
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**EMPLOYERS WITH THE MOST
WAGE ITEMS IN THE NONWORK
ALIEN FILE**

June 2006

A-08-05-15138

AUDIT REPORT



Mission

We improve SSA programs and operations and protect them against fraud, waste, and abuse by conducting independent and objective audits, evaluations, and investigations. We provide timely, useful, and reliable information and advice to Administration officials, the Congress, and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

Vision

By conducting independent and objective audits, investigations, and evaluations, we are agents of positive change striving for continuous improvement in the Social Security Administration's programs, operations, and management and in our own office.



SOCIAL SECURITY

MEMORANDUM

Date: June 19, 2006

Refer To:

To: The Commissioner

From: Inspector General

Subject: Employers with the Most Wage Items in the Nonwork Alien File (A-08-05-15138)

OBJECTIVE

Our objectives were to (1) profile the 100 employers with the most wage items¹ in the Nonwork Alien (NWALIEN) file for Tax Years (TY) 2001 through 2003 and (2) assess the extent to which noncitizens who had work authorization may have worked under nonwork Social Security numbers (SSN) in TY 2003.

BACKGROUND

The Social Security Administration (SSA) assigns nonwork SSNs to noncitizens who do not have work authorization from the Department of Homeland Security (DHS) but who have valid reasons for the SSNs. Specifically, SSA assigns nonwork SSNs to noncitizens who are in the United States but are not authorized to work and (1) a Federal statute or regulation requires that the noncitizen provide his/her SSN to get a particular benefit or service to which he or she has otherwise established entitlement or (2) a State or local law requires that the noncitizen who is legally in the United States provide his/her SSN to get public assistance benefits to which he or she has otherwise established entitlement and for which all other requirements have been met.

Although SSA annotates nonwork Social Security cards with a legend stating that these SSNs are not valid for employment purposes, some noncitizens improperly use these SSNs to work in the U.S. economy. When they do so, and their employers report their wages to SSA, the Agency posts these wages to the individuals' earnings records, which later may be relied on in determining whether the individuals qualify for Social Security benefits.

¹ A wage item is an individual employee report prepared by employers on a *Wage and Tax Statement* (Form W-2) after the close of the calendar year that shows wages paid and taxes withheld during the prior calendar year.

In March 2004, Congress placed new restrictions on the receipt of SSA benefits by noncitizens who are not authorized to work in the United States. Under the *Social Security Protection Act of 2004*,² if a noncitizen worker was first assigned an SSN on or after January 1, 2004, Title II benefits are precluded based on his/her earnings unless the noncitizen was ever

- assigned an SSN for work purposes or
- admitted to the United States as a visitor for business (B-1 visa) or as an allied crewman (D-1/D-2 visa).

As mandated by the *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*,³ each year, SSA sends DHS an electronic data file, called the NWALIEN file, that contains information on noncitizens who have earnings recorded under nonwork SSNs.⁴ The law requires that the file include the names and addresses of the nonwork numberholder and the employer reporting the earnings, as well as the amount of the earnings. While SSA notifies DHS of potentially unauthorized employment, DHS does not routinely inform SSA when it changes a person's work authorization status. In addition, noncitizens do not always report changes in their work authorization status to SSA.⁵ Unless noncitizens inform SSA directly of their status changes, SSA's enumeration records will continue to show them as "not authorized for employment" and record their earnings on the NWALIEN file. SSA does not inform the employee or employer that a nonwork SSN was used for the reported wages.

To accomplish our objectives, we obtained NWALIEN data for TYs 2001 through 2003. We then identified the 100 employers who contributed the most wage items to the NWALIEN file for the 3-year period.⁶

² Pub. L. No. 108-203, § 211, 118 Stat. 493 (2004).

³ Pub. L. No. 104-208, § 414, 110 Stat. 3009 (1996).

⁴ The law requires that this report be submitted to the Attorney General. On March 1, 2003, the responsibility for providing immigration-related services and benefits was transferred to DHS. As such, the file is now submitted annually to DHS.

⁵ Before 2002, SSA did not explicitly request that noncitizens report their change in status so the Agency could issue them a work-authorized Social Security card.

⁶ While we recognize that some employers may report wages under more than one employer identification number, we did not combine NWALIEN file wage items posted under multiple employer identification numbers to determine the 100 employers.

For the 100 employers selected, we analyzed NWALIEN data to identify characteristics of these employers and their employees. We also randomly selected a sample of 275 noncitizens who had earnings from any of the 100 employers with the most wage postings in the 2003 NWALIEN file.⁷ For each of the sampled cases, we verified noncitizens' work authorization status for TY 2003 with DHS.⁸ Because of DHS' responsibility for immigration enforcement, we will provide a copy of this report to its Inspector General. Appendix B includes a detailed description of our scope and methodology.

RESULTS OF REVIEW

For TYs 2001 through 2003, 109,064 noncitizens worked under nonwork SSNs for the 100 employers in our review. These employers submitted 210,389 wage items totaling about \$6.4 billion over the 3-year period. The employers with the most nonwork wage postings were government, retail, and universities.⁹ The largest number of noncitizens with earnings under a nonwork SSN were born in Mexico, India, and the Philippines.

Based on our review of a sample of 275 noncitizens who worked under nonwork SSNs in TY 2003, it appears 101 (37 percent) had work authorization, according to data provided by DHS. However, SSA's records had not been updated to reflect a change in these individuals' work status. The employers with the highest percentages of noncitizens who had work authorization, but were misclassified in SSA's records and the NWALIEN file, were technology, government and retail. Additionally, based on data provided by DHS, it appears 169 (61 percent) of the noncitizens reviewed were correctly classified and did not have work authorization. The employers with the highest percentages of noncitizens who worked without authorization in 2003 were staffing, healthcare, hotels and service. DHS could not locate immigration records for our five remaining sample cases (2 percent).

Unauthorized work by noncitizens weakens SSN integrity and may require that the Agency pay benefits to these individuals. In addition, noncitizens who work without DHS authorization could affect homeland security because they may obtain employment in sensitive areas. To help ensure the integrity of SSA's records and the accuracy of the NWALIEN file, we believe the Agency should consider informing numberholders it has recorded their wages under a nonwork SSN. In addition, to reduce the number of noncitizens who work without authorization, we believe SSA should consider examining its interpretation of existing disclosure laws and, if necessary, seek legislative authority that would allow the Agency to disclose nonwork

⁷ We selected the sample from 17,125 noncitizens who had earnings from any of the 100 employers with the most wage postings in the 2003 NWALIEN file and who were assigned an SSN on or after January 1, 1995. We chose this date to increase the probability that we could obtain work status information.

⁸ We were unable to determine the reliability of the information systems at DHS. Accordingly, any conclusions made in this report are qualified by the statement "based on data provided by DHS."

⁹ We subjectively categorized each employer into industry groups based on its primary product or service.

status to employers. We also believe the Agency should encourage employers who file large numbers or percentages of wage statements with nonwork SSNs to use the Basic Pilot when hiring new employees.¹⁰ For example, we believe the Agency should consider coordinating with employer associations and participating in conferences to discuss steps employers can take to reduce unauthorized work by noncitizens.

NONCITIZENS WORKING UNDER NONWORK SSNs IS WIDESPREAD

We found that 109,064 noncitizens worked under nonwork SSNs in TYs 2001 through 2003 for the 100 employers we reviewed. Over the 3-year period, these employers submitted 210,389 wage items totaling about \$6.4 billion. As shown in Table 1, the employers with the most wage items in the NWALIEN file were government, retail, universities, technology and staffing. These employers accounted for more than 3 quarters of nonwork wage items for the 100 employers we reviewed. The average wage item ranged from over \$7,700 in the staffing industry to almost \$102,000 in the technology industry. Technology and government accounted for over \$4 billion (64 percent) of the wages posted to nonwork SSNs by the 100 employers for the 3-year period.

Table 1: Employers with the Most Wage Items in the NWALIEN File (TYs 2001 - 2003)

EMPLOYER	NUMBER OF WAGE ITEMS	NUMBER OF EMPLOYERS	DOLLAR AMOUNT	AVERAGE WAGE ITEM
GOVERNMENT*	49,380	17	\$1,512,266,332.13	\$30,625
RETAIL	40,460	16	465,984,940.79	11,517
UNIVERSITIES	25,442	15	639,357,583.45	25,130
TECHNOLOGY	25,155	13	2,561,256,282.22	101,819
STAFFING	24,561	13	189,605,627.03	7,720
FOOD	14,875	8	127,027,653.37	8,540
HEALTHCARE	6,998	5	134,875,872.49	19,273
HOTEL	5,479	2	98,121,477.87	17,909
FINANCIAL	5,055	3	227,611,519.07	45,027
SERVICE	5,037	3	58,609,007.57	11,636
MANUFACTURING	4,312	4	306,873,305.03	71,167
TRANSPORTATION	3,635	1	70,618,334.93	19,427
TOTALS	210,389	100	\$6,392,207,935.95	\$30,383

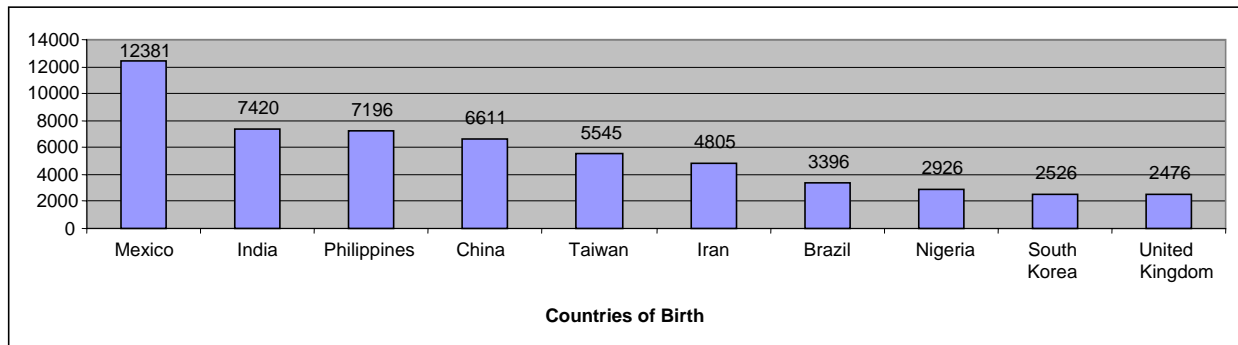
*Of the 17 employers in government, 7 were Federal agencies, 7 were State agencies and 3 were local government entities.

Additionally, 55,282 (51 percent) of the 109,064 noncitizens were born in 10 foreign countries: Mexico, India, the Philippines, China, Taiwan, Iran, Brazil, Nigeria, South Korea and the United Kingdom. As shown in Table 2, the largest numbers of noncitizens with earnings under a nonwork SSN were born in Mexico, India, and the

¹⁰ The Basic Pilot is an SSA and DHS voluntary program that helps employers determine whether a newly hired individual is eligible to work in the United States.

Philippines. These countries accounted for about 1 of every 4 noncitizens who had earnings under nonwork SSNs for the 100 employers we reviewed.

**Table 2: Top 10 Countries of Birth
for Noncitizens with Earnings Under Nonwork SSNs
(TYs 2001 - 2003)**



SOME INDIVIDUALS IN THE NWALIEN FILE HAVE WORK AUTHORIZATION

Based on data provided by DHS, of the 275 noncitizens in our review who worked under a nonwork SSN in TY 2003, it appears 101 (37 percent) had work authorization from DHS. However, SSA's records had not been updated to reflect a change in these individuals' work status. The average wage item for these individuals was \$25,206. As shown in Table 3, the employers with the highest percentages of individuals who had work authorization, but were misclassified in SSA's records and the NWALIEN file, were technology, government and retail. The percentages of individuals who had work authorization ranged from 16 percent in the staffing industry to 68 percent in the technology industry. The 101 individuals who had work authorization included 63 lawfully admitted permanent U.S. residents and 5 U.S. citizens. In fact, 19 of these 68 individuals were work-authorized in 1999 or earlier.

Based on data provided by DHS, it appears 169 (61 percent) of the noncitizens in our review were correctly classified and did not have work authorization. The average wage item for these individuals was \$13,173. The employers with the highest percentages of noncitizens who did not have work authorization were healthcare, staffing, hotel, and service, as shown in Table 3. The percentages of noncitizens who did not have work authorization ranged from 32 percent in technology to 82 percent in healthcare. Of the 169 noncitizens who did not have work authorization, 101 (60 percent) worked for the same employer for 2 or more years. In fact, 64 (38 percent) worked for the same employer for 3 or more years and 19 (11 percent) worked for 5 or more years.

DHS could not locate immigration records for the remaining five (2 percent) noncitizens in our sample. Therefore, we could not determine the work status for these individuals.

Table 3: Work Authorization by Employer (TY 2003)

Number of Individuals Working by Employer		Work Authorized		Not Work Authorized		Work Status Unknown	
Number	Employer	Percent	Number	Percent	Number	Percent	Number
28	Technology	68	19	32	9	0	0
36	Government	53	19	44	16	3	1
63	Retail	43	27	57	36	0	0
6	Other Employers*	33	2	67	4	0	0
37	Universities	32	12	68	25	0	0
7	Hotel	29	2	71	5	0	0
7	Service	29	2	71	5	0	0
29	Food	28	8	66	19	7	2
17	Healthcare	18	3	82	14	0	0
45	Staffing	16	7	80	36	4	2
275	Totals		101		169		5

Note: Not all percentages total 100 due to rounding.

*The "Other Employers" category includes two employers in the financial industry and four in the transportation industry.

OPPORTUNITY TO REDUCE SSA'S RISK FROM NONCITIZENS WHO WORK WITHOUT AUTHORIZATION

To its credit, SSA recognizes the impact unauthorized work has on its programs and has taken steps to reduce such activity. For example, as required by law,¹¹ SSA and DHS developed the Basic Pilot to assist participating employers in verifying employment eligibility for newly hired employees. In addition, each year, the Agency sends DHS the NWALIEN file, which contains information on noncitizens who have earnings recorded under nonwork SSNs. We believe such initiatives enhance SSN integrity.

However, noncitizens who work without DHS authorization may be able to obtain Title II benefits based on earnings recorded under a nonwork SSN. In addition, noncitizens who work without authorization could affect homeland security because they may obtain employment in sensitive areas.

SSA has additional opportunities to enhance SSN integrity and improve the accuracy of Agency records. We believe SSA should consider informing numberholders (1) the Agency has recorded their earnings under an SSN assigned for nonwork purposes, (2) DHS has been notified of the unauthorized work, and (3) they should visit an SSA field office and provide proof of DHS work authorization status if their status has changed since the nonwork SSN was assigned. For example, the Agency could

¹¹ Pub. L. No. 104-208 § 404, 110 Stat. 3009 (1996).

enhance its annual Social Security Statements¹² to include information regarding earnings posted under a nonwork SSN. We believe informing numberholders of such information will encourage noncitizens who have obtained work authorization to notify SSA of this change. Improving the accuracy of SSA's records will also help improve the accuracy of the NWALIEN file.

We also encourage SSA to further examine its interpretation of existing disclosure laws and, if necessary, seek legislative authority that would allow the Agency to disclose nonwork status to employers. Employers can use the information to inform employees that they are working under a nonwork SSN and encourage them to contact SSA to update their records. Also, employers would become aware that some of their employees may not have work authorization and that SSA shares this information with DHS annually.¹³ SSA representatives from the Office of Disclosure Policy indicated that the Privacy Act prohibits the Agency from notifying employers when an employee works under a nonwork SSN. We recognize the Agency has not been tasked with the mission of immigration and workplace enforcement. However, SSA is responsible for assigning SSNs, recording earnings, and, ultimately, paying benefits to eligible individuals. Accordingly, we believe maintaining the integrity of its SSN records should be of paramount concern to the Agency as it accomplishes its legislatively mandated mission.

We also believe the Agency should encourage employers who file large numbers or percentages of wage statements with nonwork SSNs to use the Basic Pilot when hiring new employees. For example, we believe the Agency should consider coordinating with employer associations and participating in conferences to discuss steps employers can take to reduce unauthorized work by noncitizens. Through such outreach efforts, the Agency can educate employers about the Basic Pilot and its ability to determine whether newly hired employees are authorized by DHS to work in the United States. We believe greater use of this service will help reduce the number of noncitizens who work without authorization.

¹² These statements provide numberholders a year-by-year earnings history, their Social Security taxes paid, and estimates of retirement, disability and survivor benefits.

¹³ We believe notices to employers should state that an employee working under a nonwork SSN may have work authorization and the notice is not a basis, in and of itself, for an employer to take any adverse action against an employee.

CONCLUSION AND RECOMMENDATIONS

Based on the results of this audit, we determined some noncitizens who worked under nonwork SSNs were authorized to work but failed to inform SSA of their changes in work status. However, other noncitizens worked without DHS authorization. In previous reports, we recommended that SSA work with DHS to resolve data compatibility problems associated with nonwork earnings and establish data fields to allow the agencies to effectively match records. The report titles are listed in Appendix C. We continue to support the recommendations made in these reports and encourage SSA to continue its collaboration with DHS to maximize use of the NWALIEN file. Given the importance of ensuring the integrity of SSA's records and improving the accuracy of the NWALIEN file, we believe SSA should take additional measures to address unauthorized work by noncitizens.

Accordingly, we recommend that SSA consider:

1. Informing numberholders (1) the Agency has recorded their earnings under an SSN assigned for nonwork purposes, (2) DHS has been notified of the unauthorized work, and (3) they should visit an SSA field office and provide proof of DHS work authorization status if their status has changed since the nonwork SSN was assigned.
2. Examining its interpretation of existing disclosure laws and, if necessary, seek legislative authority that would allow the Agency to disclose nonwork status to employers.
3. Encouraging employers who file large numbers or percentages of wage statements with nonwork SSNs to use the Basic Pilot when hiring new employees. For example, we believe the Agency should consider coordinating with employer associations and participating in conferences to discuss steps employers can take to reduce unauthorized work by noncitizens.

AGENCY COMMENTS

SSA disagreed with our recommendations. In response to Recommendation 1, SSA stated that our proposed actions would have a minimal effect on SSA program administration while creating a substantial workload, both in systems development and in SSA field offices. SSA stated the Social Security Statement is a carefully crafted document that was developed as a public education and financial planning tool to be used by all workers in this country. SSA believes it would not be prudent to (1) devote resources to a separate mailing of the Statement or (2) develop and send a new letter to individuals who have earnings and whose original Social Security card was issued with the nonwork legend. In addition, SSA stated it informs all numberholders how to notify the Agency of any changes to their record through the instructions attached to the SSN card.

In response to Recommendation 2, SSA stated the Privacy Act prevents it from disclosing nonwork status to employers. SSA stated that, even if it had legislative authority for this purpose, the information would be of questionable value because SSA's records often do not reflect the current work status of employees. Furthermore, SSA stated disclosing incorrect nonwork status information to an employer could have a negative impact on the Agency because it could lead to improper terminations of employees authorized to work, which could lead to adverse publicity for SSA. SSA also stated that disclosures of incorrect information could lead to numerous additional visits to field offices, distracting the Agency from its core mission of administering the Social Security program.

Although SSA disagreed with Recommendation 3, it stated it supports in principle the effort to provide employers information about the Basic Pilot program and encourage its use. SSA stated that DHS is this program's sponsor and, accordingly, should have the primary role in promoting its use and identifying ways employers can reduce unauthorized work by noncitizens. See Appendix D for the full text of SSA's comments.

OIG RESPONSE

We acknowledge the steps SSA has taken to address unauthorized work by noncitizens. However, we believe SSA has both the responsibility and the ability to do more to reduce unauthorized work by noncitizens.

Regarding SSA's response to Recommendation 1, we continue to believe it is important that SSA inform numberholders it has recorded their earnings under an SSN assigned for nonwork purposes. We acknowledge that noncitizens who do not have work authorization are unlikely to respond to SSA. However, we believe a significant number of noncitizens who are work-authorized (about 37 percent of our sample) will inform SSA of their change in work status because it is in their interest to do so. We agree that SSA informs numberholders to report changes to their records during the enumeration process. However, some noncitizens have worked for years under a nonwork SSN and therefore may need to be reminded of their responsibility to report changes in their work status. Given the importance of maintaining the integrity of SSA records and improving the accuracy of the NWALIEN file, we encourage SSA to commit the necessary resources to implement our recommendation.

Regarding SSA's response to Recommendation 2, we acknowledge that SSA's interpretation of the Privacy Act prevents disclosure of nonwork status to employers. However, we do not agree that disclosure of such information would be of questionable value. As discussed in this report, employers can use the information to inform employees that they are working under a nonwork SSN and encourage them to contact SSA to update their records. Also, employers would become aware that some of their employees may not have work authorization and that SSA shares this information with DHS annually. In addition, employers who place workers in sensitive positions need to know this information because it could affect homeland security. In response to SSA's concern that disclosing incorrect nonwork status could lead to improper terminations of

employees authorized to work, as discussed in this report, we believe notices sent to employers should state that an employee working under a nonwork SSN may have work authorization and the notice is not a basis, in and of itself, for an employer to take any adverse action against an employee. Regarding SSA's concern that disclosures of incorrect information could lead to numerous additional visits to field offices, distracting the Agency from its core mission of administering the Social Security program, we believe that correcting numberholders' records is an important part of the Agency's core mission. Until SSA discloses nonwork status to employers, and they are held accountable for the workers they hire, we do not believe the number of noncitizens who work without authorization will decline. Accordingly, we ask the Agency to reconsider its response to this recommendation.

Regarding SSA's response to Recommendation 3, we agree that DHS is the Basic Pilot's sponsor and should have the primary role in promoting its use and identifying ways employers can reduce unauthorized work. We did not intend to suggest that SSA should be the lead Agency regarding employers' use of the Basic Pilot. Rather, our intent was to urge the Agency to encourage employers who file large numbers or percentages of wage statements with nonwork SSNs to use the Basic Pilot when hiring new employees. We believe SSA should be proactive in promoting the Basic Pilot, given presidential and congressional interest in expanding this program. Accordingly, we ask the Agency to reconsider its response to this recommendation.

OTHER MATTER

Identification of Noncitizens of Interest to Law Enforcement

During our analysis of DHS data, we identified two noncitizens who had warrants of removal issued against them. DHS personnel advised us that such noncitizens should be identified and removed from the country. Our Office of Investigations forwarded information on these noncitizens to DHS.

Our identification of these individuals demonstrates the usefulness of the NWALIEN file as a tool to locate individuals of concern to law enforcement. DHS can use the file to obtain address and employer data on noncitizens with warrants issued against them.



Patrick P. O'Carroll, Jr.

Appendices

[APPENDIX A](#) – Acronyms

[APPENDIX B](#) – Scope and Methodology

[APPENDIX C](#) – Prior Audit Reports

[APPENDIX D](#) – Agency Comments

[APPENDIX E](#) – OIG Contacts and Staff Acknowledgments

Acronyms

DHS	Department of Homeland Security
NWALIEN	Nonwork Alien
Pub. L. No.	Public Law Number
SSA	Social Security Administration
SSN	Social Security Number
TY	Tax Year

Scope and Methodology

To accomplish our objectives, we performed the following steps.

- Reviewed pertinent sections of the Social Security Administration's (SSA) policies and procedures as well as other relevant Federal laws and regulations.
- Reviewed prior SSA Office of the Inspector General reports. See Appendix C for a list of the reports.
- Obtained Nonwork Alien (NWALIEN) file data for Tax Years (TY) 2001 through 2003 and identified the 100 employers who contributed the most wage items to the NWALIEN file for the 3-year period. For the 100 employers selected, we analyzed NWALIEN data to identify characteristics of these employers and their employees.
- Randomly selected a sample of 275 noncitizens with earnings from any of the 100 employers with the most wage postings in the 2003 NWALIEN file and verified each noncitizens' work authorization status for TY 2003 with the Department of Homeland Security (DHS). We selected the sample from 17,125 noncitizens who had earnings from any of the 100 employers with the most wage postings in the 2003 NWALIEN file and who were assigned an SSN on or after January 1, 1995. We chose this date to increase the probability that we could obtain work status information.
- Reviewed and analyzed SSA's Numident and Master Earnings File for the 275 noncitizens to determine (1) when the noncitizens were enumerated, (2) their work history, and (3) where they were born.

The entity audited was SSA's Office of Earnings, Enumeration and Administrative Systems under the Deputy Commissioner for Systems. During our review, we determined that Numident and Master Earnings File data were sufficiently reliable to satisfy our audit objectives. We limited our review of internal controls to the steps identified above. However, we could not determine the reliability of DHS data provided for our audit and included in the NWALIEN file. As a result, any conclusions made in this report are qualified by the statement "based on data provided by DHS." We conducted our audit from February 2005 through January 2006 in accordance with generally accepted government auditing standards.

Prior Audit Reports

Social Security Administration, Office of the Inspector General Reports Related to the Nonwork Alien File		
Common Identification Number	Report Title	Date Issued
A-14-01-11048	Work Activity for Social Security Numbers Assigned for Nonwork Purposes in the State of Utah	March 2002
A-03-03-23053	Congressional Response Report: Social Security Administration Benefits Related to Unauthorized Work	March 2003
A-14-03-23071	Profile of the Social Security Administration's Non-Work Alien File	September 2003
A-03-05-25127	Unauthorized Work Social Security Numbers at the Department of Defense	September 2005

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: June 5, 2006

Refer To: S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: Larry W. Dye /s/
Chief of Staff

Subject: Office of the Inspector General (OIG) Draft Report, "Employers with the Most Wage Items in the Nonwork Alien File" (A-08-05-15138)--INFORMATION

We appreciate OIG's efforts in conducting this review. Our comments on the draft report's recommendations are attached.

Please let me know if you have any questions. Staff inquiries may be directed to Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at extension 54636.

Attachment:
SSA Response

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL’S (OIG)
DRAFT REPORT, “EMPLOYERS WITH THE MOST WAGE ITEMS IN THE
NONWORK ALIEN FILE” (A-08-05-15138)**

Thank you for the opportunity to review and provide comments on this draft report. The Agency is committed to ensuring the integrity of the Social Security number (SSN), and we continue to explore ways to improve all processes related to the SSN. We will continue our outreach efforts with employers and similarly consider ways to more effectively communicate to numberholders the need to update their Social Security Administration (SSA) records as soon as their work authorization status has changed.

Recommendation 1

SSA should consider informing numberholders that: 1) the Agency has recorded their earnings under an SSN assigned for nonwork purposes; 2) the Department of Homeland Security (DHS) has been notified of the unauthorized work; and 3) they should visit an SSA field office and provide proof of DHS work authorization status if their status has changed since the nonwork SSN was assigned.

Comment

We disagree. We believe that the proposed actions would have a minimal effect on SSA program administration while creating a substantial workload, both in systems development and in SSA’s field offices.

In the body of the report, the OIG suggested that SSA use the Social Security Statement as a vehicle to notify individuals assigned a “nonwork” number when SSA has recorded earnings under their number and that DHS will be notified. However, the 4-page Social Security Statement is a carefully crafted document that was developed as a public education and financial planning tool to be used by all workers in this country. We do not believe it would be prudent to devote resources to a separate mailing of the Statement tailored specifically to those individuals who have earnings and whose original Social Security card was a “nonwork” card, as such individuals represent less than one-half of one percent of the 144 million annual Statements mailed in 2005. Nor do we believe it is prudent to develop and send a new letter to the more than 500,000 individuals who have earnings and whose original Social Security Card was issued with the “nonwork” legend. Moreover, as OIG has noted in its report, many such individuals are, in fact, authorized to work.

In addition, SSA currently informs all number holders how to notify SSA of any changes to their record through the instructions attached to the SSN card (reverse side of the Form SSA-3000). Those instructions state, “You should contact us to update your Social Security number records if your name, your U.S. citizenship status, or your status as an alien in the U.S. changes. You will need to file an application for corrected Social Security card and provide proof of your identity, and we may request certain other

evidence supporting the change.” The instructions further state, “If you are an alien without permission to work in the U.S., your Social Security card will be marked ‘NOT VALID FOR EMPLOYMENT.’ We will notify U.S. immigration officials if you use the number to work.”

Recommendation 2

SSA should consider examining its interpretation of existing disclosure laws and, if necessary, seek legislative authority that would allow the Agency to disclose nonwork status to employers.

Comment

We disagree. This draft report refers to SSA’s Office of Public Disclosure’s comments (page 7, footnote 13) on a different audit (*September 2005 OIG Report, Unauthorized Work Social Security Numbers at the Department of Defense – A-03-05-25127*) concerning “nonwork” SSNs being used by the Department of Defense. In that audit, as with this audit, SSA did not cite Section 6103 of the Internal Revenue Code as a basis for withholding “nonwork” status from employers. Section 6103 of the Internal Revenue Code is the statutory provision that prevents disclosure of tax information, including earnings information collected by SSA from employers as part of the wage reporting process. That provision, however, does not apply to records pertaining to work status. Work status records are included in the application for an SSN, and are thus included in the Privacy Act system of records Master Files of SSN Holders and SSN Applications, 60-0058, commonly referred to as the Numident.

As discussed in detail below, the Privacy Act prevents the disclosure of such information. Under the Privacy Act routine use provision (5 U.S.C. § 552a(b)(3)), SSA may disclose information for a purpose compatible with the purpose for which we collect and maintain information. Section 401.150 of SSA disclosure regulations that implement the Privacy Act (20 C.F.R. Part 401) provides that we may disclose information where necessary to carry out SSA’s programs. SSA collects enumeration information in order to assign SSNs, which in turn allows SSA to record wage credits to the appropriate earnings file. Thus, we verify SSNs for employers solely to ensure the records of the current or former employees (or for individuals whom an employer has made a commitment to hire) are correct for the purpose of completing Internal Revenue Service Forms W-2 (Wage and Tax Statement). The SSN verifications allow SSA to properly credit employees’ earnings records, which will be important information in determining their Social Security benefits in the future.

In order for SSA to be able to disclose “nonwork” status to employers for whom the Agency verifies SSNs, we must be able to establish that the disclosure of that specific information meets the compatibility standard in both the Privacy Act (5 U.S.C. § 522a(a)(7)) and SSA’s disclosure regulations noted above. We collect this information as part of the enumeration process only in order to issue SSNs and to ensure proper wage

reporting needed to accomplish our core mission. Maintaining the integrity of the SSN record is of paramount concern for SSA. DHS has purview over the authorization, collection and maintenance of information related to work eligibility. Thus, current work authorization status can be verified only by DHS. Because SSA does not have the authority to investigate, verify, or enforce work authorization status, we cannot establish the requisite compatibility needed to disclose “nonwork” status to employers.

Even if SSA has legislative authority for this purpose, with such authority, however, the information would be of questionable value, because SSA’s records often do not reflect the current status of this information. SSA only collects this information at enumeration and often does not receive notification of changes in status from the individual until they apply for benefits. Thus, the information would only be of limited value. In addition, disclosing incorrect “nonwork” status information to an employer could have a negative impact on the Agency. For example, confusion over incorrect work status information could lead to improper terminations of employees authorized to work. SSA could then be viewed by the public as having been responsible for the improper termination. Such incidents could in turn lead to adverse publicity for SSA. Disclosures of incorrect information could also lead to numerous additional visits to field offices, distracting the Agency from its core mission of administering the Social Security program. As noted above, verifying current work status information is one of the missions of DHS. Therefore, SSA should not seek legislative authority for this matter.

Recommendation 3

SSA should consider encouraging employers who file large numbers or percentages of wage statements with nonwork SSNs to use the Basic Pilot when hiring new employees. For example, we believe the Agency should consider coordinating with employer associations and participating in conferences to discuss steps employers can take to reduce unauthorized work by noncitizens.

Comment

We disagree. We support in principle the effort to provide employers information about the Basic Pilot program and encourage its use. However, DHS is this program’s sponsor and, accordingly, should have the primary role in promoting its use and identifying to employers ways in which they can reduce unauthorized work by noncitizens. Although SSA should not have the lead in implementing this recommendation, we can support DHS in its efforts and assist them in identifying effective outreach steps in which SSA can play a secondary role in providing information to employers about the Basic Pilot.

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