

Testimony of Shannon Benton

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The Senior Citizens League

Before the

House Committee on the Judiciary

Subcommittee on Immigration, Citizenship, Refugees,

Border Security, and International Law

Comprehensive Immigration Reform:

Government Perspectives on Immigration Statistics Hearing

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Introduction

Chairman Lofgren, Ranking Member King, and distinguished Members of the Committee, thank you for inviting me to present testimony today. My name is Shannon Benton, and I am the Executive Director for The Senior Citizens League (TSCL), a proud affiliate of The Retired Enlisted Association (TREA). TSCL is under the direction of an all volunteer board of trustees comprised of retired veterans. Our Chairman is Mr. Ralph McCutchen. TSCL has more than 1 million active senior citizen members and supporters concerned about the protection of their Social Security, Medicare, and veteran or military retiree benefits. Based in Alexandria, Virginia, TSCL is a non-profit, nonpartisan, educational organization, and our mission is to promote and assist members and supporters, to educate and alert senior citizens about their rights and freedoms as U.S. citizens, and to protect and defend the benefits senior citizens have earned and paid for.

We were happy to learn of this hearing, because we feel that the pending immigration reform will have far reaching effects on many issues. Of these many issues, the solvency of the Social Security Trust Fund particularly concerns us. Allow me to make clear, TSCL is in no way opposed to lawful immigration. We believe it is a vital part of the foundation of our country. However, there are current laws in place to maintain control of immigration numbers and to promote national security that are not being enforced. Some estimates, including those by the Pew Hispanic Center, have suggested there are nearly 12 million illegal immigrants in the United States from all over the world. Seemingly, the lack of law enforcement and the potential for a better life have led to staggering numbers of immigrants coming to the U.S. both legally and illegally.

TSCL is pleased that Congress and the President are realizing that this situation is not going to go away and should be addressed sooner rather than later. In fact, the Senate introduced and started debate on immigration reform earlier this year. While TSCL applauds Congress for attempting to address this issue, we fear that a little-known loophole not addressed in the Senate immigration bill, S. 1348, will result in significant damage to the already strained Social Security Trust Fund. In fact, as TSCL previously

estimated, this loophole could cost more than \$966 billion in Social Security benefits by the year 2040.

The Loophole: How Non-Citizen Illegal Workers Can Become Entitled to Social Security

The Social Security Protection Act of 2004 imposed new restrictions on the payment of Social Security benefits to illegal immigrants. Nevertheless, non-citizens who worked illegally without authorization currently, or at some time in the past, could become entitled to Social Security benefits.¹ According to the Congressional Research Service, under the 2004 law, non-citizens who apply for benefits with a Social Security number assigned after 2003 must have work authorization at the time their Social Security number is assigned, *or at some later time*, before applying for benefits, in order to become entitled.²

Despite tightening the law for persons who received their Social Security number after 2003, Congress did not fix an apparent loophole in the law. When determining entitlement for insured status and in calculating the initial retirement benefit amount, the Social Security Administration uses *all* reported earnings from covered employment in the United States, even if the earnings are from illegal or “unauthorized” work.³ Thus, workers who receive work authorization at some later point (for example, possibly under future immigration reform) could become entitled to, and receive, Social Security benefits based on illegal work.

Furthermore, the provisions of the Social Security Protection Act do not appear to affect aliens with Social Security numbers assigned prior to January 1, 2004.⁴ They could become entitled to Social Security benefits without ever having worked with legal authorization, if they can show evidence of employment and wages earned although, they cannot collect such benefits unless they are either legally present in the United States, or living in a country where the Social Security Administration is authorized to pay them benefits.⁵

Social Security Numbers Issued to Non-Citizens

In order to lawfully work in the United States, non-citizens must have *both* a valid Social Security number *and* legal work authorization from the Department of Homeland Security (DHS).⁶ Nevertheless, millions of non-citizens are working in this country without legal authorization, and their employers are reporting their wages to the Social Security Administration (SSA).⁷

Government data suggest that millions of non-citizens are working with neither a valid Social Security number nor work authorization. There are also millions who have worked, at least for some part of the time, under a valid Social Security number but without legal work authorization. In addition to widespread document fraud (use of counterfeit or stolen Social Security numbers), non-citizens work by using Social Security numbers that are not authorized for work purposes, known as “non-work” Social Security numbers. Aliens may also work illegally under Social Security numbers issued for temporary work visas that have expired.

Invalid and Fraudulent Social Security Numbers

Each year, the SSA receives millions of W-2s from employers. When the name and Social Security number do not match the SSA records, the W-2 is held in the Earnings Suspense File (ESF). Data from the Social Security Administration indicate that in recent years the ESF is growing at an unprecedented pace and the cumulative wages represent a total of \$585 billion.⁸ These wages apparently can later be reinstated to valid Social Security numbers when immigrants gain legal work authorization, as they potentially could under “guest worker” immigration reform, unless legislation specifically bans credit for unauthorized work. As we understand it, once non-citizen workers obtain a valid Social Security number, they can provide the SSA with evidence of earnings reports from unauthorized employment prior to receiving their Social Security number and those earnings will be reinstated under their valid Social Security number.

Non-Work Social Security Numbers

According to the Social Security Inspector General, the Social Security Administration assigns non-work Social Security numbers to non-citizens who do not have work authorization from the Department of Homeland Security (DHS) but who have valid reasons for the Social Security numbers. Specifically, a federal statute or regulation requires that the non-citizen provide his/her Social Security number to obtain or receive a particular benefit or service to which he or she has established entitlement or a requirement of State or local law.⁹ Examples include Supplemental Security Income (SSI), Medicaid and Food Stamps.¹⁰

Initially, the SSA issued the same type of Social Security card to everyone, regardless of whether they were legally authorized to work. In 1974, SSA began assigning Social Security numbers for non-work purposes, but the cards were not specifically annotated as such. It was not until eight years later, in May of 1982, that the SSA started issuing cards clearly printed with “NOT VALID FOR EMPLOYMENT” to non-citizens not authorized to work.¹¹ According to the Government Accountability Office (GAO), as of 2003, the SSA had issued a total of more than 7 million non-work Social Security numbers.¹²

Audits by the Social Security Inspector General have found that these non-work numbers are widely abused by illegal workers.¹³ According to the GAO, “there are millions of non-citizens assigned non-work Social Security numbers *before 2004* who may qualify for benefits in the coming years” because the Social Security Protection Act of 2004 does not affect them.¹⁴

The Social Security Administration maintains a Non-Work Alien file of wage reports (W-2) received for persons illegally working under these numbers. According to a 2006 review of the Non-Work Alien file by Social Security’s Inspector General’s Office, nearly two-thirds of the individuals whose numbers appear in the file had no change in work authorization status, and were working illegally.¹⁵

Department of Homeland Security-Work Authorized Social Security Numbers

A much less common type of Social Security number is issued to non-citizens who are eligible to work temporarily in the U.S. The cards are inscribed with “VALID

FOR WORK ONLY WITH DHS AUTHORIZATION.” Some non-citizens enter the country with work authorization, but then overstay their visas once their temporary work authorization expires.

The Cost of Social Security Benefits Based on Non-Work Social Security Numbers Issued Prior To January 1, 2004

Because non-citizens who received Social Security numbers issued prior to January 1, 2004, apparently do not need work authorization in order to claim benefits, and the impact that could have on Social Security, TSCL recently released a projection of the cost of benefits based on illegal work. The estimate, which was produced by an independent Social Security and Medicare policy analyst for TSCL, found that more than 2 million non-work Social Security number holders could become eligible for Social Security benefits at a cost of \$966 billion through 2040.

The estimate used the following assumptions:

- 7,000,000 “non-work” Social Security numbers were issued prior to January 1, 2004¹⁶
- Because jobs are a major reason for immigration to begin with, the above number was adjusted to assume that 80%, or 5,600,000, of the persons who received these numbers worked without authorization at some point using non-work numbers.
- Currently, we are aware of no official published data on the amount of money paid into the Social Security system by aliens, whether legal or illegal.¹⁷ Social Security’s Chief Actuary, Stephen C. Goss, however, has been quoted in *The New York Times* as saying that about three quarters of “other-than-legal” immigrants pay payroll taxes.¹⁸ The above number was further adjusted to assume 75%, or 4,200,000, had had payroll taxes withheld from their wages.
- The above number was also adjusted to assume 66% or 2,772,000 have no change in work authorization status.¹⁹
- Finally, the number was adjusted to assume a 2% mortality rate prior to starting benefits, leaving a total of 2,716,560 persons. This number was then further adjusted by a mortality rate of 2% per year over the survey period of 2008 through 2040. This yielded 2,065,594 beneficiaries through 2040.
- The study assumed the oldest beneficiaries, who may have received Social Security numbers as early as 1974, would start retiring as early as 2008.
- The study used a low family benefit of \$1,303.50 per month for the initial benefit amount. The family benefit is the maximum amount a retiree, and the dependents on the retiree’s account, could receive in Social Security.²⁰

Simplified, the equation used to calculate the \$966 billion cost to Social Security, from 2008 to 2040, is as follows: 2,065,594 persons with non-work Social Security

numbers (adjusted annually for mortality) **multiplied by** \$15,642.00 (annual low income family benefit, adjusted annually for 2.2%COLA) **equals \$966 billion.** For a detailed analysis, see the attachment titled, “Cost of Illegal Work: Immigrants With Non-Work SSNs Family.”

TSCL is extremely concerned by the information summarized above and contained in the study. Although, S. 1348, in its original text, does not address the loophole, an amendment was offered Senator Kay Bailey Hutchinson (TX) that would prevent Social Security credit for periods without work authorization from being counted with a start date of January 1, 2004. Although this amendment passed, it does not cover Social Security numbers issued between 1974 and 2003.

Solutions

TSCL believes that the Social Security Protection Act of 2004 should be amended to close the apparent loophole allowing credit earned while using a non-work or invalid Social Security number. There have been several pieces of legislation introduced that would do just that. For example, Representative Dana Rohrabacher (CA-46) introduced H.R. 736, the No Social Security for Illegal Immigrants Act. As reported on THOMAS, this bill would “amend title II of the Social Security Act to exclude from creditable wages and self-employment income wages earned for services by aliens illegally performed in the United States and self-employment income derived from a trade or business illegally conducted in the United States.”

More importantly, TSCL would encourage Members of Congress to request that the Congressional Budget Office (CBO) conduct a realistic, long-term study of the effect this loophole could have on the Social Security Trust Fund.

Conclusion:

In summation, TSCL is not opposed to immigration, but welcomes thoughtful legislative proposals that take all Americans into account. However, we are concerned about the effect any such legislative proposal could have on the longevity of Social Security and the fairness of the Social Security system. If studies show that immigration reform results in a detriment to the Social Security program, we would normally be

opposed to that reform. Thus, we are alarmed by the apparent loophole summarized above. For the benefit of the entire Congress, TSCL strongly encourages a study be compiled by the CBO to determine what the costs could be if this loophole is not closed.

Furthermore, if such a CBO study were to find results similar to those determined in the TSCL study, TSCL would recommend that Congress modify the law to prohibit the use of work credits based on unauthorized earnings from being used to determine entitlement for Social Security benefits. Our mission, and we believe that of Congress as well, is to ensure the solvency of Social Security for retirees and the disabled who live in the U.S. and pay into the system legally. TSCL is working hard to support that goal, and to keep Americans informed about its progress.

Again, thank you for your time and the opportunity to present testimony about the apparent \$966 billion hemorrhage the Social Security Trust Fund is facing. I would be happy to address any questions you may have.

¹ Additional Actions Needed to Prevent Improper Benefit Payments Under Social Security Protection Act,” GAO, April 2006, GAO-06-196, page 16.

² “Social Security Benefits For Non-citizens,” Congressional Research Service, July 20, 2006, RL 32004.

³ Ibid.

⁴ Additional Actions Needed to Prevent Improper Benefit Payments Under Social Security Protection Act,” GAO, April 2006, GAO-06-196, page 16.

⁵ “Proposed Totalization Agreement With Mexico Presents Unique Challenges,” GAO, September 2003, GAO-03-993.

⁶ “Social Security Numbers,” GAO, February 16, 2006, GAO-06-458T.

⁷ “Better Coordination Among Federal Agencies Could Reduce Unidentified Earnings Reports,” GAO, February 2005, GAO 05-154.

⁸ “The Growing Cost of Illegal Immigration to Social Security,” Mary Johnson, The Senior Citizens League, March 2007.

⁹ “Employers With The Most Wage Items In the Non-work Alien File,” Inspector General Audit Report, Social Security Administration, June 2006, A-08-05-15138.

¹⁰ “Procedures for Issuing Numbers and Benefits to the Foreign-Born,” GAO, March 2, 2006, GAO-06-253T.

¹¹ Statement of Martin H. Gerry, Social Security Administration, Before Subcommittee on Social Security of the House Committee on Ways and Means, March 2, 2006.

¹² Ibid.

¹³ “Employers With The Most Wage Items In the Non-work Alien File,” Inspector General Audit Report, Social Security Administration, June 2006, A-08-05-15138.

¹⁴ Additional Actions Needed To Prevent Improper Benefit Payments, GAO, April 2006, GAO-06-196, pages 13 & 14.

¹⁵ “Employers With The Most Wage Items In the Non-work Alien File,” Office of the Inspector General, SSA, June 2006, A-08-05-15138.

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- ¹⁶ “Procedures For Issuing Numbers And Benefits To The Foreign-Born,” Statement of Barbara D. Bovbjerg, GAO, March 2, 2006, GAO-06-253T, page 9.
- ¹⁷ “Social Security Benefits for Noncitizens: Current Policy and Legislation,” Congressional Research Service, July 20, 2006, RL32004.
- ¹⁸ “Illegal Immigrants Are Bolstering Social Security With Billions,” Eduardo Porter, *The New York Times*, April 5, 2005.
- ¹⁹ “Employers With The Most Wage Items In the Non-work Alien File,” Office of the Inspector General, SSA, June 2006, A-08-05-15138.
- ²⁰ “2007 CCH Social Security Explained,” Avram Sacks, J.D., Wolters, Kluwer, page 295.

TSCL's efforts are taken in an effort to educate and protect Americans, and particularly senior citizens. However, we are not a think tank and do not have either the budget or the staff to conduct regular studies about many important subjects, including the possible consequences to Social Security of certain government policies or proposed legislation. But we try very hard, particularly on certain issues that appear to be critical issues for senior citizens. It can be difficult, especially when the government is not forthcoming with information.

One recent experience we had with two government agencies may help to illustrate the point. Beginning in 2003, TSCL sought disclosure of the United States - Mexico Social Security Totalization Agreement and other related documents from the Social Security Administration and the U.S. State Department.

Yet, the Administration failed to release the Agreement, which SSA had signed in 2004 but which must be signed by the President and submitted for Congressional review before becoming law. This led to a legal battle in which TSCL filed a series of FOIA requests with both the State Department and the SSA, which were largely ignored, followed by TSCL filing two lawsuits in federal court to obtain release of the Agreement and related documents. TSCL finally obtained a copy of the Agreement and made it available to the public.

When the Totalization Agreement was finally released to TSCL in December 2006, that copy was the first and only public copy of the agreement known to exist. Previously, its release had been denied, reportedly even to members of Congress who had requested it.

TSCL's study of the Totalization Agreement, coupled with a 2003 report by the Government Accountability Office ("GAO") demonstrating that SSA's estimate about the probable cost of the Agreement on Social Security was woefully deficient, caused TSCL to fear that the Totalization Agreement, if enacted into law, could result in illegal Mexican workers being paid billions of dollars in Social Security benefits, bankrupting an already strained Social Security Trust Fund.

TSCL still does not know all of the answers with respect to the Totalization Agreement. But what it has been told — including that there have been no government studies subsequent to the critical GAO report criticizing SSA's estimate about the probable costs to Social Security — makes it imperative to get the message out, to Americans and their representatives in Congress, that this kind of arrangement seems contrary to the interests of most Americans. TSCL has those interests in mind, and is doing the best it can to discover the truth. Which brings us to the subject of this testimony, which is also about possible dangers to our Social Security system.