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Report to the Committee on Finance, U.S. Senate

October 2005

TAXPAYER INFORMATION

Options Exist to Enable Data Sharing Between IRS and USCIS but Each Presents Challenges

GAO-06-100

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GAO Accountability·Integrity·Reliability

Highlights

Highlights of GAO-06-100, a report to the Committee on Finance, U.S. Senate

Why GAO Did This Study

In 2000, federal agencies estimated they saved at least $900 million annually through data sharing initiatives. The Internal Revenue Service (IRS) can use data from taxpayers and third parties to better ensure taxpayers meet their obligations. Likewise, Congress has authorized certain agencies access to taxpayer information collected by IRS to better determine benefit eligibility.

In July 2004, we reported that data sharing between IRS and the United States Citizenship and Immigration Services (USCIS) has the potential to improve tax compliance as well as immigration eligibility decisions (GAO-04-972T). For this report, GAO determined (1) the potential benefits of data matching, and (2) the options and associated challenges.

What GAO Recommends

Congress may wish to consider (1) requiring businesses applying to sponsor immigrant workers to meet tax filing and payment obligations, and (2) authorizing a user fee to be retained by IRS to cover compliance-related costs. To improve immigration eligibility decisions, GAO recommends that USCIS, in consultation with the IRS, conduct a pilot data-sharing test utilizing taxpayer consents. IRS agreed and USCIS generally agreed with the pilot study. USCIS raised several issues that GAO generally believes should be addressed as part of the recommended pilot program.

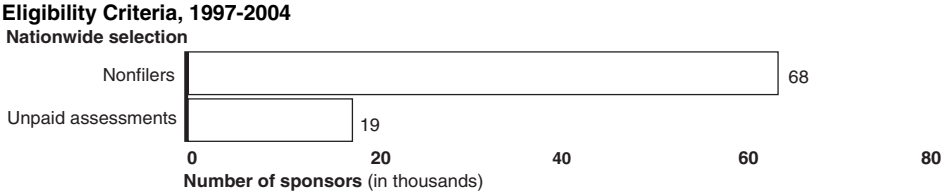
www.gao.gov/cgi-bin/getrpt?GAO-06-100.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Michael Brostek at (202) 512-9110 or brostekm@gao.gov.

What GAO Found

Data sharing can help improve (1) tax compliance if businesses applying to sponsor immigrant workers are required to meet tax filing and payment requirements, and (2) the accuracy and timeliness of USCIS's immigration eligibility decisions if it obtained tax data from IRS to help ensure business sponsors meet eligibility criteria. As of December 2003, IRS databases showed 18,942 businesses (5 percent) applying to sponsor immigrant workers had $5.6 billion in unpaid assessments. Of this amount, businesses were not in installment agreements with IRS or otherwise making payments on $3.7 billion. If future business sponsors owe taxes and are required to meet their tax obligations, they would need to make arrangements with the IRS to come into compliance. Although USCIS officials acknowledge that no explicit prohibition exists in immigration laws against conditioning approval of employer applications on their tax compliance, USCIS officials said a statutory change is preferable because they have legal concerns about USCIS's authority to issue such a regulation absent specific authority. IRS data can help USCIS make more accurate eligibility decisions by better identifying businesses that may not have met eligibility criteria due to having unpaid assessments or not filing returns. In our nationwide selection, 67,949 of 413,723 (16 percent) business sponsors were in IRS's nonfiler database at the time of their application.

Businesses Sponsoring Immigrant Workers That May Not Have Met USCIS's Immigration Eligibility Criteria, 1997-2004



Source: GAO analysis of taxpayer and immigration data.

A variety of options is available to IRS and USCIS for establishing and implementing data sharing. An applicant-initiated data-sharing arrangement could be implemented under existing Internal Revenue Code authority through taxpayer consent, whereby taxpayers authorize IRS to disclose their information. USCIS then could verify applicant-provided data by obtaining tax returns or tax transcripts. Treasury guidance suggests a small-scale pilot using consents as a way to make the business case for continued access to taxpayer information. In general, the more that data sharing could be done electronically, the more efficient the data sharing could be. However, achieving electronic data sharing may take longer than paper-based processes due to legal, technological, and cost challenges. Further, if business sponsors need to come into compliance, net tax collections might not increase if collecting their taxes displaces other IRS work. Establishing user fees to cover data-sharing costs could be a way to fund data sharing, but IRS lacks the authority to collect and retain a user fee to cover compliance-related costs associated with data sharing.

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Abbreviations

BMF	Business Master File
CLAIMS 3	Computer Linked Application Information Management System, Version 3.0
CMA	Computer Matching Agreement
CMS	Centers for Medicare and Medicaid Services
DHS	Department of Homeland Security
Education	Department of Education
EIN	Employer Identification Number
FMS	Financial Management Service
FOIA	Freedom of Information Act
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
IRC	Internal Revenue Code
IRS	Internal Revenue Service
OIG	Office of Inspector General
OMB	Office of Management and Budget
SSA	Social Security Administration
SSN	Social Security Number
TDS	Transcript Delivery System
USCIS	United States Citizenship and Immigration Services

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Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, D.C. 20548

October 11, 2005

The Honorable Charles E. Grassley
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Finance
United States Senate

In 2000, federal agencies estimated that they saved at least $900 million annually in program costs through data-sharing initiatives. As we have previously reported, federal agencies are increasingly using data sharing to help verify applicant-provided information. Many federal agencies use financial information to make eligibility decisions or ensure compliance with program requirements. For instance, the United States Citizenship and Immigration Services (USCIS) grants immigrants admittance into the United States or allows immigrants to remain in the country based, in part, on financial information provided by the applicant and/or their sponsors. Likewise, the Internal Revenue Service (IRS) uses financial information to ensure that taxpayers are meeting their tax obligations.

To facilitate data sharing, Congress has authorized a number of agencies to access federal taxpayer information collected by the IRS to improve the accuracy of eligibility decisions. The Social Security Administration (SSA) is one agency, for example, that has an extensive data-sharing relationship with IRS, which aids in administering Social Security benefit programs and ensuring taxpayer compliance. At the same time, taxpayers' privacy must be protected and various federal laws and agency policies regulate agencies' use and disclosure of taxpayer and personal information. Internal Revenue Code (IRC) Section 6103 allows IRS to disclose taxpayer information to federal agencies and authorized employees of those agencies, but only under specific conditions. Such privacy protection is an important component of continued voluntary compliance with the internal revenue laws.

Data-sharing arrangements between agencies can take different forms. These arrangements can be applicant- or agency-initiated data sharing. Applicant-initiated arrangements entail requiring an applicant for a benefit or employment to secure proof from another agency to qualify for the benefit or employment. In these cases, the agency may share the eligibility proof directly with the agency that would be providing the benefit or

employment. Agency-initiated sharing can include matching data from two agencies to help one agency or both agencies verify data accuracy.

In our July 2004 testimony, we reported that data sharing between IRS and USCIS has the potential to improve tax compliance as well as immigration eligibility decisions.[1] You then requested additional information on potential benefits and options for data sharing between IRS and USCIS. For this study, our objectives were to determine the (1) potential benefits of data matching for IRS and USCIS and (2) options for establishing and maintaining a data-sharing relationship between the IRS and USCIS, including any challenges associated with those options.

In responding to the objectives, we performed work at several IRS offices, including compliance and research, and at various program and district offices, and service centers at USCIS. We also contacted representatives of two immigration advocacy groups to obtain their perspectives. Our findings are based on matching of immigration and IRS taxpayer data, documents and various publications, and interviews with agency officials. We used two sets of USCIS data to match with IRS taxpayer data to determine the potential value for increased data sharing and matching. We matched taxpayer data to automated immigration applications and hard copy immigration applications. We used a nationwide selection of automated USCIS applications from immigration applications submitted to USCIS service centers from 1997 through 2004. Approximately 3.4 million of 4.5 million automated immigration records had Social Security numbers (SSN) or employer identification numbers (EIN) that could be used to match with SSNs and EINs in IRS databases. We used these data to determine whether businesses and others that had applied to sponsor immigrant workers or immigrants applying to change their immigration status had filed a tax return with IRS and, if so, whether they owed taxes to IRS.[2] Because the nationwide selection did not include any financial information, we also selected a nonprobability sample of about 1,000 immigration hard copy applications for citizenship, employment, and family-related immigration and change of immigration status filed by

[1]GAO, *Taxpayer Information: Data Sharing and Analysis May Enhance Tax Compliance and Improve Immigration Eligibility Decisions*, GAO-04-972T (Washington, D.C.: July 21, 2004).

[2]The term immigrant as used in this report generically refers to any employer-sponsored alien worker whether immigrant or nonimmigrant. The term application as used in this report refers to immigration petitions.

businesses and individuals from 2001 through 2003 at four immigration locations.[3] We used the hard copy applications to build a database of personal and financial information. We used this sample as a second source of examples of USCIS applicants who may not have filed tax returns and may have owed taxes to IRS. For this report, our discussion will focus on businesses applying to sponsor immigrant workers because the matching results from our July 2004 testimony identified business sponsors as the most likely group in which benefits would result.

We assessed the reliability of IRS's Individual Master File (IMF) and Business Master File (BMF) data and the USCIS's Computer Linked Application Information Management System, Version 3.0 (CLAIMS 3), which is a database containing nationwide immigration data. As part of our annual audits of IRS's financial statements, we also assessed the reliability of IRS's BMF and IMF data with respect to unpaid assessments by testing selected statistical samples of unpaid assessment modules. We determined that the data were sufficiently reliable for the purpose of this report. We conducted our work from August 2004 through August 2005 in accordance with generally accepted government auditing standards. For details on our scope and methodology, see appendixes I and II.

Results in Brief

IRS's tax compliance efforts could benefit from data sharing with USCIS if immigration eligibility were changed to require business sponsors to show that they met tax filing and payment requirements to qualify to sponsor immigrant workers. Our analysis of automated immigration records matched against IRS databases showed that 18,942 (5 percent) of businesses applying to sponsor immigrant workers from 1997 through 2004 had $5.6 billion in unpaid assessments, as of December 2003. Business sponsors who were not in an installment agreement with the IRS or otherwise making payments to IRS had unpaid assessments totaling $3.7 billion of the $5.6 billion. USCIS officials said that businesses that apply to sponsor workers tend to do so in multiple years. To the extent future business sponsors owe taxes and are required to meet their tax obligations, they would need to make arrangements with the IRS to come into compliance before being eligible to sponsor immigrant workers to enter the

[3]USCIS has four service centers nationwide established to handle the filing, data entry, and adjudication of certain applications for immigration services and benefits. District offices are responsible for providing certain immigration services and benefits to residents in their service areas.

country. Although this likely would help IRS collect unpaid tax assessments, not all taxes would be collected since, for example, some businesses may not be able to repay their full debt. USCIS officials said requiring business sponsors to meet their tax obligations in order to sponsor immigrant workers could be accomplished by a regulatory change. Although USCIS officials acknowledge that no explicit prohibition exists in immigration laws against conditioning approval of employer applications on their tax compliance, USCIS officials said a statutory change is preferable because they have legal concerns about USCIS's authority to issue such a regulation absent specific authority.

Even if the eligibility criteria for business sponsors is not changed as mentioned previously, USCIS can still benefit from data sharing with IRS by making more accurate and timely immigration eligibility decisions for businesses applying to sponsor workers. For businesses applying to sponsor immigrant workers, immigration adjudicators use two basic criteria for evaluating the eligibility of businesses to sponsor immigrants: (1) the sponsor's financial feasibility and (2) the legitimacy of the sponsor's existence. According to USCIS, because filing and paying taxes is an indicator that these qualifications are met, having access to IRS data may help them better identify businesses that do not meet immigration eligibility criteria. In addition to the 18,942 business sponsors we identified that owed taxes, we found that 67,949 of 413,723 (16 percent) of business sponsors in our nationwide selection did not file one or more tax returns at the time of their application to sponsor an immigrant worker.

Since adjudicators receive self-reported—and sometimes false—personal and financial information from applicants, USCIS officials said that a data-sharing arrangement to verify applicant-provided data during the adjudicatory process would help USCIS adjudicators make more accurate immigration eligibility decisions. USCIS officials said that adjudicators would find IRS information on small businesses particularly useful; 25 of 43 businesses with unpaid tax assessments in our nonprobability sample reported net incomes of less than $10 million to USCIS. Although USCIS officials are seeking a regulatory change that would shift adjudicators' focus away from a business sponsor's ability to pay, IRS taxpayer data could still help adjudicators establish a business sponsor's financial viability and legitimacy by providing information on whether the business sponsor was a functioning business. Further, USCIS officials said that access to IRS taxpayer data could improve the timeliness of making benefit decisions by (1) decreasing rework/follow-up work with applicants and (2) possibly reducing the volume of applications received if benefits were

made contingent on applicants having met tax filing and payment requirements.

A variety of options is available to IRS and USCIS for establishing and implementing data sharing regardless of whether data sharing is applicant- or agency-initiated. An applicant-initiated data-sharing arrangement could be implemented under existing IRC authority through a taxpayer consent, whereby a taxpayer authorizes IRS to disclose his or her information to other agencies. If so, USCIS could verify applicant-provided data by obtaining the applicant's tax return or tax transcript. However, the Department of the Treasury suggests that before an agency uses taxpayer consents, the agency should first conduct a statistical test match or a small-scale pilot demonstrating that the need for information outweighs concerns about taxpayer privacy and voluntary tax compliance. In general, the more that data sharing could rely on electronic communications between applicants and the agencies, the more efficient the data-sharing arrangements could be. USCIS, which is working to move into a paperless environment, is reluctant to receive additional pieces of hard copy information. However, achieving efficient electronic data sharing may take longer than implementing paper-based sharing due to legal, technological, and cost challenges that must be overcome. For example, if taxpayer consents were not used, IRC Section 6103 would need to be changed to authorize IRS to disclose taxpayer information directly to USCIS for immigration eligibility purposes. USCIS must also address a number of technological challenges, such as ensuring all necessary data are accurate and entered into automated systems to lay the foundation that would enable data sharing to take place between the two agencies. Further, estimating the cost benefit associated with data sharing can be complicated. Unless IRS's costs to bring business sponsors with unpaid assessments into compliance are reimbursed, net tax collections may not rise since IRS might have to forgo bringing other noncompliant taxpayers into compliance to bring the business sponsors into compliance. Establishing user fees collected from businesses applying to sponsor workers to cover data-sharing costs could be a way to fund data sharing, but the IRS lacks authority to collect and retain fees for compliance-related costs. USCIS, on the other hand, has authority to collect and retain fees for adjudicatory services including compliance related costs.

To improve taxpayer compliance and USCIS's immigration benefit decisions, we suggest that Congress consider (1) changing immigration eligibility to require businesses applying to sponsor immigrant workers to meet tax filing and payment obligations and (2) authorizing a user fee to be

collected and retained by IRS to cover its costs to bring business sponsors into compliance. To improve the accuracy and timeliness of USCIS's immigration eligibility decisions absent requiring business to have met their tax filing and payment obligations, we recommend the Secretary of the Department of Homeland Security (DHS) direct USCIS, in consultation with the IRS, to conduct a pilot data-sharing test. In the test, USCIS should require a tax check for selected businesses and other entities applying to sponsor immigrant workers before qualifying for immigration benefits.

In commenting on a draft of this report (see app. III and IV), the Commissioner of Internal Revenue agreed and the Director of DHS's Office of Inspector General (OIG) Liaison—commenting on behalf of the Secretary of DHS—generally agreed with our recommendation to conduct a small-scale pilot test to determine whether a business case exists for supporting data sharing before pursuing legislation or a large-scale taxpayer consent program. The Commissioner also stated an executive working group will determine the merits of applying user fees for compliance data sharing. The Director of DHS's OIG Office liaison generally agreed with our recommendation on the pilot program but said he had serious concerns about our recommendation on the IRS user fee. The Director acknowledged the pilot would be consistent with USCIS's desire to explore ways to streamline its processes and provide necessary information with respect to considering the feasibility of initiatives such as data sharing on a larger scale. However, his agreement was contingent on the extent to which USCIS can lawfully engage in a pilot program that requires business sponsors to consent to a tax check. The Director did not further describe his legal concerns and therefore we do not have a basis to evaluate them. We agreed with the Director's assessment in technical comments that immigration laws contain no explicit prohibition on conditioning employer petitions on their tax compliance and doing so might be legally defensible. We believe consulting with IRS in determining how to design the pilot test should help USCIS resolve those concerns.

In commenting on user fees, the Director stated that policy considerations have kept USCIS from completely using its authority to recover its full costs but did not identify the specific policy considerations. The Director specifically cited concerns about increasing fees to immigration benefit applicants without a corresponding improvement in services. However, as stated in our report, USCIS access to IRS data has the potential to improve the agency's services because it could decrease rework and follow-up work, which would help USCIS minimize processing time for all business sponsors. Further, with more routine access to IRS data, USCIS might not

need to request as much financial information from business applicants as it does now since USCIS officials themselves see IRS data as more reliable than information provided by applicants.

Finally, the Director commented that the proposed user fee to cover IRS's compliance-related costs seems to be different in concept from other existing user fees. IRS officials say they do not receive a user fee to bring applicants for any other agencies' benefits into compliance with their tax obligations. However, Congress has authorized new or expanded funding arrangements recently to help IRS deal with its workload. For instance, the user fees authorized in connection with IRS programs such as its Offers-In-Compromise Program and its private debt collection program are to support costs associated with processing agreements between IRS and the taxpayer that resolve the taxpayer's tax liability. Given the substantial unpaid taxes that we found among businesses applying to sponsor immigrant workers, we believe that it is appropriate for Congress to consider steps for effectively bringing these taxpayers into compliance without unduly deterring IRS from pursuing other noncompliant taxpayers. Consequently, our report put forth the user fee as one option for Congress to consider for supporting a potential data sharing arrangement between IRS and USCIS.

Background

As one of the largest repositories of personal information in the United States, IRS receives tax returns from about 116 million individual taxpayers who have wage and investment income and from approximately 45 million small business and self-employed taxpayers each year. IRS performs a variety of checks to ensure the accuracy of information reported by these taxpayers on their tax returns. These checks include verifying computations on returns, requesting more information about items on a tax return, and matching information reported by third parties to income reported by taxpayers on returns (i.e., document matching). IRS's document matching program has proven to be a highly cost-effective way of identifying underreported income, thereby bringing in billions of dollars of tax revenue while boosting voluntary compliance.

IRC Section 6103, amended significantly by the Tax Reform Act of 1976,[4] is the primary law used to restrict IRS's data-sharing capacity. The law

[4]Pub. L. No. 94-455, Oct. 4, 1976.

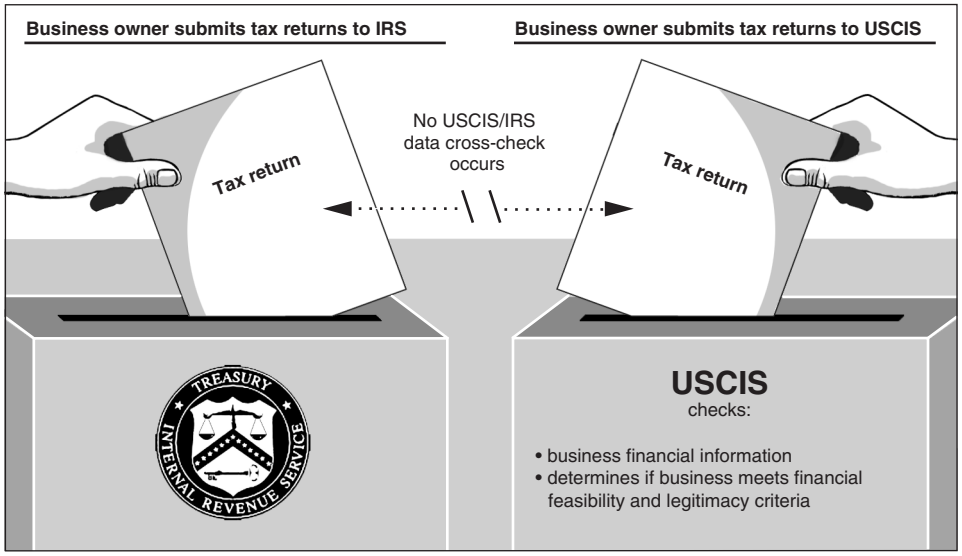
provides that tax returns and return information are confidential and may not be disclosed by IRS, other federal and/or state employees, and certain others having access to the information except as provided in IRC Section 6103. IRC Section 6103 allows IRS to disclose taxpayer information to federal agencies and authorized employees of those agencies for certain specified purposes. Accordingly, IRC Section 6103 controls whether and how tax information submitted to IRS on federal tax returns can be shared. IRC Section 6103 specifies which agencies (or other entities) may have access to tax return information, the type of information they may access, for what purposes such access may be granted, and under what conditions the information will be received. For example, IRC Section 6103 has exceptions allowing certain federal benefit and loan programs to use taxpayer information for eligibility decisions. Because the confidentiality of tax data is considered crucial to voluntary compliance, if agencies want to establish new efforts to use taxpayer information, executive branch policy calls for a business case to support sharing tax data.

USCIS is part of the Department of Homeland Security (DHS), which was established by the Homeland Security Act of 2002.[5] USCIS is responsible for administering several immigration benefits and services transferred from the former Immigration Services Division of the Immigration and Naturalization Service. Included among the immigration benefits and services USCIS's offices oversee are citizenship, asylum, lawful permanent residency, employment authorization, refugee status, intercountry adoptions, replacement immigration documents, family- and employment-related immigration, and foreign student authorization. USCIS's functions include adjudicating and processing applications for U.S. citizenship and naturalization, administering work authorizations and other petitions, and providing services for new residents and citizens. USCIS's employees who review immigration benefit applications and determine if they should be approved are its adjudicators. USCIS's fraud detection units and Fraud Detection and National Security immigration officers in the districts, service centers, and asylum offices detect potential fraudulent applications and any trends or patterns that suggest potential fraud. USCIS staff work with applicants through the adjudicatory process beginning with initial contact when an application or petition is filed, through the stages of gathering information on which to base a decision. This contact continues to the point of an approval or denial, the production of a final document or oath ceremony, and the retirement of case records.

[5]Pub. L. No. 107-296, § 451, 116 Stat. 2195.

Under current legislative authority, USCIS is not authorized to receive taxpayer information from IRS directly. USCIS currently obtains self-reported personal and financial information provided by (1) businesses, religious organizations, non-profit entities and individuals applying to sponsor immigrant workers; (2) individuals applying to sponsor relatives; and (3) individuals applying to enter the country, extend their stay or obtain citizenship. USCIS also obtains information from third parties, not including IRS, to verify applicants' self-reported data. Figure 1 illustrates the current lack of data verification between USCIS and IRS during the immigration application process.

Figure 1: Current Lack of Data Verification between IRS and USCIS



Source: GAO.

Data-sharing arrangements between agencies can take different forms. As used in this report, data sharing means obtaining and disclosing information on individuals between federal agencies (IRS and USCIS) to ensure taxpayers have met their tax obligations or to determine eligibility for immigration benefits.[6] Table 1 lists different forms of data sharing, enabling authority, information gained, and related examples.

[6]GAO, *The Challenge of Data Sharing: Results of a GAO-Sponsored Symposium on Benefit and Loan Programs*, GAO-01-67 (Washington, D.C.: Oct. 20, 2000).

Table 1: Forms of Data Sharing Involving Taxpayer or Personal Information

Type of sharing	Authority	Form	New information gained or confirm agency information	Examples (entities involved)
Applicant-initiated	Taxpayer consent	Applicant authorizes information to be sent from one agency to another to be used to qualify for benefits or employment	New	Tax checks (IRS/states) Tax checks (IRS/mortgage bankers)
Agency-initiated	Specific authority allowing disclosure	Agency-to-agency data matching that benefits one agency	New	Taxpayer address request (IRS/Department of Education)
		Agency-to-agency data matching that benefits both agencies	Confirm	Combined annual wage reporting (IRS/SSA)
		Agency-to-agency matching to verify applicant provided data	Confirm	Employment Verification Pilot (USCIS/SSA) Transitional Assistance Program (Centers for Medicare and Medicaid Services/IRS)

Sources: IRS and USCIS documents.

An example of applicant-initiated sharing occurs via tax checks required by some states. A taxpayer may authorize a third party to receive his or her IRS tax return information via consent. According to an IRS official, many states may require consents to qualify for benefits or certain types of employment. For example, the state of Missouri requires applicants to be current on their state taxes before receiving a new professional license. An example of agency-initiated sharing is an arrangement between IRS and SSA for the Combined Annual Wage Reporting Program. SSA processes and maintains W-2 and W-3 information on employees. IRS maintains personal and financial information on employees. SSA and IRS conduct exchanges of information to ensure employers are submitting accurate wage information and to identify nonfilers. The agencies have a direct data-sharing arrangement.

Research shows that certain data-sharing programs have value for increasing taxpayer compliance since these programs have identified discrepancies in income reporting amounts and, in some cases, enabled the assessment of additional dollars in unpaid taxes. For example, matching IRS's unpaid assessment database with the Treasury's Financial Management Service's (FMS) records shows a substantial amount of money that could have been collected by either IRS or FMS. In particular,

the Taxpayer Relief Act of 1997[7] allows IRS to continuously levy up to 15 percent of certain federal payments made to delinquent taxpayers.[8] IRS's continuous levy program adds tax debts to FMS's program for recovering debts owed to federal agencies. For the levy program, FMS compares federal payee information from agency payment records with extracts of IRS's unpaid assessments. We estimated that IRS could recover at least $270 million annually from about 70,000 delinquent taxpayers.[9] In addition, our analysis[10] of a match between FMS's database on payments to contractors and IRS's unpaid assessment database showed that about 33,000 contractors who received substantial federal payments from civilian agencies during fiscal year 2004 owed a total of more than $3 billion in unpaid taxes.[11] We estimated that if FMS database deficiencies such as erroneous Taxpayer Identification Numbers (TINs) and invalid contractor names were corrected, FMS could have collected at least $50 million more than it did in fiscal year 2004.[12]

Although data-sharing arrangements can be useful, privacy advocates, lawmakers, and others are concerned about the extent to which the government can disclose and share citizens' personal information, including sharing with other government agencies. Historically, lawmakers

[7]Pub. L. No. 105-34, 1977.

[8] The American Jobs Creation Act of 2004 authorized IRS to levy 100 percent of the payment amount for certain federal payments [(Pub. L. No. 108-357,§. 887 (a), 118 Stat. 1418, October 22, 2004, to be codified at 26 U.S.C. § 6331(h)(3)].

[9]GAO, *Tax Administration: Millions of Dollars Could Be Collected If IRS Levied More Federal Payments*, GAO-01-711 (Washington, D.C.: July 20, 2001). Since we issued our 2001 report, additional payment categories have been added to the levy program, so the amount that could be collected would likely be substantially higher.

[10]GAO, *Financial Management: Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence*, GAO-05-637 (Washington, D.C.: June 16, 2005).

[11]Our initial matches of civilian contractor payments made during fiscal year 2004 with IRS tax debt as of Sept. 30, 2004, identified about 63,000 contractors that had tax debt totaling $5.4 billion. We excluded tax debts from our preliminary estimates that have not been agreed to by the tax debtor or affirmed by the court, tax debts from calendar year 2004, tax debts of $100 or less, and fiscal year 2004 FMS payments of $100 or less.

[12]GAO previously issued a similar report on Department of Defense (DOD) contractors where GAO reported that DOD and IRS records showed that over 27,000 contractors owed about $3 billion in unpaid taxes as of Sept. 30, 2002; GAO, *Financial Management: Some DOD Contractors Abuse the Federal Tax System with Little Consequence*, GAO-04-414T (Washington, D.C.: Feb. 12, 2004).

and policymakers have created legislation to address these concerns. For example, the Privacy Act of 1974[13] regulates the federal government's use of personal information by limiting the collection, disclosure, and use of personal information maintained in an agency's system of records. The Computer Matching and Privacy Protection Act of 1988[14] further protects personal information by requiring agencies to enter into written agreements, referred to as matching agreements, when they share information that is protected by the Privacy Act of 1974 for the purpose of conducting computer matches.

User fees are collected from identifiable recipients of special benefits beyond those accruing to the general public, and the amounts are based on the recovery of costs of providing the service, the market value of goods, or may be set by legislation. Various user fee authorities and guidance exist which range from general to specific authority. Title V of the Independent Offices Appropriations Act of 1952 codified at 31 U.S.C. § 9701 established general authority to assess user fees or charges on identifiable beneficiaries by administrative regulation. Under this general authority, all fees collected would be deposited as miscellaneous receipts to the General Fund of the Treasury and their use would be determined through the annual appropriations process. Authority to assess user fees may also be granted to agencies through the enactment of specific authorizing or appropriations legislation, which may or may not authorize the agencies to retain and/or use the fees they collect.

In setting certain user fees, agencies must follow either the general user fee statute 31 U.S.C. § 9701 or specific user fee statute. For example, IRS must follow IRC section 7528[15] in certain cases while USCIS adheres to the Immigration and Nationality Act,[16] the general user fee statute, and DHS regulations which outline fees that are collected, the amounts, and by whom (see table 2).[17] The Office of Management and Budget's (OMB)

[13]Pub. L. No. 93-579, Dec. 31, 1974.

[14]Pub. L. No. 100-503, Oct. 18, 1988.

[15]Section 7528 was added to the IRC by section 202 of the Temporary Assistance for Needy Families Block Grant Program, Pub. L. 108-89, and was extended to Sept. 30, 2014, by section 690 of the American Jobs Creation Act of 2004, Pub. L. 108-357.

[16]8 U.S.C. § 1356(m), (n).

[17]8 C.F.R. § 103.7.

Circular A-25, *User Charges*, establishes general federal policy and guidance for user fees assessed for government services by executive branch agencies.[18] IRS's chief financial office provides internal guidance on user fees, which provides examples on how to implement the OMB directives. USCIS does not provide internal guidance. According to USCIS officials, the agency's fee setting is based upon cost studies and a full-fledged regulatory process under the Administrative Procedure Act, with the actual fees provided in regulations.

Table 2: User Fee Guidance and Authority

OMB Circular A-25	Requires that agencies: • Identify services and activities that convey special benefits; • Determine services' and activities' full cost or market price, as appropriate; • Perform biennial reviews of user fees for unanticipated cost or market price changes; and • Perform biennial reviews of agency programs not subject to user fees to determine if such fees should be assessed.
IRC Section 7528	Requires that IRS user fees: • Vary according to categories or subcategories; • Take into account the average time and difficulty of requests by categories or subcategories; • Be payable in advance; and • Be subject to appropriate exemptions and reduced fees within limits specified by IRC Section 7528. Internal CFO guidance: • Provides steps and examples on developing cost estimates and implementation considerations.

[18]OMB Circular A-25 applies to executive branch agencies assessing charges under the general user fee statute enacted in the Independent Offices Appropriations Act of 1952 and codified at 31 U.S.C. § 9701. The circular provides guidance to agencies imposing user fees under other statutes to the extent that the circular is not inconsistent with the statute in question.

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USCIS Guidance	Immigration and Nationality Act permits: • Setting fees for providing adjudication and naturalization services at a level that will ensure recovery of the full costs of providing all such services. • Retention and use of fees to provide immigration services. General statute requires agencies to establish fees that are: • Fair • Based on the costs to the government; the value of the service or thing to the recipient, public policy or interest served, and other relevant facts. DHS regulations outline: • Fee remittances • Amounts of fees • Fee adjustments • Fee waivers No internal guidance exists.

Sources: IRS and USCIS.

IRS and USCIS Could Benefit from Data Sharing Although an Immigration Eligibility Change Would Be Key for IRS

IRS's tax compliance efforts could benefit from data sharing with USCIS if immigration eligibility were changed to require business sponsors to show that they met tax filing and payment requirements to qualify to sponsor immigrant workers. In particular, IRS could benefit because businesses applying to sponsor immigrant workers that had not filed a tax return or paid taxes would need to come into compliance. IRS data can also enable USCIS adjudicators to make more accurate eligibility decisions by better identifying businesses that may not have met immigration eligibility criteria because they had unpaid assessments or did not file tax returns. Further, obtaining IRS data has the potential to improve the timeliness of benefit decisions by (1) decreasing rework/follow-up work and (2) potentially resulting in fewer applicants if benefits are contingent on having met tax filing and payment requirements.

A Change in Eligibility Rules Is Key to IRS Benefiting from a Data-Sharing Relationship with USCIS

Compliance with Payment of Taxes

IRS could benefit from data sharing with USCIS if certain taxpayers, such as business sponsors who owe taxes, were required to be in compliance

with tax filing and payment requirements to qualify for immigration benefits such as sponsoring immigrant workers. Our analysis of automated immigration records matched against IRS databases showed that 18,942 businesses applying to sponsor immigrant workers from 1997 through 2004 had $5.6 billion in unpaid assessments,[19] as of December 2003 (app. II). Many were not paying their tax bill or making payments towards fulfilling their tax obligations. As of December 2003, business sponsors from our nationwide selection who were not in installment agreements with the IRS or otherwise making payments to IRS, for taxes due, had unpaid assessments totaling $3.7 billion.[20] Although these businesses with past applications to sponsor immigrant workers would not be affected by a change to requirements for sponsoring workers since they have already received immigration benefits, USCIS officials said that businesses that apply to sponsor workers tend to do so in multiple years. If businesses were required to meet their tax obligations, to the extent that future business sponsors owe taxes, they would need to pay their tax bill or make payment arrangements with the IRS to come into compliance before becoming eligible to sponsor immigrant workers to enter the country. USCIS officials said a statutory change would be preferable to a regulatory change because, although they acknowledge no explicit prohibition exists in immigration laws against conditioning approval of employer petitions on their tax compliance, they have serious legal concerns about USCIS's authority to issue such a regulation absent specific statutory authority.

Although changing the eligibility requirement would likely help bring taxpayers with unpaid assessments into compliance, IRS would be unlikely to recover all taxes owed by the businesses. IRS officials commented that some businesses, even if they came forward to IRS, would not be able to repay their full debt. USCIS officials made a similar comment and added

[19]Unpaid assessments consist of (1) federal taxes receivable, which are taxes due from taxpayers for which IRS can support the existence of a receivable through taxpayer agreement or a favorable court ruling; (2) compliance assessments where neither the taxpayer nor the court has affirmed that the amounts are owed; (3) write-offs, which represent unpaid assessments for which IRS does not expect further collections due to factors such as the taxpayer's death, bankruptcy, or insolvency; and (4) "memo," a module which includes duplicate assessments, fraudulent returns, and cases the IRS/taxpaying entities need to resolve due to overstatements or understatements.

[20]Of the $5.6 billion in unpaid assessments owed by these businesses, business sponsors had entered into installment agreements and payment arrangements for $168 million of the unpaid assessments. An additional $1.7 billion in unpaid assessments that had not been affirmed, had been judged by IRS to have no future collection potential, or were from duplicate or fraudulent returns.

some businesses may decide not to apply for immigration benefits knowing they are not in compliance with tax filing and payment requirements. Further, either IRS would only be able to pursue collection for business sponsor cases that exceed thresholds IRS uses in determining how many cases to pursue or, if IRS took steps to collect taxes in all of these cases, it would be unable to work other cases. As we have reported previously, IRS has too many compliance cases to work.[21]

Compliance With Filing of Taxes

Immigration data appear less likely to be useful to IRS for identifying applicants who do not file tax returns. For instance, we identified 33 business/entity sponsors from our nonprobability sample who appeared to be unknown to the IRS because they did not show up in any of six different IRS databases.[22] An IRS investigation of the 33 revealed no productive compliance leads. IRS determined most of the sponsors—businesses and religious organizations—were either tax exempt, had no filing requirement, or were no longer liable for the tax. However, these 33 cases were a small fraction of the almost 20,000 business sponsors that appeared to be unknown to IRS based on our nationwide selection of USCIS business sponsor applications (see app. II).

In the mid-1980s, IRS and USCIS entered into a cost-reimbursable data-sharing arrangement under which USCIS shared immigrant data with IRS by completing IRS Form 9003.[23] According to IRS officials, IRS used Form 9003 information to help identify whether individuals who filed for U.S. permanent residency had filed tax returns and properly reported their income. IRS and USCIS shared Form 9003 data for about 10 years but ended this arrangement in 1996. Much of the form 9003 immigrant data received from USCIS lacked SSNs--a primary mechanism IRS uses for tracking individual taxpayers, which made it increasingly difficult for IRS to use the data to determine whether individuals had filed taxes and

[21]GAO, *Compliance and Collection: Challenges for IRS in Reversing Trends and Implementing New Initiatives*, GAO-03-732T (Washington, D.C.: May 7, 2003).

[22]GAO-04-972T.

[23]USCIS completed Form 9003 whenever an immigrant filed for lawful permanent residency status. The form contained personal identifying information on the immigrant such as name and SSN as well as financial information on an individual's income. USCIS provided a contractor with the Form 9003, and the contractor then transcribed the Form 9003 immigrant data onto tape and sent it to IRS's Martinsburg Computing Center. IRS conducted matches of the Form 9003 immigrant data against its own databases to determine whether the individuals had filed taxes and properly reported their incomes.

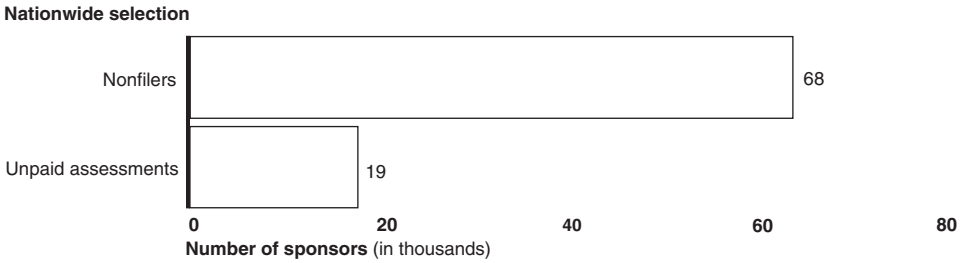
properly reported income, according to IRS officials. Additionally, the costs associated with the data-sharing agreement escalated each year, to the point that, in IRS's view, it was no longer cost effective.

USCIS Can Benefit from Data Sharing with IRS in Making Immigration Eligibility Decisions

More Accurate Immigration Eligibility Decisions

IRS data can enable USCIS adjudicators to make more accurate eligibility decisions by better identifying businesses that may not have met immigration eligibility criteria. Our matching of immigration and taxpayer data identified business sponsors that may not meet immigration financial feasibility and legitimacy tests because they have failed to file tax returns and/or pay all of their taxes. Sixteen percent of businesses from our nationwide selection (67,949 of 413,723 businesses) applying to sponsor immigrant workers did not file one or more tax returns at the time of their application to sponsor an immigrant worker between 1997 and 2004 (app. II). Twenty four percent of businesses (112 of 475 businesses) from our nonprobability sample that applied to sponsor immigrant workers did not file one or more tax returns at the time of their application to sponsor an immigrant worker between 2001 and 2003 (app. II). Five percent of sponsors from our nationwide selection (18,942 of 413,723 businesses) and 20 percent of businesses in our nonprobability sample (94 of 475 businesses) had unpaid tax assessments at the time of application. As of December 2003, for the nationwide results, the assessments totaled $5.6 billion and for the nonprobability sample results, the assessments totaled $39 million (app. II). Filing and paying taxes is an indicator that financial feasibility and legitimacy tests are met. Figure 2 shows matching results identifying business nonfilers and those with unpaid assessments from our nationwide selection.

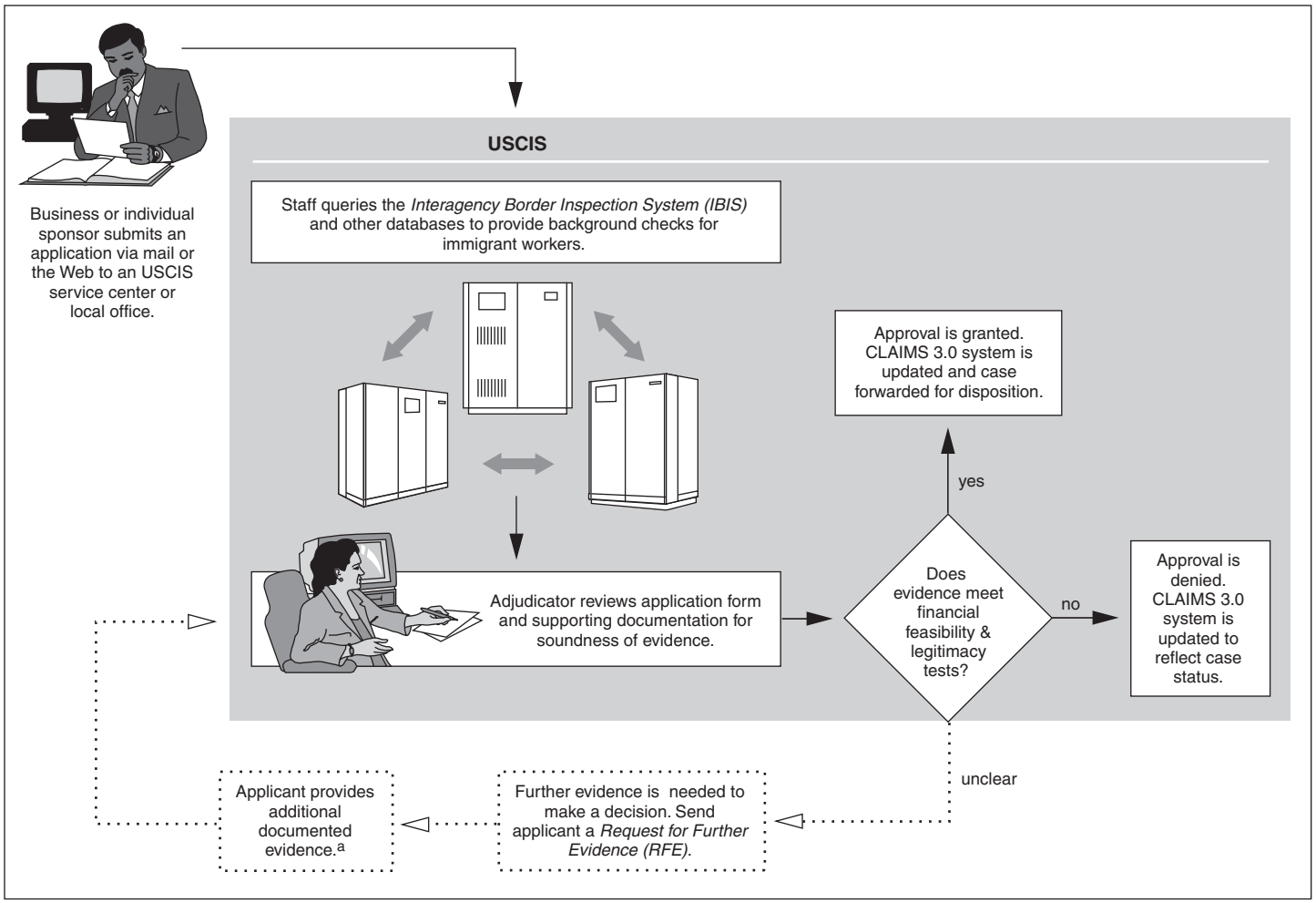
Figure 2: Businesses Sponsoring Immigrant Workers That May Not Have Met USCIS's Financial Feasibility or Legitimacy Requirements, 1997-2004



Source: GAO analysis of taxpayer and immigration data.

Immigration adjudicators use applicants' self-reported personal and financial information plus third party data to make decisions about granting benefits to immigration applicants. For businesses applying to sponsor immigrant workers—employment-based applications—immigration adjudicators use financial information for evaluating two basic eligibility criteria for businesses sponsoring immigrants: (1) the sponsor's financial feasibility and (2) the legitimacy of the sponsor's existence. Financial feasibility refers to the sponsor's ability to pay wages to or financially support the individual being sponsored. For example, if a company is sponsoring an immigrant for employment, that company must show that it has sufficient ability to pay the worker. Information on tax returns filed with IRS show income levels and these could be used to validate applicant-provided information. Legitimacy, in the case of employment-based petitions, refers to whether a sponsoring business or organization actually exists, has employees, and has real assets. Figure 3 depicts an overview of the adjudication process for employment-based applications.

Figure 3: USCIS General Adjudication Process for Employment-Based Applications to Sponsor Immigrant Workers



Source: GAO analysis of USCIS data.

[a]Some applicants may choose not to provide additional evidence, thereby ending the adjudication process.

Since adjudicators receive self-reported—and sometimes false—personal and financial information from applicants, they sometimes obtain additional or different documentation from the applicant or third parties. For example, at the time of application or during the adjudicatory process, applicants may be required to provide additional documentation, such as tax returns from IRS or unofficial copies to verify financial information reported on immigration forms. However, immigration officials we spoke with in five field locations said applicants could alter or falsify those

documents. According to USCIS officials, designing a data-sharing arrangement that includes verification of applicant-provided data during the adjudicatory process would be useful to USCIS adjudicators for the financial feasibility and legitimacy tests and afford more accurate immigration eligibility decisions. Additionally, with an eligibility change as discussed earlier, business sponsors would be required to file tax returns, pay amounts due, or make payment arrangements with IRS before qualifying for immigration benefits. This, in turn, could result in a higher likelihood of USCIS getting applications from business sponsors that have met their tax filing and payment obligations, thereby more likely meeting USCIS's financial feasibility and legitimacy criteria. USCIS could then better assure that it was granting benefits to those business sponsors that accurately meet their criteria.

USCIS Ombudsman and representatives of immigration advocacy groups have concerns about data sharing and immigration eligibility for business sponsors. Although the Ombudsman acknowledged the benefits of data sharing, he was concerned that another step in the immigration application process could be more cumbersome for business sponsors. He questioned the type of information IRS would share and said businesses in dispute with the IRS should not be prevented from applying for benefits while the dispute is being resolved. A representative from one advocacy group expressed several concerns on behalf of business sponsors including:

- Increased delays in the immigration process - from their perspective, any additional step in the application process could lengthen the time between when a business decides to sponsor a worker and obtaining USCIS's approval.

- Problems with improving USCIS's technological capabilities – according to the immigration advocate, USCIS is still mostly paper-driven and therefore it is questionable as to whether they could share data electronically.

- Special tax issues related to small businesses – many small business sponsors file tax extensions and, therefore, may not have readily available tax documents. Additionally, newer small businesses have no tax history.

- Adjudicator training – adjudicators need to understand how to read and interpret business tax documents because many, in the advocate's opinion, have no training in dealing with those complicated documents.

A representative of another immigration advocacy group also voiced the same concern about adjudicator training and added that implementing data sharing may be more useful in dealing with small- and medium-sized businesses because, based on their experience, larger businesses are less likely to be involved in immigration fraud. In addition, although not mentioned by USCIS officials, one potential unintended effect of data sharing might be an increased incentive to employ illegal workers. That is, if a business knew that its tax status would be checked by USCIS, or if it was required to meet tax filing and payment obligations before sponsoring immigrant workers, some businesses might decide to meet their labor force needs with workers not properly authorized to work in the United States. Smaller employers, who are more likely to have tax compliance problems according to IRS, may be more likely to make this choice than larger-sized businesses.

According to USCIS officials, adjudicators would find IRS information on small businesses particularly useful since they are limited in their ability to assess these businesses' financial feasibility and legitimacy. IRS has also encountered problems in corroborating financial information provided by small businesses and its research generally shows higher noncompliance among its small business population.[24] Among our nonprobability sample, 25 of 43 business sponsors with unpaid assessments reported their net incomes as less than $10 million on USCIS employment-based applications.[25] Additionally, USCIS has begun a series of benefit fraud assessments, which take a random sample of applications filed within certain immigrant and nonimmigrant categories and assess them for fraud by verifying key data reported. Based on the results of their fraud assessments, USCIS could focus on businesses that are more prone to fraud to match IRS data against in determining their financial feasibility and legitimacy.

The type of taxpayer data USCIS adjudicators find useful could change under a USCIS proposal to revise regulations for employment-based

[24]IRS classifies small businesses as all sole proprietorships, partnerships, and corporations with assets of $10 million or less. The USCIS application forms for business sponsors we examined asked for net income and gross income instead of assets.

[25]Our non-probability sample revealed 94 businesses with unpaid assessments (see app. II). However, 47 of those businesses did not report net incomes on their USCIS application forms and 4 reported negative net incomes. We did not include these in our analysis of businesses with net incomes of less than $10 million.

immigration applications.[26] USCIS officials are seeking to revise requirements since they believe that (1) establishing the validity of the sponsor is sufficient to meet immigration statutory requirements[27] and (2) adjudicators were spending too much time trying to establish a sponsor's income levels for well-known or established businesses. In the interim, in May 2004, USCIS issued updated guidance to adjudicators directing them not to reestablish a sponsor's ability to pay with its USCIS Form I-485, Application to Register Permanent Residence or to Adjust Status (see app. II) to minimize processing delays. If this regulatory change is made, IRS taxpayer data could still help adjudicators establish the legitimacy or the bona fide nature of a business sponsor. According to USCIS officials, if the proposed regulation were adopted, USCIS would still need tax documents but would no longer need specific income information from tax returns. USCIS adjudicators would need tax return information such as whether the sponsor filed income tax returns, what years they filed, how many employees they had, and if they paid taxes, and they would need to further evaluate whether additional IRS information would be useful. USCIS would need specific income information from the tax return, such as adjusted gross income, only in cases where the initial information provided by IRS raised questions about the sponsor for USCIS (e.g., if the employer had unpaid assessments or was a nonfiler). As of July 2005, the proposed regulatory change was with DHS's legal office, awaiting approval.

More Timely Immigration Eligibility Decisions

USCIS officials said that access to IRS taxpayer data could also improve the timeliness of making benefit decisions primarily because it could decrease the rework and follow-up work with the applicant. For example, adjudicators said that if they could match applicant data against IRS data early in the review process, they would spend less time researching and following up on the validity of applicant-provided data (e.g., sending fewer RFEs to applicants; see figure 3 for an overview of the adjudicatory process). According to adjudicators, it could take as long as 12 weeks to receive responses from applicants for a certified IRS tax return, during which time, the application file sits on a "suspense" shelf, thereby extending the application processing time. Due to this time gap, in certain cases, background checks must be redone, which further lengthens the application-processing time. As we reported in May 2001, USCIS officials said that lengthy processing times had resulted in increased public

[26] 8 CFR 204.5(g)(2).

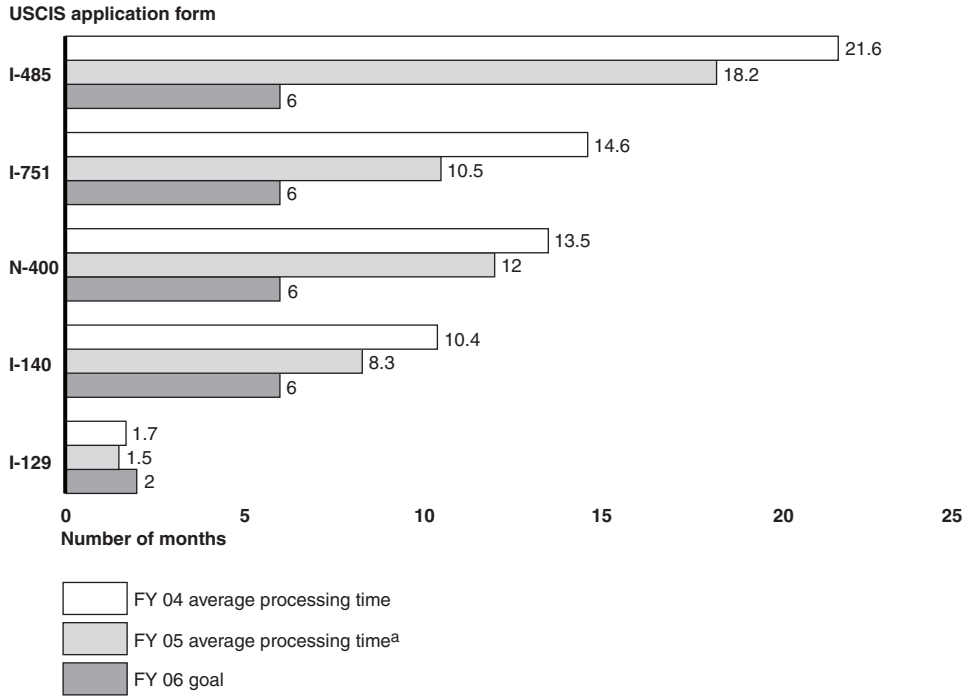
[27] 8 U.S.C. 1154.

inquiries on pending cases, which, in turn, caused USCIS to shift resources away from processing cases to responding to inquiries, adversely affecting processing time.[28]

Under a presidential initiative, USCIS has a 5-year, $540 million effort under way intended to reduce its backlog of applications, and ensure a 6-month average processing time per immigration application by the end of 2006. While USCIS has made progress on meeting most of its fiscal year 2004 and 2005 processing time goals, which range from 2 months to 20 months, its overall goal is to reduce processing time to 6 months in fiscal year 2006. This will be difficult because USCIS's fiscal year 2004 and 2005 average processing times for some forms are more than twice as long as its fiscal year 2006 goal of a 6-month processing time. As Figure 4 shows, for three of the six forms we examined—the I-485 (Application to Register Permanent Residence or to Adjust Status), I-751 (Petition to Remove the Conditions on Residence), and N-400 (Application for Naturalization),—USCIS will need to cut its application processing times by more than 50 percent by fiscal year 2006 to meet its goal and thereby improve the timeliness of eligibility decisions.

[28]GAO, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing*, GAO-01-488 (Washington, D.C.: May 4, 2001).

Figure 4: Average Reported Processing Times for Fiscal Years 2004 and 2005 and Fiscal Year 2006 Processing Time Goal for Select USCIS Forms



Source: GAO analysis of USCIS data.

Note: USCIS application forms are described in app. II. USCIS provided us with processing times for five of the six forms we examined.

[a]FY 2005 times are reported through May 2005.

In his fiscal year 2006 budget request, USCIS's director stated "Although we are on track to achieve the President's backlog elimination mandate, we fully realize that funding alone will not enable us to achieve this goal…I have worked closely with the leaders in USCIS to continually review our processes, identify opportunities for streamlining and further improvement, and to implement meaningful change."[29] USCIS's director is looking for opportunities to further streamline the adjudicatory process, and, as stated previously, USCIS adjudicators said that if they could match applicant data against IRS data early in the review process, they would

[29]*"The President's FY 2006 Budget Request"*, Statement of Eduardo Aguirre, Jr., Director, USCIS, U.S. Department of Homeland Security before the House Committee on Appropriations, Subcommittee on Homeland Security, Mar. 17, 2005.

spend less time researching and following up on the validity of applicant-provided data, which could reduce USCIS's processing times for business sponsors' applications.

USCIS staff in headquarters said that changing immigration eligibility to require proof of tax filing and payment compliance for business sponsors may also deter businesses that are not filing and paying their taxes from submitting immigration applications because they would know that USCIS would deny their applications. If so, this could somewhat reduce the volume of applications received and, thereby contribute to quicker application processing times.

IRS and USCIS Have Data-Sharing Options but Each Presents Challenges

A variety of options is available to IRS and USCIS for establishing and implementing data sharing. An applicant-initiated data-sharing relationship could be implemented under existing IRC authority through a taxpayer consent, whereby a taxpayer authorizes IRS to disclose his or her information to other agencies. Under an agency-initiated option, agencies could share information directly with each other in an electronic format, a process that is viewed as more efficient and desirable by USCIS and IRS officials. However, achieving such efficient data sharing may take time due to various legal, technological, and cost challenges that must be overcome. Establishing user fees to cover data-sharing costs are a way agencies can fund these various data-sharing options, but IRS lacks authority to include in its user fees the costs for bringing non-compliant business sponsors into compliance or to retain such fees.

Applicant-Initiated Option Could Be Implemented Using Existing Disclosure Authority

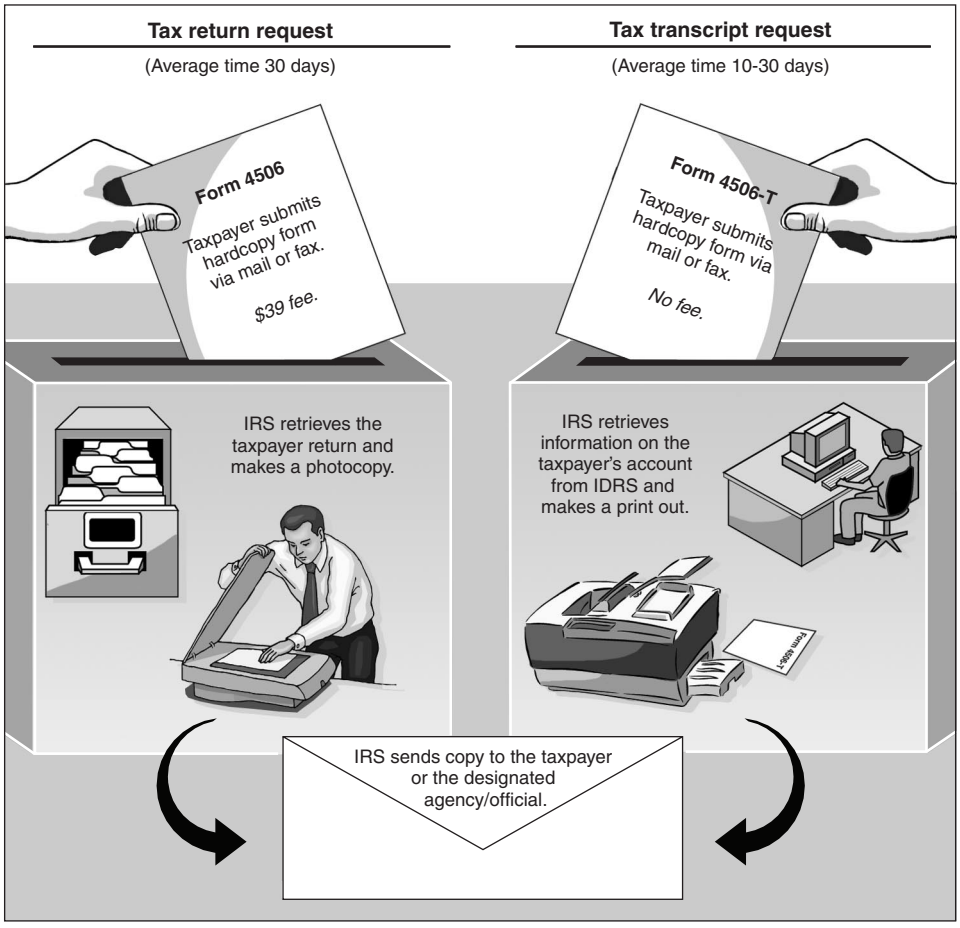
Taxpayer Consents Under Existing Disclosure Authority

One option for establishing data sharing between IRS and USCIS is to use an existing authority within the Internal Revenue Code (IRC). USCIS is not currently authorized to directly receive taxpayer information for immigration eligibility decisions under IRC Section 6103. However, individual taxpayers could authorize IRS to disclose their tax return information to agencies like USCIS through a taxpayer consent submitted either via paper or electronically. The consent must be in the form of a separate written document pertaining solely to the authorized disclosure –

with text appearing on a paper document or text appearing on a separate computer screen. The consent must include: (1) taxpayer identity information (i.e., name, address, SSN or EIN); (2) the designee to whom the disclosure is to be made; (3) the type of tax return (or specified portion of the return) or return information (and the particular data) that are to be disclosed; and (4) the tax year or years to be covered. The consent must be signed and dated by the taxpayer who filed the return or to whom the return information relates and IRS must receive the consent within 60 days of the taxpayer's signature and date.

Taxpayers use the Form 4506, Request for Copy of Tax Return, and the Form 4506-T, Request for Transcript of Tax Return, to authorize the paper consent. A tax return can show that the taxpayer filed a tax return and a tax transcript can show whether the taxpayer had a filing requirement, owed taxes, or paid taxes. Figure 5 is an overview of the way IRS processes paper consents, any costs to the taxpayer, and the average turnaround times.

Figure 5: Process for Retrieving Tax Return and Tax Transcript Information



Source: GAO analysis of IRS data.

Note: According to IRS officials, taxpayers who live in disaster relief areas do not have to pay the $39 fee.

IRS paper consents permit the agency to verify for a third party whether a taxpayer has been filing required tax returns and paying his or her taxes. These verifications may be referred to by various names but can be generically called "tax checks."[30] They are often done in connection with a

[30]The state of Kansas refers to this verification as a tax clearance, which is defined as a thorough taxpayer account review (of all tax types) to ensure the account is current, properly registered, and compliant with all Kansas tax laws.

taxpayer's application for benefits, licensing, or employment. Entities that use tax checks include mortgage institutions, major banks, financial institutions, state revenue agencies, and federal agencies. States are the biggest users of taxpayer information. According to an official with the Federation of Tax Administrators, many states have a taxpayer consent requirement, along with their own consent form, to require potential employees or contractors to consent to a state tax check as a condition of employment or to receive a license. When states verify individual and business compliance with state tax requirements, they are also able to determine federal compliance as permitted by IRC 6103(d), since states routinely receive extracts of IRS taxpayer information (See table 3 for examples of state and private entities that require tax checks.).

For example, an Executive Order permits the state of Kansas to require a tax check in order for individuals and businesses to qualify for state employment or state contracts. State law also permits the rejection of a business's application if the business owes the state taxes. Further, Kansas requires a tax check on all new and renewing vehicle dealership licenses. A March 2003 Kansas Legislative Audit Report found 514 motor vehicle dealers who owed $7 million in state sales tax. Before a business can apply or renew its dealership license at the state's Division of Motor Vehicles (DMV), the business must present to the DMV proof that it fulfilled its state tax filing and payment requirements. According to an official with the Kansas Secretary of Revenue, for an active dealer, the threat of license revocation provided an incentive to bring non-compliant businesses into compliance. Businesses with unpaid assessments either paid their assessments or set up a payment plan. The state increased its car dealer tax compliance rate by 97 percent, according to an official with the Kansas Secretary of Revenue.

Table 3: Examples of State and Private Entities That Require Tax Checks

Entity	For What Purpose	Criteria To qualify for…
Banks/financial institutions	Income verification	A mortgage
Kansas	Tax compliance	Employment
		Vehicle dealer license
Maryland	Tax compliance	Business and professional license
Missouri	Tax compliance	Building permits
		Professional license

Source: GAO analysis.

As noted previously, IRS taxpayer consents can also be implemented electronically. Similar to the paper consent, the electronic consent must indicate taxpayer identity information, the designee to whom the disclosure is made, the type of return information that is to be disclosed, and the tax year or years covered. USCIS officials are agreeable to using taxpayer consents if they could be implemented electronically in a way similar to an electronic verification pilot project that was undertaken by IRS and the Department of Education (Education). In the pilot, students who wanted to qualify for financial aid authorized the IRS to release their tax information to their academic institutions via the Internet. After authorizing the release, IRS sent the individuals' tax transcripts directly to the schools. This procedure then resolved any inconsistencies between information on the tax transcripts and on financial aid applications.[31]

Challenges Using Taxpayer Consents

One challenge agencies face in implementing data sharing based on taxpayer consents is the costs IRS and USCIS would incur to make data sharing work. Taxpayer consents can be costly and resource intensive when using paper, according to IRS officials. For example, IRS processed approximately 340,000 paper return and transcript requests at an IRS estimated cost of about $6.2 million (see table 4) during fiscal year 2004. Furthermore, the process can be paper intensive since IRS typically receives only hard copies of taxpayer consents. The agency only accepts paper requests via mail or fax, and no electronic versions of the paper copies (e.g., scanned copies cannot be e-mailed to IRS) are accepted. The

[31]GAO, *Taxpayer Information: Increased Sharing and Verifying of Information Could Improve Education's Award Decisions*, GAO-03-821 (Washington, D.C.: July 18, 2003).

process also can be time intensive. For example, the average processing turnaround time to process a copy of a tax return is 30 days; and the average turnaround time for a tax transcript is 10 to 30 days.

Table 4: Examples of Operational Data on the Paper Taxpayer Consent Process

Process	Volume of information shared	Data-sharing method	Turnaround time	Annual processing cost
Request for copy of tax return	161,000	Mail or fax	30 days	$2.9 million
Request for transcript of tax return	179,000	Mail or fax	10 to 30 days (48 hours for bulk requests)	$3.3 million

Source: IRS.

USCIS officials are reluctant to use a paper consent because the agency is moving from a paper to an electronic environment. USCIS officials warned that requiring applicants to consent to a paper or electronic tax check would necessitate business process and procedural changes by USCIS, as well as an education process to the immigration community and the third parties that assist petitioners with their applications. USCIS officials said that requiring business and individual applications to undergo a tax check could strain already limited agency resources. USCIS application data showed the estimated annual volume for the six immigration forms we reviewed totaled about two million for fiscal year 2004. USCIS officials said implementing a tax check for employment-based business applications—estimated to be at least 180,000 for fiscal year 2004—would be less difficult to process than the six application forms that require financial information. Also, because the same business sponsor could file applications more than once in a year, depending on how USCIS implemented the requirement for a tax check, it could be valid for a certain period of time according to whatever policy USCIS established. Subsequently, the business would not have to undergo a tax check every time it sponsored a worker, which would not strain USCIS's resources.

Although use of tax data has helped some federal agencies better administer their programs, some are concerned that widespread use of taxpayer consents may undermine taxpayers' right to privacy and, subsequently, voluntary tax compliance. The confidentiality of tax data is considered by many to be crucial to voluntary compliance. The Joint

Committee on Taxation and Treasury's Office of Tax Policy warn that the use of consents for programmatic governmental purposes potentially circumvents the general rule of taxpayer confidentiality because the taxpayer waives certain restrictions on agencies' use of the data. When such waivers are granted, agencies are not obligated to follow the recordkeeping, reporting, and safeguard requirements that apply to tax data, although the less stringent requirements of the privacy act may still apply. IRS's National Taxpayer Advocate stated in 2003 that "Widespread use of tax information by federal or state agencies will, in fact, undermine our tax administration system," and that "A change in tax compliance of even one percentage point equates to an annual loss of over $20 billion of revenue to the federal government." In its October 2000 report to the Congress on taxpayer confidentiality, Treasury's Office of Tax Policy recommended that before a government program is allowed to use taxpayer consents, the requesting agency should first conduct a statistical test match or a small-scale pilot.[32] If that test or pilot demonstrates that the program's need for information outweighs concerns about taxpayer privacy and voluntary tax compliance, then Treasury will determine whether the agency can proceed with a limited program using taxpayer consents or whether a legislative amendment should be sought permitting direct access.

Agency-Initiated Electronic Option Is Seen as More Efficient, but Additional Authority Would Be Needed

Specific Disclosure Authorities for Sharing Data Electronically

Another option for data sharing is direct agency-to-agency sharing. Such data-sharing arrangements are enabled by specific statutes or regulations and, in the case of electronic data matching, have written agreements between agencies. Education, SSA, and the Centers for Medicare and Medicaid Services (CMS) are examples of agencies that have existing data-sharing relationships with IRS using electronic media such as a magnetic tape. These agencies are able to share data with IRS because they were each given specific authorities under IRC Section 6103, which authorizes

[32]U.S. Department of the Treasury, Office of Tax Policy, *Report to Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions*, *Vol. 1: Study of General Provisions* (Washington, D.C.: October 2000).

the disclosure of a taxpayer's return information and tasks IRS with oversight of safeguards for taxpayer information. Further, agencies enter into a computer matching agreement (CMA), which outlines the purpose for the data-sharing relationship, the information to be shared, the method of sharing, the approximate number of records to be shared, the frequency of sharing, and the length of the data-sharing arrangement. The requesting agency is required to attach to the CMA an analysis that measures the costs and benefits associated with a data-sharing arrangement with IRS. Agencies must also provide IRS an annual report on their security safeguards that protect against any unauthorized access or disclosure of data received during the arrangement.

As shown by the examples in table 5, each agency's data-sharing relationship with IRS differs in terms of the number of records shared, the method and frequency of sharing, the annual cost to the agency, and the cost per record.

Table 5: Characteristics of Selected Electronic Data-Sharing Arrangements between IRS and Federal Agencies

Agency	Purpose of data-sharing relationship	IRC Section 6103 Provision	Annual number of records	Data-sharing method	Frequency	Annual cost to agency	and cost per record
Education	Education obtains the current addresses of those taxpayers who have defaulted on their student loan.	6103(m)(4)	4.6 million	Magnetic tape	Weekly	$819,000	$.18/record
SSA	SSA determines eligibility for its cash assistance program for the poor.	6103(1)(7)	26 million	Magnetic tape	Monthly	$5.7 million	$.22/record
	SSA identifies Medicare-eligible individuals with insurance coverage to avoid duplicate payment for health services.	6103 (1)(12)	40 million	Magnetic tape	Annually	$8.2 million	$.21/record
CMS	CMS determines eligibility for its prescription drug program.	6103(l)(19)	1,064,685	Computer file	Daily	$129,858	$.12/record

Source: CMAs.

Note: With the exception of CMS's FY 2004 actual figures, all other agency figures are estimated based on the 18-month duration of the matching agreement. Education's figures are estimated for February 2001 through August 2002. The first SSA program's figures are estimated for July 2003 through December 2004. The second SSA program's figures are estimated for October 2000 through March 2002.

Electronic Data Sharing between IRS and the Department of Education

The Department of Education obtains the mailing addresses of taxpayers for use in collecting debt from students who have defaulted on loans. Under the Taxpayer Address Request program, as authorized by IRC Section 6103(m)(4), Education furnishes the name and SSN of each defaulted student to the IRS. IRS then matches the information to its records and provides Education the most recent address for the taxpayer. Education sends about 4.6 million records annually to IRS for matching.

Electronic Data Sharing between IRS and the Social Security Administration

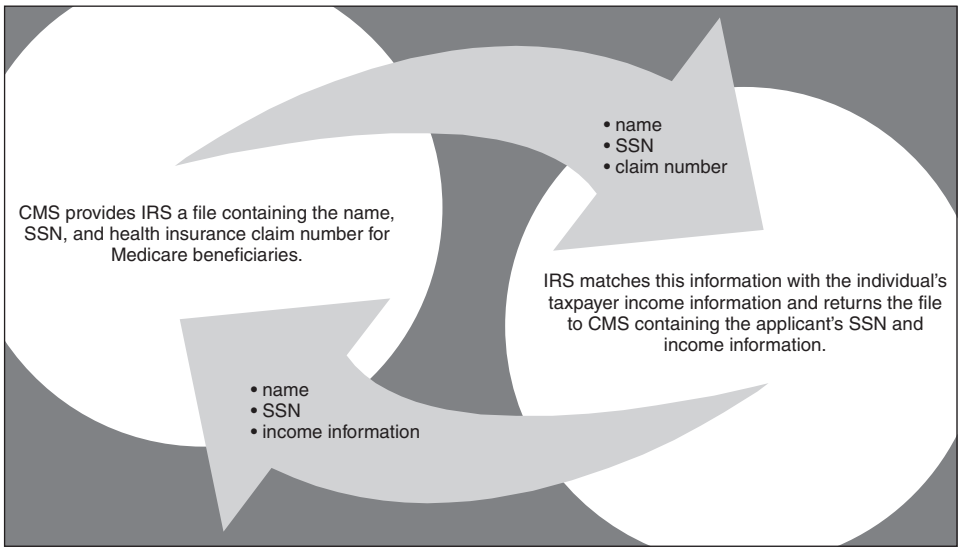
SSA is using each section within IRC Section 6103 that authorizes the disclosure of taxpayer information by IRS to SSA for benefit eligibility purposes. For example, the Disclosure of Information to Federal, State, and Local Agencies, under IRC Section 6103(l)(7), enables SSA to request and use taxpayer information from IRS to determine the eligibility of applicants and recipients of Supplemental Security Income, the nation's largest cash assistance program for the poor. SSA officials estimate a savings of approximately $48 million annually with this data-sharing relationship. In addition, with the Medicare Secondary Payer Program, as authorized by IRC Section 6103(l)(12), SSA, through information collected from employers of working-aged beneficiaries and Medicare-eligible spouses such as name and SSN, is able to avoid duplicate payments for services by identifying Medicare-eligible individuals who have primary coverage through a group health plan. This data-sharing relationship's annual savings are estimated at $463 million.

Electronic Data Sharing between IRS and the Centers for Medicare and Medicaid Services

The most recent data-sharing relationship under IRC Section 6103 is between IRS and CMS in which CMS uses taxpayer information on a daily basis to determine eligibility for the Transitional Assistance Program, which provides up to $600 to individuals to purchase prescription drugs. IRC Section 6103(l)(19) authorizes IRS to disclose to CMS specified tax return information of applicants for transitional assistance to help CMS identify eligible applicants. Figure 6 describes how the data matching occurs. In fiscal year 2004, CMS sent IRS about one million records for

matching, and this data-matching arrangement cost CMS approximately $130,000.

Figure 6: Flow Chart on the Medicare Prescription Drug Process



Source: GAO analysis of CMS data.

Electronic Data Sharing via Transcript Delivery System

IRS offers electronic service, or e-service, products that are accessed directly by authorized third parties such as tax practitioners and state revenue agencies. Available since July 2004, the Transcript Delivery System (TDS) allows authorized third parties to immediately, electronically access taxpayer transcript information like the return transcript, account transcript, record of account, and verification of nonfiling—products that otherwise are available via the paper consent Form 4506-T. Tax practitioners can use this service if the taxpayer authorizes disclosure via Form 2848, Power of Attorney, which must be on file with IRS before the practitioner can request and receive a taxpayer's data. This type of disclosure is authorized via IRC Section 6103(e)(6). Only three states are currently using TDS, as authorized by IRC Section 6103(d).

The TDS e-services are Internet based and authorized users can access them from any computer with minimal Internet capabilities. The authorized individual retrieving taxpayer information inputs the request, and the

information is accessed immediately. For fiscal year 2004, IRS estimates that it cost about 4.8 cents to provide access to a transcript using TDS.[33]

Challenges Associated with Electronic Data Sharing

Legal Challenge of Data Sharing

Electronically sharing taxpayer information directly from IRS to USCIS without a taxpayer consent has a number of legal, technological, and cost challenges if it is used for immigration benefit purposes. In order to electronically share information without first obtaining taxpayers' consent, IRC Section 6103 would need to be changed to authorize IRS to disclose taxpayer information directly to USCIS for immigration eligibility purposes. Over the years, a number of exceptions have gradually been added to IRC Section 6103 that allow access to taxpayer information. As mentioned previously, some are concerned that disclosing taxpayer data could affect the taxpayer's right to privacy and, subsequently, undermine voluntary tax compliance. According to Treasury, the burden of supporting an exception to IRC Section 6103 should be on the requesting agency, which should make the case for disclosure and provide assurances that the information will be safeguarded appropriately. Table 6 lists the criteria Treasury and IRS have applied when evaluating specific legislative proposals to amend IRC Section 6103 for governmental disclosures.

Table 6: Criteria Applied by Treasury and IRS When Evaluating Specific Proposals for Governmental Disclosures

Criteria to be addressed by the requesting agency	Is the requesting information highly relevant to the program for which it is to be disclosed?
	Are there substantial program benefits to be derived from the requested information?
	Is the request narrowly tailored to the information actually necessary for the program?
	Is the same information reasonably available from another source?

[33]TDS was accessible in July 2004; thus, actual data are not available for the 3 months of access during fiscal year 2004.

(Continued From Previous Page)

Criteria to be addressed by the requesting agency and Treasury/IRS	Will the disclosure involve significant resource demands on IRS? Will the information continue to be treated confidentially within the agency to which it is disclosed, pursuant to standards prescribed by IRS? Other than IRC Section 6103, are there any statutory impediments to implementation of the proposal?
Criteria to be addressed by Treasury/IRS	Will the disclosure have an adverse impact on tax compliance or tax administration? Will the disclosure implicate other sensitive privacy concerns?

Source: Office of Tax Policy, Department of the Treasury.

Technological Challenges of Electronic Data Sharing

USCIS must also address a number of technological challenges to lay the foundation that would enable data sharing to take place between the two agencies. For example, in our July 2004 testimony, we reported that:

- USCIS does not maintain any automated financial data on applicants. Although USCIS automates certain personal information from benefit applications, such as an individual's name and alien registration number, it does not automate any financial data that are reported on the benefit application or in accompanying documents such as tax returns.

- USCIS systems contain some inaccurate data. We and the Department of Justice's Office of Inspector General have criticized USCIS systems because they contain some inaccurate data for identifying pieces of information that identifies applicants (such as immigrants' addresses).

- USCIS and IRS databases do not always have a common numerical identifier for tracking individuals or businesses. USCIS uses alien registration numbers as tracking identifiers whereas IRS uses SSNs or EINs. Although USCIS's systems capture SSNs/EINs if they are provided on applications, USCIS does not require them to be entered into its systems. Thus, even though business sponsors should all have SSNs (if sole proprietor) or EINs (if another form of business), USCIS may not have entered the number into automated databases and therefore cannot match directly to IRS records.

These limitations in USCIS's record keeping would make electronic sharing of data between USCIS and IRS less productive than it otherwise could be, regardless of whether the data sharing was done directly between the

agencies pursuant to a change in IRC Section 6103 or whether done through taxpayer consents. USCIS officials recognize that these problems could interfere with achieving data sharing in the fully electronic environment that they hope to achieve for adjudicators, but if a policy decision was made to share data, they believe that some form of electronic data sharing could be achieved relatively quickly without major technological improvements. The officials believe that USCIS could develop interim solutions while other USCIS transformation activities are under way. For example, these officials said USCIS could modify its existing automated systems to add a SSN/EIN identifier, and could adopt procedures to ensure the identifiers are routinely entered in all locations. They view this as a business process and policy challenge rather than a technological challenge. They also believe they could link the existing USCIS record identifiers to SSNs and EINS to enable data sharing to take place with IRS relatively quickly.

Officials did offer some cautions about how quickly even these changes could be implemented. For example, they said that although adding a SSN/EIN identifier to their existing systems may only take a few months, changing immigration forms and notifying adjudicators and the larger community about the change could take much longer. As mentioned previously, these officials contend that establishing a new immigration requirement on applicants for a tax check will necessitate business process and procedural changes by USCIS, as well as an education process to the immigration community and the third parties that assist petitioners with their applications, which could take years. Finally, these USCIS officials pointed out, and the agency's fiscal year 2006 budget request reflects, that the agency's current priorities fall into three areas: (1) enhancing national security, (2) eliminating the immigration benefit application backlog, and (3) improving customer service. They stated that implementing changes to enable data sharing with IRS might take a longer time because it is not one of the agency's three main priorities.

If data sharing were to occur, officials ultimately would prefer to have it integrated into a transformed USCIS information technology (IT) environment. Since July 2004, USCIS has taken a number of steps to improve IT capability. In March 2005, USCIS unveiled its IT transformation plan that USCIS describes as a large scale and complex program to increase capabilities, streamline processes and support the collection of service fees. As such, the overall planned IT upgrade includes changes, which will improve the agency's overall IT environment as well as facilitate data sharing such as:

- Moving from a paper to an automated environment;
- Adding a unique identifier to track records for background checks;[34]
- Implementing electronic adjudication whereby adjudicators will be able to review immigration applications and supporting evidence online, among the first increments of the IT upgrade.

Of the many ongoing activities related to USCIS's IT transformation, USCIS officials described three major projects under way to improve its ability to receive and share data within the agency as well as with other agencies:

- Data layer/repository – this project will present users with a consolidated system to access information from 63 USCIS systems rather than the current situation where users have to log onto separate systems to obtain data. This capability would be available to adjudicators and, eventually, to external users.
- Software updates – this project will upgrade, among other things, USCIS's desktop and software capabilities, USCIS's servers and network, and USCIS's capability to support the new electronic processes.
- E-adjudication pilots – this project will allow paperless (electronic) adjudication for certain immigration forms. Initially, USCIS has plans to pilot green card replacement/renewal applications (Form I-90) and extension applications for temporary workers in specialty occupations (Form I-129 H1B).

In the fall of 2004, USCIS officials anticipated implementing the e-adjudication pilots by mid-April 2005 and having the ability to receive data from IRS in June or July 2005. However, these projects have not gotten under way as scheduled; the start of the pilots is dependent on the data layer and software updates being in place. USCIS could not provide us with a completion date for the data layer and e-adjudication pilots due, in part, to uncertainty regarding future funding. USCIS expects to complete

[34]USCIS is currently reviewing whether its integrated case management system and electronic adjudication process will track records using current immigration identification schemes (alien registration numbers) or will develop and implement a modernized immigrant identification scheme (still to be designed) that may use EINs/SSNs to track records.

full implementation for its information technology transformation by fiscal year 2010. We are examining USCIS's technological improvements as part of our ongoing work on immigration backlog and benefit fraud issues.

Cost Challenges of Data Sharing

Estimating the cost benefit associated with establishing and maintaining a data-sharing relationship can be complicated. One reason developing a cost estimate is difficult is because electronic methods of sharing data can vary, and different costs are associated with different methods of sharing. For example, USCIS may incur technological costs related to improving their IT capability to enable data sharing, which can be processed by either magnetic tape or computer file, each of which has different costs. However, some of the necessary IT improvements are already planned and would be funded as part of USCIS's comprehensive upgrade of its IT systems if data sharing with IRS does not occur.

Estimating the cost benefit is also complicated because of the difficulty both agencies may encounter in establishing costs for providing the service. The Computer Matching and Privacy Protection Act of 1988 states that no matching program can be approved unless the agency has preformed a cost-benefit analysis for the proposed matching program that demonstrates the program is likely to be cost effective. Similarly, Treasury's criteria for considering whether a statutory change should be made for the sharing of tax data stresses the importance of documenting whether a substantial benefit is likely and what the resource demands on IRS would be to support sharing the data. In our July 2004 testimony, we recommended that IRS and USCIS assess the benefits and costs of data sharing to enhance tax compliance and improve immigration eligibility decisions. IRS responded by stating it would study the issues and work with USCIS to identify possible solutions. DHS/USCIS agreed with our recommendation and said they were "exploring a technical capability for effectively and efficiently sharing data with the IRS on individuals who apply for immigration benefits." In addition, in 2004, we reported IRS did not have a cost accounting system capable of providing reliable cost

information,[35] and in 2004, we also reported USCIS had insufficient cost data to determine the full extent of its operating costs.[36]

Finally, estimating the cost benefit is also complicated because of uncertainty regarding the net benefits that would be gained from data sharing. For example, IRS is unable to pursue all of the current leads that it receives from existing data corroboration efforts, like document matching. Therefore, to the extent that obtaining and analyzing additional data from USCIS developed more leads for possible enforcement actions, IRS likely would only be able to pursue the portion of cases that exceeds thresholds IRS uses in determining how many cases to pursue. Further, apparent noncompliance may not be substantiated. For example, some of those who appear not to have filed tax returns based on matching IRS and USCIS data may indeed have filed but were not found in IRS's databases due to inaccurate information in USCIS files or otherwise not have a filing obligation. Of business sponsors with unpaid assessments, some portion likely would be unable to repay all taxes owed. From USCIS's perspective, although we found that many businesses may not have filed tax returns or may owe taxes, some of these situations may not be significant enough to affect a USCIS adjudicator's decision about their financial feasibility or legitimacy. For instance, some of the businesses applying to sponsor immigrant workers that owe taxes may not owe enough to raise doubts about their ability to pay the worker. This may be especially true for larger businesses.

Currently Authorized User Fees Can Fund Data Sharing, but IRS Could Not Recover All Related Costs

Under current statutes, USCIS likely would be able to increase its user fees to recover all costs associated with data sharing with IRS and to retain the fees, but IRS would not be able to charge user fees that would include costs to bring noncompliant business sponsors into compliance. Because IRS could not recover all costs, it might not realize an increase in net tax collections through data sharing with USCIS.

Both IRS and USCIS currently have authority that states when and under what circumstances they can charge user fees and defines permissible uses of the funds. IRS is statutorily restricted to retaining no more than the

[35]GAO, *Financial Audit: IRS's Fiscal Years 2004 and 2003 Financial Statements*, GAO-05-103 (Washington, D.C.: Nov. 10, 2004).

[36]GAO-04-309R.

$119 million in user fees annually. If the additional user fees to perform tax checks for USCIS business applicants seeking to sponsor workers generate additional funds that exceed IRS's limit, the agency would be unable to retain the excess amounts. Further, IRS is limited to recovering the costs directly associated with providing a service to taxpayers. USCIS, on the other hand, does not have a limit on the amount of user fees it can collect and currently is authorized to collect and retain a user fee related to providing adjudicatory and naturalization services including compliance related costs.

In 2004, IRS collected over $137 million in user fees for a wide range of services, including installment agreements, offers in compromise, and Freedom of Information Act (FOIA) requests.[37] In fiscal year 2004, about 82 percent of all user fees collected by IRS were for installment agreements or employee plans and exempt organizations' letter rulings and determination letters.[38] The 1995 Treasury Appropriations Act specifies that IRS can keep an overall maximum of $119 million per year of the user fees it collects for specific purposes, with the rest of the user fees going into the Treasury general fund.[39] However, statutory formulas also limit how much IRS can retain of certain individual user fees. Due to these individual user fee limits, in 2004, IRS retained about $90 million from the user fees collected (see table 7) while the remaining $48 million went to the Treasury general fund.

[37]An offer-in-compromise is an agreement between a taxpayer and IRS that resolves the taxpayer's tax liability for less than the full amount owed for taxes, interest, and penalties. IRS charges a one-time fee. FOIA requestors are charged a one-time fee and are provided with agency records as requested, with some exceptions.

[38]A letter ruling is a written determination issued in response to a written inquiry from an individual or an organization about its status for tax purposes or the tax effects of its acts or transactions, prior to the filing of returns or reports that are required by the revenue laws. A determination letter is written and applies the principles and precedents previously announced by IRS to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in a statute, a tax treaty, the regulations, a conclusion in a revenue ruling, or an opinion or court decision that represents the position of IRS.

[39]Pub. L. 103-329, Sept. 20, 1994.

Table 7: User Fees Collected by IRS, Fiscal Year 2004

Dollars in millions

Fee type	User fees collected	User fees to Treasury general fund	User fees retained by IRS
Installment agreements	$69.4	0.0	69.4
Offers-in-compromise	6.6	0.0	6.6
Employee plans and exempt organizations letter rulings and determination letters	43.1	$41.2	1.9
Chief counsel letter rulings and determination letters	9.3	5.5	3.8
Photocopy reimbursable user fees	6.4	0.0	6.4
Other	2.8	1.2	1.6
Total	**$137.6**	**$47.9**	**89.7**

Source: IRS.

According to USCIS officials, in 2004, USCIS collected $1.3 billion in user fees for administering a variety of immigration services and benefits. Altogether, the agency has about 60 user fees, which range from $2 to $585, except for the $1000 premium-processing fee for select employment based applications.[40] With the exception of FOIA fees, which are retained by the Treasury, DHS retains all user fees collected. According to USCIS, the agency's budget will be entirely fee based beginning in fiscal year 2007.[41]

IRS cannot collect and retain a user fee to support the compliance-related costs it incurs in connection with data-sharing activities. IRS currently only has authority to collect and retain a user fee related to the direct cost of providing the service—such as providing a copy of a tax return. If business sponsors were required to meet their tax obligations before they could sponsor immigrant workers, IRS also would incur costs to bring some sponsors into tax filing and payment compliance. As discussed earlier, bringing noncompliant business sponsors into compliance could displace other compliance activities that IRS would otherwise undertake.

[40]8 C.F.R. §103.7.

[41]According to USCIS, the agency will seek appropriations in the fiscal year 2007 budget to fund its information technology upgrades.

Depending on whether bringing the noncompliant business sponsors into compliance brought in more, the same, or less taxes than the displaced cases, bringing business sponsors into compliance could result in little change to IRS's overall net tax collections, an increase, or possibly even a decrease.

If data sharing were begun between USCIS and IRS and a user fee is charged, a number of implementation issues also would need to be considered. For example, would both agencies charge fees to cover their costs? Would one charge a fee sufficient to cover both agencies' costs and, if so, how often would it forward collected monies to the other agency? In addition, if IRS were authorized to include costs for bringing noncompliant business sponsors into compliance, it likely would have to adjust the fees as it gained experience in determining how much cost it would incur to bring sponsors into compliance.

Conclusions

Data sharing between IRS and USCIS has the potential to better guide IRS's efforts to identify and correct noncompliance by taxpayers and result in more informed, accurate, and timely immigration eligibility decisions by USCIS adjudicators. Although the agencies would benefit in differing ways, establishing and implementing data sharing can be beneficial to both agencies. For tax compliance purposes, requiring a tax check—documenting whether a business sponsor has filed required returns and paid required taxes—likely would lead some businesses to come into compliance because they would know that USCIS would consider this information in determining whether the business can sponsor immigrant workers. However, because USCIS would only consider this information as one indication of whether businesses qualify to sponsor workers, a greater tax compliance increase is likely if businesses were required to meet tax filing and payment obligations as a condition for sponsoring workers. Given the billions of dollars of unpaid tax assessments among past business sponsors, our matching results illustrate strong potential for increased tax collections from changing immigration eligibility requirements. Although USCIS officials say no statutory provision prohibits USCIS from changing its regulations to require business sponsors to meet their tax filing and payment obligations, officials believe a statutory change would better withstand a legal challenge. Further, because collecting the unpaid assessments of business sponsors would displace other tax collections work, absent funding to cover its costs of bringing the business sponsors into compliance, IRS might not realize a net increase in overall tax collections.

For immigration eligibility purposes, requiring business sponsors to meet their tax filing and payment obligations would help ensure businesses applying to sponsor immigrant workers are legitimate. Short of this change, either an applicant-initiated or an agency-initiated data-sharing arrangement could help improve benefit decisions. Our analysis shows strong potential to improve thousands of immigration eligibility decisions if USCIS uses IRS data to help support officials' decisions about a business sponsor's financial health.

Even though data sharing shows promise to benefit both agencies, they would face implementation choices and challenges that could require technological or statutory solutions. In order to develop a better understanding of the implementation challenges and costs, to explore the most practical options for full scale implementation of data sharing, and to more completely assess benefits to IRS and USCIS from data sharing, USCIS should undertake a pilot test of data sharing under existing authority to use taxpayer consents to obtain tax data. Such a study would be consistent with congressional and executive branch policies that stress that sharing of tax data be thoroughly justified given concerns about possible adverse effects on tax compliance if the confidentiality of taxpayer's data is compromised. Additionally, a study could assess issues raised by USCIS's Ombudsman and immigration advocacy groups. A study would provide executive and legislative policymakers better information for determining the costs and benefits of data sharing and whether USCIS should require taxpayer consents from all future business sponsors or whether a change to IRC Section 6103 would better support efficient data sharing.

Matters for Congressional Consideration

To improve taxpayer compliance and USCIS's immigration benefit decisions, Congress should consider (1) changing immigration eligibility to require businesses applying to sponsor immigrant workers to meet tax filing and payment obligations to sponsor immigrant workers and (2) authorizing a user fee to be collected and retained by IRS to cover the costs of bringing non-compliant taxpayers into compliance.

Recommendation for Executive Action

To improve the accuracy and timeliness of USCIS's immigration eligibility decisions absent requiring businesses to have met their tax filing and payment obligations, we recommend the Secretary of the Department of Homeland Security direct USCIS, in consultation with the IRS, to conduct a

pilot data-sharing test. In the test, USCIS should require a tax check for selected businesses and other entities applying to sponsor immigrant workers before qualifying for immigration benefits. The pilot test should assess and document the costs and benefits of data sharing including key issues such as using paper or electronic consents, or pursuing specific IRC Section 6103 disclosure authority, assessing resource implications, and considering how the agencies would allocate responsibilities for collecting and allocating user fees from the business sponsors.

Agency Comments and Our Evaluation

The Commissioner of Internal Revenue provided written comments on a draft of this report in a September 16, 2005, letter. The Commissioner agreed that data sharing between the IRS and USCIS within the Department of Homeland Security may have many benefits. IRS agreed to conduct a small-scale pilot test, in conjunction with USCIS, to determine whether a business case exists for supporting data sharing before pursuing legislation or a large-scale taxpayer consent program. The Commissioner also stated an executive working group will determine the merits of applying user fees for compliance data sharing.

On behalf of the Secretary of DHS, the Director of DHS's Office of Inspector General Liaison provided written comments on a draft of this report in a September 26, 2005, letter. The Director generally agreed with our recommendation and acknowledged the pilot program would be consistent with USCIS's desire to explore ways to streamline its processes and could provide necessary information with respect to considering the feasibility of initiatives such as data sharing on a larger scale. He appreciated GAO's recognition of the burden of paper taxpayer consent forms place on USCIS and its reluctance to embark on a process that would be largely paper-based.

Although the Director generally agreed with our recommendation, his agreement was contingent on the extent to which USCIS can lawfully engage in a pilot program as we recommend. The Director's letter did not elaborate on his uncertainty regarding USCIS's ability to lawfully engage in the recommended pilot program. Based on supplemental communication, his concern focused on USCIS's authority to require business sponsors to consent to a tax check. According to the Director, immigration laws contain no explicit prohibition on conditioning employer petitions on their tax compliance and doing so might be legally defensible. Nevertheless, he said USCIS has serious legal concerns about USCIS's authority to promulgate regulations with such a requirement.

The Director did not describe the legal concerns and therefore we do not have a basis to evaluate them. Consulting with IRS in determining how to design the pilot test should help USCIS resolve these concerns. We note that Education requires taxpayer consents as a condition of participation in certain student loan repayment programs.[42] Should USCIS ultimately conclude that it does not have authority to require such a waiver, an option for proceeding with the pilot test would be to ask selected business applicants to voluntarily allow USCIS to directly obtain tax data from IRS. Taxpayers may authorize others to obtain their tax data directly from IRS.

The Director also expressed concerns about the impact of ongoing tax disputes on immigration benefit decisions if those decisions are contingent on a taxpayer being required to meet tax filing and payment obligations. We believe consultations between USCIS and IRS in designing a pilot program can address this issue. For instance, officials might decide that businesses with some minimal level of tax underpayment or businesses with tax delinquencies that are actively participating in a payment arrangement with IRS would not be disqualified from sponsoring immigrant workers. We would urge USCIS and IRS to develop data-sharing policies that would minimize the impact of ongoing tax disputes on immigration benefit decisions for business sponsors.

In commenting on a user fee to be collected and retained by the IRS, the Director agreed that IRS should be provided with adequate resources to carry out its tax compliance mission but had serious concerns about the user fee proposal. The Director commented that policy considerations have kept USCIS from completely using its authority to recover its full costs. He noted that Congress has mandated several additional fees for certain employment-based applications and that, "in short, the more interagency functions the overall cost of an application to USCIS is expected to support, the higher the cost to the applicant without consequent improvements in USCIS services, the less likely it is that USCIS will be able to increase its fees as may be necessary to fully recover its own costs." The Director also noted that we had previously reported that fee collections are not sufficient to pay USCIS's full costs.

We understand that many considerations must be taken into account in setting USCIS's overall fees. However, as our report indicates, obtaining a benefit from IRS's perspective depends substantially on having sufficient

[42]GAO-03-821.

funds to bring business applicants that have outstanding tax filing or payment obligations into compliance. Further, as also indicated in our report, USCIS access to IRS tax data for determining immigration benefit decisions has the potential to improve service to USCIS's business applicants because it could decrease rework and follow-up work with the applicant that currently occurs. This would help USCIS in minimizing processing time for all business sponsors. Ultimately, with more routine access to IRS data, USCIS might not need to request as much financial information from business applicants as it does now since USCIS officials themselves see IRS data as more reliable than information provided by applicants. Finally, the GAO report cited by the Director did conclude that USCIS fees were not sufficient to fully fund USCIS's operations. The insufficiencies, however, were not due to fees being collected for interagency functions. Rather, we said this resulted because USCIS's fee schedule was based on an outdated fee study that did not include all costs of USCIS's operations and costs had increased since the fee study was conducted.[43]

Finally, the Director commented that the proposed user fee to cover IRS's compliance related costs seemed to be different in concept from other existing user fees. As the Director noted, it was not within the scope of our review to examine all user fee relationships between IRS and other agencies. Based on the work we did, we are not aware of another case in which IRS receives a user fee to bring applicants for other agencies' benefits into compliance with their tax obligations. However, Congress has authorized new or expanded funding arrangements to help IRS deal with its workload. For instance, in Treasury's appropriations for 1995, Congress specifically authorized IRS to establish new user fees or raise existing fees for services provided in order to increase receipts.[44] More recently, Congress also authorized IRS to use private collection agencies to assist in collecting delinquent taxes and specified that up to 25 percent of money collected can be used to pay the collection agencies and another 25 percent can be retained by IRS.[45] Given the substantial unpaid taxes that we found among businesses applying to sponsor immigrant workers, we believe that it is appropriate for Congress to consider steps for effectively bringing these taxpayers into compliance without unduly deterring IRS from

[43]GAO-04-309R.

[44]P.L. 103-329, Sept. 30, 1994.

[45]P.L. 108-357, Oct. 22, 2004.

pursuing other noncompliant taxpayers. As our report explains, for this to occur, IRS's costs for bringing the noncompliant business sponsors into compliance must be covered, otherwise IRS might experience a net decrease in tax collections. Consequently, our report put forth the user fee as one option for Congress to consider for supporting a potential data-sharing arrangement between IRS and USCIS.

As agreed with your office, unless you publicly release its contents earlier we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to interested congressional committees, the Secretary of the Treasury, the Commissioner of Internal Revenue, the Secretary of the Department of Homeland Security, the Director of the United States Citizenship and Immigration Services, and other interested parties. We will also make copies available to others on request.

If you or your staff have any questions about this report, please contact me at (202) 512-9110 or brostekm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

Michael Brostek
Director, Tax Issues,
Strategic Issues Team

Objective, Scope, and Methodology

Our objectives were to determine the (1) potential benefits of data matching and the (2) options for establishing and maintaining a data-sharing relationship between the Internal Revenue Service (IRS) and the U.S. Citizenship and Immigration Services (USCIS), including any challenges associated with those options.

We performed our work at various IRS offices, including the Office of Governmental Liaison and Disclosure, the Office of Safeguards; and the Office of Program, Evaluation, and Risk Analysis. Our work included interviews with employees in IRS's Wage and Investment Operating Division and Small Business/Self Employed Operating Division. We interviewed USCIS officials in headquarters' operational, technological, fraud, ombudsman, and policy offices. Additionally, we interviewed representatives of two immigration advocacy groups—the American Council on International Personnel and the American Immigration Lawyers Association—to obtain their perspectives on potential changes to immigration eligibility rules.

To determine the potential benefits of data matching between IRS and USCIS, we summarized the benefits reported in our July testimony (GAO-04-972T), including the results of our data matching efforts (see app. II). We worked with IRS on conducting additional research for business sponsors unknown to IRS (identified in our July 21, 2004 testimony) to determine whether they are operating businesses/organizations and have any tax compliance problems. To better illustrate the potential tax compliance benefit related to business sponsors who have unpaid tax assessments, we further stratified the business sponsors with unpaid assessments from our nationwide selection to identify subpopulations of business sponsors that were or were not in a payment arrangement or had made payments within 2 years.

To determine the options for establishing and maintaining a data-sharing relationship between the IRS and USCIS, we interviewed IRS and USCIS officials on processes in place that support data sharing under existing disclosure authorities. We summarized operational information such as timeliness, costs, and volume levels for existing data-sharing relationships to provide perspective on the options for establishing a data-sharing relationship between IRS and USCIS. We interviewed IRS officials on the resource implications of sharing data via different data-sharing arrangements. We compiled examples of private institutions and state entities that use "tax checks"— IRS verification that a taxpayer filed and/or paid his or her taxes–for eligibility determination purposes and to

summarize costs associated with "tax checks." We interviewed IRS and USCIS officials and obtained and reviewed statutory and regulatory guidance on the use of user fees and summarized information on (1) types of user fees IRS has in place to support compliance and enforcement activities, (2) regulatory implications for employing a user fee to support data sharing between USCIS and IRS, and (3) whether user fees go to the general fund or the Treasury fund. Finally, we interviewed USCIS officials and reviewed documents on planned changes to immigration eligibility that may impact the type of IRS information immigration adjudicators will need for eligibility decisions.

To determine the potential challenges of data matching between IRS and USCIS under the various data-sharing options, we primarily summarized the challenges reported in our July testimony, including the technological, cost, and legislative barriers. We identified and reviewed the legislative and regulatory authorities that govern disclosure of personal and financial information for eligibility determinations and tax compliance purposes. We interviewed USCIS policy and legal staff on the implications of changing immigration eligibility decisions to require applicants to (1) provide taxpayer consents that allow IRS to share data and (2) be current on their taxes and review related documentation. We also interviewed USCIS and IRS officials regarding future cost challenges associated with establishing a data-sharing relationship.

We assessed the reliability of IRS's Business Master File (BMF) and Individual Master File (IMF) data and the USCIS's Computer Linked Application Information Management System, Version 3.0 (CLAIMS 3), a database containing nationwide data but not naturalization data, by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. As part of our annual audits of IRS's financial statements, we also assess the reliability of IRS's BMF and IMF data with respect to unpaid assessments by testing selected statistical samples of unpaid assessment modules. We determined that the data were sufficiently reliable for the purposes of this report.

Our review was subject to some limitations. We relied on IRS officials to identify offices that use personal information because there is no central, coordinating point within IRS for receipt of this type of information. We relied on USCIS officials to identify immigration forms they believed would most benefit from data sharing with IRS, and we relied on IRS and USCIS

officials' views on possible impediments or missed opportunities to verify information, any additional data sharing and verification needs, and the benefits of increased disclosure of taxpayer information. Because our sample of 984 hard copy applications at selected USCIS field locations was not a probability sample, we cannot make inferences about the population of applications. In addition, because employer identification numbers/social security numbers were only available for 3.4 million of the 4.5 million applications in our nationwide selection of automated applications, our findings from these records are not representative of the entire population. We did not assess the reliability or quality of taxpayer information collected by IRS or the accuracy of information applicants reported to USCIS. Immigration applicants/taxpayers who were in IRS's non-filer database could include individuals who did not meet IRS filing requirements. We relied on IRS's investigation of the 33 business sponsors that were not in IRS's databases since disclosure rules limit our contact with taxpayers. Since IRS searched its tax data for the last 5 years (1999–2004) and we collected 7 years of immigration data (1997-2004), an unknown but likely small percentage of the businesses that submitted applications during 1997 and 1998, but are unknown to IRS, could be no longer in operation. Additionally, we did not assess the reliability of IRS data on the cost of paper taxpayer consents since we used this information for background purposes. We conducted our work from August 2004 through August 2005 in accordance with generally accepted government auditing standards.

Summary of IRS/USCIS Data-Matching Results

The tables that follow present the data we reported in our July 2004 testimony (GAO-04-972T) on the results of matching two sets of USCIS immigration data with IRS taxpayer data to determine the potential value for increased data sharing and matching. First, we used a nationwide selection of automated data on certain immigration applications: I-129 (Petition for a Nonimmigrant Worker), I-140 (Immigrant Petition for Alien Worker), and I-360 (Petition for Amerasian, Widow(er), or Special Immigrant[1]) submitted from January 1, 1997, through March 5, 2004, to USCIS service centers for immigration benefits. We used only those applications in USCIS's Computer Linked Application Information Management System, Version 3.0 (CLAIMS 3), a database containing nationwide data that contained an individual's Social Security Number (SSN) or a business's Employer Identification Number (EIN). For the matching process, 3.4 million out of 4.5 million records had usable SSNs or EINs. We obtained automated data for those years because USCIS's automated system had historical data not readily available in hard copy files. We used these data to determine whether businesses and others that had applied to sponsor immigrant workers or immigrants applying to change their immigration status had filed a tax return with IRS and, if so, whether they owed taxes to IRS. Because the nationwide selection did not include any financial information, we could not use it to determine whether USCIS applicants reported the same income amounts to IRS and USCIS.

Second, we visited five USCIS field locations and selected a nonprobability sample of 984 immigration files covering the period of 2001 through 2003 at four of the locations because they contained personal as well as financial information. These hard copy files were applications for citizenship, employment, and family-related immigration and change of immigration status applications. We used the hard copy immigration files to build an automated database of certain personal information, such as the individual's SSN or business's EIN and income reported to USCIS. We obtained hard copy files for those years because the USCIS offices we visited had immigration applications for those years on-site. Immigration offices send older files to storage. Since each district and service center organized and stored its applications in a different way and immigration officials could not always provide an updated count of applications by form number, we developed an approach to selecting applications that included pulling approximately every 50th file in immigration file rooms. We

[1]The I-360 applications in our sample were submitted by religious organizations sponsoring religious workers.

generally selected approximately 50-75 files at each field location for the following forms: I-129 (Petition for a Nonimmigrant Worker); I-140 (Immigrant Petition for Alien Worker); N-400 (Application for Naturalization); I-751 (Petition to Remove the Conditions on Residence); I-360 (Petition for Amerasian, Widow(er), or Special Immigrant); and I-864 (Affidavit of Financial Support) that accompanies the I-485 (Application to Register Permanent Residence or to Adjust Status). We planned to select 50 files for Form I-829 (Petition by Entrepreneur to Remove Conditions) but only reviewed 12 files due to resource constraints and the voluminous nature of the application files. The matching results for our nonprobability sample included Form I-829s for a small number of individual immigrants who had unpaid assessments or were nonfilers and none for business or individual sponsors.

To facilitate matching immigration and taxpayer data, we divided immigration applicants into three groups: business sponsors, individual sponsors, and individual beneficiaries. We matched the SSNs/EINs in our nationwide selection of immigration applications and our nonprobability sample of immigration applications with IRS's Business Master File (BMF) and Individual Master File (IMF) and other subsets such as the Revenue and Refunds Database. We identified immigration applicants/taxpayers that (1) matched with the IRS master files, (2) had unpaid assessments, (3) were nonfilers, (4) were businesses/organizations that had no record of tax activity in the last 5 years, and (5) did not match IRS master files. Additionally, to ensure we identified only business and organization sponsors whose EINs were unknown to IRS, we had IRS perform three additional matches using its BMF Taxpayer Identification Number Cross-Reference File, the BMF Entity File and the IMF Entity File.

We used this sample to determine whether USCIS applicants reported the same income information to IRS as to USCIS and also as a second source of examples of USCIS applicants may who not have filed tax returns and may have owed taxes to IRS.

Tables 1-3 show our results on business sponsors, individual sponsors, and individual beneficiaries that have unpaid assessments[2] or are nonfilers for

[2]Immigration applicants/taxpayers in IRS's unpaid assessment database may include taxpayers that have entered into an installment agreement, have proposed an offer-in-compromise or are in litigation with IRS about amounts due.

both our nationwide selection and nonprobability sample of immigration files.

Table 8: Number and Percentage of Total Applications GAO Collected

	Years	Total	Total with identifiers	Percentage
Nationwide selection of automated immigration data (CLAIMS 3)	1997-2004	4,518,875	3,430,754	75.9
Nonprobability sample of hard-copy application files	2001-2003	984	984	100.0

Source: GAO analysis of USCIS data.

Table 9: Matching Results on Nationwide Data, 1997 through 2004 – Automated Data[a]

		Owe IRS taxes *Matched with IRS's database for unpaid assessments[b]*			Nonfilers *Matched with IRS's nonfiler database*			Unknown to IRS *Did not match IRS Master Files and subsets[c]*		
	Total	Number	Percent	Amount	Number	Percent	Amount	Number	Percent	Amount
Business sponsors (petitioners)	413,723	18,942	4.6	$5.6 billion	67,949	16.0	Not available (N/A)	19,972	4.8	N/A
Individual sponsors (petitioners)	51,169	889	1.7	49.8 million	791	1.5	N/A	4,378	8.6	N/A
Individual beneficiaries	2,009,046	38,877	1.9	327,859,723	25,662	1.3	N/A	511,180	25.4	N/A

Source: GAO analysis of IRS and USCIS data.

[a]These results have been time controlled. That is, these numbers reflect taxpayers' filing status with IRS at the time the USCIS application was filed.

[b]Unpaid assessments are maintained in IRS's accounts receivable database.

[c]Did not match IRS's IMF, BMF, accounts receivable, nonfiler, revenue and refunds, BMF Taxpayer Identification Number Cross-Reference file, BMF entity file, and the IMF entity file.

Table 10: Matching Results on Nonprobability Sample, 2001 through 2003 – Hard Copy Application Files

		Owe IRS taxes *Matched with IRS's database for unpaid assessments*[a]			Nonfilers *Matched with IRS's nonfiler database*			Unknown to IRS *Did not match IRS Master Files and subsets*[b]		
	Total	Number	Percent	Amount	Number	Percent	Amount	Number	Percent	Amount
Business sponsors (petitioners)	475	94	19.8	$39.0 million	112	24.0	$533.4 million	13	2.7	N/A
Individual sponsors (petitioners)	273	14	5.2	84,761	4	1.5	19,189	17	6.3	N/A
Individual Beneficiaries	804	20	2.5	100,821	7	.9	903	83	10.3	N/A

Source: GAO analysis of IRS and USCIS data.

Note: Results from nonprobability samples cannot be generalized to the population.

[a]Unpaid assessments are maintained in IRS's accounts receivable database.

[b]Did not match IRS's IMF/BMF, accounts receivable, nonfiler, revenue and refunds, BMF Taxpayer Identification Number Cross-Reference file, BMF entity file, and the IMF entity file.

Comments from the Internal Revenue Service

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

September 16, 2005

Mr. Michael Brostek
Director, Tax Issues
Strategic Issues Team
United States General Accountability Office
Washington, DC 20548

Dear Mr. Brostek:

I am writing to give you our comments on the Government Accountability Office (GAO) draft report titled, "Options Exist to Enable Data Sharing Between IRS and USCIS But Each Presents Challenges" (GAO-05-877). While taxpayer confidentiality is always a foremost consideration, we agree that data sharing between the IRS and the United States Citizenship Immigration Services (USCIS) within the Department of Homeland Security may have many benefits.

Because the confidentiality of tax data is considered critical to voluntary compliance, Department of Treasury policy requires a business case to support data sharing before pursuing legislation or a large-scale taxpayer consent program. In conjunction with the USCIS, the IRS will conduct a small-scale pilot test in order to determine whether a business case exists for either option. The IRS Office of Chief Counsel will assist in drafting consents that conform with Treasury Regulation 301.6103(c)-1 for use in this limited test, if needed. Finally, an executive working group will determine the merits of applying user fees for compliance data sharing.

If you have any questions, please call me or Kevin Brown, Commissioner of the Small Business and Self-Employed Operating Division, at (202) 622-0600.

Sincerely,

Mark W. Everson

Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

September 26, 2005

Mr. Michael Brostek
Director, Tax Issues
Strategic Issues Team
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Brostek:

RE: Draft Report GAO-05-877, Taxpayer Information: Options Exist to Enable Data Sharing Between IRS and USCIS But Each Presents Challenges (GAO Job Code 450350)

The Department of Homeland Security appreciates the opportunity to comment on the Government Accountability Office's (GAO) draft report. The GAO concluded that both the Internal Revenue Service (IRS) and the Department's U.S. Citizenship and Immigration Services (USCIS) could benefit from a data-sharing arrangement. We appreciate GAO's research and broad discussion of the challenges and benefits to both USCIS and the IRS. Further, we appreciate the GAO's recognition of the burden of paper taxpayer consent forms placed on USCIS and its reluctance to embark on a process that would be largely paper-based.

The GAO recommended that to improve the accuracy and timeliness of USCIS' immigration eligibility decisions absent requiring businesses to have met their tax filing and payment obligations, the Secretary of the Department of Homeland Security direct USCIS, in consultation with the IRS, to conduct a pilot data-sharing test. In the test, the GAO has recommended that USCIS should require a tax check for selected businesses and other entities applying to sponsor immigrant workers before qualifying for immigration benefits. The pilot test should assess and document the costs and benefits of data sharing including key issues such as using paper or electronic consents, using consents or pursuing specific Internal Revenue Code Sections 6103 disclosure authority, assessing resource implications, and considering how the agencies would allocate responsibilities for collecting and allocating user fees from the business sponsors.

USCIS generally agrees with this recommendation to the extent that it can lawfully engage in a pilot program under applicable tax and immigration laws to verify with the IRS the information that otherwise USCIS would need to obtain by requesting a copy of

www.dhs.gov

the business petitioner's tax returns. This approach could provide useful information for some adjudications and provide necessary information with respect to considering the feasibility of such initiatives on a larger scale. A limited pilot program of this type would be consistent with USCIS' desire to explore ways in which its processes could be streamlined through validating information with other agencies rather than requesting documentation (which may be voluminous) from its customers. While of course acknowledging the importance of tax compliance as a matter of public policy, USCIS is concerned about the possible impact of ongoing tax disputes or other tax considerations as a factor that could render immigration determinations more complex or delayed.

We also would like to comment on your suggestion to Congress that it consider authorizing a user fee to be collected and retained by the IRS to cover the costs of bringing non-compliant taxpayers into compliance. Although we agree that the IRS should be provided with adequate resources from appropriate sources to carry out its tax compliance mission, USCIS has serious concerns about the user fee proposal. While it is true that USCIS has statutory authority to recover its full costs through user fees, policy considerations historically have prevented USCIS from using that authority to its full extent. In fact, the GAO previously reported that fee collections are not sufficient to pay USCIS' full costs. In recent years Congress has mandated several additional fees for certain employment-based applications, but the revenues have in part gone to other agencies for certain functions. Whether an additional fee is a supplement paid directly to another agency such as IRS, or is built into the base fee paid to USCIS, USCIS customers obviously view it as part of the overall application cost without particular regard to whether it is ultimately used for an IRS or a USCIS purpose. In short, the more interagency functions the overall cost of an application to USCIS is expected to support, the higher the cost to the applicant without consequent improvements in USCIS services, and the less likely it is that USCIS will be able to increase fees as may be necessary to fully recover its own costs. In addition, the suggested user fee to cover the costs of bringing certain taxpayers into compliance with the tax laws seems to be quite different in concept than the existing IRS user fees detailed at page 41 in the draft report, which cover the actual costs of providing a specific service rather than enforcement costs.

As noted in the draft report, the IRS has a number of existing data share arrangements with other agencies for various purposes. None of these arrangements appears to involve a user fee for the purpose of ensuring taxpayer compliance. We question why the suggested fee would be appropriate for immigration benefit petitioners but not for other applicants for government benefits, to which similar considerations might well apply; or, alternatively, whether the suggested fee should serve as a model for other data sharing arrangements involving taxpayer compliance. While we understand that a complete examination of all data sharing arrangements is beyond the scope of this report, the suggested user fee discussion would benefit by being placed in a broader context that would more fully illuminate why it appears to be unique rather than based upon existing models of user fees related to other benefit programs supporting tax enforcement. For

example, a broader approach would include determining whether similar user fee arrangements have been considered and rejected for other data sharing programs and the reasons therefore.

Technical comments will be sent under separate cover.

Sincerely,

Michael McFarland
for Steven Pecinovsky
Director
Departmental GAO/OIG Liaison Office

GAO Contact and Staff Acknowledgments

GAO Contact

Michael Brostek, (202) 512-9110

Acknowledgments

In addition to the contact named above, major contributors to this assignment were Signora J. May, Assistant Director; Jyoti Gupta, Tina Younger, Michele Fejfar, Shirley Jones, Amy Rosewarne, and James Ungvarsky who made key contributions to this report.

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