

Office of Inspector General

Testimony

H.R. 2345, The Federal Benefit Verification and Integrity Act

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**The House Committee on Government Reform and Oversight,
Subcommittee on Government Management, Information and Technology**

United States House of Representatives

Good morning Mister Chairman and Members of the Subcommittee. I am Karen S. Lee, Acting Inspector General of the Small Business Administration (SBA) and chair of an ad hoc committee on benefit eligibility verification. I am pleased to be here to provide an Office of Inspector General (OIG) perspective on the need for Federal benefit and credit eligibility verification and access to information to improve debt collection. The Inspector General Act directs us to prevent and detect fraud and abuse in Federal programs. Investigating and prosecuting fraud after it occurs is very resource intensive and does not always result in full recovery of the benefits fraudulently obtained. We have a keen interest, therefore, in deterring and preventing fraud -- stopping it at the front end instead of trying to find it at the back end.

I am also pleased to note that the issue of eligibility verification has been addressed in the FY 1999 Government-Wide Performance Plan submitted to the Congress under the Government Performance and Results Act (GPRA). In a section on Improving Performance Through Better Management, the Plan discusses an effort to reduce errors in Federal programs that lead to waste, fraud, and abuse by focusing on increasing accuracy and efficiency in three areas -- program eligibility verification, financial and program management, and debt collection.

I am convinced that we can enhance the integrity of Federal programs and ultimately save the taxpayers' money if Federal agencies work together to identify common sources of error and fraud and have the authority to develop integrated solutions. This afternoon, I will discuss an OIG view of the problem, applicable existing Government-wide legislation and its limitations, proposed solutions, and some implementation concepts.

THE PROBLEM

Many Federal Government departments and agencies administer benefit and credit programs where eligibility depends, at least in part, on the amount of an applicant's income or other financial resources and on other criteria such as marital status and number of dependents. Small business loans, educational loans and grants, veterans pensions, rental housing assistance, unemployment compensation, and food stamps are representative samples of such programs. The dollar value of benefits or assistance to any one applicant may range from several thousand to many hundreds of thousands of dollars.

As part of the eligibility determination process, applicants generally are required to submit financial data, which may include copies of Federal income tax returns, financial statements, or Form W-2 wage statements, as well as other data on completed department or agency forms. When applicants submit information falsely overstating income (e.g., to demonstrate loan repayment ability), understating income (e.g., to qualify for rental housing assistance), or misrepresenting other qualifying criteria, they may be awarded benefits to which they would not otherwise be eligible. To the extent this occurs, the Federal Government unknowingly rewards and encourages dishonesty, taxpayers bear the cost of the fraud committed, and truthful applicants may be denied assistance once program funding is exhausted.

Several departments and agencies have initiated procedures to verify financial and other information submitted by applicants with Federal and State tax return data, Social Security Administration data, and other Federal and State data bases. The legislative authority for gaining access to verifying data, however, is a cumbersome, patchwork quilt. Unfortunately, there is currently no omnibus authority for efficiently and effectively addressing the cross-cutting problem of deterring and detecting fraud in all Federal benefit and credit programs. As a result, taxpayers are unnecessarily subsidizing individuals who appear to have no compunction about lying to their Government. Examples abound.

Department of Education (ED)

A January 1997 OIG audit disclosed that, for award year 1995-96, at least 102,000 students were overawarded approximately \$109 million in Pell grants because they either failed to report or underreported their income on student aid applications. In addition, almost 1,200 students improved their eligibility for Pell grants by as much as \$1.9 million by falsely claiming veteran status. Verifying data was obtained through a match with Internal Revenue Service (IRS) and Department of Veterans Affairs records under the Computer Matching and Privacy Protection Act. (Accuracy of Student Aid Awards Can

Be Improved by Obtaining Income Data from the Internal Revenue Service CAN 11-50001)

Department of Housing and Urban Development (HUD)

HUD currently spends more than \$19 billion annually in rent subsidies to assist over 4 million low-income households through a variety of programs, including Public Housing and Assisted Housing. While tenant income is a major factor affecting eligibility and the amount of rental subsidies, admission and subsidy determinations are almost entirely dependent on self-reporting. HUD performed a computer match with Federal tax data to determine the magnitude and effect of underreported and unreported tenant income. Based on the results of the match, HUD statistically projected that the amount of excess rental subsidies during calendar year 1995 was \$409 million, plus or minus \$122 million. (Nationwide Sample of Assisted Households to Estimate Unreported Income, Excessive Housing Assistance and the Effects on HUD Subsidies, Phase I, April 17, 1997)

Small Business Administration (SBA)

OIG investigations revealed the submission of fraudulent tax returns containing inflated figures to enhance the chances of loan approval. As a result, since October 1994 the SBA has been using Federal income tax verification to detect fraudulent loan applications and, thereby, disapprove loans to applicants suspect in both character and financial integrity. Loan applicants sign IRS Form 4506, Request for Copy or Transcript of Tax Form, for business loans or IRS Form 8821, Tax Information Authorization, for disaster loans. The data obtained from the IRS is compared with financial data submitted by the applicant to determine whether there are sizable discrepancies for which the applicant cannot provide a satisfactory explanation. Over the last seven years, the OIG has received allegations of false financial data involving \$122 million in loans. While many of the allegations concerned loans disbursed prior to October 1994, the tax verification policy has resulted in the disapproval and withholding of \$34 million in loans to undeserving applicants. In addition, many possible tax evaders have been identified; for example, in calendar years 1996 and 1997, respectively, 1,131 and 546 referrals were made to the IRS for apparent failure to file or possible underreporting of income on filed returns.

Parenthetically, I would like to acknowledge the cooperation we have received from the IRS staff in establishing and improving the verification process. Not only is verification helping to identify false financial information submitted with loan applications, it is also having a significant deterrent effect.

Other Federal Programs

An Office of Management and Budget (OMB) report found that many of the large Federal benefit programs are making significant overpayments. For those agencies whose accounting systems distinguish between overpayments due to client related errors (attributable to client fraud or unintentional reporting of incorrect information) versus other errors, several billion dollars in overpayments resulted from a total benefit payout

of \$180.4 billion for the most recent fiscal year available. (Strategies for Efficiency - Improving the Coordination of Government Resources, January 1997)

Finally, one has only to read the semiannual reports to the Congress published by Offices of Inspector General to see that virtually every Federal benefit and credit program is a victim of false information submitted by applicants.

EXISTING GOVERNMENT-WIDE LEGISLATIVE AUTHORITY

Privacy Act

The purpose of the Privacy Act (5 USC §552a) is to balance the Government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from Federal agencies' collection, maintenance, use, and disclosure of personal information about them. The Act addresses four basic policy objectives: (1) restricting disclosure of personally identifiable records maintained by agencies; (2) granting individuals increased rights of access to agency records maintained on themselves; (3) granting individuals the right to seek amendment of agency records maintained on themselves upon a showing that the records are not accurate, relevant, timely, or complete; and (4) establishing a code of fair information practices that requires agencies to comply with statutory norms for collection, maintenance, and dissemination of records.

The Act allows an agency to disclose information about an individual pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. OMB guidelines state that, at a minimum, such a consent should state the general purposes for or types of recipients to which disclosure may be made.

Computer Matching and Privacy Protection Act

The Computer Matching and Privacy Protection Act of 1988 (and the amendments of 1990) allows Federal agencies to conduct computer matches pursuant to written agreement of the agencies involved. The agreement must include the purpose and legal authority for conducting the match, justification and anticipated results, identification of the records that will be matched, procedures for providing individualized notice to applicants for and recipients of benefit programs, procedures for verifying information produced in the match, procedures for the timely destruction of records generated in the match, procedures for safeguarding the records and results of the match, specification of applicable prohibitions on duplication and re-disclosure of records, procedures governing the use of records by the recipient agency, information on assessments of the accuracy of the records to be used in the match, and provision for access to all records by the Comptroller General. Oversight is accomplished by requiring agencies to publish matching agreements in the Federal Register, report matching programs to OMB and the Congress, and establish internal Data Integrity Boards to approve their matching activities.

An initial matching agreement may remain in effect for 18 months, with a possible renewal of one year. To continue a match after 30 months, a new agreement must be in place even if the purpose of the match is expected to continue indefinitely with little or no change. The January 1997 OMB report states that agencies find that the procedures for renegotiating agreements for recurring matches, such as would be required for program eligibility verification, require the expenditure of enormous personnel resources with little substantive benefit. In addition, most computer matching operations are "back-end file to file" matches occurring after an applicant has been determined eligible and benefit or assistance payments have been made. The report concludes that "front end" data sharing, i.e., verifying eligibility before payments are initiated, would avoid overpayments and allow agencies to ". . . move from a 'pay and chase' mode to one that is far more proactive and efficient."

Internal Revenue Code (IRC)

The IRS is prohibited from sharing any tax return or return information identified by taxpayer with other Federal departments and agencies absent specific statutory authorization (IRC §6103). Individual taxpayers may authorize the IRS to disclose their return information to such person(s) as the taxpayer designates in a written consent [IRC §6103 (c)]. By regulation, consent usually must be obtained from the taxpayer at the time of initial application for a Federal benefit program, and the consent must be physically received by the IRS within 60 days of the taxpayer's signature.

Some Federal departments and agencies have access to IRS data for specific programs, without taxpayer consent, through specific amendments to IRC §6103, although disclosure is limited to the taxpayer's mailing address in some instances. These amendments, however, again provide only a piecemeal framework for eligibility verification and do not cover all Federal benefit and credit programs.

SOLUTIONS TO DETECT AND DETER FRAUD

The primary goal of a front end verification procedure would be to improve the ability of all Federal agencies to prevent fraudulent and incorrect applications for benefit and credit programs. In addition, a verification procedure using Federal and, in some instances, State data bases could ultimately reduce the amount of paperwork required of an applicant and shorten the response time as more agencies implement electronic application processing. Preventing fraud and ensuring program integrity would also increase public support for these programs because taxpayers would be more confident that only honest, deserving applicants were receiving their hard-earned tax dollars.

Achieving these reasonable goals involves a three-part solution to providing the necessary authorization for eligibility verification: (1) passage of omnibus legislation that would clearly authorize the use of Federal and State data bases for the purpose of program eligibility verification, (2) amendment of IRC §6103 to allow the IRS to share relevant tax information with all Federal agencies administering such programs, and (3)

inclusion of a clearly stated Privacy Act and/or IRC §6103(c) consent on all benefit and assistance program application forms.

Eligibility verification could be accomplished under the existing consent provisions of the Privacy Act and IRC §6103(c); however, Government-wide legislation authorizing the use of existing data bases would produce several benefits. Legislation would --

- establish, as a matter of public policy, the principle of eligibility verification in Federal benefit and assistance programs and demonstrate the Government's commitment to deterring and detecting fraud;
- provide clear authority for the inclusion of a consent or acknowledgment statement signed by applicants in all benefit and credit program applications;
- ensure consistency in the treatment of applicants for all programs;
- foster cooperation between disclosing and recipient agencies in developing efficient procedures for verifying and maintaining the confidentiality of data;
- allow agencies to develop methods of sharing data in ways that could potentially reduce the amount of paperwork required from program applicants; and
- assist the IRS, to the extent that agencies used Federal tax information to verify applicant data, to identify non-filers and return them to the tax paying system.

Omnibus Legislation

Legislation to achieve the goals outlined above should include the following essential elements:

1. Applicable to all Federal benefit and credit programs. Any legislation that identifies coverage by reference to the Privacy Act definition of a Federal benefit program should also state that it applies to benefits to entities as well as individuals. The Privacy Act [5 USC §552a(a)(12)] defines Federal benefit program as ". . . any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals. . . ." Not all programs, however, provide benefits just to individuals. Federal credit programs, for example, provide loans to business entities such as corporations, partnerships, and limited liability companies.

2. Applicant consent or acknowledgment on application form. The application forms for all benefit and credit programs should include a statement, signed by the applicant, consenting to or acknowledging that the administering agency may obtain from any other Federal or State department or agency any information in the possession of such agencies that is necessary to confirm the accuracy of the eligibility data submitted by the applicant. Such a statement would also serve as a meaningful deterrent to submitting false information.

3. Scope of authorization and consent. An administering department or agency should be allowed to obtain any verifying information necessary to determine an applicant's eligibility for a Federal benefit program and the level of benefits for which an applicant qualifies.

4. Provision for electronic application processing. With increased use of communications technology, many departments and agencies are piloting telephone and electronic applications where an application process is initiated with nothing "written" in the traditional understanding of that word. Legislative language should foster such increased use of technology by allowing alternative methods of documenting an applicant's consent.

5. Definition of the applicant. In some Federal benefit programs, eligibility and the level of benefits is affected by and, therefore, requires verification of, the existence of a spouse and/or dependents. In some credit programs, the borrower for which data needs to be verified is a business entity such as a corporation or partnership. The definition of "applicant" or "person," therefore, must cover these variations in program requirements.

6. Reimbursement for cost of providing verifying data. As a general rule, departments and agencies that disclose verifying data from their data bases should be allowed to recover the direct costs of doing so from recipient agencies. Legislative language should be flexible enough so that departments and agencies providing data and those receiving data could establish agreements depending on the program, the amount of time and effort involved in providing the data, and whether there is a substantially equivalent exchange of data such that the reimbursement is "in kind." In addition, recipient agencies could be authorized to charge the applicant a fee in those programs for which there is already a statutory fee structure.

7. Sharing data with State, local, and private entities administering Federal programs. Applicant eligibility determination for some Federal programs is made by State or local government agencies, quasi-governmental agencies, or private entities operating under written agreement with the Federal program agency. Legislative language is required to allow the sharing of verifying data, under controlled conditions to maintain confidentiality, with these organizations.

8. Access for debt collection actions. Any legislation that authorizes data disclosure for eligibility verification should also authorize disclosure for debt collection actions. Debt collection action includes obtaining current addresses of individuals or entities that have been overpaid or have defaulted on direct or guaranteed loans and verifying information submitted with a request to compromise or waive a debt.

Amendment of IRC §6103

The most efficient method of providing access to Federal tax return information to verify applicant data and eligibility would be to amend IRC §6103(c), Disclosure of returns and return information to designee of taxpayer, by inserting the underscored language as shown below:

(c) Disclosure of returns and return information to designee of taxpayer. The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a written request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. Consent to such disclosure may be made by the taxpayer in an application for a Federal benefit program, as that term is defined in Section 552(a)(12) of the Privacy Act. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

For many Federal benefit and credit programs, the most useful data for verifying eligibility is Federal tax return information. This proposed amendment would clarify the authority of the IRS to release information and reduce paperwork by eliminating the current requirement that taxpayer consent be given on a separate IRS form.

Consent or Acknowledgment Statement on Application

Applicants for benefit and credit programs should be clearly advised that (1) the application form they sign includes a consent or acknowledgment that allows the agency administering the program to verify applicant data with the agency(ies) specified in the statement, (2) the agency administering the program will follow-up with the applicant to obtain an explanation for inconsistencies between the application data and the verifying data, and (3) the statement does not change any statutory program eligibility criteria or appeal procedures.

To comply with OMB and judicial guidelines on the adequacy of a Privacy Act consent statement, the departments or agencies from which verifying data will be obtained should be identified and the use of the verifying data clearly stated. An example of a consent form follows:

By signing this application for __ (identify benefit or assistance program) __, I hereby authorize the __ (name of agency(ies) that will be disclosing information) __ to disclose and release to the __ (name of agency administering program) --- __ any information or copies of records necessary to verify, validate, or otherwise confirm the accuracy of the information I have submitted to obtain __ (name of benefit) __, with the understanding that the information will be treated as confidential and that it will be used by the

____(name of administering agency)____ only for official purposes.

If IRC §6103(c) was amended as proposed above, the same statement could be used to obtain Federal tax information by simply identifying the IRS as the agency disclosing information.

IMPLEMENTATION CONCEPTS

Because the method of program delivery and the eligibility criteria for benefit and credit programs varies from program to program, the process of verification will, of necessity, vary from agency to agency. There are, nonetheless, common concepts that should apply.

1. Pilots to test the process should be authorized. Agencies should be allowed to establish pilot verification processes to test the procedures and develop cost/benefit data before full implementation. Part of the planning for a pilot would also include a determination as to which data base (e.g., the National Directory of New Hires, Federal or State tax data, or social security data) includes the information needed to verify eligibility for a given benefit or credit program.

2. Primary responsibility for verification should rest with the benefit agency. The benefit or credit program agency should bear the primary responsibility for administering the verification process. This includes --

- informing applicants and providing them due process,
- maintaining records of applicant consent or acknowledgment,
- assuring the confidentiality and use for official purposes only of verifying data obtained from other agencies, and
- developing electronic means of obtaining data that are compatible with the systems of the agencies supplying the verifying data.

3. Program applicants should be informed and given due process. Information material accompanying program application forms and instructions should clearly inform the applicant that his or her data will be verified. In addition, the applicant should be given the opportunity to explain inconsistencies identified in the verification process and allowed to provide additional supporting documentation to support their eligibility.

CONCLUSION

As a member of the inspector general community, and a taxpayer, I strongly believe that eligibility verification is needed to deter and detect fraud in Federal benefit and credit programs. I understand that the proposed sharing of data between departments and agencies raises privacy concerns. Given the voluntary nature of these programs, however, it is not unreasonable for applicants to expect that their eligibility will be verified and, as a matter of fiduciary duty, that the Federal Government will take all feasible steps to safeguard the taxpayers' money.

Mister Chairman, that concludes my formal remarks. I will be happy to answer any questions you and the Committee members may have.