concern would be if we have a cherry picking of solutions, some legalization efforts and not enough enforcement, or we don't ulti-

mately get to the right balance here, then you will be left with immigrant groups and others counseling aliens not to participate in the tax system. That remains a concern of mine. That is why I think it is so important to do what the President says and get all the elements that need to be included in this legislation handled. I support what the President is doing very vigorously, but I do think it needs to be done in a balanced way and understanding that there will, sir, be this ramification on tax administration.

Mr. LEWIS OF GEORGIA. I appreciate that very much, Mr. Commissioner. With your history and your background and your previous role in the Government, do you believe that the DHS has done all it can to enforce immigration laws and use the laws already under its authority?

Mr. EVERSON. Well, I am reluctant to criticize sister agencies, especially when someone is sitting right next to me. So, if you will bear with me, I won't go down that road. What I will say is that the flaw in the 86 Act is one that we have been dancing around all afternoon. That is the fact that employers were able to just review the documents and the documents of the employee could be false. That is what has gutted the effect of the IRCA, the 86 Act, the fact that you as an employer could look at me and say, gee, those documents look good and then you were off the hook. That is what gave rise to the decline in this interior enforcement I would suggest, and that is what the Administration is trying to address here, sir.

Mr. LEWIS OF GEORGIA. Thank you very much.

Ms. MYERS. If I could just add?

Mr. LEWIS OF GEORGIA. Yes.

Ms. MYERS. I think as a Department we are and have been striving to do better. The Secretary's Secure Border Initiative developed the kind of a comprehensive strategy for looking anew at interior enforcement and using the tools that we have. I believe that we had not adequately used all the tools that were existing and that is why we are trying to enforce the law in new and better ways but there is much more work to be done.

Mr. LEWIS OF GEORGIA. Thank you very much. Thank you, Mr. Chairman. I yield back.

Mr. MCCRERY. Thank you, Mr. Lewis. Mr. Beauprez.

Mr. BEAUPREZ. Thank you, Mr. Chairman. Mr. Horn, are you aware of any cases where someone who thought probably did qualify for benefits, welfare benefits of one type or another, when they applied, they found out, were told, "Wait a minute, you have got a whole bunch more income than you are reporting here" or that they were on benefits and later were bumped off because of at least an assumed reporting of too much income?

Mr. HORN. Are you saying am I aware, sir——

Mr. BEAUPREZ. Somebody applies for a benefit. They meet the poverty guidelines. Somebody does the check and says, "Wait a minute, we checked your SSN and your reporting $200,000 of income," what is up?

Mr. HORN. Sure, I know that happens. In fact, we encourage the TANF agencies to match against the National Directory of New Hires.

Mr. BEAUPREZ. Good, I am glad you do that check. I am also familiar with, and I am going to share with all of you, some background information that I got recently from my State Department of Labor in Colorado. In the first quarter of 2006 alone, just inside one quarter, 304 different SSNs were reported by 2,819 different employers. This was a check for only numbers that were reported at least six or more times. It is certainly possible that somebody had six employers within a 90 day period, I grant that, but that seems like quite a few, especially for that many. They further found out that one number was reported by 57 different employers, one by 36, one by 24, 23, 22, 19, you get the picture. Some employers actually reported SSNs, interestingly enough, with all nine digits the same digit, 111–11–1111, same for two and three and four and nine, and I am sure you are familiar with this. Some of those employers were extremely familiar employers to me and I am sure to you. The point being something must be wrong. Some of that is probably legitimate, people change jobs several times, but it staggers the imagination. I don't know how much of this really goes to our illegal question or not because we don't know. There is a problem here. I think it was Ms. Barnhart, if I remember right, who pointed out what I already knew, misuse of a SSN is a felony. Are we pursuing this kind of a problem or are we not?

Ms. BARNHART. I can say that generally these kinds of issues do not rise to the level of demanding aggressive pursuit by U.S. attorneys.

Mr. BEAUPREZ. Okay, let me tell you what I think is part of the problem, and this is the complexity I think of illegal immigration and identity theft and law enforcement that we are dealing with, there is at least some degree of identity theft going on here. I saw one case of a lady who had 529, I believe I have got the number right, I am working from memory, over a half a million dollars of income reported to her SSN in a year. She was a widow lady and was legitimately trying to get benefits. Now she has got to go hire an attorney and you know the rest of the story and wait a protracted period of time and literally live hand to mouth and be begging from relatives instead of getting her justifiable benefits. That is part of the problem we have got here. I guess what I would ask, I have got a photo ID that is encrypted to get into my YMCA. Would it make sense, Ms. Barnhart, if our Social Security identification, which is the backbone of our ID in this whole country for citizenship and everything else, would it make sense that it got into something close to the 21st century technologically as opposed to more line the 19th century?

Ms. BARNHART. There has been a lot of interest expressed in what you are talking about, a tamper proof or allegedly tamper proof hard card, whether it has biometrics in it or a photograph. We have looked at that and explored what that would mean for us in terms of workload particularly. I know that was one of the subjects for this hearing and one of the questions posed us specifically by the Chairman.

Mr. BEAUPREZ. Yes, that is why I am asking it.

Ms. BARNHART. Yes, the cost of the card itself is not the issue. The cost of the card is very inexpensive. The questions that have been asked to me by Congressman and Senators "Jo Anne, explain

to me why can't you just issue a card like American Express does? It costs them nine cents a card." My response to that is the reason is because we spend about 30 minutes—31 minutes to be precise—per person checking the evidentiary documents that are provided to us. When someone loses a Social Security card and comes in for a replacement, we don't just accept the fact that the person ways he is Mark Everson, although in your case we might, Mark, but we actually say show us a U.S. passport, show us a U.S. driver's license.

Mr. BEAUPREZ. Sure.

Ms. BARNHART. You have to have two forms of documentation. So, it is that time—the times spent verifying the evidence documents that drives the cost. Also, the estimate, whether you use a photograph or biometrics, if we were to look at re-issuing cards, for just the working people, that would be 300,000,000 minus 60,000,000 of the under 14, so a total of 240,000,000 people. Trying to do that would cost about $9.5 billion and require 67,000 work years. To put that in perspective, I currently have a budget of $9.4 billion and less than 65,000 employees at the agency. So, it is really a matter of checking the evidence that stands behind those cards.

Mr. BEAUPREZ. I accept that. I see I am out of time but only a follow-up comment. I would suggest for at least this Committee and this Congress that the system we have is broken and unsustainable. At some point when you have got this kind of problem out there, when the SSN clearly doesn't mean anything anymore, we have got a problem and somehow have to address it. I think technology somehow has to be your friend and ours and that of the legitimate legal citizen out there and the person who is perhaps a victim of identity theft, which I know is an enormously growing problem in this country. With that, I will just yield back, Mr. Chairman.

Mr. MCCRERY. Thank you, Mr. Beauprez. Mr. Neal, you just returned, but it is your turn to inquire if you like, or I can go to Mr. Becerra.

Mr. NEAL. Go ahead.

Mr. MCCRERY. Be happy to. Mr. Becerra.

Mr. BECERRA. Mr. Chairman, thank you very much. To all the witnesses, thank you very much for your patience and for your testimony. Let me make sure in all this conversation that I have this correct in terms of where we are so far on these immigration matters. First, if I hear correctly, any worker—any immigrant who does not have the authority to be in this country is barred under law, Federal law, from receiving any kind of Federal benefit. The only exception that I heard was emergency medical care. Any disagreement with that. Okay, secondly, legal immigrants, individuals who have the right to be in this country and are on their way to becoming U.S. citizens and have gone through all the process to have their documents certified, those with what we call the green card, they too are restricted from a lot of these Federal benefit programs. In many cases, even if they are entitled or eligible for some, they are means tested so they may not qualify based on their income. Any disagreement with that? Okay. Social Security and Medicare are programs that are earnings based. If you work and

pay into these programs, then you have earned the right to receive those benefits. If you don't work, you don't get to receive Social Security or Medicare payments, is that correct?

Ms. BARNHART. Yes, it is.

Mr. BECERRA. So, for any immigrant here in this country to qualify, first that immigrant would have to be here legally, correct?

Ms. BARNHART. Correct.

Mr. BECERRA. Secondly, the person would have to have worked and paid into the system for Social Security and Medicare to have any access to those programs, correct?

Ms. BARNHART. For Social Security purposes, absolutely.

Mr. BECERRA. My understanding, Commissioner Barnhart, is that the actuaries for the SSA have estimated that the Senate bill on immigration reform, the comprehensive immigration reform, would actually if it passed extend the solvency of the Social Security Trust Fund, as you pointed out earlier, and that it would reduce, because it would increase revenues, it would reduce the long range deficit of the Social Security system by about 6 percent?

Ms. BARNHART. That is correct, it would reduce it to 1.88 percent of taxable payroll.

Mr. BECERRA. So, I am assuming that what the actuaries are saying in these estimates is that if the Senate comprehensive immigration reform bill would pass, that you would incorporate more of these immigrants, who are probably right now in our underground economy or our shadow economy and maybe some paying taxes, maybe others not, but it would incorporate them more so that we would all get them within the legal system for paying their contributions into Social Security and Medicare and therefore the trust fund for Social Security would have an increase in revenues?

Ms. BARNHART. I have read the actuaries' memo and that is what it says to me, Mr. Becerra.

Mr. BECERRA. Okay, now we have all these folks that are the subject of this discussion about immigration reform because many are in this country without documents, and I think everyone in this panel, on this Committee would agree that no one has the right to be in this country without first having received the permission of this sovereign Nation to be here. The fact remains that we have some, estimates are some 10,000,000 to 12,000,000 people who are in this country working without those documents. The nut here that we haven't been able to crack is what do you do with so many folks? I know that some folks are saying we just deport them all and others are saying let's be more rational and try to figure out how we figure out who has earned a chance to stay here, who will pay some fines, and so forth so they have an opportunity to stay here long term and continue to contribute to this country.

The Social Security system, as you just mentioned, I think the questions asked by the gentleman from Texas, my friend from Texas, Mr. Brady, has an earnings suspense file. That is a file or an account of money where you cannot connect the contribution that you found from the W–2 form that was submitted to you with a name for someone who has a SSN. So, that contribution that came in from that work, documented through that W–2 form, is now money in the Social Security system but you cannot trace to

whom it really belongs because it did not match the names you have on file?

Ms. BARNHART. That is correct.

Mr. BECERRA. That totals $520 billion or so to date?

Ms. BARNHART. Yes.

Mr. BECERRA. We do not know the source of all these discrepancies. We know in some cases it could be just a simple clerical error or a mistyped name but in many cases it is probably due to the fact that there are many workers in this country who do not have documented status, are paying into the Social Security system, but you cannot trace it to them because they do not have a legal or a legitimate SSN?

Ms. BARNHART. That is right and if they do not get that and come back and unscramble the earnings, they will never be able to collect.

Mr. BECERRA. So, I guess my point here is not really a question. As we try to move forward in this debate, and I found this hearing to be somewhat constructive and helpful in this discussion, is that what we find is that for the most part we are talking about a population of folks who do not have the right to be in this country but continue to work, in many cases I think, as Commissioner Everson also mentioned, they are also paying taxes even though most of them will not get to file for a tax refund for any taxes they may have paid, they are paying into Social Security in many cases, yet they cannot collect it because they cannot legally apply for the system. So, we are trying to figure out what to do with folks who for the most part are working very hard, don't deserve to be here if they do not have the documents, but we have to figure out a way to resolve this for some 10,000,000 to 12,000,000 people, the size of the State of Ohio, to get this immigration nut cracked. I hope that with your testimony you will help us come to a rational way, a comprehensive way of dealing with immigration reform [continuing]. So, I thank you for having taken so much time here to be with us. I yield back.

Mr. MCCRERY. Just a quick correction to an exchange that Mr. Becerra had with Commissioner Barnhart. In fact, in the case of spousal benefits and survivor benefits, there are often people who do not have a work history who do receive Social Security benefits.

Ms. BARNHART. I apologize. Yes, that is correct. I was looking at it specifically within the universe he was discussing. Absolutely, Mr. Chairman, you are right.

Mr. BECERRA. Mr. Chairman, can I clarify? You are saying a spouse or a child who may not have worked but it is due to the fact that there was a person who did work and paid into the system?

No one is receiving a benefit that he or she or a working relative did not pay into the system for?

Mr. MCCRERY. That is correct.

Mr. BECERRA. Thank you.

Mr. MCCRERY. Mr. Hayworth?

Mr. HAYWORTH. Thank you, Mr. Chairman. Thank you to the witnesses.

It is almost like an exam question. Compare and contrast the observations of my friend from Colorado with the observations of my friend from California. It goes to the crux of the matter.

What my friend from California failed to describe when he talked about hard working people using false SSNs, my friend from Colorado did address.

It is committing a felony. Now, we go back to the crux of the matter. Are we a nation of laws or not? I guess that is the essence of the public policy debate.

I marvel at my friend from Washington State, a psychiatrist by training, who had a generous amount of time applied to a complete hypothetical about an illegal Irish immigrant and the game of what if. It is called counter factual now in the study of history.

In other words, it was fictitious. Yet, we had almost 15 minutes of serious sober policy analysis of a tragic fable. It makes for great political theater, but it sheds very little light.

Dr. Gustafson, thank you for coming in. You talked about EMTALA. You also talked about Section 1011. This is Section 1011. It says here, I have highlighted, "A provider should not ask a patient if he or she is an undocumented alien."

According to a 2004 GAO study, over 95 percent of hospitals use lack of a SSN as a method of identifying unauthorized aliens.

You go on down Application 1011, it says the SSA cannot validate SSNs for Section 1011 purposes, but rather providers should determine if the SSN is valid or not.

Dr. Gustafson, why can't hospitals ask outright a person's immigration status?

Mr. GUSTAFSON. The 1011 program is intended to be a program providing support for hospitals serving illegal aliens and other folks for which they have an obligation as I described under EMTALA.

The intent of Congress as we implemented it was to ensure that payments went to hospitals, to try to prevent inhibiting effects on potential applicants for medical care, for patients coming through emergency rooms, because they would be concerned about enforcement information being turned over to the DHS or other authorities, so we set up the system in such a way that although we can audit whether the individuals are in fact appropriately identified, but we concluded that it would be counter productive for the purposes of this statute to require information about whether the person was in fact illegally here.

I guess, Mr. Chairman, I could claim the right that my friend from Washington State utilized, to offer a hypothetical. Since Arizona is ground zero for illegal immigration, since we have had confirmation from both the DHS of at least hundreds of people, persons of a national security interest, crossing our border illegally, submitted for your disapproval, the story of one Osama Hussein, where in reconciling testimony to an appropriations Subcommittee, the Director of the FBI, tells us that we now have people from Nation States exporting Islamic fascism, adopting Hispanic surnames, in this case, Osama Hussein has changed his name to Juan Valdez.

He is involved in transporting across our southern border components of a nuclear device when he is thrown from a pick up truck,

his neck is broken, and he is taken to the Copper Queen Emergency Room in Bisbee, Arizona.

What we understand now is that it would be counter productive to inquire as to Mr. Hussein, now with the alias, Valdez, status, and really, it is not the role of the hospital to first ascertain who this person is, to offer that compassionate care, but basically not to go any further.

That is basically the conundrum we find now. As I said in the oversight hearing to my friend from the IRS, and as we have heard in a variety of different answers today, and again, I'm not like my friend from Washington State, licensed to practice psychiatry, but I would tell you, ladies and gentlemen, we are engaged in public policy schizophrenia.

Unless and until we understand the first and most basic responsibility of Government is protection of the citizenry, and offer true compassion to the American people and to those really in need of compassionate care, and deal with the security and legal questions as they stand, and unless and until we do, we will remain a Nation at risk, and we are whistling past the grave yard.

I yield back.

Mr. MCCRERY. Thank you, Mr. Hayworth. Mr. Neal?

Mr. NEAL. Thank you very much, Mr. Chairman.

I was at a meeting with the National Transportation Safety Board discussing the Big Dig. I apologize for coming back late.

I was hoping the gentleman from Arizona might have stated, as the grandson of immigrants, which probably qualifies half of Massachusetts, we remind people that all those immigrants, they raised two sons who gladly and proudly fought for America during World War II, and raised families quite successfully, and nobody loved America more than those grandparents did.

Nobody ever thought there was going to be a chance that would come close in any other Nation, the chance that was presented to them by coming to America.

Mr. Everson, just a couple of questions, and a note of congratulations to you on many of the reforms you have embraced. I think not only is it healthy, but I think the public interpretation of them is being balanced and fair, and it is really an achievement that you ought to take some satisfaction from.

Mr. EVERSON. Thank you, sir.

Mr. NEAL. You spoke a couple of days ago before the House Government Reform Committee about the negative impact on tax administration if procedures are imposed on employers and employees that have the effect of driving economic activities underground.

What you are referring to there is the underground economy, I assume.

Mr. EVERSON. Yes, sir. What we were just discussing with your colleague, Mr. Lewis, is that I am a strong advocate for what the President is trying to achieve, which is a comprehensive program of immigration reform.

If you get this right and you have an eligible legal workforce and you do not have the reason to go underground, then the system will be helped.

The problem that we potentially have, if we do not have a balanced solution, is that if we open up 6103 and make another excep-

tion, and I would emphasize there are already 50 exceptions, so it is not as if this has never been done before, but if we agree to share this information but then there is not the benefit of solving our illegal immigration problem, I do worry there will be a price on tax administration that we all should understand as we go through this process.

Mr. NEAL. What would be a couple of examples that might encourage non-compliance?

Mr. EVERSON. You have a lot of businesses that may have competition that is not legal. They are not organized formally as a corporation. They are hiring illegal employees, and they are not paying their taxes.

The problem is if they know there is a check by DHS, then they may just say it is not worth organizing legally. If you really have not stopped that flow of illegals into the country, and that ready illegal workforce continues to be there, there will be some who will say "I will just go underground and not participate in the system at all."

That situation would not be in the interest of tax administration. You really have to solve this and stop that flow with enforcement at the border and strong interior enforcement as well as an appropriate legal workforce, which I think the President is trying to work toward.

Mr. NEAL. The Senate bill disallows workers attempting to obtain legal status, the ability to file for a refund on over withheld taxes. Who would receive that excess tax revenue?

Mr. EVERSON. I think that would stay in the Treasury. I have not commented on this, but there are two points here. One is the denial of the participation with certain credits, like EITC. That is, as your colleague, Mr. Becerra, was saying, that is consistent with the denial of other benefits to illegals.

I am somewhat troubled with the specific provision you mention, if our goal is to have people get current with their taxes, if they do that, I'm not quite sure I understand the basis for saying you are current, you happen to be over withheld, and you cannot have that back. Once you have evened out, you have fulfilled the tax obligation.

I think the intent of what the Senate is trying to do is to say everybody should have fulfilled that tax obligation. I think we ought to think about that one provision.

Mr. NEAL. Are there any other groups of workers who are barred from filing for refunds of over withheld income taxes?

Mr. EVERSON. I would have to consider that more carefully. I think the Joint Committee staff paper makes it clear that this is an aberration.

Mr. NEAL. Thank you, Mr. Chairman.

Mr. MCCRERY. Ms. Hart?

Ms. HART. Thank you, Mr. Chairman. I want to thank the panel for coming before the Committee. Your testimony actually demonstrates for us part of what the problem is, and obviously, each of you are not in complete sync with the other in ways that we can all get together and help enforce our immigration laws.

That is not criticism of you. It is obviously something that we need to focus on to help you do better. We fully intend to do that.

This sharing of information, I want to address right up front. Taxpayer information sharing, obviously between the DHS and the IRS. I am interested in your comments about the Senate proposal, because it permits the sharing of taxpayer information with the DHS.

I want to know first of all, does the IRS have any concerns with that sharing on a limited basis with DHS?

Mr. EVERSON. As I have indicated in several of the conversations, we do have concerns, but there are 50 exceptions to section 6103.

The Congress very clearly takes a look at that broad prohibition, and then acts from time to time to allow that information sharing. It will have to be done properly, and again, I believe it should only be done if we can achieve a real reform, a comprehensive reform of our immigration laws.

If that is not the case and we have not fixed our immigration system, but we have tinkered with the tax administration system, you could have problems.

I am not saying do not do this. I support what we are trying to do here.

Ms. HART. In a comprehensive way.

Mr. EVERSON. In a comprehensive way, and with all the safeguards. There are standing protections now that are very important when the IRS shares taxpayer information, we regularly audit the other agencies that have the information, be that a State tax system or another Federal agency, that needs to be done.

Ms. HART. That is fair. I have very little time and I want to jump to Ms. Myers. Does the DHS have ideas or a mechanism now that they are using that kind of information that is accessible on a limited basis?

Ms. MYERS. Right now, Congresswoman, we have access to the information on a case by case basis. Sometimes we will be working on an investigation for over a year, and then Social Security Office of Inspector General joins in and then they are able to share that information with us.

It is very frustrating to us. We waste a lot of time where we could really target things up front, if we had this information in a more regularized fashion.

Ms. HART. Does the Senate proposal actually satisfy what you believe would be a good model for that sharing?

Ms. MYERS. The Senate proposal, we think goes a long way and takes us much further than where we are now.

Ms. HART. There is something good in the Senate proposal.

Ms. MYERS. We would be perfectly happy to work with that and continue to work with the SSA.

Ms. HART. I will yield 30 seconds to my colleague, Bob Beauprez, and then I am coming right back.

Mr. BEAUPREZ. I thank the gentle lady and my good friend and colleague for yielding.

I assume Ms. Barnhart is the right one to answer this question. I am confused about Basic Pilot and the Social Security Administration's number verification program.

As I read them, for employers who want to verify especially new employees, Basic Pilot is the appropriate program. The NV pro-

gram looks to me like it has all kinds of signals on it that you should not use it because of privacy violation concerns.

Can you clarify for me? My State is one of the States who is looking at trying to give employers very clear direction as to how to live better within the law.

Ms. BARNHART. Actually, thank you for that question. We are constantly promoting Social Security's online number verification system as a matter of fact. We are trying to urge as many employers as possible to use it, and the usage has grown fairly dramatically in the last couple of years. It has only been around for about two and a half years and open to all employers since June 2005.

The caution is that we are not allowed under the law to verify name and SSN for an employer until the person is hired. I believe that is the privacy violation concern you are talking about. That is the issue.

Mr. BEAUPREZ. That is exactly right. I yield back to the gentle lady from Pennsylvania.

Ms. HART. Thanks. I have a quick question actually, and it is more or less to the panel in general.

There have been a lot of discussions about what we need to do to help fix the immigration system among my colleagues informally, formally, proposals, you name it.

One of the things that has been talked about there, and I do not necessarily endorse it, is that we end birth right citizenship in the United States.

I am interested in any feedback, especially from the two gentlemen on the end, if you believe your agencies are burdened because we have birth right citizenship, as a result of—I see my time is limited. Can I have another second for them to answer?

Mr. MCCRERY. Yes.

Ms. HART. Thank you. I appreciate that. Gentlemen, if you could, quickly.

Mr. HORN. First of all, whether caseloads go up or down, States get the same amount of money in a block grant environment. Of the 1.9 million families on TANF, a relatively small percentage of them are child only cases, where a U.S. citizen born child resides with a parent who is an illegal immigrant.

We do not know the precise percentage, because if the adult is not applying for assistance the adult is not required to provide proof of immigrant status. Therefore, they are not part of the assistance unit because they are legal permanent residents but under the 5-year bar, or they are illegal immigrants.

Ms. HART. Thank you. Dr. Gustafson, are you familiar with any cases?

Mr. GUSTAFSON. No. I do not really have anything to add.

Ms. HART. You do have under your agency and under your jurisdiction benefits that actually are applied for by parents for children directly?

Mr. GUSTAFSON. It comes as part of the Medicaid program, and basically the benefits flow as a by-product of the welfare programs.

Ms. HART. It is pretty hard to measure.

Mr. GUSTAFSON. I would believe so; yes.

Ms. HART. On the State programs, the parents can apply for all kinds of assistance where they do not get any but it is for the child.

Mr. MCCRERY. Mr. Everson, if you would like to submit a response in writing.

Ms. HART. If any of you have further responses, we would love it in writing. I thank the Chairman for his indulgence.

Mr. MCCRERY. We have two more members who would like to inquire. I would like to get that in before we leave. Mr. Doggett?

Mr. DOGGETT. Thank you, Mr. Chairman. I would offer my sincere thanks for your comments. I know the Committee asked you to appear. You have been kind enough to appear. We will benefit from your insight.

My comments do not go to your role as individuals but to other failings of this Administration and this Congress. Of the many bizarre hearings I have been at in this room, I think this one ranks fairly near the top.

This Committee played absolutely no role in the passage of the immigration bill that passed through the House. It was not referred to this Committee. I think there have been some occasional hearings about the impact on Social Security, not directly related to this bill.

The bill that passed the House was a narrow, impractical bill that will not address this problem, and it would not have passed the House without the vote of almost every Republican on this Committee.

The Senate passed a bill that dealt with this problem, and while it is an imperfect bill, it appears to be a more comprehensive way of approaching the problem. I am pleased that the President has belatedly endorsed, it though his Administration also seemed to have kind words to say about the initial House bill.

I think any high school civics class member in Austin, Texas would know that when the House passes a bill and the Senate passes a bill, there is a way to resolve the differences if the Administration and the Congress has the slightest interest in addressing this problem, and if it has any degree of the urgency that your testimony suggests that it does.

That is to convene a conference Committee to address the differences between the House and the Senate, one of the first things you learn in understanding the legislative branch in high school civics.

The House has chosen not to do that. The Bush Administration is in year six of dealing with this problem or in fact, not dealing with this problem.

Today's hearing, while insightful and interesting and of some academic importance, has very little relevance to whether or not we will see an immigration bill passed in this Congress, and apparently, it is not the intent of the House leadership, which took such a narrow backward and impractical approach to immigration, to do anything except use this for political purposes.

That would be consistent with the way the House has handled this issue in the last couple of years. As we have heard in earlier questions, instead of having more border patrol officers, we are going to turn our emergency room nurses into border patrol offi-

cers. Instead of having more border patrol officers, we will turn our bank tellers into border patrol officers.

Instead of having more border patrol officers, we will turn our local police who need the confidence of everyone in their community to be able to prosecute garden variety murders, rapes and robberies, we will turn them into border patrol officers.

The problem is that this Congress back in 2004 approved 2,000 additional border patrol officers, and this Administration said no, we do not need 2,000, 210 will be enough.

The problem became so serious in Texas that my Republican colleagues in the Texas delegation, including two in this Committee, wrote to the Administration last September and said there was an emergency, a crisis in Texas, because the administration had taken our border patrol officers and transferred them out to Arizona.

This Administration has come on board about this problem too little with none of the so-called political capital that the President claimed he had applied in a consistent manner to try to work out a solution.

I appreciate your comments, given the phony solutions and the whole phony situation that has been set up about immigration reform. I am not sure they are going to advance us much closer to an answer that will make any difference in the lives of the people throughout America.

I represent the largest border section, along the Rio Grande River, in Texas, of any Member of Congress save one. I can tell you there is a broad consensus along that border, whether you are talking about a Republican banker, a Democratic farm worker, or an independent small businessperson, that there is a total lack of understanding of the realities of the border.

Many phony solutions that are being advanced, like the ones I mentioned, as well as more formal policies, like the western hemispheric travel initiative, WHTI, they are counter productive to our local economy, that they will undermine our local economy and prevent legitimate business transactions and customers coming from Mexico to share, invest and contribute as they have in a very significant way.

As to the real comprehensive solutions, I will ask you if all of you agree that if the Senate bill with imperfections that it has were passed in its current form, if you agree it is actually a revenue raiser, not a revenue cost, according to the analysis that the Congressional Budget Office and others have done of the Senate bill?

Mr. MCCRERY. I thank the gentleman for his testimony.

Mr. DOGGETT. It was a question.

Mr. MCCRERY. The witnesses may present their answers in writing. Mrs. Tubbs Jones, if you would like to inquire. We have one more panel of two witnesses. I would like to get them in so they do not have to wait through the entire series of votes that we have.

[Ms. Barnhart's response follows:]

With respect to Mr. Doggett's question, concerning S. 2611's impact on revenue, on July 24, 2006, the SSA's Chief Actuary, Mr. Stephen C. Goss, sent a memo to Senator Charles E. Grassley concerning the effect of S. 2611 as passed by the Senate would result in increases in net immigration that would improve the long-range Old Age, Survivors, and Disability Insurance (OASDI) actuarial deficit by roughly

0.13 percent of payroll. This would reduce the long-range deficit from the estimated level of 2.02 percent of payroll under current law to roughly 1.88 percent of payroll.

Mrs. TUBBS JONES. Mr. Chairman, thank you very much. Let me begin, please, with you, Mr. Horn. Ms. Hart's questions, there was the implication that children born of illegal aliens in the United States—illegal immigrants in the United States of America cause a burden financially on the United States of America.

Can you tell me how much money there is that is paid to children born in the United States of America who are illegal immigrants, whose parents are illegal immigrants?

Mr. HORN. We would not know that because States are allowed the flexibility to provide different levels of benefits. All that we know is the number of children who fall into that category.

Mrs. TUBBS JONES. Can you tell me how many children?

Mr. HORN. Approximately 152,000 families are in child only cases in which they reside with a parent of either unknown citizenship or alien status, where the child is receiving a benefit and the parent is not.

Not all of those cases will be in the category that you are suggesting. Someone may just simply refuse if they are not applying for a benefit to say whether they are illegal, a U.S. citizen or an immigrant.

Mrs. TUBBS JONES. If they are not applying for a benefit, we are not paying any money?

Mr. HORN. We are paying a benefit on behalf of the U.S. born citizen child, but not the adult.

Mrs. TUBBS JONES. It is a small number in comparison with what we pay for—excuse me. Have you estimated how many illegal immigrants there are in the United States?

I am sure that at some juncture, the U.S. Government has contacted every State in the United States of America and asked them to assess how many people are receiving some type of benefit, that may be children of illegal immigrants.

Mr. HORN. Under the TANF program?

Mrs. TUBBS JONES. Any program.

Mr. HORN. The only thing I can speak to would be the TANF program.

Mrs. TUBBS JONES. Under the TANF program then, sir. If you have not done it, I would suggest that you do it. It only makes sense to me if you are going to figure out numbers of people in the United States, receiving that information.

Would it not make sense?

Mr. HORN. The States would not be able to tell us. The reason they would not be able to tell us is because you cannot deny a U.S. born child a benefit.

Mrs. TUBBS JONES. They can tell you how many people say they are not legal immigrants, right, or assess that?

Where do you come up with this number of 152,000 if they do not tell you?

Mr. HORN. Some of them are legal immigrants who are under the 5 year bar. Some of them are——

Mrs. TUBBS JONES. Tell me this, how many legal immigrants under the 5 year bar are families that are receiving money?

Mr. HORN. Approximately 37,000.

Mrs. TUBBS JONES. Approximately 37,000. Of those 37,000, have you ever contacted the State to find out how much money is being paid for those 37,000 families?

Mr. HORN. No.

Mrs. TUBBS JONES. Would you do that for me, please, and get back with me? I think it would help us determine how much money we are spending nationally. You can shake your head, but I want to know. Okay? Could you do that?

Mr. HORN. There are limitations under the statute concerning what data we can ask States to collect under this program.

Mrs. TUBBS JONES. Mr. Horn, do what you can.

Mr. HORN. I will do what we can.

Mrs. TUBBS JONES. Thank you. Let me go to Ms. Myers. Ms. Myers, I recall your making a statement with regard to prosecution, with regard to criminal prosecution, of companies.

How many criminal prosecutions have you done?

Ms. MYERS. This year, we have had 445 criminal arrests through June 30th.

Mrs. TUBBS JONES. Who was arrested? Are these owners of companies?

Ms. MYERS. It varies. In some cases, it was owners, managers. In some cases, we had illegal aliens who were also crew leaders who brought people in. In some cases, there were also criminal arrests of illegal alien work sites.

Mrs. TUBBS JONES. Of those 445, how many of them emanate from this year, the original charge was brought this year?

Ms. MYERS. Those are all this year.

Mrs. TUBBS JONES. Previously, we have had testimony that only three companies in the United States of America in the past few years have been charged with failing to provide the Government SSNs for people, accurate SSNs.

Ms. MYERS. Congresswoman, I think the number three that you are referring to reflects numbers of companies who were given a notice of intent to fine. That is a civil penalty system. We have shifted from that civil penalty system because we think that is not effective to bring criminal charges.

Mrs. TUBBS JONES. I understand what you are saying. Previously, of the three civilly, how many criminally do we do? Companies. I do not want to know all the other illegal residents.

Ms. MYERS. What I can tell you is that was 445 criminal arrests.

Mrs. TUBBS JONES. How many are companies, ma'am?

Ms. MYERS. It is a mix of employers, crew leaders, a range——

Mrs. TUBBS JONES. Could you do me a favor? Could you send me a notice of how many are companies? I do not want to know about the workers. I want to know about the heads of companies that you have charged for failing to appropriately provide information with regard to their workers, particularly with regard to their SSNs.

Could you do that?

Ms. MYERS. Absolutely, yes. Just yesterday, by the way, there were two——

Mr. MCCRERY. Ms. Myers, if you could get that to Mrs. Tubbs Jones in writing, that would be appreciated.

Mrs. TUBBS JONES. I would think all of the Committee would like to hear it. Thank you, Mr. Chairman.

Mr. MCCRERY. Thank you very much for your testimony and for your patience today in answering all our questions.

We have one more panel. Michael Fix and Dr. Camarota, if you would come forward. Members, we have about 2 or 3 minutes left on the clock to vote.

We are going to recess the Committee while members vote. We will return, I hope, in about 15 minutes.

The Committee is in recess.

[Recess.]

Mr. MCCRERY. Our second panel is composed of Mr. Michael Fix, Vice President and Director of Studies, Migration Policy Institute, and Dr. Steven A. Camarota, Director of Research, Center for Immigration Studies.

Gentlemen, welcome. Mr. Fix, we will start with you.

STATEMENT OF MICHAEL FIX, VICE PRESIDENT AND DIRECTOR OF STUDIES, MIGRATION POLICY INSTITUTE

Mr. FIX. Thank you so much, Mr. McCrery.

It is a great and somewhat daunting privilege to appear before you today. My name is Michael Fix. I am the Vice President and Director of Studies at the Migration Policy Institute, a non-profit, non-partisan research organization here in Washington.

You have a copy of my rather tardily prepared testimony. I will simply summarize my main points, if you will.

First, I would say that it is an often overlooked fact that the fiscal costs of providing many means tested benefits to new or legalizing immigrants are going to be circumscribed by restrictions imposed by the 1996 welfare reform law, which as we have heard, barred new legal immigrants from receiving SSI, from Medicaid, from TANF, and food stamps.

The second point I would make is that the exacting demands that are written into proposed reform legislation and in combination with welfare reform policies are likely to forestall legalizing immigrants' eligibility for means tested programs for some time. CBO estimates until 2020.

However, tax payments, including substantial potential payments for back taxes by the undocumented, if they legalize, would flow far sooner under the plan.

My third point is that while the public and the media often believe that immigrants are swamping benefit programs, as Figure 1 on page four in my testimony indicates, research at Migration Policy Institute (MPI), along with the Urban Institute, where I was formerly, indicates that low income legal non-citizen immigrant families with children actually used TANF, actually used food stamps and SSI at lower rates than their citizen counterparts, and that their use rates have fallen substantially over the course of the past decade.

Medicaid expenditures, if you look at that chart, follow a different path, in part because of what could be considered policy successes. There was strong outreach under the State Children's Health Insurance program in the late 1990s to provide care to low income children, and partly, I think, as a function of pull backs in private insurance among many employers of low wage immigrant workers in particular, and all low wage workers in general.

My fourth point, as Figure 2 on page five of my testimony indicates, is that I would suggest that if you look at the settlement patterns of immigrants observed during the nineties, which is essentially away from States with generous eligibility programs for immigrants, on the map, they are the blue States, and most notably, California, their settlement pattern has moved to high growth States, such as Georgia, Tennessee, and Colorado, which are shown in the map in red colors, which indicates basically that these flows are labor driven and not welfare driven.

My fifth point that I make in my testimony is that many commentators suggest that the new wave of immigrants are not going to experience the same kind of mobility as their predecessors, but as Figure 3 on page seven of my testimony shows, cohorts of immigrants who are in the United States for 10 years or more, which are the blue bars, had substantially higher incomes than those who had been in the United States for less than 10 years, the yellow bars.

We see that phenomenon reproducing itself when we decompose the immigrant population into refugees. They show great growth. Into legal immigrants, you see substantial growth, and naturalized citizens, you see substantial growth.

The incomes and the gains among undocumented immigrants were far lower.

Taking a longer view of this question of mobility, at MPI, we recently commissioned a study by Roger Waldinger of the University of California Los Angeles, who found substantial—I think this is important—intergenerational gains along almost all measures of economic progress that he examined, including, as Figure 4 indicates, incomes.

You see this for all broad immigrant groups studied, including Mexicans.

Sixth, and I guess my final empirical set of points, go to the fact that income gains are of course linked to the payment of taxes. We have had a lot of discussion on that today, and a variety of researchers who have documented the tax contributions that immigrants make, including Steve Camarota, but here I just want to highlight a recent study of taxes paid by immigrant households in the Washington metropolitan area that we conducted with the Urban Institute and Jeffrey Passel of the Pew Hispanic Center.

What we found is that all households, including households led by the undocumented, paid substantial taxes.

Tax payments of the region's immigrant populations were proportional to their share of the population. That is to say they make up about 18 percent of the regional population, and they pay about 18 percent of the taxes.

Like income, the taxes again varied by legal status with the lowest paid by the undocumented, in part, we estimate, as a function of compliance rates.

The results suggest to us that some form of legalization that mandates full tax compliance would lead to higher tax yields. Yields would be felt immediately and not down the road like most benefit costs.

Reform legislation like the one passed by the Senate also would raise the caps on skilled legal immigrants and would also likely contribute and to boost tax revenue as well.

Mr. McCrery, I am aware that these are only pieces of a much larger fiscal and still larger economic puzzle that surrounds this complex debate that we have heard today.

For example, we found that immigrants are more likely than U.S. natives to be self employed. That immigrant entrepreneurship creates jobs and boosts tax payments in ways that many accounts do not capture.

The foreign born population's willingness to follow jobs to other States and localities make the U.S. economy run more efficiently, and high skilled immigrants innovate in key sectors of the economy that are very difficult to measure.

I would submit that even if we limit our discussion to tax payments and benefits use, the trends that I have discussed here offer, I think, a realistic anecdote to some of the most gloom and doom scenarios that we have heard in this discussion.

Thank you very much for your attention.

[The prepared statement of Mr. Fix follows:]

Statement of Michael Fix, Vice President and Director of Studies, Migration Policy Institute

Debate over immigration and proposals to reform it raise a number of issues that have been at the center of research conducted over the past decade on selected costs and benefits. In my testimony today I would like to raise several issues regarding immigrants' costs and contributions.

In sum, my points are as follows:

- The 1996 welfare reform law substantially restricted new legal immigrants' access to public benefits, limiting fiscal exposure in the short-run.
- The exacting character of proposed legislation would bar the current undocumented population from social welfare programs through 2020.
- Since welfare reform's enactment, use of TANF, SSI, and Food Stamps has fallen substantially among legal immigrant families with children. Medicaid for immigrants, like citizens, does not follow this trend, and corresponds to a general decline in extension of private health insurance benefits to low-wage workers.
- During the 1990s many immigrants moved from states with comparatively generous public welfare programs for immigrants to states with strong economies but less generous programs, raising doubts about the strength of welfare magnets.
- Cohorts of immigrants in the U.S. 10 years or more had significantly higher incomes than those in the U.S. less than 10 years—*suggesting* substantial income gains. Naturalized citizens in the U.S. 10 or more years had higher average incomes than natives. Lower incomes were found among both recent and established undocumented immigrants, again suggesting that regularization would boost wages and taxes.
- A study of taxes paid by immigrants in the Washington, DC region revealed that immigrant households pay substantial taxes. Immigrants' tax payments were proportional to their share of the total regional population.
- Tax payments in the Washington region varied by legal status, with payments and compliance ascribed to undocumented immigrants being lowest. This finding suggests that a legalization program that effectively mandates full tax com-

pliance as a condition for earning LPR status would lead to higher tax yields, which would be felt immediately (unlike increased usage of social benefits—which to the degree it actually occurs—would be delayed for many years).
- Higher tax yields might be supplemented by higher incomes. The wage benefit of legalization under IRCA was approximately 6 percent.

I will address several points in turn:

First, I will briefly explore the degree to which current comprehensive reform proposals are likely to affect social welfare systems by focusing on (1) the existing bars that restrict legal immigrants' access to benefits; (2) patterns of declining benefit use among legal immigrants; and (3) the labor-driven, rather than welfare-driven, movement of immigrants that we see in today's settlement patterns.

Second, I will note patterns of wage growth and mobility among immigrants over time, differentiating, among other things, between legal statuses.

Third, in a related vein, I will say a word about the taxes paid by immigrants by highlighting the Washington Metropolitan area, a major new gateway region.

AVAILABILITY OF BENEFITS

The 1996 welfare reform law imposed restrictions on new legal immigrants' access to means-tested federal public benefits. Recent discussion of immigration reform has often overlooked this fact and the likelihood that the law will limit benefit outlays associated with such immigration reforms as a legalization program or expanded legal immigration. The Senate bill's emphasis on skilled and educated immigrants and the proposed temporary worker program would mean that a large component of new permanent immigrants would not likely need social services, while temporary workers would by definition not qualify for most forms of assistance.

Prior to 1996 welfare reform, legal immigrants were eligible for benefits on the same terms as citizens. Following the law's enactment, states were authorized to discriminate against legal immigrants in their public benefit programs. The most severe restrictions were imposed on immigrants arriving after August 22, 1996, the law's date of enactment. These restrictions essentially bar nearly all legal immigrants arriving after that date from receiving selected means-tested public benefits—SSI, TANF, Medicaid, SCHIP, and Food Stamps—for at least five years.

These restrictions are not the only barriers to access to public benefits for post-96 immigrants. In addition, immigrants entering under the family unification provisions of immigration law must sign an enforceable affidavit of support that makes their sponsors liable for benefits they use. Further, the sponsor's income is deemed to the immigrant—commonly making the immigrant's income too high to qualify for means-tested public benefits. The sponsor deeming provision extends until an immigrant naturalizes or establishes a work history of 40 quarters (i.e., at least 10 years)—in many cases a date substantially beyond the five-year bar.

These multiple barriers serve to push back the date of new immigrants' eligibility for benefits. Fully 40 percent of legal immigrants in the U.S. today arrived after 1996, and so have been subject to the welfare restrictions; new or legalizing immigrants as a result of comprehensive immigration reform would be no different.

Beyond the barriers to access embedded in welfare reform, the proposed comprehensive reform legislation (as reflected by S. 2611) further lengthens the time before a formerly undocumented immigrant will be eligible for means-tested public benefits.[1] According to the Congressional Budget Office, the earliest most undocumented immigrants would be eligible for benefits would be 2020, almost 20 years after their entry into the United States. This delayed access owes to the fact that most of them might not become legal permanent residents until eight years after the initiation of the legalization process, at which time they would have to wait another five years as a result of welfare reform bars in order to access benefits. Further, the qualification process described in S. 2611—which includes extensive employment and acquisition of some English—is quite exacting. Those who attain permanent legal status and wait an additional five years are likely to have benefited financially from the wage gains that U.S. work experience and English skills bring and thus be less likely to need public assistance in the future than they do at time of arrival.

DECLINE IN BENEFIT USE BY LEGAL IMMIGRANTS

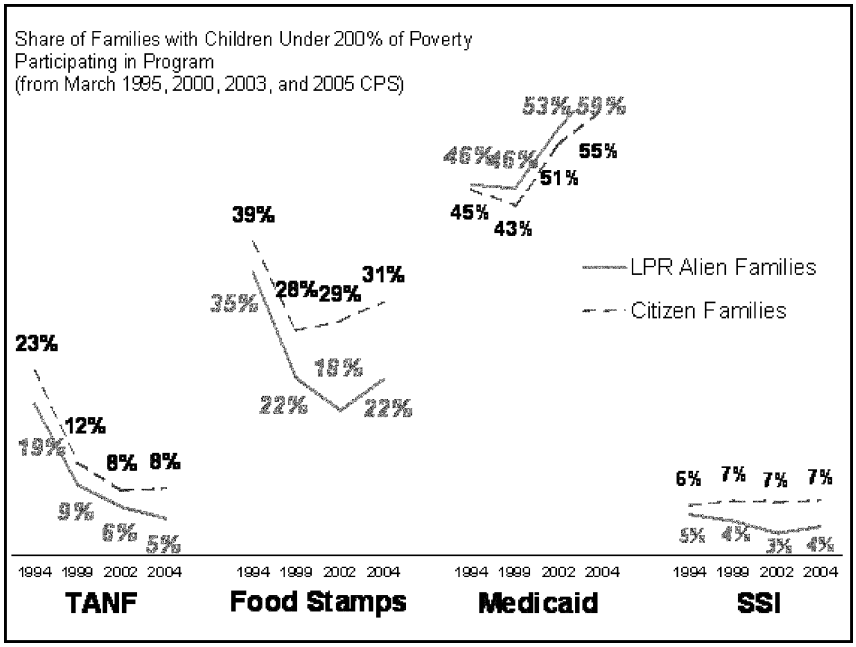
Our research suggests two other trends in the use of public assistance among immigrants that have been downplayed in the current debate over the impact of immigration reform on the social welfare system. One is the decline in the use of most

[1] Under current law, undocumented are eligible for emergency Medicaid. Their U.S. born children are citizens and hence eligible for benefits.

public benefits on the part of legal immigrants in the wake of welfare reform's 1996 enactment.

As Figure 1 indicates, following reform, we see sharp drops in TANF use among immigrant families. Immigrant use of TANF was lower than that of citizens both before and after welfare reform, falling from 19 percent in 1994 to 4.5 percent in 2004. (Our analysis focuses on low-income, legal noncitizen-headed families with children. We contrast them with low-income, citizen-headed families with children.) Similar patterns emerge through 2002 when we examine Food Stamps. There is a slight up-tick in use from 2002 through 2004, perhaps reflecting policy changes in the program introduced by the 2002 Farm Bill, which restored eligibility to working age adults who had been in "qualified status" in the United States for five or more years and to legal, noncitizen children regardless of date of entry. Finally, we see declines in SSI use among legal, noncitizen-headed families for the period 1996—2004; in fact, noncitizens' usage levels are just over half those of citizens.

Figure 1: Low-Income Families' Benefit Usage, 1994–2004



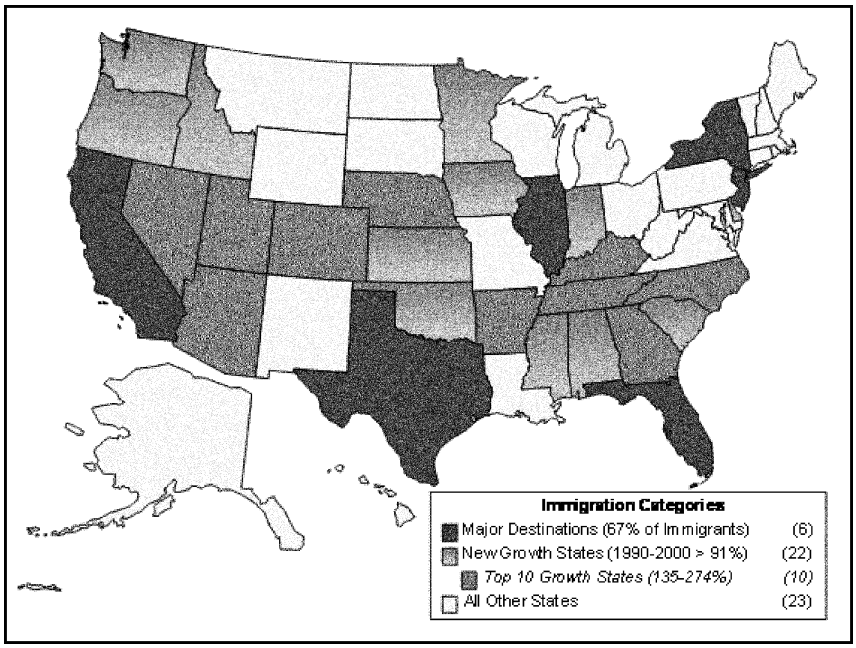
For each program, then, benefit use among immigrant families has fallen since welfare reform and is substantially lower than that of citizens. This is not the image of immigrants and social welfare reliance that is commonly conveyed.

We do, however, see different patterns when it comes to Medicaid—with use among noncitizen families exceeding that of natives and rising since 1999. Generally higher levels of Medicaid use among legal, noncitizen families may reflect the introduction of the 1997 SCHIP program, broad outreach in the late 1990s to boost enrollment, and a reduction in private insurance coverage among low-wage immigrant workers and low-wage workers more generally.

DISPERSAL FROM HIGH TO LOWER BENEFIT STATES

A third general point that has not received much attention in the current debate over immigration benefits is the dispersal of immigrants during between 1990 and 2000 away from states that have comparatively generous public benefit programs (California, most notably) toward many states with less generous state eligibility rules for legal immigrants such as Georgia, Tennessee, and Colorado (See Figure 2). This trend suggests that welfare remains a far less powerful magnet for newcomers than jobs.

Figure 2: New Immigration Growth Centers



Declining benefit use, the continuation of stringent restrictions on legal immigrants' access to public benefits, and changing spatial migration patterns suggest that fears that welfare systems will be swamped by increased legal immigration and by a legalization program are overstated.

LABOR FORCE PARTICIPATION, WAGE GROWTH AND MOBILITY, AND TAXES

We turn now to the other side of that fiscal equation that is so often discussed in debates over immigration reform: the contributions of immigrants to the federal purse. But first I'd like to highlight some of the most relevant facts about immigrants in the labor force and their wages that position them to make these contributions.

Immigrants contribute significantly to the U.S. workforce and economy. Since 2000, immigrants have made up 46 percent of the growth in the U.S. labor force, and today there are more than 22 million foreign-born workers.[2] While immigrants are one in eight U.S. residents, they are one in seven workers, and one in five low-wage workers. At the same time, the foreign-born now account for one in every five doctors; one in five computer specialists, and one in six professionals in engineering or science occupations in the United States.[3]

Clearly the skill levels of immigrants affect their income levels and tax contributions. Also of note, though, is evidence that the wages of immigrants rise over time and that the rates of growth outpace those of natives, perhaps by 10 to 13 percent in the first twenty years an immigrant is in the United States.[4] While these gains do not fully compensate for the large *average* earning differential between natives and immigrants at arrival, the fact that immigrants are earning more over time

[2] Bureau of Labor Statistics, "Foreign-Born Workers: Labor Force Characteristics in 2005," (Washington, DC: U.S. Department of Labor, 2006). Available: http://www.bls.gov/news.release/pdf/forbrn.pdf.

[3] Neeraj Kaushal and Michael Fix, "The Contributions of High Skilled Immigrants," (Washington, DC: Migration Policy Institute, forthcoming 2006).

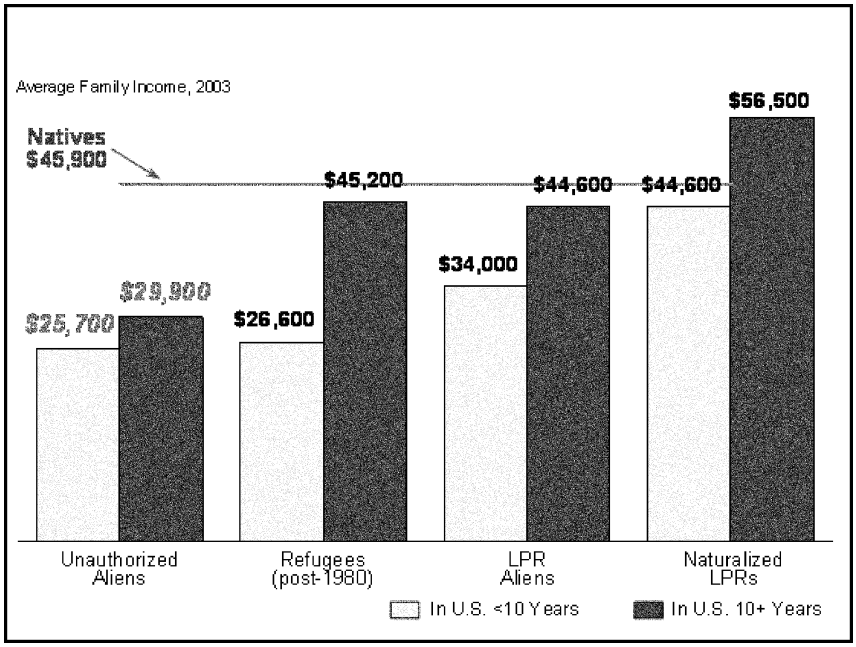
[4] Darren Lubotsky, "Chutes or Ladders?: A Longitudinal Analysis of Immigrant Earnings," Princeton University Industrial Relations Section Working Paper No. 445, 2000. This paper is particularly rigorous in that it relies on longitudinal—as opposed to cross-sectional—data.

means that they have more to contribute to the federal purse the longer they are in the United States.[5]

Legal status is also related to wages. Research that followed illegal immigrants regularizing under IRCA in 1986 found that the wage benefit of the legislation for previously unauthorized immigrants was 6 percent.[6]

Incomes and Legal Status. Figure 3 compares incomes of cohorts of immigrants in the United States for less than 10 years in 2002 with those who had been in the country for 10 years or more. We see that for all groups other than unauthorized immigrants the data reveal substantially higher family incomes for immigrants who had been in the United States for 10 years or more than their more recently-arrived counterparts. The data also reveal that the incomes of naturalized citizens in the United States for more than 10 years exceed those of natives' and that those of refugees and legal immigrants approach those of natives. We see much lower incomes and smaller differences in incomes among unauthorized immigrants, suggesting the potential value of legal status for economic integration and for tax contributions.

Figure 3: Immigrants' Income by Time in United States and Immigration Status



Generational Mobility. Any analysis of the contributions of immigrants should arguably take a somewhat longer view than most fiscal analyses do, as well. By that, I mean, looking at the second generation and its outcomes—in some ways the crucible for economic progress. In his analysis of this topic, Professor Roger Waldinger, the former Chairman of the Department of Sociology at the University of California, Los Angeles, broke the first and second generation into broad categories:

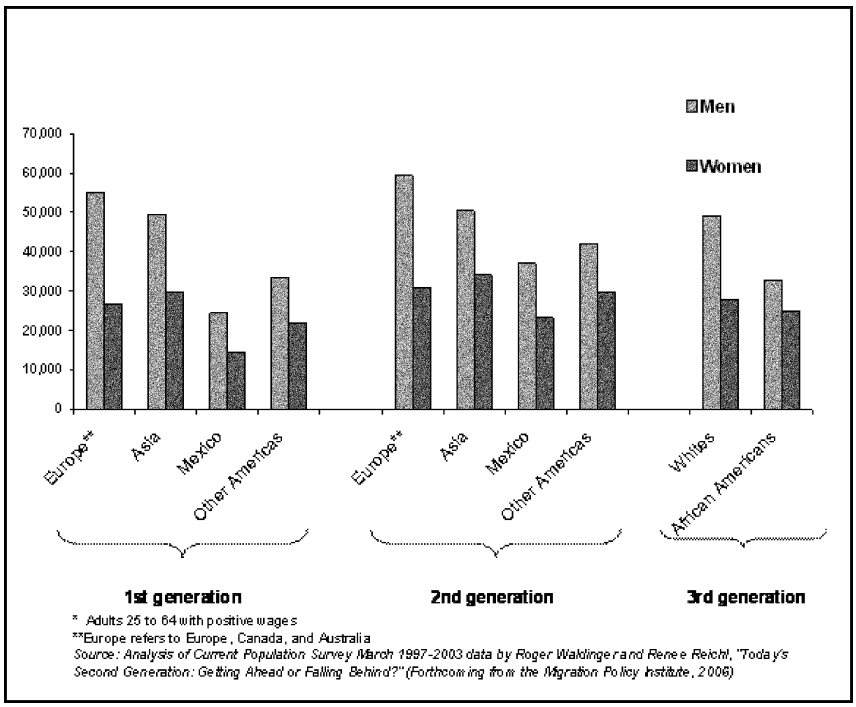
- Mexicans;
- Asians;
- Europeans, Canadians, and Australians; and
- Other Americans (from Central and South America and the Caribbean)

[5] With regard to wage differentials between natives and new immigrants: David Card, "Is the New Immigration Really So Bad?" IZA Discussion Paper Series, No. 1119, 2004.

[6] Sherrie A. Koussoudji and Deborah Cobb-Clark, "Coming Out of the Shadows: Learning about Legal Status and Wages from the Legalized Population," *Journal of Labor Economics* 20 (3), 2002.

Results were compared with white and black 3rd generations.[7]

Figure 4: Median Yearly Wage and Salary Income ($) of Adults* by Generation, Origin, and Gender, 2000



He found that *all* of these broadly defined immigrant groups are making generational progress along almost all indicators: rates of high school graduation; college completion, incomes, and job quality as measured by health insurance and pensions (Figure 4). With regard to incomes, he found that while Mexicans lag all groups in the first generation, dramatic growth occurs in the wages and salaries of the second, with incomes approaching those of African American natives.

Tax Contributions. In today's economy, then, the foreign-born are no strangers to the workforce, and as a consequence, they make sizable tax contributions. In the future, new tax contributions stemming from comprehensive immigration reform like that set forth in S. 2611 would be felt immediately, in contrast to the delayed impact of potential welfare benefit usage among legalizing or newly arriving immigrants.

We highlight a localized example of these tax contributions through a recent study my colleagues Jeffrey S. Passel and Randy Capps and I conducted, which examined the federal, state and local taxes paid by immigrant households in the Washington Metropolitan Region.[8] Despite polls that find most people believe that immigrants do not pay their fair share in taxes, our study found that immigrant households paid taxes at the nearly the same rates as native households. Further, as earlier studies in New York and Illinois have revealed, immigrants' tax payments are proportional to their share of the regional population. That is, immigrants paid the

[7] Roger Waldinger and Renee Reichl, "Today's Second Generation: Getting Ahead or Falling Behind?" *Securing the Future: The U.S. Immigrant Integration Policy Agenda,* Ed. Michael E. Fix (Washington, DC: Migration Policy Institute, forthcoming 2006).

[8] While the Washington region is a new gateway community, it may not be representative of the nation as a whole. Its immigrant population is unusually diverse and is composed of a comparatively large share of Asian immigrants. See, R. Capps, *et. al. Civic Contributions: Taxes Paid by Immigrants in the Washington DC Metropolitan Area,* (Washington, DC: The Community Foundation and the Urban Institute, 2006).

same share of the region's overall taxes (18 percent) as their share of the total population (17.4 percent).

The study also found that immigrant households in Northern Virginia paid eight percent of all state taxes paid by households in Virginia ($810 million out of $9 billion). Immigrant households in suburban Maryland paid an equivalent share of Maryland state taxes ($560 million out of $6 billion). These findings highlight the fact that immigrants' tax payments support both local and state services on which residents draw, in addition to the federal coffers.

While all immigrants pay a substantial share of their incomes in taxes, we found, as with incomes, that tax payments are correlated with legal status. Naturalized citizens paid higher taxes than households headed by native-born citizens. Households headed by legal permanent residents and refugees had slightly lower incomes and paid somewhat lower taxes. Those headed by undocumented immigrants had the lowest average incomes and therefore paid the lowest average taxes. Based on other analyses we assumed that a little over half of unauthorized immigrants paid payroll taxes. Here again it appears that legislation that would change this population's legal work authorization would effectively mandate full tax compliance and likely lead to higher incomes, thereby raising immigrants' fiscal contributions to the federal, state, and local coffers.

In sum—these trends in welfare use and tax contributions are often ignored in debates over immigration's impacts and the merits of reform. While I make no attempt to sum them up, they suggest that reform's fiscal impacts may be much more positive than the current debate would lead one to believe and far more complex than the caricature portrayed by some of the literature.

OTHER ECONOMIC IMPACTS

To close let me indicate a few additional ways that impacts affect the federal purse. Decade after decade we've found that immigrants are more likely than U.S. natives to be self-employed, and immigrant entrepreneurship may create jobs and as a result boost tax payments. Immigrants are increasingly associated with further openings to trade and other forms of exchange that promote business. The foreign-born population's willingness to follow jobs to other states and localities makes the U.S. economy run more efficiently. High-skilled immigrants innovate in key sectors of the economy. And immigrant workers both produce and, in turn, consume goods and services—thus creating jobs that might not otherwise have existed and making much wider ripple economic effects. The effects are felt up and downstream from the specific places and sectors of immigrant employment.

Mr. MCCRERY. Thank you, Mr. Fix. Dr. Camarota.

STATEMENT OF STEVEN A. CAMAROTA, DIRECTOR OF RESEARCH, CENTER FOR IMMIGRATION STUDIES

Mr. CAMAROTA. I would like to thank the Committee for inviting me to testify. My name is Steven Camarota. I am Director of Research at the Center for Immigration Studies in Washington.

All of my comments can be found in detail at our website, cis.org.

When it comes to immigrants and public coffers, there is a lot of agreement, in fact, overwhelming agreement, that their fiscal impact depends largely on the education level of the immigrants in question, while other factors also matter, immigrants with a lot of education tend to pay a lot in taxes, and use relatively little in services, while those with little education tend to have low incomes, pay relatively little in taxes, and often use a good deal in public services.

In the case of illegal aliens, the public services are typically received on behalf of their U.S. born children.

It should be pointed out that the fiscal drain that comes from less educated immigrants is not because they come to get welfare. In fact, use of cash assistance welfare programs is irrelevant to this debate.

It is Medicaid. It is the food assistance program, particularly WIC and free school lunch, where use rates tend to be quite high.

Nor does the fiscal drain from unskilled immigrants come from an unwillingness to work. Legal or illegal, they mostly hold jobs.

It is simply due to the fact that there is no single better predictor of one's income, tax payments, or use of public services in the modern American economy than one's education level.

All research shows that the vast majority of illegal aliens have very little education. It is estimated that some 60 percent of illegal aliens have not even completed high school. Another 20 percent have only a high school degree, that is no additional schooling.

Thus, the people who will be legalized under the Senate bill have significant negative fiscal implications.

One of the most detailed studies of the fiscal effects of immigration ever done was done by the National Research Council. It is called "The New Americans." It found that the life time drain on public coffers from an immigrant who comes to America without a high school degree is negative $89,000. That is he will use $89,000 more in services than he pays in taxes in his life time.

The drain for an immigrant who has only a high school degree in his life time is $31,000.

However, an immigrant with education beyond high school is a net fiscal benefit of $105,000. Again, educational attainment is the key to understanding fiscal effects.

The fundamental problem with the Senate bill is that it ignores this basic insight. My research shows that in 2002, illegal alien families used $26 billion or imposed, I should say, $26 billion in costs on the Federal Government, but it is important to know that they also paid about $16 billion in taxes, for a net drain of $10 billion at the Federal level.

However, I also find that if illegal aliens were legalized and they began to pay taxes and use services like households headed by legal immigrants with the same level of education, the fiscal costs would explode to $29 billion, net drain.

That is the difference between what they pay in taxes and use in services.

To understand why this happens, it might be helpful to look at a particular program, like the earned income tax credit, which goes to low income workers.

Right now, I estimate that illegal aliens account for just 1.5 percent of that program's total cost, a very small share. If they were legalized and had the income of legal immigrants with the same level of education, the costs of that program would increase ten fold.

Again, this dramatic rise in costs is not due to laziness or net lack of work. In fact, only those that work get the credit. It simply reflects their education level.

Let me shift my comments very briefly to Social Security and Medicare. I have estimated that illegal aliens pay into those two systems and create a net benefit for those two programs of $7 billion a year, but it makes little sense to focus just on those two programs because illegals create a net deficit of $17 billion in the rest of the Federal budget, for a total net drain of $10 billion.

Again, the benefits to those programs, it should also be pointed out, would largely disappear upon legalization. The benefit comes from the fact that they pay and do not use. Again, that is probably not the way to think about the program, since they create such large problems for the rest of the Federal budget.

Speaking more generally on Social Security, it is very important to note immigration has only a very small impact on the aging of American society, mainly because immigrants age like everyone else, and they do not have that many more children than everyone else, so they do have somewhat higher fertility.

The Social Security Administration's projections show that the dollar value of the Social Security deficit would increase by just 6.6 percent if net immigration was $350,000 a year versus $800,000 a year, over 75 years.

Put simply, an extra 34 million immigrants over 75 years has only a very tiny effect, and it is not even clear that this small net gain for Social Security even exists, because the SSA assumes that immigrants will have exactly the same incomes as natives immediately upon arrival, which is contrary to a very large body of literature.

It also ignores the fact that we have something called the earned income tax credit, which is explicitly designed to refund people some or all of their Social Security payments.

My own research suggests that legal immigrants are almost twice as likely to get this program as natives.

As a general proposition, immigration is largely irrelevant to the Social Security system because it has such a tiny impact on the aging of American society.

The bottom line is this. The Senate bill has large increases in legal immigration and is supposed to legalize some 10 million illegals. For the most part, the bill does not attempt to select new immigrants based on their skills and skills are also irrelevant to the legalization of the illegals.

There is the fundamental problem. If you take nothing else away from my testimony, it is simply this. It is not possible to fund social programs, including those for retirees, with large numbers of immigrants with relatively little education. Unfortunately, the Senate bill ignores this basic common sense.

Thank you.

[The prepared statement of Mr. Camarota follows:]

Statement of Steven A. Camarota, Ph.D., Director of Research, Center for Immigration Studies

Summary

There is general agreement that the fiscal impact of immigration depends largely on the education level of the immigrants in question. Immigrants with a lot of education pay more in taxes than they use in services, while those with little education tend to have low incomes, pay relatively little in taxes and often use a good deal in public services. In the case of illegal alien, the vast majority have little education, and this is the key reason they create fiscal costs. Illegal families often receive benefits on behalf of their U.S.-born children. As a general proposition, the large scale immigration of less-educated immigrants (legal or illegal) creates significant funding problems for social programs, including those for retirees, even though the immigrants work.

Key Findings of Research:

The Fiscal Impact of Immigration Generally

- The National Research Council (NRC)[1] estimated that immigrant households create a net fiscal burden (taxes paid minus services used) on all levels of government of $20.2 billion annually.
- The NRC estimated that an immigrant without a high school diploma will create a net lifetime burden of $89,000, an immigrant with only a high school education it is negative $31,000. However, an immigrant with education beyond high school is a fiscal benefit of $105,000.
- Estimating the impact of immigrants and their descendants, the NRC found that if today's newcomers do as well as past generations, the average immigrant will be a fiscal drain for his first 22 years after arrival. It takes his children another 18 years to pay back this burden.
- The NRC also estimated that the average immigrant plus all his descendants over 300 years would create a fiscal benefit, expressed in today's dollars of $80,000. Some immigration advocates have pointed to this 300-year figure, but the NRC states it would be "absurd" to do so.

Illegal Immigration

- The Center for Immigration Studies (CIS) estimates that in 2002 illegal alien households imposed costs of $26 billion on the federal government and paid $16 billion in federal taxes, creating an annual net fiscal deficit of $10.4 billion at the federal level, or $2,700 per household.[2]
- Among the largest costs, were Medicaid ($2.5 billion); treatment for the uninsured ($2.2 billion); food assistance programs such as food stamps, WIC, and free school lunches ($1.9 billion); the federal prison/court systems ($1.6 billion); and federal aid to schools ($1.4 billion).
- If illegal aliens were legalized and began to pay taxes and use services like households headed by legal immigrants with the same education levels, CIS estimates the annual net fiscal deficit would increase to $29 billion, or $7,700, per household.
- The primary reason illegal aliens create a fiscal deficit is that an estimated 60 percent lack a high school degree and another 20 percent have no education beyond high school. The fiscal drain is not due to their legal status or unwillingness to work.
- Illegal alines with little education are a significant fiscal drain, but less-educated immigrants who are legal residents are a much larger fiscal problem because they are eligible for many more programs.
- Many of the costs associated with illegals aliens are due to their U.S.-born children who have American citizenship. Thus, barring illegal aliens themselves from federal programs will have little impact on costs.
- Focusing just on Social Security and Medicare, CIS estimates that illegal households create a combined net benefit for these two programs in excess of $7 billion a year. However, they create a net deficit of $17 billion in the rest of the budget, for a total net federal cost of $10 billion.

Funding for Retirement Programs

- Immigration has only a very small impact on the aging of society because although immigrants arrive relatively young, and have higher fertility than natives, they age like everyone else, and the differences with natives are not large enough to fundamentally alter the nation's age structure.
- In 2000 the average age of an immigrant was 39, which is actually about four years older than the average age of a native-born American.[3]
- If all post-1980 immigrants and all the children they have had are excluded from the 2000 Census, the working-age (15 to 64 years old) share of the popu-

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[1] The National Research Council's 1997 is report entitled, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration.* A summary of the report's findings can be found at www.cis.org/articles/1999/combinednrc.pdf.

[2] These estimates and those that follow dealing with illegal immigration come a Center for Immigration Studies report entitled, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget.* The Report can be found online at www.cis.org/articles/2004/fiscal.pdf.

[3] These figures and those that follow dealing with the Social Security system can be found in a Center for Immigration Studies report, entitled, *Immigration in an Aging Society: Workers, Birth Rates, and Social Security,* which is available online at: www.cis.org/articles/2005/back505.pdf. The data for the Center's Social Security study comes from the 2004 trustee's report which can be found online at: www.socialsecurity.gov/OACT/TR/TR04/index.html and from additional data provide by the SSA to Senators Chuck Hagel, which can be found online at: www.nfap.net/researchactivities/studies/Appendix1toSocialSecurityStudy.pdf.

lation would be 65.9, almost exactly the same as the 66.2 percent when they are all included.

- Looking to the future, Census Bureau projections indicate that if net immigration averaged 100,000 to 200,000 annually, the working-age share would be 58.7 percent in 2060, if net immigration average roughly 900,000 to one million, it would be still be 59.5 percent.[4]
- The Social Security Administration (SAA) projections show that, net annual legal immigration of 800,000 a year over the next 75 years versus 350,000 a year would create a benefit equal to less than 1 percent of the program's projected total expenditures.
- As for the program's deficit, net annual legal immigration of 350,000 a year versus 800,000 would increase the dollar value of the actuarial deficit by just 6.6 percent over the next 75 years.
- It is not clear that even this small benefit exists, because SSA does not take into account the lower average earnings and resulting lower average tax payments of legal immigrants.
- SSA also does not consider the Earned Income Tax Credit (EITC), which is explicitly designed to give back Social Security tax payments to low-wage earners. Legal immigrants use the EITC at significantly higher rates than natives.
- If illegal alines are legalized and began to receive the EITC at the same rate as legal immigrants with the same education, CIS estimates that costs for the Credit would increase 10-fold.[5]

Immigration's impact on public coffers has long been at the center of the immigration debate. Until recently, however, we actually had very little reliable data on the subject. While there is still much that is not known, we now have some reasonably good information about this important topic. As I tried to make clear in the summary above, there is a pretty clear consensus that the fiscal impact of immigration depends on the education level of the immigrants. Certainly other factors also matter, but the human capital of immigrants, as economists like to refer to it, is clearly very important. There is no signal better predictor of one's income, tax payments or use of public services in modern America than one's education level. The vast majority of immigrants come as adults, and it should come as no surprise that the education they bring with them is a key determinate of their fiscal impact. It is simply not possible to fund social programs, including those for retirees, by bringing in large numbers of immigrants with relatively little education and resulting low incomes.

In my own research I have concentrated in two areas: the effect of illegal aliens on the federal government and the impact of immigration more generally on the Social Security system. I can only briefly touch on these two topics in my testimony. For those wanting a more detailed look at these questions, my most recent publications are available online at the Center for Immigration Studies web site, www.cis.org. My most recent studies of these issues are, "The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget" and "Immigration in an Aging Society: Workers, Birth Rates and Social Security."

Illegal Immigrants and the Federal Budget

A good deal of research has focused on the effect illegal have on taxpayers at the state and local level. Much of this work has examined only costs, or only tax payments, but not both. In my work I have tried to estimated both, and I have focused on the federal government. In Based on a detailed analysis of Census Bureau data, my analysis indicates that households headed by illegal aliens imposed more than $26.3 billion in costs on the federal government in 2002 and paid $16 billion in taxes, creating a net fiscal deficit of almost $10.4 billion, or $2,700 per illegal household. The largest costs are Medicaid ($2.5 billion); treatment for the uninsured ($2.2 billion); food assistance programs such as food stamps, WIC, and free school lunches ($1.9 billion); the federal prison and court systems ($1.6 billion); and federal aid to schools ($1.4 billion).[6]

A Complex Fiscal Picture. While the net fiscal drain they create for the federal government is significant, I also found that the costs illegal households impose on federal coffers are less than half that of other households, but their tax payments

[4] The Census Bureau's population estimates from 2000 can be found at www.census.gov/population/www/documentation/twps0038.pdf. Table E on page 28 reports the different net immigration assumptions and Table F on page 29 reports the impact of these assumptions on the dependency ratio.

[5] See footnote 2.

[6] See footnote 2 for the source of this information and all information dealing with the fiscal costs of illegal immigration on the Federal budget.

are only one-fourth that of other households. Many of the costs associated with illegals are due to their American-born children, who are awarded U.S. citizenship at birth. Thus, greater efforts to bar illegals from federal programs will not reduce costs because their citizen children can continue to access them. It must also be remember that the vast majority of illegals hold jobs. Thus the fiscal deficit they create for the federal government is not the result of an unwillingness to work. In 2002, I found that 89 percent of illegal households had at least one person working compared to 78 percent of households headed by legal immigrants and natives.

Legalization Would Dramatically Grow Costs. One of my most important findings with regard to illegal aliens is that if they were given legal status and began to pay taxes and use services like households headed by legal immigrants with the same education levels, the estimated annual net fiscal deficit would increase from $2,700 per household to nearly $7,700, for a total net cost of $29 billion. Costs increase dramatically because less-educated immigrants with legal status—what most illegal aliens would become—can access government programs, but still tend to make very modest tax payments. Of course, I also found that their income would rise, as would their tax payment if legalized. I estimate that tax payments would increase 77 percent, but costs would rise by 118 percent.

These costs are considerable and should give anyone who advocates legalizing illegal immigrants serious pause. However, my findings show that many of the preconceived notions about the fiscal impact of illegal households turn out to be inaccurate. In terms of welfare use, receipt of cash assistance programs tends to be very low, while Medicaid use, though significant, is still less than for other households. Only use of food assistance programs is significantly higher than that of the rest of the population. Also, contrary to the perceptions that illegal aliens don't pay payroll taxes, we estimate that more than half of illegals work "on the books." On average, illegal households pay more than $4,200 a year in all forms of federal taxes. Unfortunately, they impose costs of $6,950 per household.

What's Different About Today's Immigration. It is worth noting that many native-born Americans observe that their ancestors came to America and did not place great demands on government services. Perhaps this is true, but the size and scope of government was dramatically smaller during the last great wave of immigration. Not just means-tested programs, but expenditures on everything from public schools to roads were only a fraction of what they are today. Thus, the arrival of immigrants with little education in the past did not have the negative fiscal implications that it does today. Moreover, the American economy has changed profoundly since the last great wave of immigration, with education now the key determinant of economic success. The costs that unskilled immigrants impose simply reflect the nature of the modern American economy and welfare state. It is doubtful that the fiscal costs can be avoided if our immigration policies remain unchanged.

Illegals and Federal Retirement Programs. As for Social Security and Medicare, our findings show that illegals have an unambiguously positive effect for these two programs. We estimate that illegal households create a combined net benefit for these two programs in excess of $7 billion a year, accounting for about 4 percent of the total annual surplus in these two programs. Unfortunately, they create a net drain of $17 billion in the rest of the federal budget, for a total net loss of more than $10 billion. Nonetheless, their impact on Social Security and Medicare is unquestionably positive. Of course, the benefit to these two programs stems from the fact that they are illegal. In the long run, legalization would be a significant problem for these two programs because it would add millions of low-wage earns to the system. Also, if the Social Security totalization agreement with Mexico goes into effect, which allows illegals to collect Social Security, the impact could be very negative for both programs as well.

Policy Options for Dealing With Illegal Immigration. The negative impact on the federal budget from illegal immigration need not be the only or even the primary consideration when deciding what to do about illegal immigration. But assuming that the fiscal status quo is unacceptable, there are three main changes in policy that might reduce or eliminate the fiscal costs of illegal immigration. One set of options is to allow illegal aliens to remain in the country, but attempt to reduce the costs they impose. A second set of options would be to grant them legal status as a way of increasing the taxes they pay. A third option would be to enforce the law and reduce the size of the illegal population and with it the costs of illegal immigration.

Let Illegal Stay Illegal, But Cut Costs. Reducing the costs illegals impose would probably be the most difficult because illegal households already impose only about 46 percent as much in costs on the federal government as other households. Moreover, the fact that benefits are often received on behalf of their U.S.-citizen children means that it is very difficult to prevent illegal households from accessing

the programs they do. It seems almost certain that if illegals are allowed to remain in the country, the fiscal deficit will persist.

The High Cost of Legalization. As discussed above, our research shows that granting illegal aliens amnesty would dramatically increase tax revenue. Unfortunately, we also find that costs would increase even more. Costs would rise dramatically because illegals would be able to access many programs that are currently off limits to them. Moreover, even if legalized illegal aliens continued to be barred from using some means-tested programs, they would still be much more likely to sign their U.S.-citizen children up for them because they would lose whatever fear they had of the government. We know this because immigrants with legal status, who have the same education levels and resulting low incomes as illegal aliens, sign their U.S.-citizen children up for programs like Medicaid at higher rates than illegal aliens with U.S.-citizen children. In addition, direct costs for programs like the Earned Income Tax Credit would also grow dramatically with legalization. Right now, illegals need a Social Security number and have to file a tax return to get the credit. As a result, relatively few actually get it. We estimate that once legalized, payments to illegals under this program would grow more than ten-fold.

Enforcing the Law. If we are serious about avoiding the fiscal costs of illegal immigration, the only real option is to enforce the law and reduce the number of illegal aliens in the country. First, this would entail much greater efforts to police the nation's land and sea borders. At present, less than 2,000 agents are on duty at any one time on the Mexican and Canadian borders. Second, much greater effort must be made to ensure that those allowed into the country on a temporary basis, such as tourists and guest workers, are not likely to stay in the country permanently. Third, the centerpiece of any enforcement effort would be to enforce the ban on hiring illegal aliens. At present, the law is completely unenforced. Enforcement would require using existing databases to ensure that all new hires are authorized to work in the United States and levying heavy fines on businesses that knowingly employ illegal aliens.

Policing the border, enforcing the ban on hiring illegal aliens, denying temporary visas to those likely to remain permanently, and all the other things necessary to reduce illegal immigration will take time and cost money. However, since the cost of illegal immigration to the federal government alone is estimated at over $10 billion a year, significant resources could be devoted to enforcement efforts and still leave taxpayers with significant net savings. Enforcement not only has the advantage of reducing the costs of illegal immigration, it also is very popular with the general public. Nonetheless, policymakers can expect strong opposition from special interest groups, especially ethnic advocacy groups and those elements of the business community that do not want to invest in labor-saving devices and techniques or pay better salaries, but instead want access to large numbers of cheap, unskilled workers. If we choose to continue to not enforce the law or to grant illegals legal status, both the public and policymakers have to understand that there will be significant long-term costs for taxpayers.

Immigration and Federal Retirement Programs

Many advocates argue for high levels of immigration on the grounds that it can solve the problem of our aging population. Those that make this argument worry that there will not be enough working-age people to support the economy or pay for government, particularly retirement programs. Immigration, it is argued, will make the country more youthful. Almost all of those making this argument, however, are not demographers. Actual demographic analysis shows immigration can have only a very tiny effect on the nation's age structure.

Basic Demographics. We can measure the impact of current immigration on the aging of the United States very precisely. The Census asks immigrants when they arrived. (Some 90 percent of illegal immigrants are thought to have responded to the 2000 Census.) If we excluded all immigrants, including illegals, who arrived after 1980 from the 2000 Census, the average age in the United States would have only been four months older. Another way to look at the aging of society is to examine the working-age (15 to 64) share of the population. Looking at the full impact of post-1980 immigrants reveals that if they and all their U.S.-born children are not counted, the working-age share would have been 65.9 percent in 2000, almost exactly the same as the 66.2 percent when they are all included. We can also look at fertility rates. In 2000 the average woman living in America had 2.1 children in her life time, compared to 1.4 for Europe. But if all immigrants are excluded the rate would still have been 2.0. The key to understanding why America has higher fertility than other industrialized democracies is not immigration. The relatively

high U.S. fertility is one of the key reasons immigration has such a small impact on the aging of American society.[7]

Immigration's Projected Impact on Aging. Looking to the future, Census Bureau projections indicate that if net immigration averaged 100,000 to 200,000 annually, the working-age share would be 58.7 percent in 2060, while if net immigration averaged 900,000 to one million, it would be 59.5 percent A 2000 report by Census Bureau states that immigration is a "highly inefficient" means for addressing the ratio of working-age people to the rest of the population in the long run. The argument that immigration can have a significant impact on the aging of our society may seem plausible. Immigrants tend to arrive in America relatively young and they also tend to have more children than natives. But an evaluation of the actual data shows that the difference between immigrants and natives is not sufficiently large, nor are immigrants sufficiently numerous to be of any real help in changing the nation's age structure. Moreover immigrants age just like everyone else. Americans will simply have to look elsewhere to deal with this problem.[8]

Impact on Retirement Programs. Because, as pointed out above, immigration has little impact on the working-age share of the population, it follows that it will have only a very small impact on federally funded retirement programs. One can see this by looking at Social Security Administration (SSA) projections. The 2004 trustee's report, along with other information provided to Senator Hagel, indicate that net annual legal immigration of 800,000 a year versus 350,000 a year would create a benefit equal to only 0.77 percent of the program's projected total expenditures. As for the program's deficit, annual legal immigration of 350,000 versus 800,000, would increase the dollar value of the actuarial deficit by just 6.6 percent of the projected deficit over the next 75 years. The bottom line is that even very large shifts in the number of people allowed into the country have only a minor impact on the program.[9]

Low-wage Workers Are a Problem for Social Security. It not even clear that the modest benefits estimated by the SSA from immigration actually exist. The SSA immigration projections do not account for the lower average income and resulting tax payments of legal immigrants. SSA basically assumes that legal immigrants will have average earnings from the moment they arrive, which is contrary to a large body of research. A 1998 study by the Urban Institute, which is generally regarded as a supporter of high immigration, found that legal immigrants in New York State paid only 85 percent as much in Social Security taxes as natives on average. This also matters because Social Security is redistributive in nature, making somewhat more generous payments to lower-wage earners relative to their tax contributions, than to more affluent earners.

The lower income of immigrants also has implications for Earned Income Tax Credit (EITC), which as the IRS states on its web site, was partly created by Congress to "offset the burden of Social Security taxes" on low-wage workers. For example, a family of four (with two children) and earned income of $25,000 a year would received about $2,100 from the EITC in 2004, compared to Social Security tax payments of roughly $1,600, not including the employer contributions. The Center for Immigration Studies has estimated that households headed by legal immigrants received an average of $392 from the EITC in 2002 compared to $209 for native headed households. The SSA makes no attempt to adjust for the existence of the EITC in its projection, which are focused solely on Social Security. Even putting aside the EITC and the lower average earnings of immigrants, Census Bureau and SSA projection show that immigration of any kind can have only a modest impact on the aging of society and thus the Social Security system.

Conclusion

If you take nothing else away from my testimony, it should be remembered that it simply is not possible to fund social programs, including those for retirees, by bringing in large numbers of immigrants with relatively little education. This is central to the debate over illegal immigration debate because 60 percent of illegals are estimated to have not completed high school and another 20 have only a high school degree. The fiscal problem created by less-educated immigrants exists even though the vast majority of immigrants, including illegals, work and did not come to America to get welfare. The realities of the modern American economy coupled with the modern American administrative state make large fiscal costs an unavoidable problem of large scale less-educated immigration.

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[7] See footnote 3 for the source of information dealing with the impact of immigration on demographics in the United States and the Social Security system.

[8] See footnote 3.

[9] See footnote 3.

This fact does not reflect a moral defect on the part of immigrants. What it does mean is that we need an immigration policy that reflects the reality of modern America. We may decide to let illegals stay and we may even significantly increase the number of less-educated legal immigrants allowed into the country, which is what the immigration bill recently passed by the Senate would do. But we have to at least understand that such a policy will create large unavoidable costs for taxpayers.

Mr. MCCRERY. Thank you both, gentlemen, for your testimony. You both spoke primarily about identifiable fiscal effects on the Federal Government. What about a bigger economic effect?

I hear quite often and read that these illegal immigrants are filling jobs that nobody else in this country will do, and that the agriculture industry really needs these workers to go in the fields and gather the crops, that the service industry really needs these workers to fill the jobs in the service industry, whether it is hotels or restaurants, that services for landscaping needs this, and on and on.

Is that true? Do either of you have any research on that or an opinion on that?

Mr. FIX. I think it is definitely true there is a demand for the labor in these comparatively low wage occupations, low skilled occupations. There has been an explosion in the numbers of people working in the low wage service sector. Agricultural workers have not declined significantly, as was expected. We did not think we would have two million field workers 20 years ago when we were thinking about the future.

There is obviously a big demand here. It is not met at any level with the number of legal visas or legal opportunities to enter, that are in any way commensurate with the number of jobs in the sector.

You have suggested another point, which is very important, which is you have to step back to think about the merits of the Senate bill. The fiscal impacts are very important, and I would not discount them.

As Eugene Steurle, a tax economist at the Urban Institute points out to me all the time, the public sector represents about 10 percent of the total economy and a lot of the contributions of these populations, even though they may produce a fiscal deficit, their larger economic impacts may really look rather different.

Mr. CAMAROTA. Let me answer it in a couple of ways. One is that the most definitive study done on the economic benefits of immigration was done by the National Research Council, part of the National Academy of Sciences.

The report is called "The New Americans." What they found is look, you add more workers, the economy is bigger, but is it richer?

The impact on natives was mainly to drive down the wages of the poorest 10 percent, but the benefit to natives was so small, they could barely measure it, one tenth of one percent. You cannot add lots of unskilled workers to an economy like ours, which is mostly made up of skilled workers and capital, and get a big economic boost.

What the lead author in that report, George Borjas at Harvard, who did the economic analysis for the National Research Council,

pointed out is that the benefits that come from immigration would appear to be minuscule for natives, but huge for the immigrants themselves. That is something to think about.

What is happening generally in the U.S. economy is native born Americans who would compete at the bottom end of the labor market, these are the 16 or 17 million native born Americans who do not have a high school education, and then there is about 10 million young natives who have only a high school education but they are in their twenties, they have been dropping out of the labor market in droves, in just the last 5 years, three million fewer of those people hold a job.

The actual number of these people in the working age groups has gone up, but natives with little education have been leaving the labor market in droves, and these are precisely the kind of people who, until very recently, worked in construction, worked in food service, and worked in hotel and restaurant maintenance.

In fact, the vast majority of workers in all those occupations are still native born.

When more educated and effluent people say illegal aliens only take jobs Americans do not want, what they really mean is they take jobs that I do not want, as a more educated and effluent American, since the vast majority of people who do those jobs are native born, and their wages are down, their unemployment is up, and their workforce participation has also fallen. Things look very bad for less educated natives.

All the objective economic evidence suggests there simply is no shortage of high school drop outs in America or young people with only a high school degree.

Mr. MCCRERY. If all of the illegal immigrants who are here were found and deported, you have no concerns that we could find the workforce to fill all these jobs?

Mr. FIX. In fact, the number of U.S. born drop outs has been dropping quite rapidly over the years. If I could add to that, there is very little literature—we have just done a review of this—I have to say there is very little literature that supports a strong competitive wage effect. In the main literature, these strong competitive effects are not found.

Mr. CAMAROTA. What Mr. Fix is referring to is literature that tries to look at wages. If you have lots of immigrants, does it seem to reduce wages.

I think the evidence on that—we disagree on the literature. I think it is pretty significant, but it is confined to the poorest and most vulnerable American workers.

The bottom line is this. If there is no wage effect, then there is no economic benefit. You cannot argue that immigration creates large economic benefits for the United States but wages in hotels and construction and so forth are exactly the same with or without immigrants.

You cannot have it both ways. You cannot be a single married man. Either immigration saves consumers a lot of money by holding down labor costs or it has very little or no effect on wages.

If you say it has no effect on wages, then you are saying it has no significant economic benefits for everyone else. Businesses could

do the same with or without them, is what you are saying. Their presence is not having an effect.

In terms of could we get rid of them and be okay, yes, I think we could. It would not happen overnight. As I understand the approach in the House bill, it is attrition through enforcement. Go after the employers. Police the border. Get the cooperation of local law enforcement, and over time make many more illegal aliens go home on their home then come in.

Even if there is any temporary disruption, it happens gradually. There are millions—let me give you a statistic. There are seven million native born Americans of working age who do not have a high school degree who are not even in the labor market.

There are something like 13 million natives of working age who have only a high school degree who are not in the labor market. These figures do not even include the unemployed.

Mr. MCCRERY. Why would they enter the labor market?

Mr. CAMAROTA. My contention would be in the absence of immigration, wages, benefits and working conditions would improve. We would expect that a larger share would go into the labor market.

There is no such thing as a job Americans do not do, depending on the wage. When I worked in farm work in New Jersey 20 some years ago, that job paid over $7 an hour, adjusted for inflation, it would have to be over $16 an hour today. Farm jobs pay generally speaking $8 to $12 an hour.

There has been a significant decline in wages in the farm sector in the last 25 years. That is strong prima facie evidence there is no labor shortage.

Mr. MCCRERY. There is a reason I did not study economics. You two are illustrating that quite well. I think you have just used both hands.

I do not think there is anyone who disagrees with one of Dr. Camarota's principal themes, which is given a choice, we would rather have immigrate to this country people with higher educations. Clearly, there is a bigger bang for the buck, so to speak, if we get a highly educated immigrant, a scientist, an engineer, than an immigrant with very little formal education.

I am hopeful that when we do get a comprehensive immigration policy reform in this country, and I think we will, we have to, we are certainly going to invite more highly skilled, highly educated immigrants to join us in this country.

I think it is a real question, and demonstrated by your conflicting testimonies and opinions, as to whether we should close the door on lower skilled, lower educated immigrants.

If you would, just kind of sum up. Mr. Fix, you talked about the ripple effects through the economy of immigration, positive impacts. Can you just kind of talk about that a minute?

Dr. Camarota, if you want to respond about any negative ripple effects.

Mr. FIX. I would simply reiterate a number of the statements that I made earlier. When you look at these cost accounts of the impacts of immigration on the economy, one of the problems is they simply cannot take into account a couple of things.

First of all, entrepreneurship and the spill over effects of job creation that immigrant entrepreneurship generates. We know immigrants are more likely to be self employed than natives, as well as the tax effects of entrepreneurship.

I think another piece of the puzzle which is often left out is the consumption of immigrants. We forget that immigrants spend a lot of money and their money ripples through the economy and creates jobs for natives as well.

Immigrants are more mobile than are natives, and they move to jobs, and by moving to jobs, they make the economy more fluid and they make it more productive.

Finally, the point that you just made, I just want to underscore the point that you have made, that high skilled immigrants are incredibly important to the economy and to the productivity of the economy, and in particular, to innovation within the U.S. economy.

In terms of low skilled immigrants, I think we have to be realistic. Our economy is structured in many ways so that it needs lots of low wage, comparably low skilled workers.

It would be good if we could manage that supply, manage that flow. This is a global flow. We should regulate that flow. If we do regulate that flow, perhaps we could move to higher wages, as Steve has suggested.

To just ignore that these people are going to come and these jobs are going to be created and we can exclude them through attrition, I do not think it is realistic at this stage in the game.

Thank you.

Mr. CAMAROTA. Let me answer it this way. If the argument is look, we just cannot enforce our law. People want to come to America, and quite frankly, it does not matter what this Congress—if we want to let a million legal immigrants a year but another million foreigners want to break our laws and come, tough. We have to accept that.

I would urge Congress to reject that fundamentally anti-democratic position. It is we who decide how many come in and then we enforce the law. We do not say, well, look, the willingness of foreigners to break our laws really should be the key determinant. Another million want to come on top of the legal million that we let in, we just have to let them in.

I think that is fundamentally un-democratic and a very dangerous argument to go down in a democratic republic.

We decide how many come in and then we enforce. If we want two million, then we should have two million a year, instead of the one million.

On the question of entrepreneurship, let me say I believe Michael and I just have a fundamentally different view of this. I think all the literature shows that now natives have slightly higher self employment rates.

The current population surveys show this. The census shows this. For example, the 2005 current population survey showed that 11 percent of immigrants were self employed and 13 percent of natives were self employed.

It is true that historically, immigrants once had a higher entrepreneurship rate. That is no longer the case.

On this point, I guess we disagree, and it has not been true for a number of years now. Immigrant entrepreneurship has fallen a lot, partly because the education level of immigrants relative to natives has deteriorated.

On a larger question, let me sum it up this way, when the National Research Council looked at this question, again, they found the economy is bigger, the immigrants benefit, but the benefit to natives appears to be so small, that they could barely find it, one-tenth of 1 percent increase in the income or per capita Gross Domestic Product of natives.

You cannot get a big boost to the U.S. economy by increasing the supply of unskilled workers. That is the big effect that immigration has on the United States, because fully, one-third of all the foreign-born in the United States have not completed high school.

Thank you.

Mr. MCCRERY. Thank you both for your testimony and your patience today. I would just say, Dr. Camarota, I do not think anybody is suggesting that we not enforce our laws.

What some are suggesting is that we change our laws, and we change our underlying policy. I think that is a legitimate area for Congress to explore. That is what we do.

We are certainly not suggesting that we not enforce our laws, but maybe we need to change our laws to accommodate more immigrants or a different mix of immigrants or whatever.

Clearly, we need to be able to enforce our laws. That is certainly part of the equation of protecting our border, being able to enforce our border is certainly part of the overall equation.

I think we also have to look, as the President has suggested, at the other parts of the equation, which would include the mix of immigrants, and the overall number of immigrants that we would like to join us here.

Those are the questions we are trying to explore. Yes, we do need to know the impact of those various proposals for change on the Social Security system, on other benefit programs, and that is why we appreciate your coming today and sharing with us your expertise on those issues.

Thanks very much. The hearing is adjourned.

[Whereupon, at 5:55 p.m., the hearing was adjourned.]

[Questions submitted from Chairman Thomas to Ms. Barnhart, Mr. Everson, and Ms. Myers, and their responses follow:]

Questions from Chairman William Thomas to Ms. Jo Anne Barnhart

Question: What effect did the last major immigration reform—The Immigration Reform and Control Act 1986 (P.L. 99–603) have on the Social Security Administration's (SSA's) workloads?

[The response from Ms. Barnhart not received at time of printing.]

Question: What new workloads would the Senate-passed Comprehensive Immigration Reform Act (S. 2611) create for the SSA, and how would these additional workloads affect current workloads? In other words, if the Senate bill were enacted, would you expect retirees and individuals with disabilities to have to wait even longer for their claims to be processed? Would Americans who need to conduct business at their local Social Security office have to wait in even longer lines?

[The response from Ms. Barnhart not received at time of printing.]

Question: What percent of the work authorizations performed by the Basic Pilot are processed by the SSA versus the Department of Homeland Security (DHS)? What work is involved, other than a data match between SSA computers and DHS computers? How many employees and how many dollars does it take for the SSA to conduct its share of the Basic Pilot—name, SSN, & U.S. citizenship verification? What would be the effect on the SSA's workloads of a mandatory Basic Pilot program? Will the SSA have the capacity to handle the increased number of verifications that would be required under either the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437) or the Comprehensive Immigration Reform Act (S. 2611)?

[The response from Ms. Barnhart not received at time of printing.]

Question: The current "no-match" letter the SSA sends to employers when they submit W–2s with names and SSNs that do not match the SSA's records contains language saying the employer should not take adverse action against the employee due to the letter. The DHS rule could eventually result in the employee being fired if the discrepancy identified in the no-match letter is not resolved. Did the DHS consult with the SSA in developing the rule? Does the SSA plan to change any of the language in the letter if the DHS rule becomes final?

[The response from Ms. Barnhart not received at time of printing.]

Questions from Chairman William Thomas to Mr. Mark Everson

Question: The Social Security Administration (SSA) provides SSN (SSN) information to the Internal Revenue Service (IRS) along with an indicator showing whether the SSN was issued to the individual for a non-work purpose (i.e., the SSN recipient was not authorized to work in the United States at the time the SSN was issued). The IRS has explained that it cannot estimate the amount of Earned Income Tax Credit (EITC) dollars paid in error because the SSA's indicator does not specify whether the non-work SSN was issued solely for the purpose of receiving Federal benefits versus another non-work purpose. Would you please clarify the rules regarding eligibility for the EITC for non-citizens who are not authorized to work in the United States, and explain whether the IRS is able to detect EITC fraud and enforce the law based on the information it receives from the SSA?

Answer: In 1996, Congress enacted a provision (IRC sec. 32(m)) that was intended to deny the EITC to noncitizens who were not authorized to work in the United States. However, this provision requires noncitizens EITC claimants to provide a SSN issued for work purposes for themselves and their qualifying children. It explicitly denies the EITC to noncitizens who are not authorized to work in the United States but who, under clause (II) of sec. 205(c)(2)(B)(i) of the Social Security Act, obtain an SSN solely for the purpose of claiming Federally funded government benefits (such as public assistance).

The 1996 Act also gave the IRS the authority to automatically deny such claims during processing using "mathematical error" procedures. (Without mathematical error authority, the IRS can still deny ineligible claims through the examination process. However, more ineligible claims can be denied through the less labor-intensive mathematical error procedures.)

At the time of enactment, it was thought that this provision would effectively restrict EITC eligibility to U.S. citizens, permanent residents ("green card" holders), and other noncitizens who obtain an SSN because their visas authorize them to work in the United States. These individuals are entitled to obtain an SSN under clause (I) of sec. 205(c)(2)(B)(i) of the Social Security Act.

However, Sec. 32(m) inadvertently allows some undocumented workers to receive the EITC. Prior to October 2003, it was possible for some undocumented workers to receive SSNs for certain reasons other than to obtain federal benefits—e.g., to obtain a driver's license in some states or, before the adoption of ITINs, to file a tax return. In addition, it is still possible for some noncitizens who are legally in the United States without authorization to work to receive SSNs for state general assistance benefits. Further, while SSA records contain an indicator showing that an SSN holder is not authorized to work in the United States, the records do not distinguish between those who receive an SSN in order to obtain federal government ben-

efits and those who obtain an SSN for other nonwork purposes. As a result, the IRS has never used its mathematical error authority to deny EITC claims of certain noncitizens, for fear of denying the credit to individuals who are technically eligible (albeit undocumented workers).

In the FY 2007 budget, the Administration proposed that sec. 32(m) be rewritten to state that for purposes of the EITC, IRS will recognize only an SSN assigned either to a citizen of the United States or pursuant to clause I of section 205(c)(2)(B)(i) of the Social Security Act. This modification would effectively deny EITC eligibility to individuals who were assigned SSNs for any non-work reason—as was the intent of Congress in 1996. Further, this modification would allow the IRS to implement the existing math error authority to deny the EITC to undocumented workers, because the IRS would be able to use SSA and DHS provided data to detect claimants who were neither U.S. citizens nor work-authorized aliens and thus ineligible for the EITC.

Question: The Senate proposal requires the Treasury Secretary to establish rules and procedures for the IRS to determine an illegal alien's payment of taxes in exchange for legal status. It seems that this requirement would place an undue burden on the IRS. How would the IRS know if a taxpayer reported all of his or her income and how would the IRS ensure that those ineligible to receive tax credits and refunds did not receive them for previous years?

Answer: Upon request, we are able to provide taxpayers, including t onewho has filed using Individual Tax Identification Numbers (ITINs), a transcript of his or her tax records. However, this process would not provide a verification of the accuracy of the tax return or information the taxpayer has submitted. Due to disclosure concerns, we would also not provide information to a taxpayer on multiple identification numbers, which might be necessary if the taxpayer had been filing Federal income tax returns using various ITINs or SSNs belonging to other taxpayers. To take the necessary steps to verify that all income has been reported and prior year credits and refunds were appropriate, the IRS would have to divert significant resources from current functions. In particular, the IRS could have to conduct labor-intensive examinations of millions of undocumented workers, going back a number of years and sorting out complex return reporting that may involve improper use of ITINs or SSNs belonging to other taxpayers. This high cost of enforcement will result in little revenue.

Questions from Chairman William Thomas to Ms. Julie Myers

Question: A Government Accountability Office (GAO) study found some weaknesses with the existing Basic Pilot program. For example, it does not detect identity theft, the databases are not always up-to-date, employers may misuse the system to discriminate against workers, and the system may not be able to handle a significant increase in users. How would the Department of Homeland Security (DHS) address these problems if the Basic Pilot were made mandatory for all employers?

Answer: The Basic Pilot relies in part on the employer's I–9 document inspection to detect identity fraud. Since the Basic Pilot currently does not have a biometrics component, it is not possible for it to detect all identity theft. However, as the Department makes technological advances in capturing, storing and using biometrics over time, the Basic Pilot program will consider modifications to its current business processes to leverage those advances. Detecting identity theft generally and fraud related to false claims to U.S. citizenship would require a biometrics check on all new hires, including those claiming to be U.S. citizens. The Basic Pilot verifies the name, Social Security Number, and date of birth for all new hires, including U.S. citizens, by comparing the employee's information with the records in the SSA Numident database, which does not include biometrics. USCIS is currently evaluating ways of displaying the photograph of non-citizen new hires who have been issued a secure DHS document (i.e., a Lawful Permanent Resident card or a secure Employment Authorization Document (EAD)), as part of the Basic Pilot. In addition, USCIS will explore the technical feasibility of adding visa photographs, including photographs of nonimmigrants who do not have to obtain an EAD, and passport photographs of U.S. citizens, to the Basic Pilot database.

USCIS recently briefed the GAO about its initiatives to reduce the percentage of noncitizen queries that cannot be verified electronically through the Basic Pilot

database. These initiatives include: (1) adding real-time CBP arrival information and change and extension of status information about nonimmigrants to that database and (2) developing a query method that verifies noncitizen work authorization status against the USCIS repository of secure card information.

With respect to potential discrimination, USCIS has worked closely with the Department of Justice's Office of Special Counsel for Unfair Immigration-Related Employment Practices (OSC) from the earliest development of the Basic Pilot program to minimize any such potential. While any verification system, including the I–9 form itself, can potentially be misused, we believe the requirements and capabilities of the Basic Pilot, such as verifying all new hires at participating employment sites, reduce rather than enhance the potential for any discrimination, when used properly by employers. In FY2007, USCIS plans to add a data monitoring and compliance function to the Basic Pilot program. We have reached out to the DHS Office of Civil Rights and Civil Liberties and to OSC to solicit their further input into how to best detect possible misuse of the system for discriminatory purposes and work with employers to prevent such misuse.

Finally, the greatest challenges in scaling the system to handle a significant number of additional users lie, not in adding hardware to handle more queries, but in streamlining current employer registration procedures, and in improving the electronic sharing of data to more effectively resolve queries that require secondary processing and reduce the percentage of those queries. USCIS already has initiatives in place to address each of the challenges.

Question: The law requires Federal agencies to take steps to ensure the security of their computer systems. The DHS does not have a good track record in this area, and received a failing grade from the House Committee on Government Reform based on the agency's 2005 report, which is required under the Financial Information Security Management Act (FISMA) of 2002. How secure are the Basic Pilot program and the databases that support it, including components of the Basic Pilot operated by a contractor? Do they meet the law's requirements? Have there been any data breach or security incidents related to the Basic Pilot, the databases it uses, or the contractor?

Answer: The Verification Information System (VIS) database, which supports the Basic Pilot program, is certified and accredited as required by FISMA and in accordance with security guidelines from the National Institute of Standards and Technology. The VIS database is housed in a secure and accredited contractor-owned facility. There have been no data breach or security incidents of any kind relating to the Basic Pilot program, the VIS database, or its contractor.

Question: In a June 2004 report to the Congress, the DHS found that too frequently, work-authorized employees receive an initial response that they are not authorized to work when in fact they are authorized to work (a "false negative" response), especially in the case of foreign-born employees. How accurate is the Basic Pilot? What happens to employees who receive a response that they are not authorized to work? Has an employee ever been wrongly fired from a job due to an incorrect response from the Basic Pilot? Has an employee who was authorized to work ever sought compensation from the DHS or the Federal Government because he or she wrongly lost a job due to the Basic Pilot? What recourse, if any, does an employee have if he or she wrongly loses a job because of data provided to the employer by the Basic Pilot?

Answer: Employees who are not instantaneously confirmed by the Basic Pilot are issued tentative non-confirmations. These tentative non-confirmation findings mean that additional information and/or review of SSA or DHS records is required before work authorization can be confirmed; they do not mean that the employee is not work authorized. Sometimes the need for further verification results from actions or corrections that employees have not made, and in other cases it results from employer input errors or missing or inaccurate government records. USCIS is currently taking aggressive steps to improve the quality and timeliness of its data to reduce the number of tentative non-confirmations issued by the Basic Pilot for work authorized non-citizens. Basic Pilot procedures require that employers cannot terminate the employment of workers for verification-related purposes while the verification is pending. If action is not taken to resolve the discrepancy or if SSA's records do not indicate U.S. citizenship and USCIS finds that the person is not work authorized, a final non-confirmation is issued and the employer may terminate employment of the individual.

We are not aware of any cases where employees have been wrongfully fired from jobs due to tentative non-confirmation findings where employers and employees have followed all of the requirements of the Basic Pilot program or where an employee sought compensation for such a termination.

Question: The Comprehensive Immigration Reform Act, S. 2611, includes an appeal process for workers who believe they were wrongly fired from their job due to an error attributable to the mandatory electronic employment verification system in the bill, which is modeled on the Basic Pilot. What are your thoughts on the Senate bill's provisions? Is an appeal process necessary?

Answer: Because the incidence of tentative nonconfirmations of work authorized noncitizens is quite low and getting lower, we have serious concerns about subjecting the system to the prospect of extensive administrative and judicial review procedures that could prevent it from getting off the ground, particularly since those provisions appear to make DHS potentially liable in situations where it was not the cause of the error. We believe that making back wages an available remedy could result in an incentive for litigation. We would oppose any provision that would allow attorney fees. We would further note that since the verification system is specifically a two-step process involving review of any initial tentative nonconfirmation, the benefit of any further administrative steps is substantially reduced compared to the disadvantages of lengthy delays before work authorization is finally resolved to the employer and the employee themselves, as well as to the Government.

Question: Are there requests for verification from the Basic Pilot that are never resolved because the DHS cannot determine whether or not the individual is authorized to work? What is the longest period of time it takes to resolve a request for verification?

Answer: No. USCIS is always able to issue either a confirmation or final nonconfirmation of a noncitizen new hire's work authorization status. In FY 2006, we resolved 99.56% of DHS tentative nonconfirmations within 10 days of the employer notifying the employee of the DHS tentative nonconfirmation response (Note: the new hire may take up to eight days to contact USCIS and provide additional information, and we have an additional 2 days to resolve.) In that same time period, there was one instance where we took 57 days to resolve a DHS tentative nonconfirmation, but appropriate steps were taken to ensure it will not happen again. Of course, a number of final nonconfirmations are the result of employees who are the subject of a tentative nonconfirmation because there is no matching DHS record that verifies their claim on the Form I–9 that they are work authorized. This is the normal, expected, and indeed desirable result of a system that catches false claims to lawful status and/or work authorization.

Question: The Basic Pilot is intended to help employers comply with immigration law that prohibits the hiring of an unauthorized immigrant. To what extent has the Basic Pilot achieved that goal?

Answer: Basic Pilot has proven to be a critical tool in helping employers comply with hiring requirements of non-U.S. citizens. Through participation in the Basic Pilot program employers are able to go beyond the law's minimum requirements related to the Form I–9 and actually verify work authorization against Federal databases. It is the best procedure available to ensure that an employer's workforce is work authorized, and as a web-based program it is easy to use with more than 80 percent of responses provided electronically within 3 seconds.

Additionally, while voluntary participation in the program has grown steadily since 2001, there was a significant increase from FY 2005 to FY 2006, with the number of employers nearly doubling to over 11,000.

Question: Are there alternatives, short of a mandatory Basic Pilot program, that would help prevent the hiring of unauthorized immigrants, such as changes in the list of acceptable documents proving identity and employment eligibility, or increased data-sharing among agencies?

Answer: While there are other initiatives that could help prevent the hiring of unauthorized aliens, such as changes in the list of acceptable documents, these initiatives are missing the critical component found in Basic Pilot—verification of work authorization. A mandatory employment eligibility verification program is essential to more effectively enforce our immigration laws.

DHS is examining the list of acceptable documents with an eye toward further streamlining while balancing the need for simplicity against the need to ensure that those who are authorized to work, including U.S. citizens, have access to the appro-

priate documentation. DHS also supports increased data sharing among agencies. These, however, are complements to Basic Pilot that should also be pursued, rather than "alternatives" to it. Because the opportunity for employment is a major factor behind most illegal entry and visa overstays, mandating the use of the Basic Pilot by all U.S. employers would have the biggest effect on reducing the ability of unauthorized persons to work in the United States.

Question: Prior to FY 2006, the DHS reimbursed the Social Security Administration (SSA) for its work related to the Basic Pilot. However, it stopped effective with FY 2006, even though the SSA is still providing services. Why? How much will the DHS owe the SSA by the end of Fiscal Year 2006 (approximately $1 million)?

Answer: USCIS did not receive appropriated funds for Basic Pilot in FY 2006 and thus was unable to reimburse SSA, as it had done in prior years. The 2007 budget includes approximately $6 million to reimburse SSA for its cost of resolving SSA tentative nonconfirmations when the new hire contests SSA's inability to verify the worker's claimed name, SSN and date of birth or U.S. citizenship. We note that we view this program as one that Congress has directed SSA and USCIS to work together on to implement in the public interest, and both have done so in what we believe has been a model example of interagency cooperation.

Question: In June 2006, the DHS proposed a rule that would require employers to take certain steps to verify a worker's name, SSN, and work authorization status if the SSA sends the employer a letter notifying them of name/SSN mismatches in the W–2s the employer files. When responding to evidence of potential unauthorized work, employers may be placed between a rock and a hard place—if they don't reverify employment authorization, they may be subject to DHS penalties; if they do reverify, they may be sued for discrimination. Are you concerned that the proposed rule would exacerbate that situation?

Answer: No, rather than exacerbate the situation, DHS believes that the Notice of Proposed Rule Making will go a long way toward resolving it. The proposed rule describes an employer's current obligations under the immigration laws, and provides employers with an optional "safe-harbor" procedure to avoid violations of the employer sanctions provisions in the INA. The proposed addition of SSA no-match letters to 8 C.F.R. 247a.1(I) would clarify, not change, employers' duties under existing law. Previous guidance from INS and DHS noted that employers who ignore SSA no-match letters may, depending on the circumstances, be found to have constructive knowledge. This led to confusion among employers, who did not know how to respond to SSA no-match letters in a manner that satisfies DHS and is consistent with the anti-discrimination provisions in the INA. The proposed rule still allows employers to address SSA no-match letters in any reasonable way they choose, but it also provides a DHS-approved method for doing so. Further, we do not see any conflict between the INA's anti-discrimination and employer sanctions provisions. Conduct that is justified under the INA's employer sanctions provisions does not violate the INA's anti-discrimination provisions, which were designed to ensure that employers did not overreach to the threat of employer sanctions. The anti-discrimination provision does not prohibit an employer from taking reasonable action in response to the receipt of reliable information that leads the employer to question an employee's eligibility to work in the United States.

[Questions submitted from Mrs. Tubbs Jones to Mr. Everson and his responses follow:]

Questions from Mrs. Tubbs Jones to Mr. Everson

Question: To your knowledge, how many of the patents that have been issued are being "marketed" by the patent holder? That is, how many of the tax strategies that have received patents do you know are being "shopped around" to taxpayers?

Answer: Based on our focused review of 14 patents and published applications we observed little conspicuous marketing of the related patents. In one case a website restriction (we needed to be a client) hampered our ability to drill into the site without a client password. Nevertheless, it is important to note that there is no requirement in U.S. patent law to work (or market) the patented invention.

Question: If taxpayers are believing that a particular tax strategy has some sort of "seal of approval" because it has been patented, then should the IRS not be intimately involved in the process of issuing tax patents?

Answer: No. The process of examining and granting patents is outside the IRS' jurisdiction and expertise. Importantly, the granting of a patent on a tax strategy provides protection to the patent holder against infringement by other parties, but has no bearing on its legitimacy or illegitimacy under the tax laws, which remain under the jurisdiction of the IRS. The IRS is, however, considering taking steps to clarify for taxpayers that the tax treatment of a strategy is unrelated to any patent protection and that a patent is not an IRS "seal of approval."

Question: To what extent is the IRS currently involved?

Answer: The IRS has no involvement with the USPTO in the patent review process and does not review patents to determine whether they are valid or meet the criteria for patentability. We monitor the USPTO database to gauge the level and type of potential Tax Strategy Patents. When warranted, we review public applications and previously granted patents to learn more about the strategy in order to assess the extent of potential aggressiveness of the strategy/technique and to gain insight into areas where activity is occurring. Furthermore, in the summer of 2005 we conducted a cross-Agency workshop that encompassed topics requested by the USPTO. This was an awareness workshop and was similar to what industries have historically done with the USPTO to keep them abreast of the latest sources of information, trends in practice, and the like. Our goal was to assist the USPTO in developing the resources to determine "prior art" in the area of tax strategies and structures.

Question: Of those tax patents that you have reviewed, how many do you think are abusive tax shelters?

Answer: In 2004 and 2005, we performed two searches of the USPTO data base. The first search, conducted in November 2004, was designed to identify patents and public applications of known tax shelter strategies. Specifically, we were looking for transactions the IRS has identified as "listed" transactions in Notices 2004–67 and 2005–13. These Notices describe over thirty transactions the IRS considers tax avoidance transactions. That search, which was updated in November 2005, and again in June 2006, found no evidence of patents or public patent applications embodying any abusive tax shelters or listed transactions.

Question: How many do you think are aggressive—there is a good likelihood that if audited the legality of the tax strategy will be challenged by the IRS?

Answer: It is impossible to definitively determine that a patented structure will constitute an aggressive tax strategy as used by taxpayers. This determination is inherently factual and depends on how the transaction is implemented in the real world. However, we have reviewed patents and applications to determine whether, as described in the application itself, the patented structure represents a high risk of aggressive tax planning.

We conducted this type of search in July 2005, and update it periodically.

The initial search just asked for patents that included the word "tax" in applications and granted patents in all classifications. We had fewer than 300 "hits". A further analysis showed that approximately 100 of these dealt with "business methods" and the majority of those appeared to be software models for computing tax impact or effect, and not tax strategies.

We pared the potential population to 14 patents and public applications primarily in the areas of employee compensation, wealth transfer, and financial products. Upon initial examination, none of the 14 patents were found to clearly involve abusive tax avoidance transactions. We have subsequently completed our review of 12 of the 14, one of which was allowed by the applicant to expire for non-payment of fees. While we do not consider them to be abusive tax avoidance transactions, we are continuing to review two of the transactions to fully satisfy ourselves that they do not present an apparent compliance risk requiring follow-up action on our part.

Question: Of those tax patents that you have reviewed, how many would you say are common tax strategies and how many are truly unique?

Answer: Considering our lack of expertise in the patent review process and the difficulty in determining "uniqueness," most (11 of the 14) of the tax strategy patents and public applications reviewed involved strategies familiar to us and thus appear to be commonly used "tried and true" techniques. Of course, it is USPTO's role

to decide whether these patents meet the criteria of patentability, such as novelty and nonobviousness.

[Submissions for the record follow.]

Statement of The Honorable John R. Carter, a Representative in Congress from the State of Texas

Chairman Thomas:

The purpose of this hearing is to review the impact of current and proposed border security and immigration policies on programs in the Committee's jurisdiction.

As you are aware, Section 2029 (y) of the Social Security Act requires aliens in the United States to be "lawfully present" in order to receive Social Security benefits. Even though most illegal workers pay taxes, they do not place a burden on the Social Security Administration (SSA) as they are not eligible for said benefits unless they become legal residents of the United States.

Currently, there are over 10 million illegal immigrants living and working in our borders. Several surveys indicate that households headed by illegal workers pay, on average, less than $5,000 annually in federal taxes. This is less than two-thirds of the average paid by all legal households. While providing much less to the treasury, each illegal household results in a net loss of over $2,700 annually due to healthcare costs and other social programs. However, the Social Security Administration actually sees a net profit from illegal workers because while they pay in, they are not eligible to receive benefits.

Under current law, the path to citizenship for an illegal alien is difficult. However, language in S 2611 would allow some 10 million illegal aliens a path to citizenship. This newfound amnesty will place a severe strain on Social Security to meet the needs of the 10 million new workers suddenly eligible to receive benefits—benefits they have accrued by openly ignoring our laws.

I am concerned about the obvious incentives of S 2611 to additional illegal workers. Our first priority should be to employ U.S. citizens, whether native born or legal immigrant. As we learned in the years following the 1986 amnesty, a path to citizenship for illegal workers only serves to invite more illegal aliens across our borders, not shut the door. This open invitation will serve only to place additional strain on welfare programs and drive down wages for American workers.

I am also concerned about the cost associated with the Senate Bill as projected to all social security wage earners. Through Tax Year 2003, over 255 million wage files have been placed in the Earnings Suspense File (ESF) by SSA. In the 1990's alone, nearly $190 billion in unmatched wages were placed in the ESF. Some have argued that this serves as a "savings account" for illegal workers to later draw benefits once they reach a legal status. Make no mistake that this is not the case. The ESF, by its very definition, is comprised of money we cannot attribute to any worker, legal or not. Each wage report placed in the ESF merely shows that SSA cannot match the file with a worker in its system. Because of this, any wages attributable to an illegal worker that are placed in this file are wages earned through either identity theft or Social Security fraud. I find it reprehensible that we would consider granting benefits to those who work in our country illegally while the solvency of Social Security for America's seniors remains a very real problem.

Furthermore, the Earnings Suspense File does not include contributions made by illegal workers under fraudulently obtained, valid Social Security numbers or Individual Taxpayer Identification Numbers legally obtained from the IRS. While these records result in deposits to Social Security, they are not drawn on due to the illegal status of the record holder. Should these monies, deposited over several decades, be drawn we should expect nothing less than bankruptcy of the Social Security system.

As we attempt to forecast the effects of the amnesty included in S 2611, it is important to note that in 2010, the first of the "baby-boomers" generation will be eligible for Social Security benefits. It is an unfortunate coincidence that just as an entire generation of Americans begins to draw Social Security benefits, the first wave of the10 million illegal aliens granted amnesty would also become eligible for these very same benefits, thereby placing an even greater strain on the system.

Because of these concerns, I urge the Ways and Means Committee to look into methods by which we can utilize the Social Security Administration and the Internal Revenue Service to assist with not only controlling, but decreasing the levels of illegal work in the country. The primary tools to fight this battle are through more accurate verification of a person's eligibility to work legally in the United States, and enforcement of current law against employers who so willingly violate it. I also

urge the Committee to undertake a serious study of the potential costs to federal, state, and community welfare programs and educational systems associated with the legalization of millions of illegal immigrants.

Statement of U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security

Mr. Chairman, Ranking Member Rangel, and Members of the Committee:

I. Introduction

We appreciate the opportunity to submit testimony for the record to the Committee about the U.S. Citizenship and Immigration Services' (USCIS) Basic Pilot Employment Verification Program (Basic Pilot), which provides information to participating employers about the work eligibility of their newly hired workers. We will also describe the agency's plans to improve and expand the Basic Pilot in preparation for a nationwide mandatory Employment Verification Program.

An Employment Verification Program is a critical step to improving worksite enforcement and directly supports the President's goal of achieving comprehensive immigration reform. In his speech to the U.S. Chamber of Commerce on June 1, President Bush endorsed the Basic Pilot as "a quick and practical way to verify Social Security numbers" that "gives employers confidence that their workers are legal, improves the accuracy of wage and tax reporting, and helps ensure that those who obey our laws are not undercut by illegal workers."

Clearly, if we are to control illegal immigration, we can't just focus on the border. Illegal immigrants are living and working in every state of the nation, and our solution must be just as comprehensive. We must make sure that our immigration laws are enforced in New York and Colorado and Georgia, not just along the southwest border. Today, an illegal immigrant with a fake ID and Social Security card can find work almost anywhere in the country without difficulty. It's the prospect of jobs that leads people to risk their lives crossing a hundred miles of desert or to spend years in the shadows, afraid to call the authorities when victimized by criminals or exploited by their boss.

That is why the Administration has proposed a comprehensive overhaul of the employment verification and employer sanctions program as part of the President's call for comprehensive immigration reform.

There is much we can do in advance of the enactment of comprehensive immigration reform. Here's what we are working on at USCIS to improve and expand the Basic Pilot:

- Ensuring that more aliens authorized to work have secure biometric cards.
- Accessing our card databases for verification of work authorization—which will decrease the number of Basic Pilot queries that require a manual check.
- Streamlining the enrollment process for employers by making it completely electronic.
- Creating monitoring and compliance units that will search Basic Pilot and Employment Verification Program data for patterns to detect identification fraud and employer abuse.

The President's FY07 budget requests $110 million for expansion of the Basic Pilot to make it easier for employers to verify electronically the employment eligibility of workers. Based on our planning to date, we believe a feasible timetable allowing for phased-in expansion of mandatory verification along with flexible, user-friendly program requirements are essential to expand and operate the program as efficiently and effectively as possible.

We will also reach out to employers, including small businesses, for feedback and real-world input, such as ideas on the best ways to submit data on new hires with the least collective burden and how to make electronic employment verification as user-friendly as possible.

II. The Current Basic Pilot Program and Employment Verification Program

With that backdrop, we would like to take this opportunity to outline how the current Basic Pilot works and the plans USCIS is putting in place to expand and improve it in preparation for a national mandatory program.

Congress established the Basic Pilot as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, creating a program for verifying employment eligibility, at no charge to the employer, of both U.S. citizens and noncitizens. The Basic Pilot program began in 1997 as a voluntary program for employ-

ers in the five states with the largest immigrant populations—California, Florida, Illinois, New York and Texas. In 1999, based on the needs of the meat-packing industry as identified through a cooperative program called Operation Vanguard, Nebraska was added to the list. The program was originally set to sunset in 2001, but Congress has twice extended it, most recently in 2003 extending its duration to 2008 and also ordering that it be made available in all 50 States. However, the program remains only voluntary, with very limited exceptions. A small percentage of U.S. employers participate, although the program is growing by about 200 employers a month to a current 10,000 agreements between USCIS and employers. These employers are verifying over a million new hires per year at more than 35,000 work sites.

We seek in operating the Basic Pilot program to encourage the voluntary participation of small businesses, and to be responsive to their needs and concerns. Most (87%) of our participating employers have 500 or fewer employees. We would welcome your support in reaching out to enroll even more employers in the program. Interested employers can register by going to our Basic Pilot Employer Registration Site at: https://www.vis-dhs.com/employerregistration

How the Basic Pilot Works

After hiring a new employee, an employer submits a query including the employee's name, date of birth, Social Security account number (SSN) and whether the person claims to be a U.S. citizen or work-authorized noncitizen (for noncitizens, DHS issued identifying # is also submitted) and receives an initial verification response within seconds. For an employee claiming to be a U.S. citizen, the system transmits the new hire's SSN, name and date of birth to the Social Security Administration (SSA) to match that data, and SSA will confirm citizenship status on the basis of its Numident database. For the 88% of employees whose status can be immediately verified electronically, the process terminates here; in the remaining cases, the system issues a tentative nonconfirmation to the employer. The employer must notify the employee of the tentative nonconfirmation and give him or her an opportunity to contest that finding. If the employee contests the tentative nonconfirmation, he or she has eight days to visit an SSA office with the required documents to correct the SSA record.

Noncitizen employees face a more elaborate process. Once SSA verifies the name, date of birth, and SSN, the system will attempt to verify the person's work authorization status against the Basic Pilot database. (If a noncitizen's SSN information does not match, the individual is first referred to SSA) If the system cannot electronically verify the information, an Immigration Status Verifier will research the case, usually providing a response within one business day,[1] either verifying work authorization or, in 19 percent of cases, issuing a DHS tentative nonconfirmation. If the employer receives a tentative nonconfirmation, the employer must notify the employee and provide an opportunity to contest that finding. An employee has eight days to call a toll-free number to contest the finding and cannot be fired during that time because of the tentative nonconfirmation. Once the necessary information from the employee has been received, USCIS generally resolves the case within three business days,[2] by issuing either a verification of the employee's work authorization status or a DHS Final Nonconfirmation.

As you know, the House and Senate have both passed significant immigration legislation this Congress, including provisions that require a mandatory electronic employment eligibility verification program for all 7 million U.S. employers. Although the House and Senate provisions differ in some significant ways, both bills would require the eventual expansion to all U.S. employers of an Employment Verification Program generally modeled on the Basic Pilot.

USCIS is already planning for the expansion of the program. The President's FY07 budget request includes $110 million to begin expanding and improving the Basic Pilot, including conducting outreach, instituting systems monitoring, and compliance functions. USCIS is exploring ways to improve the completeness of the immigration data in the Basic Pilot database, including adding information about nonimmigrants who have extended or changed status and incorporating arrival information in real time from U.S. Customs and Border Protection. In addition, USCIS is enhancing the Basic Pilot system to allow an employer to query by the new hire's card number, when that worker has a secure I–551 ("green card") or secure Employment Authorization Document. This enhancement will improve USCIS' ability to verify promptly the employment eligibility of noncitizens because the system will

[1] Statistics gathered from the Basic Pilot database, Oct. 1, 2005 to March 31, 2006.
[2] Ibid.

validate the card number against the repository of information that was used to produce the card, thereby instantly verifying all legitimate card numbers.

Planned Monitoring and Compliance Functions

No electronic verification system is foolproof or can fully eliminatedocument fraud, identity theft, or intentional violation of the required procedures by employers for the purpose of hiring unauthorized persons or keeping them on the payroll. But an Employment Verification Program that includes all U.S. employers, along with monitoring and compliance functions and a fraud referral process for potential ICE Worksite Enforcement cases, can substantially deter and detect the use of fraud by both employers and employees as the Administration works to strengthen its overall interior enforcement strategy.

The current Basic Pilot is not fraud-proof and was not designed to detect identity fraud. In fact, a recent analysis of Basic Pilot systems data found multiple uses of certain I–94 numbers, A-numbers, and SSNs in patterns that could suggest fraud. As currently envisioned, the Employment Verification Program will include robust processes for monitoring and compliance that will help detect and deter the use of fraudulent documents, imposter fraud, and incorrect usage of the system by employers (intentionally and unintentionally). USCIS will forward enforcement leads to ICE Worksite Enforcement in accordance with referral procedures developed with ICE. The monitoring unit will scrutinize individual employers' use of the system and conduct trend analysis to detect potential fraud. Findings that are not likely to lead to enforcement action (e.g., a user has not completed training) will be referred to USCIS compliance officers for follow-up. Findings concerning potential fraud (e.g., SSNs being run multiple times in improbable patterns; employers not indicating what action they took after receiving a final nonconfirmation) will be referred to ICE Worksite Enforcement investigators.

It is essential that DHS have the authority to use information arising from the Employment Verification Program to enforce our Nation's laws, including prosecuting fraud and identifying and removing criminal aliens and other threats to public safety or national security. It is also important that the system contain security and other protections to guard personal information from inappropriate disclosure or use, and to discourage use of the system to discriminate unlawfully or otherwise violate the civil rights of U.S. citizens or work-authorized noncitizens.

Planning for the Employment Verification Program

We are confident in our ability to get a substantially expanded Employment Verification Program operational with the President's budget request.

The Administration supports a phased-in Employment Verification Program implementation schedule on a carefully drawn timeframe to allow employers to begin using the system in an orderly and efficient way. We favor having the discretion to phase in certain industry employers ahead of others. As noted elsewhere in my testimony, USCIS already is working to improve and expand the Basic Pilot program to support the proposed expansion.

USCIS is also committed to constructing a system that responds quickly and accurately. In order for this system to work, it must be carefully implemented and cannot be burdened with extensive administrative and judicial review provisions that could effectively tie the system, and DHS, up in litigation for years.

III. Improved Documentation

In the President's May 15, 2006 address to the nation on comprehensive immigration reform, he indicated that businesses often cannot verify the legal status of their employees because of widespread document fraud. We need, he said, "a better system for verifying documents and work eligibility. A key part of that system should be a new identification card for every legal foreign worker. This card should use biometric technology . . . to make it tamper-proof. A tamper-proof card would help us enforce the law, and leave employers with no excuse for violating it."

Many foreign workers already possess a secure, biometric card evidencing their immigration status as either an immigrant (an I–551 card, commonly known as a "green card") or a work-authorized nonimmigrant (an Employment Authorization Document or EAD). Some nonimmigrants currently have non-secure EADs, but USCIS is planning to eliminate the issuance of these cards in favor of secure cards. In addition, USCIS is considering requiringmore classes of work-authorized nonimmigrants to obtain a secure EAD. Requiring all work-authorized nonimmigrants to obtain secure documentation would help ensure that their work eligibility can be instantly verified in the Basic Pilot or Employment Verification Program. As discussed previously, USCIS already is developing the system capability to verify a new hire's immigration card number against the card information repository. Under this new system, a legitimate card number matched with a name and date of birth

will electronically verify in a matter of seconds—and only a fraudulent card would fail to verify.

IV. Conclusion

We in USCIS are in a unique position to understand the importance of having legal means for individuals to enter and work in the United States. That is why we, and the President, support comprehensive immigration reform that includes interior and border enforcement in addition to a temporary worker program.

We thank both the House and the Senate for recognizing the need for change in this area. With a strong cooperative effort now, the prospect of a truly effective national mandatory Employment Verification Program, combined with improved documentation, will reduce pressure on border and interior enforcement, simplify today's processes, put employers on an equal footing, and support a temporary worker program that is vital to our economy.

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