



SOCIAL SECURITY

Inspector General

March 18, 2003

The Honorable E. Clay Shaw, Jr.
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Shaw:

In response to your October 10, 2002 questions from the *Hearing on Preserving the Integrity of Social Security Numbers and Preventing their Misuse by Terrorists and Identity Thieves*, I am pleased to provide you the enclosed report. Specifically, you were interested in more background on the regulatory environment that allows noncitizens to receive Social Security benefits based on unauthorized work. Our objective was to review this regulatory framework and define the characteristics of specific instances where unauthorized work later led to Social Security benefits.

The enclosed report contains information related to

- the statutory and regulatory framework that allows benefits to be claimed by noncitizens working in the United States without authorization;
- earlier audits highlighting benefits paid to individuals based on earnings under nonwork SSNs; and
- sample cases where noncitizens appeared to be working without authorization and later collected benefits based on their earnings.

If you have any questions or would like to be briefed on this issue, please call me or have your staff contact Douglas Cunningham, Executive Assistant, at (202) 358-6319.

Sincerely,

A handwritten signature in blue ink, appearing to read "James G. Huse, Jr.", written in a cursive style.

James G. Huse, Jr.

Enclosure

cc:
Jo Anne B. Barnhart

CONGRESSIONAL RESPONSE REPORT

Social Security Administration Benefits Related to Unauthorized Work

A-03-03-23053



MARCH 2003

Mission

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

Authority

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

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

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

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

Vision

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

Background

In response to an October 10, 2002 request from the Chairman of the Subcommittee on Social Security, we reviewed the statutory and regulatory framework that allows noncitizens to receive Social Security benefits based on unauthorized work and defined the characteristics of specific instances where such unauthorized work later led to Social Security benefits.

ENTITLEMENT TO SOCIAL SECURITY BENEFITS

The Social Security Administration (SSA) provides Old-Age, Survivors and Disability Insurance (OASDI) benefits to individuals based on their lifetime earnings reported under a valid Social Security number (SSN).¹ These earnings determine whether an individual has enough quarters of coverage, or work credits, for insured status. Social Security work credits are based on an individual's total annual wages or self-employment income. An individual can earn up to four credits each year. The amount needed for a credit changes from year to year. In 2002, for example, an individual earned one credit for each \$870 of wages or self-employment income. When an individual earns \$3,480, he or she has earned four credits for the year.

Wages reported under an invalid name and/or SSN cannot be posted to a unique earner's account and instead accumulate in SSA's Earnings Suspense File (ESF). As of July 2002, the ESF contained approximately 236 million wage items totaling about \$374 billion related to Tax Years (TY) 1937 through 2000. See Appendix B for more information on this File.

To be entitled to OASDI benefits under his or her own record, an individual must

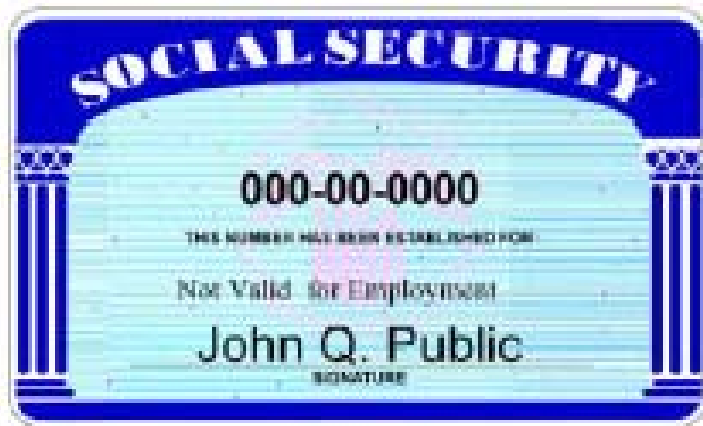
- be insured;²
- have filed an application; and
- meet the age or disability requirements.³

¹ In accordance with the Social Security Act Section 205(c)(2)(A) and 20 CFR Section 422.103(a), SSA maintains an earnings record for each SSN holder. This earnings information is maintained on SSA's Master Earnings File. To have the wages count for purposes of later benefits, an individual must first have worked in jobs where he or she paid Federal Insurance Contribution Act (FICA) taxes.

² The number of quarters of coverage required may be different depending on the type of benefits involved and other factors.

³ Through the OASDI program, entitled workers receive monthly benefits when they reach the appropriate age or are found to have a disability that either prevents or can be expected to prevent them from engaging in substantial gainful activity for at least 12 months, or can be expected to result in death. Entitled members of a worker's family can also receive monthly benefits based on the worker's record.

SOCIAL SECURITY NUMBERS AND WORK AUTHORIZATION



To credit quarters of coverage to an account for later benefits, SSA issues each individual a unique SSN.⁴ The Social Security cards displaying this SSN also indicate the individual's right to work in the United States. While U.S. citizens are automatically entitled to work in the economy, noncitizens may not have this same right. Nonwork SSNs may be issued to noncitizens who meet certain requirements but are not

authorized by the Immigration and Naturalization Service (INS) to work in the United States. The Social Security card issued to these noncitizens notes that the SSN is "Not Valid for Employment."

The original Social Security Act, Public Law (P.L.) 74-271, enacted August 14, 1935, included no provision for issuing nonwork SSNs. However, as other Federal and private entities started using the SSN, it became apparent that many noncitizens who were lawfully present in the United States without work authorization needed SSNs for other purposes. Therefore, SSA began issuing nonwork SSNs to these noncitizens. In March 1974, SSA published regulations authorizing the issuance of nonwork SSNs.⁵

As of August 1997, SSA had issued approximately 7 million nonwork SSNs. Until recently, SSA issued nonwork SSNs to individuals who may have been unauthorized to work but needed an SSN to

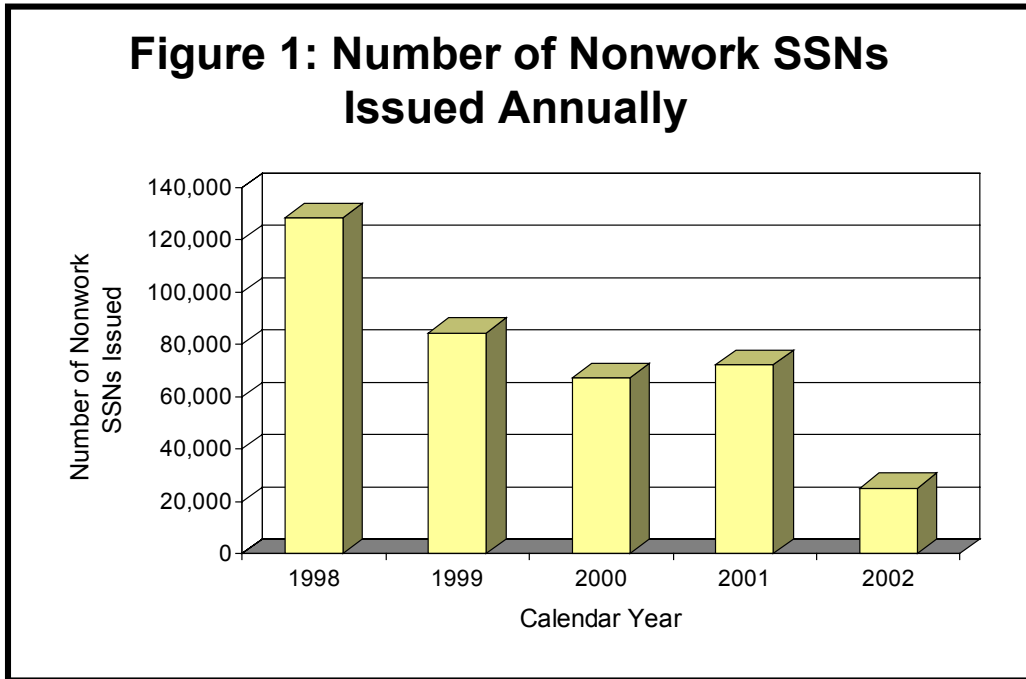
- obtain a State driver's license;
- receive other federally funded benefits or services;
- receive State or local general assistance benefits; or
- meet specific tax and banking purposes.

However, in recent years, the number of nonwork SSNs issued has declined as SSA has strengthened controls over the issuance of nonwork SSNs (see Figure 1). In March 2002, SSA provided additional guidance to its field offices limiting the reasons for issuing nonwork SSNs, such as specifically eliminating their issuance solely for a

⁴ If an individual reports earnings under an invalid name and/or SSN, these wages cannot be posted to a unique earner's account and instead accumulate in the ESF. See Appendix B for more information on this file.

⁵ 39 Fed. Reg. 10241 (March 19, 1974).

driver's license.⁶ Under this policy, noncitizens should only be issued an SSN because (1) a Federal statute or regulation requires that the noncitizen provide his or her SSN to get the particular benefit or service or (2) a State or local law requires that the noncitizen provide his or her SSN to get general assistance benefits to which the noncitizen has established entitlement.⁷



⁶ Because of a December 2002 lawsuit, SSA has returned to its previous policy of allowing the issuance of SSNs to obtain driver's licenses. (*Iyengar v. Barnhart*, Civ. No. 02-0825, 2002 U.S. Dist. LEXIS 22668 [Nov. 26, 2002]). SSA has drafted new regulations regarding the use of nonwork SSNs and forwarded these regulations to the Office of Management and Budget for review and approval. Once approved, SSA intends to share the new regulations with the States and eliminate the issuance of SSNs to obtain a driver's license.

⁷ Program Operations Manual System (POMS), section RM 00203.510, *Alien Without Work Authorization - Nonwork Need For an SSN*.

Results of Review

The following sections provide information on (1) the statutory and regulatory framework allowing benefits to be claimed by noncitizens working in the United States without authorization; (2) earlier audits highlighting benefits paid to individuals based on earnings under nonwork SSNs; and (3) sample cases where noncitizens appeared to be working without authorization and later collected benefits based on their earnings.

UNAUTHORIZED WORK AND SSA BENEFITS

Current Social Security laws and regulations only sometimes differentiate between citizens and noncitizens for the purpose of determining quarters of coverage. As a result, in many cases SSA creates a work history for individuals with valid SSNs,⁸ even when some of the earnings

- occurred under nonwork SSNs or
- belonged to noncitizens who were in the United States illegally or were otherwise unauthorized to work at the time of their unauthorized earnings but who later obtained a valid SSN.

The Social Security Act allows OASDI benefits to be paid to entitled noncitizens regardless of their authorization to work in the economy at the time of their earnings. Section 210(a) of the Social Security Act⁹ defines the term “employment” as

...any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 ... by an employee for the person employing him, **irrespective of the citizenship or residence of either**....[emphasis added]

⁸ A valid SSN is one that matches the name and date of birth on SSA's records.

⁹ 42 U.S.C. Section 410(a).

While section 210 addresses noncitizen status in connection with certain discrete forms of employment,¹⁰ in general, citizenship does not matter with regard to earning quarters of coverage.¹¹

In our discussion with SSA field office staff, we were told that, as long as a noncitizen can prove that earnings belong to him or her, SSA will provide that individual earnings credits. Once these earnings are recorded, the noncitizens may have sufficient quarters of coverage to receive OASDI benefits.

In the 1980s, members of Congress questioned the legal framework that allowed noncitizens to benefit from unauthorized work. For instance, we found that amendments were proposed to (1) provide that benefits no longer be paid to noncitizens not authorized to live and work in the United States and (2) place a limit on Social Security benefits paid to illegal and nonresident noncitizens. Some of the reasons in support of the amendments included protecting the trust funds and encouraging respect for immigration laws. Reasons against the amendments included the Government's responsibility to provide benefits where the taxes have been paid and potential difficulties in administering a restriction on noncitizen benefits. While these amendments never became law, they do provide an example of earlier concerns related to the current policy (see Appendix C for more on these amendments).

UNAUTHORIZED WORK BY NONCITIZENS WITH NONWORK SSNs

Noncitizens have used nonwork SSNs to work in the U.S. economy, acquire quarters of coverage, and later receive SSA disability and retirement benefits. The use of nonwork SSNs for employment purposes has been the subject of previous audits, including two SSA Office of the Inspector General (OIG) reviews and a separate review by the Treasury Inspector General for Tax Administration (TIGTA).

¹⁰ Section 210(a) contains provisions that may treat noncitizens differently. For instance, under section 210(a)(C)(1), "employment" does not include service performed by foreign agricultural workers lawfully admitted to the United States on a temporary basis. In addition, under section 210(a)(B), only a "citizen or resident of the United States" may have "employment" with an American employer outside the United States. Moreover, a "nonresident alien" by definition cannot earn "self employment income" for Social Security purposes under the definition of such income in section 211(b).

¹¹ However, the statute and regulations make clear that certain noncitizens in the country illegally may not *receive* OASDI benefits. For instance, under section 202(y) of the Act, no monthly OASDI benefit may be paid to any alien in the United States for any month during which the Attorney General determines he or she is not lawfully present. Under section 202(n) of the Act, OASDI benefits are terminated for any beneficiary who is deported, and may not be paid to any other auxiliary beneficiary who is not a citizen of the United States and is outside the United States. Auxiliary beneficiaries, however, are otherwise not affected by a worker's deportation. Under the Supplemental Security Income (SSI) program only legal residents qualify for benefits. See 42 U.S.C. Section 1382c(a)(1)(B). SSI is authorized under title XVI of the Act and provides monthly payments to aged, blind and disabled individuals based on financial need and medical requirements.

Nonwork SSNs and SSA's Trust Fund

In a 1999 OIG audit,¹² we estimated that unauthorized earnings associated with nonwork SSNs may have already cost SSA's trust funds \$287 million and could cost the trust funds as much as \$63 million annually.¹³ Over the lifetimes of the nonwork SSN holders and their dependents, we estimated that unauthorized earnings associated with these nonwork SSNs may cost the trust funds over \$1.7 billion. Our report recommended that SSA propose legislation to prohibit the crediting of nonwork earnings and related quarters of coverage for purposes of benefit entitlement.

In a 2002 OIG audit,¹⁴ we recommended enhanced controls over nonwork SSNs as well as greater coordination between SSA and other Federal agencies to discourage illegal employment. In the report, we noted data compatibility problems between SSA and the INS that will need to be resolved to improve the information in both agencies' databases. For instance, although SSA provides an annual report to the INS that shows the number of SSNs assigned to noncitizens who are not authorized to work in the United States,¹⁵ the audit found that resource priorities and data compatibility problems prevent INS from making effective use of the earnings information SSA provides. SSA and INS structure certain data fields differently, which makes it difficult for the two Agencies to match records. Consequently, the INS cannot adequately identify noncitizens who are employed illegally or employers who continually hire these individuals. In TY 2000, earnings were reported for 599,097 individual nonwork SSNs.

SSA is not always aware of a change in circumstances that entitles an individual with a nonwork SSN to work, noting that most individuals do not come to SSA to get an amended SSN card and report their change in work status. SSA would need to periodically confirm an individual's work status with INS to be certain that specific earnings occurred without proper work authorization. However, as we have noted, SSA and INS need to resolve data sharing problems. As a result, SSA believes that some percentage of the earnings credited to these nonwork SSNs is based on legal work, which may impact our estimates on the amount of benefits being paid based on illegal work.

¹² *Review of Controls over Nonwork Social Security Numbers (A-08-97-41002)*, September 1999.

¹³ This does not include any additional costs incurred by the Medicare program.

¹⁴ *Work Activity for Social Security Numbers Assigned for Nonwork Purposes in the State of Utah (A-14-01-11048)*, March 2002.

¹⁵ As indicated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208 Div C, Title IV, Subtitle B, Section 414(a)).

Nonwork SSNs and Earned Income Tax Credits

Unauthorized work performed by noncitizens using nonwork SSNs has impacted other Federal agencies as well. For example, a 2001 TIGTA report¹⁶ found that, each year, an average \$700 million in potentially erroneous Earned Income Credit (EIC) claims was paid to an average 334,000 individuals using nonwork SSNs. These individuals may erroneously receive the EIC because the Internal Revenue Service (IRS) does not have a process to identify and stop those tax returns before the refunds are issued. In August 1996, the IRS was authorized to deny claims for the EIC by individuals who filed tax returns with nonwork SSNs issued to obtain Federal benefits.

UNAUTHORIZED WORK BY NONCITIZENS WITHOUT SSNs

SSA's practice allows noncitizens to work illegally in the U.S. economy for a number of years, eventually acquire a valid SSN and have these earnings posted to their valid SSNs, and then receive OASDI benefits as a result of those earnings. As noted earlier, SSA does not consider the work-authorization status of the individual when they earned the wages; it only considers whether the individual can prove he or she paid Federal Insurance Contribution Act (FICA) taxes as part of this work.

For example, if the noncitizen was working in the United States illegally using an invalid SSN for a number of years (that is, SSA never issued the SSN), SSA would place these earnings into the ESF for later resolution. If this same noncitizen later receives a valid SSN and becomes eligible to work, he or she can request that the earnings for prior illegal work be reinstated from the ESF into his or her earnings record. We reviewed SSA earnings reinstatement guidance to its teleservice center representatives and found that this guidance provided no cautionary language related to the noncitizen's status when the wages were earned.¹⁷ This guidance allows the representative to reinstate past wages if

1. the caller has a *Wage and Tax Statement* (Form W-2) in his or her possession;
2. the information on the W-2 matches the name and/or SSN in SSA's records;¹⁸
3. wages are found in the ESF; and
4. wages found in the ESF match the wages on the caller's W-2.

Once these earnings are recorded, the individuals may have sufficient quarters of coverage to receive OASDI benefits.

¹⁶ *Substantial Earned Income Credit is Paid to Non-Entitled Individuals Who Use Not Valid for Work Social Security Numbers*, Reference Number: 2001-40-185, TIGTA, September 28, 2001.

¹⁷ POMS, section RM 01310.042, and the Teleservice Center Operation Guide, *Earnings Inquires and Discrepancies*.

¹⁸ If the information on the W-2 matches the name and SSN in SSA's records, the item will not post to the ESF unless it is for earnings after death or earnings of a child under the age of 7.

It should be noted that, although noncitizens may be residing and working illegally in the United States, they are contributing their labor, paying required taxes, and accumulating an earnings record with SSA in the same manner as legal workers. SSA's policy of allowing such workers who obtain legitimate SSNs to recreate their earnings records to receive SSA benefits is drawn from the Agency's mission, history, and understanding of the Social Security Act, rather than from a lack of concern for immigration law.

Review of Two Reinstatement Cases

During an ongoing audit,¹⁹ we found information related to two individuals who may have been in the country illegally while working and paying FICA taxes. At the time of our review, one individual was receiving disability benefits, and the other was receiving retirement benefits. The following paragraphs describe the circumstances surrounding each case, including the information found in SSA's Numident file, earnings records, and payment systems. In addition, we reviewed the original *Application for a Social Security Card* (Form SS-5) and verified the immigration information with the INS for both cases.²⁰

The first case involved a woman born in Mexico who worked illegally under an invalid SSN for 6 years.²¹ She was later enumerated, had the earlier wages reinstated to her earnings record, and started receiving SSA disability benefits. After reviewing SSA's records, we determined the woman began working in 1992 but was not issued an SSN until August 1997. For 6 years, she used her own name, along with an invalid SSN, for employment purposes. In early 1999, SSA posted her past wages under her valid SSN. The total wages reinstated for the 6 years she worked under an invalid SSN totaled about \$83,300. She began collecting disability benefits in August 1999 under her valid SSN. During Calendar Years (CY) 1999 to 2002, this woman collected approximately \$26,990 in disability benefits.²²

¹⁹ *Utility of Earnings Wage Records in the Earnings Suspense File*, (A-03-02-22076), ongoing.

²⁰ We cannot determine whether these individuals became legal residents through the Immigration Reform and Control Act (IRCA) of 1986 P.L. 99-603, Section 201(a). This law granted amnesty to undocumented immigrants in the United States who could show they had been in the United States since 1982 except for "brief" and "casual" absences. *Id.* There was a 1-year period to apply for benefits under IRCA, between May 5, 1987 and May 5, 1988. 8 C.F.R. Section 245a.2. Nonetheless, both individuals obtained valid SSNs after working under other individuals' SSNs. The issue in this report is whether these earlier wages should be posted to their new SSN and not whether they were later entitled to residency in the United States.

²¹ From 1992 through 1995, the SSN was invalid because SSA had yet to assign it. From 1996 through 1997, the SSN was assigned to a woman from the Philippines who was last residing in California. A review of this woman's earnings history indicates the earnings related to the unauthorized work were never posted to her record.

²² This amount includes \$21,604 in benefits for the primary beneficiary and \$5,386 in benefits for auxiliary beneficiaries.

The second case involved a man born in Mexico who worked under his father's SSN for 9 years and then had these wages transferred to his newly acquired SSN before collecting retirement benefits.²³ After reviewing SSA's Numident file and earnings records, we determined this individual had worked under his father's SSN from 1971 through 1979.²⁴ The individual was issued a valid SSN in 1989, and his previous wages were reinstated in 1998. SSA's records related to the reinstatement note that this individual "used his father's SSN for several years...father...signed a statement to advise that it was ok for the earnings to transferred [sic] over to his son..." In February 1999, this individual began collecting retirement benefits under his valid SSN. During CYs 1999 to 2002, he collected approximately \$11,441 in retirement benefits.²⁵ See Table 1 for a timeline related to both cases discussed above.

Table 1: Earnings and Benefit Timeline for Cases Reviewed

Case Characteristics	Case Number 1	Case Number 2
Date Work Began	1992	1971
Date SSN Issued	1997	1989
Date Wages Reinstated	1999	1998
Reinstated Wages	\$83,300	\$21,700 (1)
Date of SSA Benefits	1999	1999
Type of SSA Benefits	Disability	Retirement
Monthly Benefit Amount Paid to Primary Beneficiary	\$583.70	\$174.20
SSA Benefits Through Calendar Year 2002(2)	\$26,990	\$11,441

Notes to table:

(1) The \$21,700 relates to wages earned under the father's SSN. Another \$12,900 was earned under three additional SSNs from 1989 to 1993.

(2) Includes both primary and auxiliary benefits. Children, widows, spouses, and parents who receive OASDI benefits based on another wage earner's Social Security record are referred to as auxiliary beneficiaries.

In neither of the above cases did we find any indications that SSA questioned the individual's right to be working in the U.S. economy or reported the incident to the OIG. For instance, the individual working under his father's SSN had wages reinstated from

²³ Before the transfer of these earnings to his son, the father collected approximately \$11,300 in Social Security benefits; without these earnings, he would not have had enough quarters of coverage of his own to qualify for such benefits. This \$11,300 appears to be an improper payment to the father that SSA has made no attempt to date to recover.

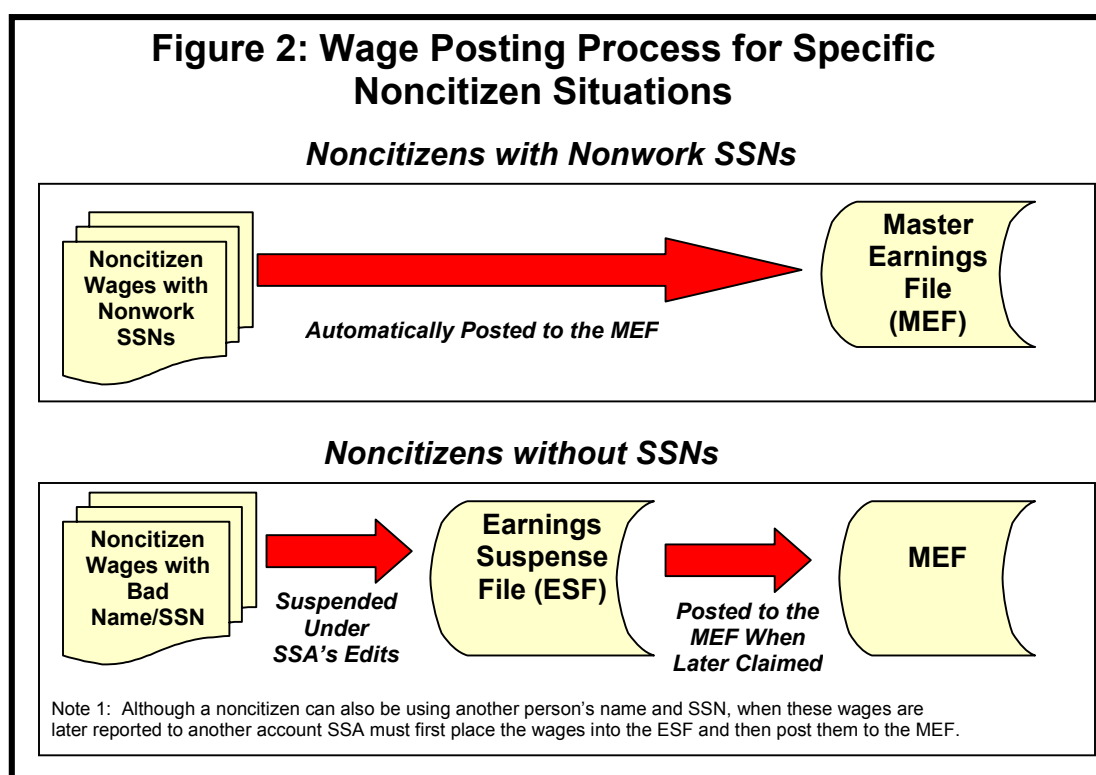
²⁴ This individual also worked under 3 additional SSNs that did not belong to him from 1989 through 1993. SSA did not record any earnings for this individual from 1980 to 1988.

²⁵ This amount includes \$7,695 in benefits for the primary beneficiary and \$3,746 in benefits for auxiliary beneficiaries.

10 different employers, primarily in the agriculture sector, but SSA staff did not make any annotations to the system questioning the movement from the father's earnings record to the son's earnings record.

NONCITIZENS AND THE ESF

Wages reported by noncitizens may also increase the number of wage items posted to SSA's ESF. As noted earlier, when wages cannot be posted to earners' records because of name and SSN mismatches, SSA places the wages in the ESF. While wages for nonwork SSNs are posted directly to the noncitizen's earnings record, if a noncitizen lacks a valid name and SSN combination, those wages will accumulate in the ESF. See Figure 2 for a flowchart describing the wage posting process for noncitizen wages.



Noncitizens working in the U.S. economy without a valid SSN sometimes earn their wages under another individual's SSN or create an SSN, both of which are forms of potential SSN misuse (see Appendix D).²⁶ Regardless of which method is used, these earnings continue to represent an administrative burden for SSA as it attempts to post

²⁶ The use of another person's name and SSN is potentially identity theft. These forms of misuse could also relate to violations of immigration laws.

wages to the proper earner's account. SSA must perform costly operations to locate the correct owner of these wages. SSA has recently noted that these costs include²⁷

- \$5.4 million in TY 2001 to send notices to every individual whose name and SSN do not match SSA's records;
- \$600,000 in TY 2001 to send 944,000 notices to all employers who had an item posted to the ESF;
- over \$200,000 for system maintenance and cyclical changes; and
- an average of \$9.00 for each call to SSA's national 800-number generated by the notices. SSA estimated the Agency received about 100,000 inquiries about the TY 2001 letters.

We have placed the ESF on our Major Management Challenges list for several years because of our concerns about the File's size and continued growth.²⁸ The ESF will continue to grow as long as earnings are reported under incorrect name and SSN combinations, and the current policies allowing noncitizens to benefit from potential SSN misuse and/or identity theft will do little to discourage such growth. In fact, these provisions may hinder SSA's ability to reduce the growth of the ESF in the future.

FUTURE AGREEMENTS AND REINSTATED WAGES

SSA's policy of crediting wages to individuals who worked in the economy illegally may have even greater implications in the future. For example, the Government has discussed the idea of a future amnesty agreement for Mexican citizens residing illegally in the United States. If an amnesty agreement occurs, one result may be that Mexican citizens who have been in the country illegally would be allowed to obtain valid SSNs from SSA and may become entitled to their past quarters of coverage, regardless of any name or SSN they used in the past. In addition, the Government is considering a totalization agreement with Mexico.²⁹ While SSA has prepared a memorandum

²⁷ *Questions for the Record from the September 19 Hearing*, SSA Letter to the Honorable E. Clay Shaw, Jr., Chairman, Subcommittee on Social Security, Committee on Ways and Means, House of Representatives, December 30, 2002.

²⁸ *Inspector General Statement on the Social Security Administration's Major Management Challenges*, (A-02-03-13034), November 2002.

²⁹ The Social Security Amendments of 1977 authorized the President to enter into bilateral agreements with other countries to provide for coordination between the Social Security systems of the United States and other countries (P.L. 95-216, Title III, Part B, Section 317). A totalization agreement would help many people who, without the agreement, would not be eligible for monthly retirement, disability or survivors benefits under the Social Security system of one or both countries. It also helps many people who would otherwise have to pay Social Security taxes to both countries on the same earnings. The United States has totalization agreements with 20 countries. See 42 U.S.C. Section 433.

estimating the number of Mexicans who may apply for benefits under the proposed totalization agreement, the treatment of unauthorized work was not discussed.³⁰

According to INS statistics, about 5 million undocumented immigrants were residing in the United States in October 1996.³¹ An estimated 2.7 million (54 percent) of these undocumented immigrants were of Mexican origin (see Table 2). If these Mexican noncitizens are also working in the United States illegally, and an amnesty and/or totalization agreement occurs, SSA potentially may need to reinstate a large volume of wages from the ESF based on earlier unauthorized work.

Table 2: Estimated Illegal Immigrant Population for Top 10 Countries of Origin (INS Data as of October 1996)

Country of Origin	Number of Illegal Immigrants	Percent of Total Immigrants
Mexico	2.7 million	54
El Salvador	335,000	6.7
Guatemala	165,000	3.3
Canada	120,000	2.4
Haiti	105,000	2.1
Philippines	95,000	1.9
Honduras	90,000	1.8
Dominican Republic	75,000	1.5
Nicaragua	70,000	1.4
Poland	70,000	1.4
All Other Countries	1.2 million	24
Total	5 million	100

Source: 2000 Statistical Yearbook of the Immigration and Naturalization Service.

³⁰ *Estimated Financial Effects of a Proposed Totalization Agreement Between the United States and Mexico on Their Respective Social Security Programs - INFORMATION*, Letter from Chris Chaplain and Nettie Barrick, SSA actuaries, to Stephen C. Goss, SSA's Chief Actuary, November 8, 2002.

³¹ 2000 Statistical Yearbook of the Immigration and Naturalization Service, INS.

Conclusions

Under the current statutory and regulatory framework, the Social Security Act often does not prohibit noncitizens from claiming 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. As a result, while SSA is adhering to the Social Security Act in terms of paying benefits to such persons, these statutory requirements are benefiting noncitizens whose work activities are not consistent with U.S. immigration laws. In some specific cases, this practice may also be inconsistent with other provisions, such as certain penalties in section 208 of the Social Security Act and the Identity Theft and Assumption Deterrence Act.

Consequently, noncitizens, whether here legally or illegally, continue to engage in unauthorized employment and earn entitlement to Social Security benefits. If SSA's treatment of noncitizen illegal employment is to change, it will be necessary for current laws to be modified.

With respect to nonwork SSNs, we have made recommendations to discourage illegal employment. In our previous reports, we recommended the following

- **SSA propose legislation to prohibit the crediting of nonwork earnings and related quarters of coverage for purposes of benefit entitlement.**³² However, the Agency noted the issue of unauthorized work can be dealt with more effectively through (1) pilot projects for determining work eligibility than through a legislative proposal and (2) limiting the issuance of nonwork SSNs. In our response, we commended SSA for its participation in pilot projects with the INS and its proposed efforts to amend the regulations pertaining to the issuance of nonwork SSNs. However, we stated we did not believe these initiatives sufficiently addressed nonwork SSNs used in the past to illegally obtain employment in the United States. Specifically, neither of these actions addressed (1) wages already posted as a result of unauthorized work or (2) future earnings of employees who continue to work illegally in their present jobs.
- **SSA should work with the INS to resolve data compatibility problems between SSA and the INS to improve the information in both agencies' databases.**³³ In its response, SSA stated it is preparing to capture information that will help resolve data compatibility problems with the INS. Improved coordination between SSA and the INS is critical to successfully prevent illegal employment in the future.

³² *Review of Controls over Nonwork Social Security Numbers* (A-08-97-41002), September 1999.

³³ *Work Activity for Social Security Numbers Assigned for Nonwork Purposes in the State of Utah* (A-14-01-11048), March 2002.

With respect to noncitizen work without an SSN, SSA may need to consider these potential wage reinstatements in future workload plans. In addition, SSA needs to consider how its current policy to reinstate wages related to unauthorized work by noncitizens impacts

- growth of the ESF;
- consistency with immigration and SSN misuse legislation; and
- conformance with ongoing Government efforts to identify and deter illegal immigration.

Appendices

Appendix A – *Acronyms*

Appendix B – *Background on the Earnings Suspense File*

Appendix C – *Summary of Earlier Congressional Discussions on
Restricting Benefits to Noncitizens*

Appendix D – *Selected Social Security Number Misuse and Identity
Theft Provisions*

Appendix E – *Scope and Methodology*

Appendix F – *OIG Contacts and Staff Acknowledgments*

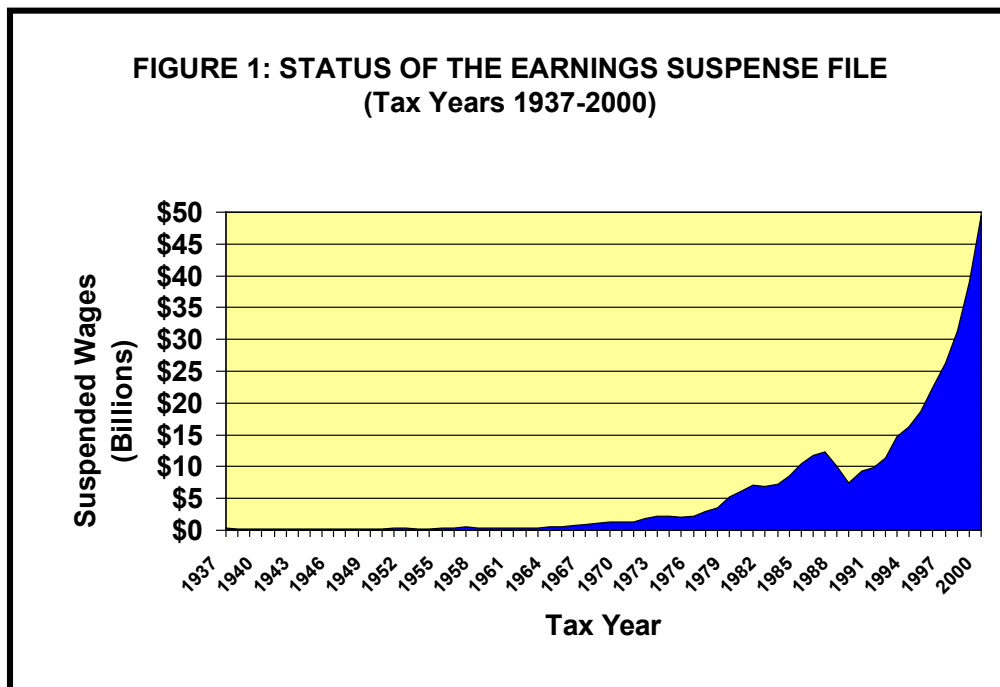
Acronyms

CY	Calendar Year
EIC	Earned Income Credit
ESF	Earnings Suspense File
FICA	Federal Insurance Contribution Act
Form SS-5	Application for a Social Security Card
Form W-2	Wage and Tax Statement
INS	Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act
IRS	Internal Revenue Service
MEF	Master Earnings File
OASDI	Old-Age, Survivors and Disability Insurance
OIG	Office of the Inspector General
POMS	Program Operations Manual System
QC	Quarter of Coverage
SSA	Social Security Administration
SSN	Social Security Number
TIGTA	Treasury Inspector General for Tax Administration
TY	Tax Year

Background on the Earnings Suspense File

Title II of the Social Security Act requires that the Social Security Administration (SSA) maintain records of wages employers pay to individuals. Employers report their employees' wages to SSA at the conclusion of each tax year (TY). Wages on those employer reports containing invalid names and/or Social Security numbers (SSN) cannot be posted to an individual's earnings record in SSA's Master Earnings File (MEF).¹ Instead, these wages are placed in the Earnings Suspense File (ESF) - a repository for unmatched wages. Suspended wages can affect a worker's eligibility for and/or the amount of retirement, disability, or survivor benefits. In addition, when wage reports cannot be matched to the correct individual, both SSA and the employer incur additional administrative costs in their efforts to correct unmatched wage reports.

As of July 2002, the ESF contained approximately 236 million wage items totaling about \$374 billion related to TYs 1937 through 2000 (see Figure 1). In TY 2000 alone, SSA posted 9.6 million items and \$49 billion in wages to the ESF. Wage items and their associated dollar value are only removed from the ESF when the wages can be matched and posted to an individual's MEF.



¹ The MEF contains all earnings data reported by employers and self-employed individuals. These data are used to calculate the Social Security benefits due an individual with an earnings record.

Summary of Earlier Discussion on Restricting Benefits to Noncitizens

Congress has discussed the pros and cons of providing Social Security benefits to noncitizens. While we do not presume these comments are all-encompassing when dealing with such a complex issue, we have provided some of the earlier arguments to provide additional context.

Social Security Act Amendments of 1983¹

Wording of Amendment

To provide that benefits no longer be paid to noncitizens not authorized by law to live and work in the United States.

Arguments in Support of the Amendment²

- This amendment would give the Social Security Administration (SSA) authority to stop payment of benefits or credits from going to any noncitizen who violates U.S. employment and resident laws. In addition, it would require that the wage earner or dependent provide SSA sufficient evidence that vestige in the system was earned while working and living legally in the United States.
- The present Social Security system was designed to benefit American workers or persons working legally in the United States. Many current beneficiaries, however, do not fall into either of these two categories. This amendment would restore Social Security to its original purposes and end the flow of billions of dollars to individuals who worked in this country illegally.
- This amendment would encourage respect for the credibility of the Social Security system. This amendment would join with other provisions of this bill in signaling to the American people that this Congress aims to restore confidence in the Social Security system. This amendment is a strong and explicit statement of congressional will and purpose.

¹ Amendment number 92 to H.R. 1900, later to become P.L. 98-21. The amendment was not included in the final law.

² Senate Record Vote Analysis (98th Cong., 1st Sess., March 18, 1983, 1:33 p.m., page S-3362 Temp. Record, Vote No. 34).

Arguments Against the Amendment³

- This amendment would benefit from further study, committee hearings, and executive comment.
- We lack the ability to construct administrative procedures to enforce the provisions of this amendment. The Social Security Administrator has testified before committees in the Senate and the House that SSA could not produce a tamper-proof Social Security card. If a noncitizen can purchase an "immigration kit" on any streetcorner in the Sun Belt, how are we to enforce the amendment?
- SSA takes an employee's money without concern for that individual's noncitizen status. This amendment would allow these collections to continue but would prohibit any benefits from being paid. This is not just hypocritical but is actually a violation of our 14th amendment protection against confiscation of a person's property.

Amendment to Concurrent Resolution on the Budget, Fiscal Year 1986⁴

Wording of Amendment

To limit Social Security benefits paid to illegal and nonresident noncitizens.

Arguments in Support of the Amendment⁵

- This amendment would state our intent to place a limit on Social Security benefits paid to illegal and nonresident noncitizens. We should support this approach for the following reasons
 - It is fair. It would give back what has been contributed, plus interest but would not continue the burden placed on the Social Security system and the American workers whose taxes support it. It would not ask hard-working, law-abiding citizens to keep working and paying increasing Social Security taxes so their money can be sent overseas or paid to those who have violated this Nation's laws.
 - It is logical. It would rectify a gross inconsistency in our laws, which allow a noncitizen who is living or working in this country illegally to earn and receive Social Security benefits.

³ Id.

⁴ Amendment number 62 to the Senate Congressional Resolution 32 of the 99th Congress.

⁵ Senate Record Vote Analysis (99th Cong., 1st Sess., May 8, 1985, 11:50 a.m., page S-5611 Temp. Record, Vote No. 50).

- It is consistent with past Senate action. The limitation on nonresident noncitizen Social Security benefits was a part of the Senate Finance Committee's version of the Social Security Amendments of 1983. Unfortunately, these provisions did not survive conference.
- It is important. It would help bolster confidence in the minds of the American public in the Social Security system.
- It is prudent. It would make a savings of approximately \$100 million - not an insignificant sum at this time of deficit-reduction effort.

Arguments Against the Amendment⁶

- We should oppose this proposal because it would only give more reason for an undocumented worker to cooperate in his or her exploitation by unscrupulous employers. Congress should promote compliance with our Social Security payroll tax laws and withholding of Federal and State income taxes.
- We should note that, to be eligible for Social Security, a worker must have paid in for 40 quarters, or 10 years. For a seasonal laborer, 40 quarters may be the equivalent of a lifetime of work. Workers in such situations have paid their way by their contributions to our economy.

⁶ Id.

Selected Social Security Number Misuse and Identity Theft Provisions

SOCIAL SECURITY ACT

In December 1981, Congress passed a bill to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act. In addition, the Act made it a felony to

...willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title.¹

Violators shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than 5 years, or both.

IMMIGRATION AND NATURALIZATION ACT

In November, 1986, Congress passed a bill to amend the Immigration and Nationality Act to effectively control unauthorized immigration into the United States.² Among other things, the act established an employment verification system that requires the worker to attest that he or she is a U.S. citizen or national, or authorized alien. Specifically, the worker must

...attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.³

¹ 42 U.S.C. Section 408(a)(6). Unauthorized work activity involving SSN misuse may also violate sections 208(a)(7)(A) and (B) of the Act. See 42 U.S.C. Sections 408(a)(7)(A) and (B).

² Public Law (P.L.) 99-603.

³ 8 U.S.C., Section 1324(b)(2).

IDENTITY THEFT AND ASSUMPTION DETERRENCE ACT

In October 1998, Congress passed the Identity Theft and Assumption Deterrence Act⁴ to address the problem of identity theft. Specifically, the Act made it a Federal crime when anyone

...knowingly transfers or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.⁵

Violations of the Act are investigated by Federal investigative agencies such as the U.S. Secret Service, the Federal Bureau of Investigation, and the U.S. Postal Inspection Service and prosecuted by the Department of Justice.

⁴ P.L. 105-318.

⁵ 18 U.S.C. Section 1028(a)(7).

Scope and Methodology

To respond to the Chairman's request, we

- reviewed prior audit reports dealing with unauthorized employment, nonwork Social Security numbers and Social Security benefits paid to noncitizens;
- reviewed applicable Social Security Administration (SSA) policies and procedures;
- reviewed legal information provided by our Office of the Counsel to the Inspector General;
- interviewed staff at the SSA's Office of General Counsel as well as field office personnel to document the current policies and procedures;
- obtained copies of the original *Application for a Social Security Card* (Form SS-5) from Boyers, Pennsylvania, (for case 1 and case 2) to determine whether the proper evidence was submitted for enumeration purposes and verified this information against the Immigration and Naturalization Service databases; and
- queried the Social Security Administration's various electronic records, including information found in the Numident, earnings records, and payment systems, to determine the timing of events and the impact on the trust funds.

The entities responsible for reinstating wages are the field offices and program service centers under the Deputy Commissioner of Operations. Our work was conducted at the Office of Audit in Philadelphia, Pennsylvania, from November 2002 to January 2003. We conducted our review in accordance with generally accepted government auditing standards.

OIG Contacts and Staff Acknowledgments

OIG Contacts

Walter Bayer, Director, (215) 597-4080

Rona Rustigian, Director, (617) 565-1819

Acknowledgments

In addition to those named above:

Judy Ringle, Attorney

Mildred Soto, Auditor

Frank Trzaska, Auditor-in-charge

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President, National Council of Social Security Management Associations,
Incorporated

Treasurer, National Council of Social Security Management Associations,
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Overview of the Office of the Inspector General

Office of Audit

The Office of Audit (OA) conducts comprehensive financial and performance audits of the Social Security Administration's (SSA) programs and makes recommendations to ensure that program objectives are achieved effectively and efficiently. Financial audits, required by the Chief Financial Officers' Act of 1990, assess whether SSA's financial statements fairly present the Agency's financial position, results of operations and cash flow. Performance audits review the economy, efficiency and effectiveness of SSA's programs. OA also conducts short-term management and program evaluations focused on issues of concern to SSA, Congress and the general public. Evaluations often focus on identifying and recommending ways to prevent and minimize program fraud and inefficiency, rather than detecting problems after they occur.

Office of Executive Operations

The Office of Executive Operations (OEO) supports the Office of the Inspector General (OIG) by providing information resource management; systems security; and the coordination of budget, procurement, telecommunications, facilities and equipment, and human resources. In addition, this office is the focal point for the OIG's strategic planning function and the development and implementation of performance measures required by the *Government Performance and Results Act*. OEO is also responsible for performing internal reviews to ensure that OIG offices nationwide hold themselves to the same rigorous standards that we expect from SSA, as well as conducting investigations of OIG employees, when necessary. Finally, OEO administers OIG's public affairs, media, and interagency activities, coordinates responses to Congressional requests for information, and also communicates OIG's planned and current activities and their results to the Commissioner and Congress.

Office of Investigations

The Office of Investigations (OI) conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement of SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, physicians, interpreters, representative payees, third parties, and by SSA employees in the performance of their duties. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Counsel to the Inspector General

The Counsel to the Inspector General provides legal advice and counsel to the Inspector General on various matters, including: 1) statutes, regulations, legislation, and policy directives governing the administration of SSA's programs; 2) investigative procedures and techniques; and 3) legal implications and conclusions to be drawn from audit and investigative material produced by the OIG. The Counsel's office also administers the civil monetary penalty program.