

House Committee on Ways and Means

Statement of The Honorable Patrick P. O'Carroll, Inspector General, Social Security Administration

Testimony Before the Subcommittee on Oversight
of the House Committee on Ways and Means

February 16, 2006

Good Morning, Chairman McCrery, Mr. Levin, Chairman Ramstad, Mr. Lewis. It's a pleasure to be here today to discuss these important issues of mutual interest. I was disappointed when I was unable to testify at the first hearing in this "SSN High-Risk Issues" series due to a previously scheduled trip abroad, but I understand that the hearing went very well, and I'm pleased to be here for the second hearing in the series.

Since this is our first time together since I was sworn in as the Social Security Administration's (SSA) Inspector General, I'd like to take just a moment to familiarize you with our organization. We were established on March 31, 1995, the day SSA became independent of the Department of Health and Human Services (HHS) by virtue of the Social Security Independence and Program Improvements Act of 1994. Prior to that, the Inspector General for HHS was charged with stewardship responsibilities over SSA's programs and operations. Last year, we marked the completion of our first decade of service as an organization, and I believe that our accomplishments over that first decade are a testament not only to our talented and hard-working staff, but to SSA and its leadership, who have been ceaselessly supportive of our efforts.

Our office, like all Federal offices of Inspector General, has two statutory components:

Our Office of Investigations is comprised of 388 Special Agents and support staff, located in about 70 cities across the country. By conducting independent criminal investigations into violations of the Social Security Act and the U.S. Criminal Code, we protect SSA funds, SSA programs, and most importantly, SSA employees on a daily basis. We also work closely with other Federal agencies to ensure homeland security, and provide for disaster relief and integrity in recovery operations, such as in the aftermath of Hurricane Katrina last year. In Fiscal Year 2005, the Office of Investigations opened over 9,500 criminal investigations, resulting in well over 2,000 convictions, and almost a quarter billion dollars in restitution orders, repayment agreements, fines, recoveries and savings. Our Special Agents are among the most talented and committed law enforcement officers in the land, and I'm enormously proud of the work they do.

Our Office of Audit is equally impressive. Across the country, some 154 auditors and support personnel conduct in-depth audits and reviews of Social Security programs and operations to ensure that tax dollars are wisely spent and benefits are properly paid. In Fiscal Year 2005, the Office of Audit issued 108 reports, identifying potential savings of about \$375 million, and over \$187 million in funds that could be put to better use.

In addition to these statutory components, our Office of Chief Counsel, in addition to providing legal advice and guidance to me and my staff, administers the Civil Monetary Penalty (CMP) program. Through their efforts, imposing civil penalties on those who would defraud SSA, or would use SSA's good name to deceive the American public, we assessed more than \$700,000 in penalties and assessments in Fiscal Year 2005.

Finally, our Office of Resource Management makes all of our work possible. By providing budget, human resource, information technology, and other critical services, they keep the Office of the Inspector General running.

Over the course of what is now almost 11 full years, we have seen issues resolved and, more often, new issues arise, but there are issues that we inherited on Day One that are still with us after all this time. The challenges we are discussing today are among those that have persisted.

As you know, SSA receives wage reports from employers and posts the wages to workers' accounts. This enables SSA to make accurate benefit eligibility determinations and administer its programs. But when a wage report contains errors, and cannot be properly posted to a worker's account, it is instead placed in the Earnings Suspense File, or ESF, until it can be resolved. As of November 2005, there were 255 million wage items placed in the ESF, representing \$520 billion in wages through Tax Year 2003. Looking at ESF entries on a yearly basis, the number of entries increased significantly during the decade between 1993 and 2003, but starting in 2001, the increases stopped, and began holding steady. While this is a hopeful sign, we do not believe it means that a solution has been found. To the contrary, while hard work by my office and by SSA has slowed the tide, the same obstacles to truly meaningful improvement in the ESF that existed a decade ago remain in our paths today.

In 1998, less than 3 years after the formation of our office, SSA's first confirmed Inspector General testified before Congress and identified the eight greatest challenges facing SSA. After identifying solvency as the first issue, he stated that "Second is the problem of erroneous wage reports held in SSA's Suspense Account. At the end of FY 1997, the cumulative balance of employee wages held in SSA's suspense account exceeded \$240 billion, and it continues to grow. Unless corrected, suspended wages could reduce the amount of Title II benefits paid to individuals and their families. SSA must implement its newly established tactical plan to resolve suspended wages and evaluate its effectiveness." In the years that followed, we made many recommendations through our audit work and provided evidence through our

investigations of a need to implement those recommendations, but the issue remained largely unresolved.

More than 4 years later, in 2002, SSA's second confirmed Inspector General appeared before Congress and testified that the ESF remained one of the great challenges facing SSA. In that testimony, he identified the two most significant obstacles to improvement in the ESF. First, he pointed out that without a robust program of sanctions against employers who habitually misreport earnings for their employees, there is no incentive for employers to comply with the law, and that the authority to impose such sanctions rested with the Internal Revenue Service (IRS). Second, he emphasized the role that unauthorized non-citizens play in the increases in the ESF, and the fact that IRS disclosure laws limited the data sharing necessary to bring about significant improvement. Again, our efforts, and SSA's efforts, continued, but these two obstacles remained in place.

Now, 4 more years have passed, and I stand before you as SSA's third confirmed Inspector General. More recommendations have been made to SSA; some have been agreed to, some have even been implemented. Nevertheless, the ESF remains one of SSA's greatest challenges, and the most significant impediments to resolving that challenge are unchanged: the lack of a meaningful program of sanctions against the most egregious employers, and legal obstacles that prevent SSA from sharing meaningful data with immigration authorities and employers.

I would submit that it would be an unfortunate neglect of the trust placed in all of us if, when my tenure is over, SSA's fourth confirmed Inspector General walks through these doors and tells the same story.

Last year, we issued two audit reports that highlighted the need for effective sanctions against problem employers. One of these reports addressed the issue of misreported wages in some of the most problematic industries—the restaurant, service, and agriculture industries—and repeated yet again the need to collaborate with the IRS on an effective sanctions program. Unfortunately, talks with the IRS have been ongoing for years, and even with respect to the nation's most egregious violators of the wage reporting laws, sanctions are rarely imposed. We have recommended in the past that SSA seek legislative authority to create an SSA-based sanctions program, but they have responded that this authority is properly with the IRS. We have recommended repeatedly that SSA intensify talks with the IRS to bring about a robust IRS-based sanctions program using long-existing authority, and SSA has generally followed our recommendations, but to no avail. Whether through the creation of new authority or more active use of existing authority, sanctions are an absolutely critical element of any plan that hopes to reduce the size of the ESF in a meaningful way.

The second report we issued last year sought new approaches to the problem, recognizing that while sanctions and expanded disclosure authority were the keys to significant progress,

other measures could be taken that would at least bring about some degree of improvement. We looked at SSA's process for notifying employers and wage-earners of misreported wages, a process known as "DECOR," or Decentralized Correspondence. When name and SSN information on a W-2 form do not match, and the wages must be posted to the ESF, SSA sends a "no-match letter" to either the employee or, if there is no proper address for the employee, to the employer, pointing out the discrepancy and requesting a correction. Since prior recommendations dealing with encouraging IRS to make better use of its authority to impose sanctions had not yet borne fruit, this report instead focused on actions that SSA can take with the information in the DECOR database to bring about some degree of improvement in the wage reporting process.

We made several recommendations to SSA aimed at improving outreach, education, and trend analysis. While SSA agreed with many of our points, they returned to the issue that has become a central theme in looking at the ESF, stating that employers would still have little reason to change their ways. In its comments, SSA stated that "educational outreach is not a strong motivator for change with employers who have found their current wage reporting methods meet their needs without fear of any retribution."

The disclosure issue is similarly daunting. We believe the chief cause of wage items being posted to the ESF instead of an individual's earnings record is unauthorized work by noncitizens. Under existing law, as interpreted by SSA and the IRS, SSA cannot share data from the ESF with the Department of Homeland Security (DHS). For example, these laws make it impossible for SSA to provide DHS information regarding even the most egregious employers who routinely submit large numbers of inaccurate wage statements in which employee SSNs and names do not match SSA records. We believe disclosure limitations such as these perpetuate illegal work, erroneous wage reports, and the growth of the ESF. Most of the information necessary to address the ESF problem is in SSA's possession, but SSA must remain mute; all of the authority to sanction employers and deter continued violations is in the IRS' hands, but the IRS chooses not to act. The only greater surprise than this bureaucratic gridlock is the fact that the ESF is not even larger than it is.

While the ESF is by far the larger indicator of unauthorized noncitizens working in the U.S., another indicator which involves a smaller population of individuals engaged in unauthorized work is the Nonwork Alien, or NWALIEN File, and here again, disclosure issues pose an obstacle. We have issued multiple reports, and are on the verge of issuing yet another, that address the impact that non-citizens without authorization to work in the United States are having on SSN integrity, the Agency's future responsibility to pay benefits and, even more disturbing, improper employment in sensitive and critical industries. In 2000, 2001, and again in 2005, we examined SSN misuse and wage reporting issues with a focus on wages improperly earned by non-citizens without authorization to work in the United States—those whom SSA has assigned "nonwork" Social Security numbers. Each time, we identified as a significant obstacle in addressing this issue the limited ability of SSA to share information. SSA is required by law to annually share with DHS the NWALIEN File, a file of noncitizens who

have received earnings using a non-work Social Security number. However, since this law was enacted in 1996, little has been done by SSA and DHS to analyze, attempt to reconcile and/or correct, and use this information for immigration enforcement purposes. Additionally, SSA believes privacy provisions of the Internal Revenue Code prohibit SSA from notifying employers when employees with non-work SSNs, who may not have DHS authorization to work, are in their employ. While SSA and DHS have extensive information at their disposal, they have been unable to find a way to work with the information to prevent, detect, and enforce unauthorized employment.

In short, our work has shown, over the course of more than a decade, that until these obstacles are removed, either through legislation or cooperation, there is unlikely to be a truly meaningful reduction in the size of the ESF. Unless and until employers are either required to verify SSNs prior to submitting wage reports, or faced with stiff penalties for erroneous wage reports, there is no incentive for employers to do anything differently. And with limited ability to share meaningful information with immigration authorities and employers, there is relatively little SSA can do alone to address the significant impact non-citizens have on the ESF, the NWALIEN file, and ultimately, SSN integrity.

The information is at our fingertips. We can identify the most egregious employers with respect to wage reporting irregularities, but no action is taken against them by IRS, and no action can be taken against them by our office or by SSA. We can identify the employers with the most unauthorized non-citizens on their payrolls, but we cannot tell the employers who the unauthorized employees are. We know the scope of the unauthorized non-citizen issue is significant, but SSA cannot share adequate information with DHS to provide truly useful information.

We will, of course, continue our work aimed at quantifying and identifying discrete issues and proposing program improvements, but these improvements will likely continue to be relatively minor when viewed against the size of the ESF. We stand ready, however, to work with you and other members of Congress to bring about truly meaningful change.

Thank you again for inviting me to speak with you today, and I'd be happy to answer any questions.