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BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

## Issues Concerning Social Security Benefits Paid To Aliens

There has long been congressional concern about aliens who work only long enough to become eligible for social security benefits and then return to their native countries to collect the benefits for themselves and their dependents. In 1981, the Social Security Administration paid nearly \$1 billion to 313,000 beneficiaries living abroad, more than 60 percent of whom were aliens. Alien retirees abroad generally have worked less time in covered employment, have paid less taxes to social security, and have more dependents than the average retiree, frequently adding such dependents after retirement.

GAO's study also identified an inconsistency between the Social Security Act and the Immigration and Nationality Act--aliens are allowed to earn social security credits under the former act while violating the latter. Accumulation of credits by and the payment of benefits to aliens who worked illegally in the United States could be costly to the trust funds.



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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

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To the President of the Senate and the  
Speaker of the House of Representatives

This report examines the circumstances under which social security benefits are paid to alien retirees and dependents living abroad and discusses the characteristics of this beneficiary group. The report also presents information concerning aliens who, while working in violation of the Immigration and Nationality Act, can earn social security credits.

The study, requested by Congressman G. William Whitehurst, gives the Congress information to use when considering legislative proposals affecting future social security benefits for aliens.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of Health and Human Services; the Attorney General; the Secretary of State; and the Commissioners of Social Security and the Immigration and Naturalization Service.

*Charles A. Bowser*  
Comptroller General  
of the United States



D I G E S T

In this report GAO examines the circumstances under which social security benefits are paid to alien retirees and dependents living abroad. GAO also presents information concerning aliens who, while working in violation of the Immigration and Nationality Act, earn social security credits.

Congressional concerns have long dealt with whether it is fair and affordable for the American social security taxpayer to have aliens work in the United States for a relatively short period and then retire to their native lands and receive benefits for themselves and their dependents for long periods.

The Social Security Act does not restrict benefits to U.S. citizens or to people living in the United States. However, when social security benefits began in 1940, there were only 100 beneficiaries abroad who received \$12,000. In 1981 these numbers had grown to 313,000 such beneficiaries who received nearly \$1 billion. Of the these beneficiaries, an estimated 206,100 (66 percent) were aliens, and most of these were alien dependents.

About 34 percent of all dependents abroad were added to the social security rolls after the wage earner became entitled to benefits. About 91 percent of such dependents were aliens. (See p. 10.) Alien retirees abroad have generally worked less time in covered employment and paid less social security taxes than the average worker. (See p. 8.)

In 1956 the Congress enacted legislation designed to curtail benefits to aliens abroad, but because of its many exemptions, the legislation has had little effect. (See p. 11.)

The concerns that prompted the legislation are still valid today--aliens can work in the United States for a relatively short time and then return to their native country and retire and receive benefits for themselves and their dependents.

The payment of social security benefits to aliens represents a policy question for the Congress and presents a number of difficult and complex issues. Some of these issues involve (1) the equity of treating aliens differently than Americans, (2) the international reaction by countries whose citizens will be adversely affected and the potential retaliatory action of curtailing benefits to Americans under their systems, and (3) the question of requiring alien workers to pay full Federal Insurance Contribution Act taxes if they may not receive full benefits for retirement or disability.

The Congress may decide that benefits to aliens abroad should continue as under present law. If, however, the Congress decides to reconsider paying benefits to aliens abroad, it could consider the following alternatives:

- Pay benefits only to the alien wage earner.
- Pay benefits to the alien wage earner and dependents based on the family composition at the time of the wage earner's retirement.
- Pay benefits to the alien wage earner and dependents based on the family composition at the time the wage earner left the United States.

GAO identified an inconsistency between the Social Security Act and the Immigration and Nationality Act--aliens are allowed to earn entitlement to social security benefits under the former act while violating the latter. There are no complete and accurate data on the impact that this situation could have on social security; however, it could be costly to pay aliens who reside either abroad or in the United States on the basis of their illegal employment. (See p. 21.)

The Congress may wish to consider whether aliens who work illegally in the United States should be allowed to earn entitlement to social security benefits for such work. If the Congress decides that aliens should not earn credits for illegal work, it could require proof of legal immigrant status before benefits are paid.

GAO sent a draft of this report to the Departments of Health and Human Services and Justice for advance review and comments. Neither department provided comments within the requested time frames. However, GAO met with Social Security Administration officials, who provided a number of suggestions for improving the report's accuracy. GAO considered these suggestions and has incorporated them in the report where appropriate.





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ABBREVIATIONS

FICA      Federal Insurance Contribution Act  
GAO      General Accounting Office  
INS      Immigration and Naturalization Service  
SSA      Social Security Administration

## CHAPTER 1

### INTRODUCTION

The Social Security Act of 1935 forms the statutory foundation for the social security system. When the system was created, one of its main objectives was to provide greater economic security for workers in the United States. This security would be provided in the form of monthly benefits to retired wage earners and their eligible spouses and children. The act provided that eligibility to receive benefits, and the amount thereof, would be partly determined by the wage earners' earnings history of covered employment.

In 1936, compulsory social security coverage was provided for all workers in commerce and industry (except railroads) under age 65 in the continental United States, Alaska, and Hawaii and on American vessels. Thus, the discriminating factors for earning entitlement to social security benefits were the type and location of the employment, not the citizenship of the employee or employer.

The Social Security Act was silent on whether benefits should be paid to alien beneficiaries, but it echoed the principal theme of President Roosevelt and others--providing greater economic security for American workers. The act was also silent on whether aliens who were illegally employed under social security should be allowed to earn social security coverage and receive benefits. The act provided that earnings derived from covered employment entitle workers to social security coverage, regardless of the employee's or employer's citizenship.

Because the Social Security Act did not restrict social security benefits on the basis of the wage earners' citizenship, aliens have been receiving benefits since payments began in 1940. Policymakers have occasionally raised questions about paying benefits to aliens, especially those who live abroad. Some policymakers believed that many aliens might work in the United States for only the minimum length of time needed to become insured, then return to their native country and receive social security benefits.

It was not until 1956, however, that the Social Security Act was amended to place some restrictions on alien beneficiaries living abroad (the alien nonpayment provisions). These provisions provided a number of exceptions, and if any one is met, the aliens' benefits will not be affected. Most aliens living abroad meet one or more of the exceptions; therefore, the nonpayment provisions have had little effect on limiting social security payments.

In the 97th Congress, some members questioned the propriety of paying social security benefits to non-U.S. citizens or nationals, especially those living abroad. In 1981, at least four bills were introduced that would have curtailed payment of future benefits to aliens regardless of their residency and would have eliminated certain payments to all persons residing abroad.

In July 1981, Representative G. William Whitehurst wrote to us expressing his concern about the growing number of foreigners who receive social security benefits for themselves and their dependents. He said that because foreigners commonly work in the United States for a short period and then return to their native country and begin a new family, social security benefits may be going to many foreigners who have virtually no association with the United States. He said he was considering the need for legislation addressing dependent benefits for foreigners.

Because of the concerns of Representative Whitehurst and others, we reviewed the extent of social security payments made to aliens living abroad and the beneficiaries' characteristics. We also examined how the law allows aliens illegally residing or working in the United States to earn social security benefits.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

The Social Security Administration (SSA) does not compile data to show the number of alien beneficiaries living abroad, their family composition, their benefit amounts, or their work history. Similarly, no data exist on the extent to which aliens who lived or worked illegally in the United States receive social security benefit payments based on their illegal employment. Our study was designed to develop information for the Congress to use in considering whether legislation is needed to change current provisions that allow social security benefits to (1) aliens and dependents living abroad and (2) aliens whose benefits are based on work done while residing or working illegally in the United States. Our principal objectives were to (1) analyze the characteristics of the current social security beneficiary population abroad and (2) assess the potential impact that aliens can have on the social security trust funds as a result of their unlawful employment in this country.

To achieve the first objective, we focused on the beneficiary population living abroad in 1981. We analyzed the demographic characteristics of this population, including its

- size and the costs of paying benefits,
- citizenship mix (aliens vs. U.S. citizens),
- wage earners' work histories covered by social security,
- Federal Insurance Contribution Act (FICA) taxes paid and benefits received, and
- ratio of dependent beneficiaries to wage earners.

We selected a random sample of 313<sup>1</sup> beneficiary accounts out of the approximately 149,000 beneficiary accounts abroad on which payments were being made in 1981. We obtained the beneficiary case files for the accounts selected in our sample, and we determined

- the citizenship of the retired or disabled wage earners and their dependents,
- the family size,
- the amount of social security benefits received,
- the amount of FICA taxes the wage earner paid before retirement,
- the number of years the wage earners were employed under social security, and
- the number of years that dependent beneficiaries were dependent upon the wage earners before their retirement.

From these data, we calculated the percentage of wage earners and their dependents who were U.S. citizens and the percentage who were aliens; determined the mean family size and computed the dependent-to-wage-earner ratio; determined the mean FICA taxes paid by wage earners and the amount of benefits received; and determined when dependent relationships were established with wage earners, which enabled us to identify dependents who were added to the rolls after the wage earners retired.

To achieve our second objective--to assess the impact of aliens' unlawful employment in the United States--we examined several empirical studies published since 1976 dealing with the

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<sup>1</sup>This sample is statistically valid within a 95-percent confidence limit. For information on the precision of the estimates in this report, see appendix I.

number and characteristics of illegal aliens in this country and their impact on various social services systems. We drew from previous GAO studies on illegal or undocumented aliens who had been working in the United States and paying social security taxes. We also drew from information gathered during our earlier survey of the social security program operations as they affect alien wage earners and beneficiaries abroad.

We also analyzed SSA data on legal aliens who have been unlawfully employed in the United States since 1974. By using these data and statistics on benefits received by aliens abroad in 1981, we developed an estimate of the financial liability that the social security trust funds might incur as a result of aliens' unlawful employment in this country.

We reviewed the Social Security Act, the Immigration and Nationality Act, Federal regulations, and SSA policies and procedures relating to the objectives and scope of the review.

Our review was conducted in accordance with generally accepted government auditing standards. It was conducted primarily at SSA headquarters in Baltimore, where our principal focus was the Division of International Operations, which operates the social security program outside the United States. We interviewed Immigration and Naturalization Service (INS) personnel because of that agency's role in regulating the admission of aliens into the United States and in advising SSA whenever alien beneficiaries arrive and depart from the country (these events can affect the beneficiaries' eligibility for receiving social security payments).

We requested official comments from the Departments of Health and Human Services and Justice on a draft of this report, but we did not receive comments from either department within the 15 days requested. We discussed a draft of this report with SSA officials, who provided suggestions they believed would improve the accuracy of the report. We considered these suggestions and incorporated them into the report where appropriate.

## CHAPTER 2

### THE COST AND GROWTH OF

#### SOCIAL SECURITY BENEFITS ABROAD

Since social security benefits began in 1940, an increasing number of beneficiaries have chosen to live abroad during retirement. As this number increased, so did the cost of paying benefits abroad. In 1940, the 100 beneficiaries living abroad received about \$12,000; in 1981, 313,000 such beneficiaries received about \$980 million.<sup>1</sup> Beneficiaries living abroad consist of retired and disabled wage earners and their survivors and dependents. Most beneficiaries living abroad, however, are not U.S. citizens. Aliens accounted for 66 percent of beneficiaries living abroad in 1981. The average beneficiary living abroad had worked fewer years in social security-covered employment, paid less social security taxes, and had more dependents than the average social security beneficiary. In addition, many of these wage earners added dependents to the benefit rolls after they retired.

This chapter briefly discusses the demographics of beneficiaries living abroad, then focuses on the alien beneficiaries in that population. It discusses their characteristics, explores why they receive benefits, discusses arguments for and against curtailing future benefits, and presents the potential effects of two benefit-curtailement alternatives.

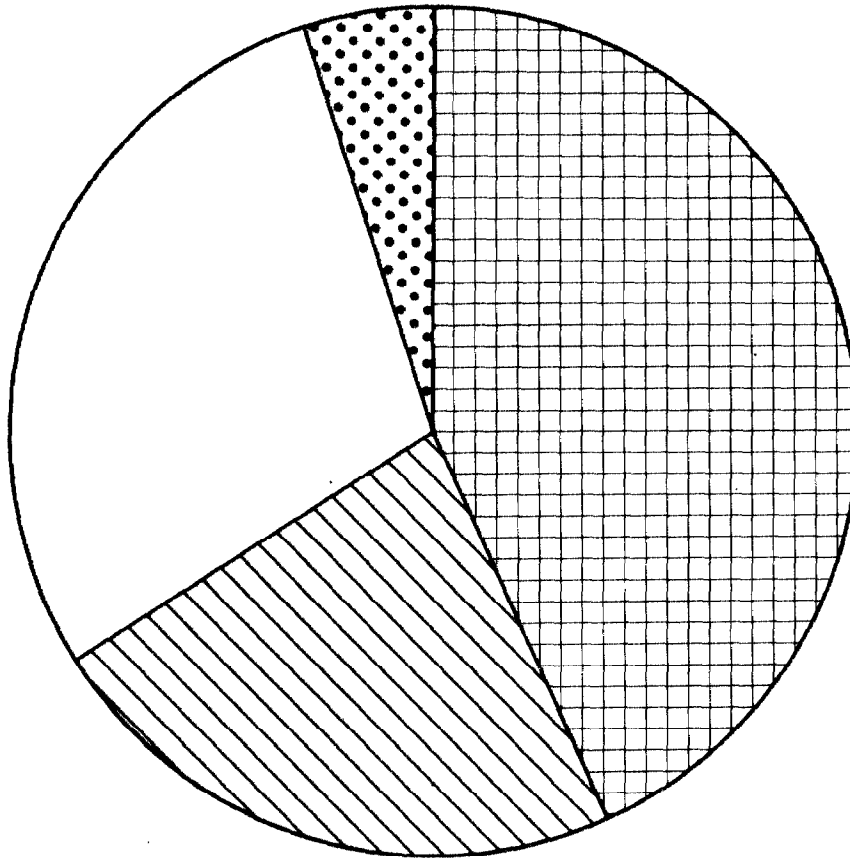
#### A CLOSER LOOK AT THE BENEFICIARIES LIVING ABROAD





In 1981, 313,000 social security beneficiaries lived abroad. Of that number, we estimated that 206,100 (or 66 percent) were aliens; 90,900 (or 29 percent) were U.S. citizens; and 16,000 (or 5 percent) were of a nationality we could not determine. The following chart illustrates this distribution and shows that most beneficiaries living abroad in 1981 were aliens and that most of them were dependents, not wage earners.

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<sup>1</sup>In this same period, beneficiaries and benefits paid in the United States also increased significantly but at a slower rate from 222,000 beneficiaries receiving \$49 million in 1940 to 36 million beneficiaries receiving \$141 billion in 1981.

**Social Security Beneficiaries  
Living Abroad In 1981  
(313,000)**



-  **Alien Dependents, 134,700 or 43 percent**
-  **Alien wage earners, 71,400 or 23 percent**
-  **U.S. citizen wage earners and dependents, 90,900 or 29 percent**
-  **Undetermined Nationality, 16,000 or 5 percent**



In 1981, alien beneficiaries were living in 149 foreign countries. About 74 percent of the 206,100 alien beneficiaries abroad lived in four countries, as shown below.

Alien Beneficiaries Living in  
Foreign Countries in 1981 (note a)

| <u>Country</u>         | <u>Wage<br/>earners</u> | <u>Dependents</u> | <u>Total</u>   | <u>Percent</u> |
|------------------------|-------------------------|-------------------|----------------|----------------|
| Mexico                 | 12,400                  | 40,000            | 52,400         | 25             |
| Philippines            | 14,300                  | 35,200            | 49,500         | 24             |
| Canada                 | 10,900                  | 15,200            | 26,100         | 13             |
| Italy                  | 10,500                  | 14,800            | 25,300         | 12             |
|                        | 48,100                  | 105,200           | 153,300        | 74             |
| All other<br>countries | 23,300                  | 29,500            | 52,800         | 26             |
| Total                  | <u>71,400</u>           | <u>134,700</u>    | <u>206,100</u> | <u>100</u>     |

a/The beneficiary population in these countries was projected based on the number of alien beneficiaries found in each country from our sample of beneficiaries abroad. It is intended only to show the relative size of the beneficiary population in each country and should not be used as a precise indication of the population.

CHARACTERISTICS OF ALIEN  
BENEFICIARIES LIVING ABROAD

The average alien beneficiary living abroad in 1981 had worked fewer years in social security-covered employment, had paid less taxes, and had more dependents than the average social security beneficiary. About 34 percent of all dependents abroad receiving benefits were added after the wage earners became entitled to benefits, as is permitted by law, and of those added dependents, 91 percent were aliens. These aliens were dependents of both U.S. citizens and alien wage earners abroad.

Because the Social Security Act provides for paying benefits to the wage earners' dependents and the benefit formula provides a higher wage replacement rate to the short-term low-income wage earner, alien beneficiaries are more likely to receive proportionately more benefits per tax dollar paid than the average beneficiary.

Alien beneficiaries abroad  
worked fewer years

The average alien beneficiary living abroad in 1981 had earned about 39 quarters of social security credits before retirement or onset of disability. This is equivalent to 9.8 years of social security-covered employment. The average social security beneficiary in 1978 had earned 82 quarters of social security credits, or an equivalent of 20.5 years of employment.

While the average alien wage earner abroad worked only about half as long in covered employment as did the average wage earner, about 40 percent of the aliens abroad had earned 40 or more quarters of social security credit, the maximum number of credits that anyone might need for retirement. Those alien wage earner beneficiaries who had earned fewer than 40 quarters nevertheless had earned enough credits to be eligible to receive benefits.<sup>2</sup> The quarters of credits for alien beneficiaries living abroad in 1981 ranged from the minimum permitted by law to 118.

Aliens at the lower end of the scale generally were older and did not need as many quarters of coverage to be insured as would be required of a beneficiary who attained age 62 in 1982. The latter needed 31 quarters of credit to be fully insured, while a 62-year-old male retiree in 1962, for example, needed only 14 quarters.

Alien beneficiaries abroad  
paid less social security taxes

The shorter average work history in social security-covered employment is partly reflected in the aliens' lower average FICA tax payments. Aliens on the rolls in 1981, on the average, paid an estimated \$1,202 in taxes before they began receiving social security benefits, compared to an average of \$2,170 for all beneficiaries.

The amount of benefits aliens have received relative to their FICA tax payments has been substantial. We estimated that the average alien family had received about \$30,000 since 1961, or about \$24 in benefits for every \$1 in FICA taxes paid before retirement.

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<sup>2</sup>The number of quarters of social security credits that wage earners need to become eligible for benefits varies according to the wage earners' dates of birth. Section 214 of the Social Security Act provides criteria for determining the number of credits that wage earners need to receive benefits for themselves and their survivors.

Alien beneficiaries abroad  
have more dependents

The average alien wage earner living abroad has more dependents than the average social security beneficiary. Alien dependents outnumber wage earners by 180 to 100, in marked contrast to 50 dependents per 100 wage earners in the overall beneficiary population. The table below illustrates the differences in the ratio of dependents to wage earners in four countries where about 74 percent of alien beneficiaries live.

Dependent-Wage Earner Ratio For Alien  
Beneficiaries In Four Foreign Countries  
And The United States In 1981

| <u>Country</u>                 | <u>Dependent-to-<br/>wage-earner ratio</u> |
|--------------------------------|--|
| United States                  | .5:1                                       |
| Mexico                         | 3.2:1                                      |
| Philippines                    | 2.4:1                                      |
| Canada                         | 1.3:1                                      |
| Italy                          | 1.4:1                                      |
| All other foreign<br>countries | 1.2:1                                      |
| Total foreign<br>countries     | 1.8:1                                      |

Because the Social Security Act provides for paying benefits to a wage earner's dependents, wage earners with dependents receive more benefits for their FICA tax dollar than do similar wage earners without dependents. Moreover, if the dependents are younger than the wage earner, they could be getting benefits well after the wage earner's death, thus prolonging the life-cycle of social security benefits and increasing the benefit liability of the social security trust funds.

## Beneficiaries added after retirement

We estimate that about 56,000 (or 34 percent) of the 164,000 dependents living abroad in 1981 were added to the benefit rolls after the wage earner began receiving benefits. Of the dependents added, about 51,000 were aliens.

We estimate that about 91 percent of all dependents abroad who were added to the rolls after a wage earner's retirement were aliens. And about 52 percent of those aliens were added as a result of the wage earner's getting married or having or adopting children after retirement. The remainder were added primarily because the spouse reached retirement age after the retired wage earner or became an eligible widow.

Whenever beneficiaries are added after the wage earner's retirement, benefits to dependents can continue for a long time depending on the dependent's age. The following are examples of cases in which dependents were added to the social security rolls after the wage earner became entitled to payments.

--An alien in a foreign country retired at age 63. At age 73, he married a 29-year-old woman, who 2 years later had a child. The annual benefit amount for the wife and child is \$1,704. The child will be 16 years of age in 1994 and could continue receiving benefits until then.

--An alien in a foreign country retired at age 62 and at age 65 married a 29-year-old woman. She had three children during the next 7 years. She and the children have received \$2,256 a year in social security benefits over that period. Their benefits could continue until the children are age 16 and could resume for the spouse when she attains age 62 or, if widowed, age 60.

While these cases are not representative of all the alien beneficiaries that were added after retirement, they show how some beneficiaries are added to the rolls.

## WHY DO ALIENS GET BENEFITS?

The Social Security Act does not differentiate between U.S. citizens and aliens in the criteria for earning social security insurance credits. An alien who engages in employment covered by the act earns quarters of social security credits just as a citizen would. When the alien has earned enough credits, he or she becomes insured and any dependents may be

eligible to receive benefits. Such benefits are payable when the insured wage earner becomes disabled, attains the minimum age for retirement, or dies leaving eligible dependents.

As early as 1939, the Congress expressed concern that some aliens might come to the United States and work for a short period, contribute minimally to the social security system, and then return to their native countries for retirement on social security benefits. In 1956, the Congress attempted to legislate some control over aliens living abroad and receiving such benefits.

The Social Security Amendments of 1956 (which contain the alien nonpayment provisions) provide that retired or disabled wage earners who are not U.S. citizens or nationals will have their social security payment suspended whenever they have been outside the country for 6 consecutive months without spending at least 1 calendar month in the country. The so-called alien non-payment provisions' basic intent (implied in the legislative history) was to restrict social security payments to aliens with relatively short work histories<sup>3</sup> who chose to live abroad.

That objective has not been met, however, because of the exemptions included in the amendments. These exemptions preclude suspending benefits if an alien beneficiary meets any of the following conditions:

1. The alien was eligible for a monthly benefit for December 1956 or earlier.
2. The alien has railroad employment coverage that is creditable under the Social Security Act.
3. The alien is living abroad while in the active U.S. Armed Forces.
4. The alien died while in the U.S. Armed Forces or as a result of disease or injury attributable to such service.
5. The suspension of the alien's benefits would be contrary to a treaty obligation of the United States.

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<sup>3</sup>"Short work history" was not defined in the amendments, but from the legislative history the implied meaning was less than 40 quarters of social security credit.

6. The alien lived in the United States for at least 10 years or has at least 40 quarters of social security insurance credit.
7. The alien is a citizen of a foreign country that has a social insurance or pension system under which U.S. citizens who qualify may receive benefits while living outside the foreign country, regardless of the duration of their absence.

Also, an alien entitled to benefits under a totalization agreement<sup>4</sup> between the United States and his or her native country is not subject to the nonpayment provisions' criteria.

Because of the above exemptions, most aliens are not affected by the alien nonpayment provisions. In 1981, only 1,461 alien beneficiaries' payments were suspended because they were living abroad and did not meet any of the above conditions. This means that less than 1 percent of the alien beneficiary population was affected by the provisions.

SSA data do not show for all alien beneficiaries which exemption or exemptions they most frequently met. However, our review of cases indicates that most of them are exempted because they meet the criteria for one or more of four exemptions: they have at least 40 quarters of social security credits; they are citizens of one of the countries that provide social insurance benefits to U.S. citizens; they are citizens of a country with which the United States has a social insurance treaty obligation; or they are citizens of a country with which the United States has a totalization agreement. We estimate that about 99 percent of aliens living abroad met exemptions because they are citizens of a country that provides social insurance benefits to U.S. citizens or has a treaty obligation or totalization agreement with the United States. Almost half of the aliens living abroad also qualify for exemptions because the wage earner had at least 40 quarters of social security credits.

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<sup>4</sup>The International Social Security Agreement Act authorizes the President to establish a "totalization agreement" between the U.S. social security system and that of a foreign country. This agreement permits a beneficiary's old-age, survivors, and disability benefit to be based on a combination of the worker's coverage under the two systems. As of January 1983, social security had such agreements in effect with Italy, West Germany, and Switzerland and had signed but not implemented agreements with Belgium, Canada, and Norway.

SHOULD ALIENS ABROAD  
GET BENEFITS IN THE FUTURE?

Because of the many alien beneficiaries living abroad and congressional interest in considering whether future payments to aliens should be modified, we examined some reasons often given for curtailing benefits to aliens living abroad. Those who would favor curtailing future payments to such aliens generally contend that the alien beneficiaries often receive a better deal than American workers and can take advantage of a system that was designed for Americans. Arguments for curtailing benefits include the following:

1. The system was created for American workers, and its benefit structure is geared to the American economy.
2. Many aliens work in the United States for only a short time, pay a minimal amount of social security taxes, return to their native country, and eventually receive benefits.
3. Many aliens marry and have or adopt children after they retire; consequently, their dependents receive benefits for many years.
4. Monitoring the continued eligibility of alien beneficiaries abroad is difficult; consequently, there is a higher risk of fraud and abuse.
5. Payments to beneficiaries only remotely associated with the United States are a drain on the financially troubled social security trust funds.

Although data show that the average alien works fewer years in social security-covered employment and pays less taxes than does the average beneficiary, alien beneficiaries do meet benefit eligibility criteria set by law, which are the same standards for Americans. Many U.S. citizens have received benefits based on relatively short work histories and minimal tax contributions under social security. The amount of FICA taxes a wage earner pays over his or her working years is a function of earnings levels, the FICA tax base, and the tax rate. When the social security program began, the tax base was \$3,000 at a 1-percent tax rate for both the employee and the employer. The tax base and rate remained relatively low well into the 1960s. Therefore, many retirees of this era--citizens and aliens--paid a rather modest amount of taxes even if they had substantial earnings during those years.

Aliens abroad receive benefits that are based on a benefit structure keyed to the American economy and designed to meet social adequacy as well as insurance objectives. Benefit amounts, including an annual cost-of-living increase, are indexed based on American wage and price increases. The benefit structure is designed to provide not only a replacement of earnings for the wage earner but also additional benefits for the dependents without affecting the amount received by the retiree.

Some have suggested that the annual cost-of-living increase and the payment of dependent benefits are inappropriate for aliens abroad because the former is based on the American economy and the latter is intended to meet an American social adequacy objective. However, any argument suggesting that a separate benefit structure be applied for aliens abroad because they are not a part of the American economy could be considered discriminatory if not also applied to U.S. citizens abroad. Moreover, some would argue that economic conditions in some countries leave the retiree at a disadvantage when his benefits are based on the American economy, and since economic differences also exist between U.S. geographical areas, using one base for measuring changes is not inappropriate.

As discussed, aliens abroad tend to have more dependents than the average beneficiary and to add dependents after retirement. To that extent, benefits are more likely to be paid for a longer time to the dependents. As the data on page 9 show, however, the dependent-to-wage-earner ratio may differ considerably between some foreign countries and the United States.

Furthermore, social security does not have data to show to what extent all retirees add dependents after retirement. Some would argue that any restrictions on adding dependents after retirement should apply to all beneficiaries, not just aliens living abroad.

Some contend that payments to alien beneficiaries abroad are a drain on the trust fund resources and that a change could curtail the outflow of U.S. dollars to foreign countries. Any curtailment of future benefits would of course save trust fund moneys, but because payments to all alien beneficiaries abroad are less than \$1 billion annually, any change not applicable to current beneficiaries would not have a major impact on the estimated \$150 billion to \$200 billion shortfall the trust funds will experience by 1990.

Arguments can also be made that the program is too costly and difficult to administer. Such an argument, however, would apply to all beneficiaries abroad. The \$13.8 million spent in fiscal year 1981 administering to the roughly 1 percent of the social security beneficiary population that lives abroad is



equal to more than 4 percent of what it costs to administer to beneficiaries living in the United States. The program is more difficult to administer because of the diversity of languages, customs, and laws. The international program is required to publish, monitor, and enforce restrictions that do not apply to beneficiaries living in this country, in addition to regulations that apply to all beneficiaries. Also, the international program is vulnerable to fraud and abuse, which, when discovered and proved, is difficult to act on, simply because SSA often lacks legal authority abroad.

However, the difficulty and increased cost to administer the international program and its vulnerability to fraud and abuse may not, by themselves, be adequate justification for its curtailment. Even if all alien beneficiaries abroad were denied further benefits, benefits being paid to U.S. citizen beneficiaries living abroad would still need to be administered.

Other arguments against curtailing benefits to aliens abroad have also been made. Among such arguments are that (1) alien wage earners pay the same mandatory taxes as all other workers, (2) alien wage earners who have paid into the system but not yet retired should be entitled to credits earned, and (3) any change to the current system denying benefits to aliens abroad could violate U.S. treaties or other agreements with foreign countries and result in retaliation against U.S. citizens in the United States and in foreign countries. The ramifications of any change to the current structure cannot be precisely determined. Any such change, however, would raise the possibility of foreign countries retaliating against U.S. citizens and could affect the residency decisions of aliens at retirement.

#### POTENTIAL SAVINGS IF FUTURE BENEFITS ARE CURTAILED

If the Congress decides to curtail social security benefits to future claimants living abroad who are not U.S. citizens, it would have to consider whether aliens who are members of families with U.S. citizens should be affected and, if so, how. There are three primary types of family situations involving alien beneficiaries abroad: (1) all family members are aliens, (2) a retired or deceased alien wage earner has U.S. citizen dependents, or (3) a retired or deceased U.S. citizen wage earner has alien dependents. If benefits were curtailed for all aliens abroad regardless of a relationship to U.S. citizens, some U.S. citizen dependents of alien retirees could be affected, as would the alien dependents of some retired or deceased U.S. citizen wage earners. A change in benefit eligibility criteria, therefore, could affect U.S. citizens as well as aliens, depending upon which factors are used to determine benefit eligibility.

In estimating the potential impact of curtailing benefits for future alien beneficiaries abroad, we considered two approaches and analyzed the potential impact of each.

The first alternative presents the results if all aliens living abroad who became eligible for benefits in the future would be denied benefits regardless of the citizenship of the wage earner from whose earnings their benefits derive. The second alternative shows the results if only alien wage earners living abroad who become eligible for benefits in the future and their alien dependents would be denied benefits--this approach would not affect alien dependents of U.S. citizens.

Using SSA data on new foreign beneficiaries, we estimate that over 16,000 new alien beneficiaries would be denied benefits each year if all aliens abroad were denied benefits. This would affect about 6,000 wage earners, 5,000 dependent spouses and widows, and 5,000 dependent children. The gross benefits curtailed would be about \$43 million annually. However, if the wage earners were reimbursed for their FICA tax contributions, which would amount to about \$8 million, the net curtailment would be about \$35 million annually. Alternatively, if benefits were curtailed only for alien wage earners and their alien dependents, about 14,000 beneficiaries would be affected and about \$37 million in gross benefits curtailed, or about \$29 million if tax contributions are returned. The amount of FICA tax reimbursement is the same in each case because the tax reimbursement is based on the number of alien wage earners, not dependents.

To illustrate the potential effect of these two alternatives, figures 1 and 2 summarize by beneficiary category the number of alien beneficiaries abroad who would be affected and the effect on the social security trust funds.

Figure 1

Curtailling Benefits to All  
Future Aliens Abroad

| <u>Beneficiary<br/>category</u>                               | <u>Number affected<br/>annually</u> | <u>Estimated benefits to be<br/>curtailed annually</u><br><br>(millions) |
|---|-------------------------------------|--|
| Alien wage earners  | 6,230                               | \$23   |
| Alien dependent<br>spouses and<br>widows/widowers<br>(note a) | 5,333                               | 13   |
| Alien dependent<br>children<br>(note a)                       | <u>5,376</u>                        | <u>7</u>   |
| Total   | <u>16,939</u>                       | <u>\$43</u>  |

Figure 2

Curtailling Benefits to Future Alien Wage  
Earners Abroad and Their Alien Dependents

| <u>Beneficiary<br/>category</u>   | <u>Number affected<br/>annually</u> | <u>Estimated benefits to be<br/>curtailed annually</u><br><br>(millions) |
|---|-------------------------------------|--|
| Alien wage earners  | 6,230                               | \$23   |
| Alien dependent<br>spouses and<br>widows/widowers<br>of alien wage<br>earners | 3,253                               | 8  |
| Alien dependent<br>children of<br>wage earners                                | <u>4,278</u>                        | <u>6</u>   |
| Total   | <u>13,761</u>                       | <u>\$37</u>  |

a/Includes alien dependents of U.S. citizens.

## CONCLUSION

The cost of social security benefits paid to aliens abroad has grown substantially over the years, and the circumstances by which some aliens attain eligibility have contributed to this growth.

Legislation enacted in 1956 to restrict payments to aliens residing abroad has had little effect because of its numerous exemptions. The concerns that prompted the legislation are still valid today--aliens can work in the United States for a relatively short time, return to their native country, and retire and receive benefits for themselves and their dependents for a long time. As a group, aliens abroad generally have worked fewer years in social security-covered employment, paid less social security taxes, and had more dependents than the average social security beneficiary, frequently adding dependents after retirement.

The payment of social security benefits to aliens represents a policy question for the Congress and presents a number of difficult and complex issues. Some of these issues are (1) the equity of treating aliens differently than Americans, (2) the reaction by countries whose citizens will be adversely affected and the potential retaliatory action by their systems, and (3) the question of requiring alien workers to pay full FICA taxes if they might not receive full benefits for retirement or disability.

For these reasons, the Congress may decide that benefits to aliens abroad should continue as under present law. If, however, the Congress decides to reconsider paying benefits to aliens abroad, it could consider the following alternatives:

- Pay benefits only to the alien wage earner.
- Pay benefits to the alien wage earner and dependents based on the family composition at the time of the wage earner's retirement.
- Pay benefits to the alien wage earner and dependents based on the family composition at the time the wage earner left the United States.

## CHAPTER 3

### ALIENS CAN EARN ENTITLEMENT TO

### SOCIAL SECURITY BENEFITS WHILE VIOLATING

### THE IMMIGRATION AND NATIONALITY ACT

The Immigration and Nationality Act provides for regulating admission of aliens to the United States. The act requires that before aliens are permitted to enter this country for permanent employment, the Secretary of Labor must certify to the Attorney General that (1) there are not enough U.S. workers willing, able, and qualified to perform the work at the time and location it is to be performed and (2) such employment of aliens will not adversely affect wages and working conditions of U.S. workers similarly employed.

The Social Security Act allows aliens to earn social security insurance credits regardless of their employment or resident status in the United States. Section 210(a) of the act defines employment for the purpose of social security credits as any service performed in the United States by an employee for an employer irrespective of the citizenship of either. Consequently, aliens who are admitted to this country to attend school, visit, or for other purposes, but not for permanent employment, can earn social security credits by illegally working at a job covered by social security. Similarly, aliens who enter the country illegally can earn social security credits as a result of employment during their illegal stay. The accumulation of social security credits by legal and illegal aliens can lead to insured status and entitle them to social security benefits earned through unlawful employment.

This chapter discusses both legal and illegal aliens who might have earned social security credits while violating the Immigration and Nationality Act and the potential cost of paying benefits to such aliens.

### ALIENS HAVE ILLEGALLY WORKED AND EARNED SOCIAL SECURITY COVERAGE

The number of aliens who have illegally engaged in employment and earned social security credits cannot be precisely determined. Under the Social Security Act, a wage earner's citizenship does not affect his or her eligibility to earn social security credits; for that reason, SSA has not maintained data on the citizenship of all workers who pay social security taxes. SSA has some information on legal aliens who have violated their immigration status by working, but it does not have

such data on aliens who have entered the United States illegally and engaged in social security-covered employment during their illegal stay.

Legal aliens working illegally  
in the United States

According to SSA's statistics (as of December 1982), about 289,000 legal aliens have engaged in social security-covered employment since 1974.

Until 1974, SSA made no distinction based on citizenship when issuing a social security card. Beginning in 1974, as was required by the Social Security Amendments of 1972, SSA began issuing social security cards to legal aliens who requested them for "nonwork purposes." These purposes included opening bank accounts, registering for school, and obtaining a driver's permit. When SSA issued such social security cards, it coded its enumeration records to indicate that these numbers were for nonwork purposes.

In 1975, SSA discovered that social security-covered earnings were being reported under many of the social security numbers that were issued for nonwork purposes. This was not a violation of the Social Security Act, but SSA did gather statistical information on these incidents and shared it with INS since these alien wage earners were apparently violating their immigrant status. This information flow was discontinued after the enactment of the Tax Reform Act of 1976 because of questions regarding interagency transmittal of taxpayer information. These questions were resolved in 1982, and SSA plans to resume transmitting to INS the information on aliens who may have worked illegally since 1976.

Also, SSA has begun noting "not valid for employment" on the face of new social security cards issued to legal aliens if they are not permitted to work in this country.

Illegal aliens working illegally  
in the United States

The exact number of illegal aliens who have entered and worked in the United States and earned social security credits cannot be determined. This occurs partly because illegal aliens conceal their illegal immigrant status when they apply for social security cards. Cards and numbers they succeed in obtaining cannot be distinguished from legitimate ones. Therefore, little is known as to the number of illegal aliens who have earned social security credits under fraudulently obtained social security cards or the number who have worked and paid taxes under someone else's social security number.

Various studies, including one by us,<sup>1</sup> have developed estimates of the number of illegal aliens in the United States. The estimates range from 1 million to 12 million, but the most widely accepted range is from 3.5 million to 6 million. One study showed that between 65 and 88 percent of a group of illegal aliens who were interviewed had been employed while residing in this country and had paid social security taxes on their earnings.<sup>2</sup>

POTENTIAL COST TO SOCIAL SECURITY  
DUE TO ALIENS ENGAGING UNLAWFULLY  
IN COVERED EMPLOYMENT

Despite the statistical limitations of the various illegal alien studies, one can develop a rough estimate of the impact on the social security trust funds of payments to illegal aliens. To illustrate such a potential impact, we used the lower range of the most widely quoted illegal alien population estimate (3.5 million) and the lower estimate of those illegal aliens who had been employed while in the United States and paid social security taxes (65 percent). We chose the lower range of the estimates because of uncertainties as to their statistical reliability. Using these data, we estimated that about 2.3 million<sup>3</sup> illegal aliens had worked in social security-covered employment and had received some social security credits.

It is unknown how many of these wage earners have earned enough credits to be eligible for disability or retirement benefits. There are no reliable data on social security payments made to aliens as a result of their unlawful employment. Nonetheless, we developed an estimate to show the potential annual costs to the trust funds if only 1 percent of the 2.6 million aliens<sup>4</sup> who had illegally worked in this country had been eligible for and receiving benefits in 1981. We estimated that, if 1 percent of such workers eventually qualify and receive benefits, it could cost the trust funds \$108 million a year.

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<sup>1</sup>"Problems and Options in Estimating the Size of the Illegal Alien Population," IPE-82-9, pp. ii, 10-11. (Sept. 24, 1982).

<sup>2</sup>David North and Marion Houstoun, "The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study," March 1976, p. 130.

<sup>3</sup>3.5 million x .65.

<sup>4</sup>This includes 2.3 million illegal alien workers and 289,000 legal aliens who worked illegally in the country.

Furthermore, this cost would increase by approximately \$108 million for each 1-percent increase in such beneficiary population. We used the average alien family benefit rate (\$4,160) for aliens abroad in 1981 to complete the estimate.

SHOULD SOCIAL SECURITY BENEFITS  
ACCRUE FROM UNLAWFUL EMPLOYMENT?

In 1954, a bill was introduced in the Congress (H.R. 9366) which stated in part that earnings derived from covered employment by individuals while they were unlawfully residing in the United States would not be used in establishing eligibility for, or the amount of, social security benefits. Furthermore, the bill said these earnings would be deleted from such individuals' earnings record upon the Secretary's<sup>5</sup> receipt of notification from the Attorney General of an alien's periods of unlawful residence in this country.

These provisions were deleted from the bill, however, by the Senate Finance Committee after it received the Secretary's comments on the feasibility of its implementation. The Secretary endorsed the provisions' objective, but opposed enactment because of the disproportionate administrative burden it would impose on the Department and SSA, compared to the potential benefits. She noted, for example, that the Department would have received 900,000 notifications of unlawful employment in 1953 and that earnings from such employment would have had to be deleted from the aliens' social security earnings records--a task she thought too administratively burdensome.

The subject of aliens who might earn entitlement to social security benefits while either unlawfully residing or unlawfully working in the United States was discussed during hearings before the House Committee on Government Operations in November 1973. A member of this Committee stated that it seemed almost incongruous that aliens could participate in illegal activity--working in violation of the Immigration and Nationality Act--and earn social security benefits when, if their status had been known, they would not have been permitted employment and might have been deported. If aliens are formally deported for illegal work, they do not receive benefits. The member asserted that these wages/earnings were, in effect, obtained in violation of the Immigration and Nationality Act. He added that if the employment upon which the entitlement is based was illegal, the law should require that the benefits be disallowed.

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<sup>5</sup>Referred to the Secretary of Health, Education, and Welfare; currently the Secretary of Health and Human Services.



If legal resident and employment status were required in order to earn social security credits, we believe SSA could enforce it by implementing a two-phase process. In the first phase, SSA could delete any earnings and credits derived from such earnings when it discovers that an alien has reported earnings while violating the Immigration and Nationality Act.

The second phase of the enforcement process could be applied when aliens or their surviving dependents apply for benefits. At that time, SSA could require that sufficient evidence be provided by the claimant that the wage earner was in legal alien status and was authorized to be employed when his social security credits were earned. Otherwise, no credits would be allowed for earnings during any calendar quarter in which the wage earner was in violation of the Immigration and Nationality Act.

Any change to the current process should consider the availability of the evidence required to prove the wage earner's legal status and the capability of SSA and Justice to implement and administer the change.

#### CONCLUSION

The Social Security Act does not prohibit aliens from earning entitlement to social security benefits based on earnings derived from covered employment in the United States even if the individuals were illegal residents, or legal residents who had engaged in unauthorized employment.

Under the Immigration and Nationality Act, both types of aliens may be deported if discovered for entering illegally or violating their immigrant status by engaging in unauthorized employment.

A gap between the provisions of the Social Security Act and the Immigration and Nationality Act allows aliens to earn entitlement to social security benefits under the former law while violating the latter. Consequently, millions of aliens, both legal and illegal, may have engaged in unauthorized employment and earned entitlement to social security benefits. The effects these benefit payments to these workers could have on the trust funds depend on their numbers and benefit levels.

The Congress may wish to consider whether aliens who work illegally in the United States should be allowed to earn entitlement to social security benefits for such work. If the Congress decides that aliens should not earn credits for illegal work, it could require proof of legal immigrant status before benefits are paid.

STATISTICAL PROJECTIONS FOR  
ALIENS LIVING ABROAD IN 1981 (note a)

Table 1

Estimate of Alien Beneficiary Population Abroad

| <u>Alien wage earners</u> | <u>Sampling error (±)</u> | <u>Alien dependents</u> | <u>Sampling error (±)</u> | <u>Total</u> | <u>Sampling error (±)</u> |
|---------------------------|---------------------------|-------------------------|---------------------------|--------------|---------------------------|
| 71,400                    | 8,200                     | 134,700                 | 23,600                    | 206,100      | 25,000                    |

Table 2

Estimate of Alien Beneficiary Population  
in Four Foreign Countries With Largest  
Number of Alien Beneficiaries

| <u>Country</u>   | <u>Alien wage earners</u> | <u>Sampling error(±)</u> | <u>Alien dependents</u> | <u>Sampling error(±)</u> | <u>Total</u> | <u>Sampling error(±)</u> |
|------------------|---------------------------|--------------------------|-------------------------|--------------------------|--------------|--------------------------|
| Mexico           | 12,400                    | 4,600                    | 40,000                  | 18,100                   | 52,400       | 18,700                   |
| Philip-<br>pines | 14,300                    | 4,900                    | 35,200                  | 15,000                   | 49,500       | 15,800                   |
| Canada           | 10,900                    | 4,300                    | 15,200                  | 7,300                    | 26,100       | 8,500                    |
| Italy            | 10,500                    | 4,200                    | 14,800                  | 6,600                    | 25,300       | 7,800                    |
| Total            | 48,100                    | 9,000                    | 105,200                 | 25,500                   | 153,300      | 27,000                   |

Table 2 lists the four foreign countries where the largest numbers of alien beneficiaries were living in 1981. According to these estimates, about 74 percent of all alien beneficiaries abroad were residing in these countries.

a/The sampling errors of the estimates are stated at the 95 percent confidence level. This means that if all case files for beneficiaries living abroad were examined and the beneficiary characteristics determined, the chances are 19 out of 20 that the results achieved would not differ from the estimates shown in tables 1 through 4 by any more than the corresponding sampling error shown for each statistical estimate.

Table 3Estimate of the Average Number of Social Security Credits Earned by Aliens Abroad

| <u>Population estimate</u> | <u>Average quarters of credit</u> | <u>Sampling error (±)</u> |
|----------------------------|-----------------------------------|---------------------------|
| 71,400                     | 39.4                              | 4.5 quarters              |

Table 3 shows an estimate of the average number of social security credits alien wage earners had earned before retirement, disability, or death. This average number of credits is equivalent to approximately 10 years of social security-covered employment.

Table 4Estimate of Alien Dependents Added After Wage Earner's Retirement

| <u>Population estimate</u> | <u>Sampling error (±)</u> |
|----------------------------|---------------------------|
| 51,400                     | 13,400                    |

Table 4 shows an estimate of the number of alien dependents who were added to the beneficiary rolls after the wage earners' retirement or disability. This estimate represents over 90 percent of all dependents abroad that were so added.





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