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MEDICARE DOCTORS WHO CHEAT ON THEIR TAXES AND WHAT SHOULD BE DONE ABOUT IT

HEARING

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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MEDICARE DOCTORS WHO CHEAT ON THEIR TAXES AND WHAT SHOULD BE DONE ABOUT IT

TUESDAY, MARCH 20, 2007

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room 342, Dirksen Senate Office Building, Hon. Carl Levin, Chairman of the Subcommittee, presiding.

Present: Senators Levin, Coleman, and McCaskill.

Staff Present: Mary D. Robertson, Chief Clerk; John McDougal, Detailee, IRS; Guy Ficco, Detailee, IRS; Peggy Gustafson, McCaskill staff; Mark L. Greenblatt, Staff Director and Chief Counsel to the Minority; Mark D. Nelson, Deputy Chief Counsel to the Minority; Sharon Beth Kristal, Counsel to the Minority; Clifford C. Stoddard, Jr., Counsel to the Minority; Timothy R. Terry, Counsel to the Minority; Jay Jennings, Senior Investigator to the Minority; Emily T. Germain, Staff Assistant to the Minority; and Robin Landauer (Coburn).

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Good afternoon, everybody. This afternoon, the Subcommittee will be looking at a very troubling anomaly—one of our Nation's most important programs, Medicare, a program which is indispensable to the health of our citizens, is also a source of significant abuse.

While the vast majority of health care providers are honest, taxpaying citizens, the focus of today's hearing is on those health care providers who are getting paid with taxpayer dollars under the Medicare program while at the same time failing to pay their taxes. While stuffing taxpayer dollars into their pockets, they are stiffing Uncle Sam by not paying their taxes.

Federal programs exist to stop this type of abuse. One key program is the Federal Payment Levy Program, which was established about 10 years ago to enable the Federal Government to identify Federal payments being made to tax deadbeats and authorize the withholding of a portion of those taxpayers' dollars to apply to the person's tax debt. For the past 4 years, under the leadership of Senator Coleman, the Subcommittee has been involved in an intensive effort to strengthen the tax levy program in order to withhold

funds from Federal payments made to Federal contractors who don't pay their taxes.

Past hearings have exposed the fact that there are 27,000 defense contractors with $3 billion in unpaid taxes; 33,000 contractors with other Federal agencies who owe $3.3 billion in unpaid tax debt; and 3,800 GSA contractors with $1.4 billion in unpaid tax debt. Those mind-boggling numbers represent tens of thousands of companies putting their hand in the taxpayers' wallet while dodging billions of dollars of tax obligations.

To stop this flagrant disregard of tax fairness, the Subcommittee has worked hard to identify and fix the many technical problems and red tape that have hindered the government's ability to withhold money from contract payments to apply to the contractors' tax debt.

Today's hearing highlights still another group of tax-dodging Federal contractors taking advantage of honest taxpayers. A study prepared by the Government Accountability Office (GAO), at the request of the Subcommittee, shows that 21,000 Medicare Part B health care providers, including doctors, ambulance companies, and medical laboratories, collectively owe about $1 billion in delinquent taxes. Together, they represent about 5 percent of all Medicare Part B service providers.

One of the examples we will hear about today is a doctor who collected over $1 million in taxpayer dollars from Medicare last year while owing $1 million in back taxes. While not paying his taxes, he purchased a $1 million house, a pleasure boat, and he bought several nightclubs. In another example, a doctor owes more than $400,000 in back taxes but collected more than $100,000 in Medicare payments last year and engaged in millions of dollars of gambling transactions rather than getting right with the government. In its report, the GAO identifies about 40 such tax dodgers who each received $100,000 or more in Medicare service provider payments.

The key Federal agency that oversees Federal Medicare payments is the Centers for Medicare and Medicaid Services (CMS). CMS sends its payments on Medicare Part C and D to the Treasury Department for disbursement, and these payments are processed through the Federal Tax Levy Program. But for over 5 years, CMS has failed to implement the levy program for Medicare Parts A and B, approving countless Medicare payments to countless medical service providers who owe taxes while failing to hold back money owed the government for delinquent taxes. When asked by the Subcommittee why it declined to implement the tax levy program for Part B, CMS explained that its lawyers thought the statute did not obligate it to participate.

CMS does not make Part B Medicare payments directly to its service providers but to intermediaries who then make the actual payments. CMS apparently thought this payment system might be too complex, for the tax levy system to handle. It is not too complex and the Subcommittee is glad to see that CMS has now had a change of heart and apparently agreed to set up procedures to enable these Medicare payments to be screened for possible tax debt. Given the 21,000 tax delinquents on Medicare Part B provider roles that the GAO has identified, it is long past time for CMS to join

the government-wide tax levy effort. Those 21,000 were identified without the ability to pierce the corporate veil, which is an essential step that needs to be taken if we are going to put teeth in this program.

The tax levy program that CMS will be joining is much improved since the Subcommittee's first hearing in 2004. One key advance has been the formation of a government-wide interagency task force to tackle tax levy problems. Since its formation in 2004, this task force has worked with the Subcommittee to resolve a host of technical issues to improve tax levy collections from Federal contractors. These improvements include ensuring accurate Taxpayer Identification Numbers in the Federal contractor registration data base, eliminating a requirement for an IRS agent to be assigned to a tax-delinquent contractor before a tax levy could be imposed, and issuing earlier tax levy notices to Federal contractors to ensure their contract payments are eligible for levy.

As a result of these and other improvements, tax levy collections have more than doubled over the past 3 years, going from $136 million in 2004 to nearly $340 million in 2006. Of these totals, tax levy collections from Federal contractors have also more than doubled, going from $28 million to $62 million.

With respect to the Medicare program, CMS has now agreed to work with the IRS to set up procedures to screen Medicare Part B payments. CMS needs also to screen payments made under other parts of the Medicare program. Now, that is just a matter of matching the CMS Taxpayer Identification Number, known as a TIN, with the IRS Taxpayer Identification Number.

A separate problem results from the standard practice of doctors and other medical professionals of conducting their medical practices through a small corporation or a limited liability company. The problem arises from the fact that the professional typically has a personal TIN that is different from the TIN held by their professional corporation or limited liability company. Current tax rules allow individuals to treat the income earned by such professional corporations as either corporate income that gets separately taxed or as partnership income that is attributed to the company owners and individually taxed.

Because many professionals choose to report income under their personal TINs, if they fail to pay taxes on the income received by their professional corporations, they can easily circumvent the tax levy process because the individual will appear on the IRS list of tax delinquents under one TIN while his or her company will appear on the CMS payment list under a different TIN. There won't be, then, a computer match between the IRS and CMS databases, and the IRS will be unable to levy the Medicare payments.

To fix this problem, CMS could require the taxpayers to supply both their individual TINs and the TINs of the companies that receive Medicare payments on their behalf. CMS could also require companies, as a condition of participation, to agree to make their Medicare payments subject to tax levies for member physicians or company owners who accrue those payments as personal income. The IRS also needs to change its regulations to allow that type of tax levy. If that change in regulations isn't made, it would be necessary perhaps to change the law to allow this type of business in-

come to be levied to satisfy the tax debt of member physicians and company owners.

Additional work is also needed to strengthen the tax levy program as a whole. Right now, for a variety of legal and technical reasons, only 45 percent of the tax debt assessed that is still uncollected in 2006 was actually made subject to levy under the Federal program. While that percentage is up from 34 percent in 2004, the data shows that in 2006, over half of this assessed tax debt, some $67 billion, was never activated by the IRS, or as they put it, "turned on" for actual collection under the tax levy program. Sixty-seven billion dollars is a big number even by Washington standards. That tax debt should be subject to levy for Federal payments.

The vast majority of Medicare providers render valuable services and they pay their taxes. These honest health care providers are put at a competitive disadvantage by the Medicare tax cheats. Besides hurting honest businesses, this type of tax dodging hurts our country by undermining the fairness of our tax system and by forcing honest taxpayers to make up the shortfall needed to pay for the basic Federal protections like health care. When these tax delinquents also receive large payments of Federal funds, it adds insult to injury. We must force the tax dodgers to pay their tax debt, and a key tool is to subject any Federal payments that they receive to an effective tax levy program.

Again, I want to commend Senator Coleman. He has been the leader in this effort. It has been a sustained effort, whether he has been Chairman or Ranking Member of this Subcommittee. We thank him for all the energy that he has put into this effort, for his leadership, and we now call upon him for his opening statement.

OPENING STATEMENT OF SENATOR COLEMAN

Senator COLEMAN. Thank you, Mr. Chairman, and thank you for your kind words. I have been working at the side of a master on this issue for a number of years and it has been your passion to make sure that those who have taxpayer obligations pay those obligations. The work that you did with folks using offshore companies, the super-rich avoiding taxpayer obligations, and the case you continually make as we look at contractors and others, they hurt the rest of us.

In this investigation, we have over 600,000 physicians who are part of the system. The 21,000 that have been identified, they are hurting the rest. They are hurting those who are paying their obligations. As you have so wisely indicated, it adds insult to injury when at the same time the Federal Government is putting money in the pockets of tax cheats without having them live up to their obligations, and the reality is there is a system in place. It is widely used within the government, and once again which, you have indicated in your opening statement, has produced results.

We talked about the system as a whole and the increase from $139 million collected to $339 million. Just the Defense Department, I believe, the Commissioner of the Internal Revenue Service will indicate that since we began the investigation, collections under the levy program went from $1 million to $26 million, one narrow universe of folks and a significant increase.

Again, I appreciate and thank you for the bipartisan effort and the way in which we have done this.

We do turn our attention today to tax cheats in the Medicare system. In particular, we have found that more than 21,000 doctors and related service providers who receive billions of dollars in Medicare payments every year owe an estimated $1.3 billion in back taxes.

To make matters worse, $430 million of this outstanding debt is composed of unpaid payroll taxes, so that the average worker is out there working for these folks. Money is coming out of their paycheck. They are believing that it is being set aside for payroll taxes. Instead, it is going into somebody's pocket. These tax deadbeats then are cheating the system by withholding payroll taxes from employees' paychecks but failing to pay those taxes to the government. Instead, they keep the employees' taxes for their personal use. So they are not only cheating the government, they are, in a sense, stealing from their own employees, as well, to the tune of over $430 million.

And if that is not bad enough, these tax cheats are not exactly paupers. To the contrary, they are living the good life. We will hear testimony about 50-foot yachts, multi-million-dollar mansions, vacation homes, million-dollar gambling habits, and personal airplanes, all at the expense of the American taxpayer. Some of these tax cheats have been previously convicted for defrauding the government, money laundering, and tax evasion. Some have had hospital privileges revoked, been disciplined by various State medical boards, investigated by State Medicaid fraud boards, and some have even been previously excluded from Medicare, yet they continue to receive substantial payments from Medicare every year.

Let me share a handful of disturbing examples to kind of build on the two that you mentioned in your opening statement. One ambulance company received more than $1 million from Medicare in the first 9 months of 2005 and it owed more than $11 million in back taxes. One doctor has refused to pay Federal income taxes since the 1970s and now owes more than $3 million in unpaid Federal taxes and more than $1 million to another Federal agency. He was paid approximately $100,000 in the first 9 months of 2005 by Medicare. Apparently, he tried to hide his assets by attempting to transfer property to his children.

Unfortunately, the list goes on and on. Were failing to pay their taxes not a sufficient insult to American taxpayers, Medicare doctors, and again I say doctors, this narrow universe of tax cheats, not the vast overall majority of doctors working in the system doing what they should do, but these tax cheats also owe $33 million in child support, $27 million in unpaid student loans, $114 million owed to other Federal agencies, and $22 million in unpaid State income taxes.

All this raises some important questions. The first question is obvious. How did it happen? The best case scenario is that there is a disappointing situation of the left hand not knowing what the right hand is doing. On the one hand, we have the Centers for Medicare and Medicaid Services, which oversees the Medicare program, paying doctors to keep the Medicare program running

smoothly. On the other hand, we have the IRS trying to recoup substantial tax debts from many of these same doctors.

But that is only the best case scenario. I fear the reality is worse. The Federal Government created the Federal Payment Levy Program in 2000 to target government payments to tax deadbeats and levy those payments to recover the unpaid taxes. The levy program was designed to put an end to this very problem. The Government Accountability Office specifically recommended that CMS confer with the IRS and FMS to figure out how to get Medicare payments into the levy program. That recommendation came 6 years ago, in 2001. So it is clear that CMS and other agencies have been on notice about this very issue for years, yet CMS still isn't participating in the program.

As a result, we have lost countless opportunities to levy Medicare payments made to tax-delinquent doctors and other suppliers. The GAO estimated that if CMS had participated in the levy program, the government could have recouped anywhere from $50 to $140 million from these Medicare tax cheats, and I stress, Mr. Chairman, that we are really dealing with, first, just the 9 months in 2005, so it is a narrow time period that we could have potentially recouped between $50 and $140 million. You have to imagine how many hundreds of millions could have been recovered if CMS started participating in the program in 2001, 2002, 2003, 2004, and 2005.

The other thing is that we are really dealing with just a small portion of Medicare, a portion of Part B. So this narrow slice of the Medicare program in a short time frame tells us that there are tens of millions, if not hundreds of millions of dollars. The chart being put up right now shows that we are dealing with Part B, the subject of the hearing, and it is only a small piece of the Medicare benefit pie.[1]

So why are we still struggling with this issue 7 years after the levy program began and 6 years after GAO's initial recommendation? Why did CMS wait until February 2007, just a few weeks before this hearing, to take an active interest in joining the levy program? I intend to put those very questions to CMS, IRS, and FMS, the Federal agencies involved, and get to the bottom of the problem.

But we are not in the blame business. We are in the problem solving business. The Chairman did, I think, an outstanding job of recommending some things that should change.

The paramount question, then, is how do we fix the mess? Make no mistake, these are complex problems, but I have no doubt, Mr. Chairman, that we can fix them. We have faced many similar complicated problems throughout this investigation and have overcome them one by one. For instance, I talked about when we began the DOD investigation, a mere fraction of DOD payments to its contractors were checked for tax debt and making improvements seemed daunting. Just 2 years later, I believe 99 percent of all DOD payments are now checked for levies and this has led to substantial results as collections from tax-delinquent DOD contractors

[1] Exhibit 3 appears in the Appendix on page 144.

have jumped dramatically, as I have indicated, for Fiscal Year 2003, from $1 million, to more than $26 million in 2006.

Similarly, we are overcoming problems in getting other Federal agencies to participate in the Federal levy program. For instance, the U.S. Postal Service and the Army Corps of Engineers have successfully joined the program and their payments will be checked for levies beginning in June of this year.

So we have dealt with thorny problems in the past and I am confident we will have similar success in addressing the problems now confronting Medicare payments. In fact, I understand that CMS has already expressed a willingness to make changes to lay the foundation to ensure that its payments will be checked for levies and we will no longer lose opportunities to recover unpaid tax debts. I look forward to the testimony from CMS, IRS, and FMS on what changes need to be made and what we can do to make these changes quickly.

In closing, I should reiterate our profound appreciation of the hard work and dedication of GAO's Forensic Audits and Special Investigations Unit. They have provided this Subcommittee with invaluable assistance. Our first panel is very familiar to this Subcommittee and to the full Committee. They have done extraordinary work and we are appreciative of that.

I also recognize the diligence and determination of the Commissioner of the IRS, the Administrator of GSA, the Secretary of Defense, and the Commissioner of the Financial Management Service, whose support led to the establishment of the Federal Contractor Compliance Task Force. The task force has addressed and resolved numerous problems that inhibit the levy process. It is painstaking work, but it has shown real tangible results.

We are also grateful to the Postmaster General and the Commanding General of the Army Corps of Engineers, who have directed their respective agencies to join the Federal Payment Levy Program voluntarily. I appreciate all their hard work. I applaud their success. I am confident that we can achieve greater success as we move forward and I look forward to the testimony today.

Thank you, Mr. Chairman.

Senator LEVIN. Thank you. Senator McCaskill, do you have an opening comment or two that you would like to make?

Senator MCCASKILL. I do not. Thank you, Mr. Chairman.

Senator LEVIN. Thank you.

Let me now welcome our first panel to this important hearing. Gregory Kutz is Managing Director of the Forensic Audits and Special Investigations Unit at the Government Accountability Office. Special Agent John Ryan, an Assistant Director with the Forensic Audits and Special Investigations Unit, and Steven Sebastian, Director of Financial Management and Assurance, we welcome each of you, I think in all cases, back to the Subcommittee. GAO is here to testify on the latest information that they have developed pursuant to our request for an investigation of Medicare providers who are not paying their taxes. We appreciate the hard work of the GAO. As Senator Coleman mentioned, without your work, we could not possibly be here and do so many things that we try to do, so we are very grateful for that work.

Pursuant to Rule VI, all witness who testify before the Subcommittee are required to be sworn and I would ask each of you to please stand and raise your right hand.

Do you solemnly swear that the testimony you are about to give to this Subcommittee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KUTZ. I do.

Mr. SEBASTIAN. I do.

Mr. RYAN. I do.

Senator LEVIN. Thank you. We will be using a timing system today, and please be aware that one minute approximately before the red light comes on, you will see your green light change to yellow, which will give you an opportunity to conclude your remarks. The written testimony will be made part of the record in its entirety.

I believe, Mr. Kutz, that you are going to lead off and summarize.

Mr. KUTZ. Yes.

Senator LEVIN. Thank you.

TESTIMONY OF GREGORY D. KUTZ,[1] MANAGING DIRECTOR, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS UNIT, ACCOMPANIED BY STEVEN J. SEBASTIAN, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, AND JOHN J. RYAN, ASSISTANT DIRECTOR, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS UNIT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. KUTZ. Mr. Chairman, Senator Coleman, and Senator McCaskill, thank you for the opportunity to discuss Medicare providers with tax problems.

As you both mentioned, we have previously testified that government contractors were abusing the Federal tax system with little or no consequence. At your request, we have expanded our investigation of tax abuse to Medicare and Medicaid providers. Today's testimony is the first installment of our work on Medicare and Medicaid. My testimony has two parts: First, our findings related to Medicare physicians and other suppliers; and second, key policy and program issues.

First, we found that over 21,000, or 5 percent, of Medicare Part B physicians, health professionals, and other suppliers had over $1 billion of unpaid Federal taxes. Note that our analysis was limited, as you mentioned, to 9 months of 2005 data. The scope of our investigation was limited due to problems receiving accurate and reliable data from the Centers for Medicare and Medicaid Services. The data we did receive represents about 20 percent of total Medicare disbursements.

To put a face on this issue, we investigated 40 case studies, including physicians and ambulance, imaging service, and laboratory businesses. For all 40 cases, we found abusive and potentially criminal activity related to the Federal tax system. Twenty-five of

[1] The joint prepared statement of Mr. Kutz, Mr. Sebastian, and Mr. Ryan appears in the Appendix on page 43.

our case studies were businesses that had unpaid payroll taxes. Willful failure to remit payroll taxes to the IRS is a felony.

For the first 9 months of 2005, these 40 providers received $16 million of Medicare payments while owing $59 million of Federal taxes. The individuals associated with these case studies have made a career out of failing to pay their Federal taxes. Some of the schemes used to avoid paying taxes include non-filing of tax returns and under-reporting of income, paying employees in cash, closing the entity with tax debt and opening up another entity with a similar name at the same address, and transferring millions of dollars of property to other family members and offshore accounts to avoid IRS collections.

The individuals involved with these cases have accumulated substantial personal wealth while at the same time failing to pay their Federal taxes. The posterboard shows examples of luxury homes and vehicles owned by these individuals along with a $400,000 yacht.[1] Other interesting assets include a tobacco farm, expensive paintings and antiques, a liquor store, an airplane, and nightclubs.

Our current and past investigations have shown that failure to pay Federal taxes isn't the only problem these individuals have. Let me use the posterboard to walk you through five other themes from our case studies.[2]

The first is professional practice problems. We found physicians denied hospital privileges due to substandard care. We also found many State medical board license suspensions and sanctions.

Second, substantial other debt. At least 23 of our case studies had unpaid State taxes. Other defaulted on student and other Federal loans.

Third, prior convictions, including money laundering, income tax evasion, and obtaining controlled substances by means of deception.

Fourth, suspicious cash transactions. One physician had millions of dollars of gambling transactions. Another physician attempted to transfer large amounts of cash to a country known for state-sponsored terrorism.

Fifth, deadbeat parents who had substantial delinquent child support payments.

If you walked in partway through my presentation, you might have assumed that I was talking about America's most wanted criminals rather than Medicare providers, which leads to my second point. What is being done to address this problem?

There are many policy and program issues here, but I will focus on two. The first is the one that you have spoken about the most here, which is the back end of the process, the collection of unpaid taxes through tax levy. Your oversight of contractors with tax problems has led to improvements in debt collection. We estimate that your oversight and positive actions by the IRS and FMS have resulted in hundreds of millions of dollars of increased collections through tax levy. Your similar oversight is needed for Medicare Part B providers because there is no continuous tax levy program.

[1] Chart referred to appears in the Appendix on page 00.
[2] Chart referred to appears in the Appendix on page 00.

As you mentioned, we estimate that for 9 months, between $50 and $140 million could have been collected from these providers, the little sliver that Senator Coleman talked about, through continuous levy. Why aren't these payments being levied? The second panel needs to answer that question.

The second aspect I wanted to explore was the front end of the process. Our work across the government has shown that fraud prevention is the most efficient and effective means to minimize fraud, waste, and abuse. We found that very little is being done to prevent even the most egregious Medicare providers from doing business with the Federal Government, although it is hard to believe the 40 cases I just described received $16 million of payments from Medicare in 2005.

In conclusion, the good news is that the vast majority of Medicare physicians and providers are paying their Federal taxes. However, our work has shown that thousands of these providers have taken advantage of the opportunity to avoid paying over $1 billion of Federal taxes. These tax cheats have an unfair advantage compared to the vast majority of physicians and other suppliers that do pay their Federal taxes.

With respect to our 40 case studies, the question I have is how bad does the behavior of Medicare providers need to be for them to be barred from doing business with the Federal Government. I find it hard to believe that the hard-earned money we collect from honest American taxpayers is being used to bankroll these tax deadbeats.

Mr. Chairman, that ends my statement. Special Agent Ryan, Mr. Sebastian, and I look forward to your questions.

Senator LEVIN. Thank you very much, Mr. Kutz.

First of all, I think you have already made it clear that you have looked at only some of the Medicare Part B payments. You have not looked at other types of Medicare payments that have also not been made subject to tax levy, is that correct?

Mr. KUTZ. That is correct. We have looked at about 20 percent of Medicare, it appears.

Senator LEVIN. All right. And so is it fair to make an assumption that perhaps the other parts of the problem would be 80 percent of the problem and you have looked at 20 percent of it?

Mr. KUTZ. We don't know for sure, but it could be, because in some of the other work we have done, for example one of the most egregious offenders for our civilian contractor work was nursing homes, and so we do believe there is going to be a lot of other tax problems here.

Senator LEVIN. And nursing homes were not included in your review?

Mr. KUTZ. That is correct.

Senator LEVIN. Is it also true that, for instance, people who sell durable medical equipment, like wheelchairs, are not included?

Mr. KUTZ. That was excluded from the Part B data we received.

Senator LEVIN. All right. In matching the records of CMS against those of the IRS, you found 21,000 doctors, approximately, and other Medicare Part B providers that owed over $1 billion of back taxes. Now, these 21,000 cases are where the CMS TIN and the IRS TIN, the Taxpayer Identification Number, match?

Mr. KUTZ. Correct. The TIN that was being paid by CMS matched the unpaid assessment file at IRS.

Senator LEVIN. All right. So the 21,000 providers that you identified where there is a match clearly understates, does it not, the problem or the numbers that are out there, because it does not include non-filers and it does not include under-reported amounts so far, right?

Mr. KUTZ. Correct.

Senator LEVIN. Now, doesn't it also omit taxes that are assessed against the individual doctors or physicians of medical corporations that have elected to be taxed as partnerships?

Mr. KUTZ. That would be correct, or businesses, and there would be hundreds of thousands of physicians that would not be providing billing information like that. They would be excluded from these numbers.

Senator LEVIN. All right. So the larger part of the problem probably is where there is no match possible under the current system because different Taxpayer Identification Numbers are provided?

Mr. KUTZ. Yes.

Senator LEVIN. All right. Now, have you talked to CMS or the IRS about that issue, and how they are going to correct that or how Congress needs to correct that?

Mr. KUTZ. Well, I think we are trying to crawl before we can walk and so we actually would like to see a levy program first, so we have not gotten to that advanced of a discussion. We would like to see a levy program first of all for the ones that match. We are not even anywhere close to having a levy program for what we would call the low-hanging fruit——

Senator LEVIN. All right.

Mr. KUTZ [continuing]. Let alone the more sophisticated types of analysis needed. But you are right. There is a lot more money on the table than just the analysis we showed today.

Senator LEVIN. Why has the low-hanging fruit not been picked?

Mr. KUTZ. You are going to have to ask the second panel that.

Senator LEVIN. Well, we are going to. I am sure we are all looking forward to that. [Laughter.]

But in the meantime, I am sure you talked to them about it, as well. What were the reasons they gave?

Mr. KUTZ. Well, as I think Senator Coleman mentioned, we had recommended in 2001, and probably before that also, that IRS and FMS work with CMS to make this happen. The Federal Contractor Task Force has been meeting now for several years as a result, I believe in many respects, of your oversight. CMS has not participated in that until February 2007. So I don't know if they were invited or whether they decided not to show up or what the case may be, but they have not participated in that until about the time you called this hearing.

Senator LEVIN. But you have talked to CMS as part of your investigation?

Mr. KUTZ. Yes.

Senator LEVIN. I am sure you have asked them what the reasons are. Did they give you an answer so we can get kind of a preview of what to expect here?

Mr. KUTZ. Well, I think they are going to talk to you in the second panel about technical issues. They are going to say they are working with IRS and FMS, but that would be a recent event given the fact that they just started participating in February.

Senator LEVIN. There is no reason that they gave you for their delay in participating?

Mr. KUTZ. There is not a legitimate reason. We have heard why 5 or 6 years have passed, and that could be over a billion dollars of lost collection, Senator.

Senator LEVIN. We fully agree with that. I am just wondering whether there is a non-legitimate reason which has been given, I mean, any reason. But they have not offered you an explanation?

Mr. KUTZ. No.

Senator LEVIN. OK. Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman.

Just following up on the Chairman's last question, in that original recommendation in 2001, was there a discussion or a response from CMS that they were doing some system overhaul, some system changes? Are you familiar with that?

Mr. KUTZ. I am not familiar with that, no. The responses I saw were mostly from IRS and FMS. They are doing an overhaul right now——

Senator COLEMAN. We received comments from the Acting Deputy in which he stressed CMS vendor payments could not be included in the continuous levy program until a new CMS-integrated accounting system is completed. That is 2001.

Mr. KUTZ. And that still is underway, that system.

Senator COLEMAN. Even for government, that is an extraordinary pace.

Mr. KUTZ. Yes.

Senator COLEMAN. You indicated in the early part of your testimony that in talking about why we are only looking at 20 percent of the total disbursements that you had problems getting data from CMS. Can you elaborate on that?

Mr. KUTZ. Yes. The request for us to look at the Medicare was in 2005, actually, so we had an entrance meeting with CMS in 2005. We worked with them to get the physician and other files during 2005 and 2006. I sent a letter to them in the fall of 2006 saying we had a lot of data we hadn't received yet. You sent a letter to them February 1, 2007 asking for the same data we hadn't been able to get from them, and here we are today without the data.

Now, I will say once again, since you have called this hearing, there has been a lot more activity. They have given us 1099 information and they have tried to give us other pieces of data. But again, you asked us to look at Medicare, not 20 percent of Medicare, but I think it was important to have this hearing to get the issue out there so that actions can start being taken to actually address the problems.

Senator COLEMAN. I take it, then, you will continue to look at Medicare and go beyond just the 20 percent that we are talking about today?

Mr. KUTZ. We will if we get the data, and we do not have the data.

Senator COLEMAN. We will do everything in our power to make sure you have the data.

One of the issues that I have been asked about is the nature of the folks involved in having tax obligations and is this something just the average business guy could run into. It is clear by, and I take it that is kind of the intent for you to focus on some of the luxury personal goods, the yachts, the cars, etc. We are not talking about struggling small business operators, are we, here?

Mr. KUTZ. No. That is a good point. When we did the contractor work, some of the cases were truly businesses that appeared to be struggling, having cash flow problems, etc.. For the most part, these people—on the one hand, they are telling IRS that they are having financial problems and they can't pay the bill. On the other hand, we see an accumulation of substantial assets. These are fraudsters, Senator. There is no question.

Senator COLEMAN. I don't know whether you can explain or perhaps I may ask the Commissioner. In one of the examples that you cite, you had a physician who hasn't filed a tax return in over 30 years. Can you explain to me how that person has avoided becoming a guest of the Federal prison system?

Mr. KUTZ. I can't, and that is something I think Mr. Ryan could probably comment to. Why there haven't been more criminal cases with these 40, we don't know.

Senator COLEMAN. Mr. Ryan, you have done a lot of work in this area. Does that strike you as pretty excessive?

Mr. RYAN. Yes, but then again, you have to ask the Department of Justice. I think that, overall, the agents of the IRS, the ones I have been talking to, are trying to do a good job. I think the letter that was sent to Senator Levin by the Justice Department opens up the door for the IRS to go in and ask the Department of Justice, what are you going to do and how are you going to help us bring these tax cheats to the table? They indicated that if the IRS brings the cases, they will consider them. If I was the IRS, I guess I would be jumping over at the Department of Justice and asking them to send letters out to all the districts and having the SACs of those districts work together with the Justice Department to bring these type of people to justice.

Senator COLEMAN. Part of your testimony focused on the qualifications of the folks who are these tax cheats, technical qualifications, revoked licenses, all sorts of other tax debt, other kinds of criminal behavior, suspicious cash transactions. Did you have discussions with CMS in terms of this issue of standards? Is there a way to somehow tie this into quality medical care? I mean, the bottom line for me is are you aware of any standards that should be applied to these folks before they continue participating in the Medicare system?

Mr. KUTZ. There are extensive standards for exclusions and debarments and most of them are health-related ones, and some of these people have been excluded during various points in time, but during 2005, all 40 of them received Federal payments. But it is difficult, and we didn't look at the whole exclusion and debarment process at length. That wasn't really our objective here.

But it does raise questions why none of these 40 most recently as when we looked were being debarred at this point. It certainly

seems that some of them would have met the criteria, because if you look—I would just read to you a couple of the examples of what we have here. We have substandard care, drug abuse, lack of moral character, embezzlement, abusive prescription writing. That doesn't sound to me, Senator, like people we should have doing business with the Federal Government.

Senator COLEMAN. So clearly, there is not a sufficient screening process here.

Mr. KUTZ. In these particular cases. We can only speak to the 40. I would say there are problems with that.

Senator COLEMAN. Thank you. Thank you, Mr. Chairman.

Senator LEVIN. Thank you very much, Senator Coleman.

Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman.

I want to follow up a little bit on what Senator Coleman was talking about. In reading this, my conclusion is that we really don't have any deterrent out there right now that would be effective in terms of any of these people that are systematically trying to avoid tax liability. Would that be a fair statement?

Mr. KUTZ. Well, there was a lot of collection activity with respect to the 40 cases, but again, when you consider that they have avoided paying taxes for 10, 15, or 20 years, we would have probably expected more aggressive action by the IRS on the enforcement side and the criminal side to put them out of business.

Senator MCCASKILL. I understand that the debarment, according to your report, doesn't happen unless a taxpayer is actually convicted of a felony in regards to tax evasion.

Mr. KUTZ. That is one of the possible areas, yes. There are other health-related felony convictions that would require a Medicare exclusion, also.

Senator MCCASKILL. Right. But right now, if somebody had consistently—let us say one of the examples you found where they were changing the names of their businesses but residing at the same address. The discovery of that, if someone was motivated at CMS and decided—would that even be a basis under the law to say, we are not going to do business with you anymore?

Mr. KUTZ. There is probably enough flexibility that, depending on how egregious the behavior, they could exclude them for various things like you have just described. But that is a matter of judgment and we certainly didn't see it with the 40 cases we looked at.

Senator MCCASKILL. Did you discover any cases where there had been any type of attempt to notify providers about the possibility of debarment if they didn't live up to their Federal tax liabilities, if they didn't——

Mr. KUTZ. No, not for tax liabilities.

Senator MCCASKILL. None?

Mr. KUTZ. None. One thing to keep in mind, Senator, is that CMS doesn't know whether or not these people have tax liabilities. Section 6103 of the Internal Revenue Code would not allow IRS to share that information with them, necessarily. And so for them to get that information, they would have to have the taxpayer when they enroll or re-up consent to letting them check IRS's tax records. So that is one impediment right now that could be dealt with procedurally, or you could deal with it legislatively.

Senator MCCASKILL. That is what I was just going to ask as the next question. It would appear to me that if we are going to do business with a contractor, whether it be a doctor or a major defense contractor, that they ought to be willing to agree to allow the government to check to make sure they have paid their taxes if we are going to be giving them taxpayer money.

Mr. KUTZ. I agree with you 100 percent, and given the vast majority of these people are honest tax-paying Americans, the vast majority would agree with you. The ones that wouldn't agree are the ones that aren't paying their taxes.

Senator MCCASKILL. And did you get a sense from the people at HHS that they were reluctant to do that, that would have some kind of chilling effect on the willingness of these various providers to participate in this program?

Mr. KUTZ. We haven't gotten into that discussion with them.

Senator MCCASKILL. I also notice that you have only looked at 20 percent. You have not included home health care, either, is that correct?

Mr. KUTZ. I believe that is correct.

Senator MCCASKILL. That is Medicare Part A, is that right?

Mr. KUTZ. We haven't looked at any of Part A. We have only looked at about half of Part B and 20 percent of all Medicare disbursements is what was in our population.

Senator MCCASKILL. I guess the problem I have here is that there is such an opportunity for deterrence and no one is availing themselves of it. Knowing in the criminal justice system that there are people you can deter and there are people you can't, and generally, the people that are medical professionals are going to be deterred if they believe there are consequences to this activity. This isn't like people who it doesn't work if you try to—and by the way, I would be willing to bet that if some of these cases were brought, they would be highly publicized. I would think this is the kind of stuff that makes the papers because people are, probably it is not a good thing about human nature, that people are fascinated by people not living up to their obligations that are in positions of trust, and for all the right reasons the vast majority of the medical community has a revered place of trust in our country.

Mr. KUTZ. We would certainly like to see some high-profile cases prosecuted and made examples of and well publicized. That is a deterrent, there is no question.

Senator MCCASKILL. Were you able to determine if any of these kinds of cases had been brought at the Department of Justice for tax evasion by Medicare providers?

Mr. KUTZ. There were a couple of the 40 that had tax evasion issues in their history, but they were not barred from doing business during the year we looked at, 2005. So there had been action on tax evasion for maybe one or two of them, but currently, none.

Senator MCCASKILL. Do you know if any of this has ever been covered in a single audit as it relates to single audits are being done in the States when we are looking—because certainly I know that is something we look at in a single audit as it relates to the Medicare program. Are you aware of whether in any of the single audits across the country there has been a look at this kind of issue?

Mr. KUTZ. I wouldn't think they could because they wouldn't have access to this information. So the public accounting firms or State auditors or whoever do those audits, I don't think they would have access to this. We had to work through you and the Joint Committee on Taxation to get access to taxpayer information.

Senator MCCASKILL. OK. I think some could, depending on the State, because I think we could on a limited scope in Missouri. We couldn't by identifying who they were, but we could by number.

Mr. KUTZ. OK.

Senator MCCASKILL. Thank you.

Senator LEVIN. Thank you, Senator McCaskill. Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman. I just have a series of questions for Mr. Kutz that is actually going to lay the foundation for the next panel.

One, did you find as part of the matching of Medicare payments with the outstanding tax debts that CMS has the names and Taxpayer Identification Numbers of physicians who were paid in 2005? Do they have that information?

Mr. KUTZ. They did. It took us a long time to get the information, but we got it.

Senator COLEMAN. They don't, however, validate the TINs, do they?

Mr. KUTZ. I don't believe so.

Senator COLEMAN. Which is, I think, something we did with the Defense Department after our investigation, is actually validate the TINs. But they have the Taxpayer Identification Numbers. Does CMS obtain the name and Taxpayer Identification Number——

Mr. KUTZ. Senator, I am sorry. I understand that they do validate, is that correct? I am told they do validate.

Senator COLEMAN. Does CMS obtain the name and Taxpayer Identification Number before payment is actually made?

Mr. KUTZ. Yes.

Senator COLEMAN. Then you would agree that CMS has all the information, the basic information, that is required for the Federal Payment Levy Program to identify payments that should be levied?

Mr. KUTZ. Under their old system and new system, I would say, yes, the data is there. It would be harder to do under the old system than the new system from what I understand.

Senator COLEMAN. Just dealing with this narrow issue of potential participation in the Federal Payment Levy Program, where all you need is name and Taxpayer Identification Number and then compare that with the IRS data, is there any reason why CMS cannot participate in the Federal Payment Levy Program?

Mr. KUTZ. No. I think that it could be worked out.

Senator COLEMAN. Thank you. Thank you, Mr. Chairman.

Senator LEVIN. Why would it be harder under the old system to make the match if the numbers are there in both systems?

Mr. KUTZ. I think the old system is more decentralized. I think the new system is going to be more centralized where ultimately everybody will be on one system, so you could do one file match. Here, you might need to do several dozen file matches. But that doesn't mean it can't be done.

Senator LEVIN. Is this computer generated under both systems?

Mr. KUTZ. Yes.

Senator LEVIN. Senator McCaskill, any more questions?

Senator MCCASKILL. No.

Senator LEVIN. OK. Thank you very much. Thank you again for your good work on this and so many other projects.

We will now call on our second panel. Let me now welcome our second panel of witnesses for this afternoon's hearing.

First, we have Mark Everson, Commissioner of the Internal Revenue Service; Kenneth Papaj, Commissioner of the Financial Management Service of the Department of Treasury; Leslie Norwalk, the Acting Administrator for the Centers for Medicare and Medicaid Services at the Department of Health and Human Services, and accompanying Ms. Norwalk this afternoon is Timothy Hill, Chief Financial Officer and Director of the Office of Financial Management at the Centers for Medicare and Medicaid Services.

I would ask you at this time if you would all please rise.

Do you swear that the testimony that you will give before this Subcommittee this afternoon will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. EVERSON. I do.

Mr. PAPAJ. I do.

Ms. NORWALK. I do.

Mr. HILL. I do.

Senator LEVIN. I think you heard the way the lighting system works. A number of you have been here before, so I won't repeat that. Your written testimony will be made part of the record. We would ask that you attempt to limit your oral testimony to no more than 5 minutes.

Mr. Everson, we will have you go first. Before you start, there are so many things that you do for the Nation and for this Subcommittee, and we are grateful for both.

TESTIMONY OF HON. MARK EVERSON,[1] COMMISSIONER, INTERNAL REVENUE SERVICE, U.S. DEPARTMENT OF THE TREASURY

Mr. EVERSON. Thank you, sir. Good afternoon, Chairman Levin, Ranking Member Coleman, and Senator McCaskill. I am pleased to be before you today to discuss the Government's Federal Payment Levy Program. I commend the Subcommittee for your continued interest in this subject. As you know, this is the fourth time we have met on this topic.

The government has made demonstrable progress in going after tax debt owed by Federal contractors. This is an instance of Congressional oversight at its best in that I firmly believe that you get a lot of the credit for our increased attention to this problem. As you indicate, Mr. Chairman, your predecessor and his staff certainly did an awful lot in this area.

Before taking your questions, I do want to review briefly the overall progress the IRS has made in recent years in restoring levies as an important enforcement tool. As the Members of the Subcommittee know, restoring the credibility of IRS enforcement programs has been a priority during my 4 years as Commissioner.

[1] The prepared statement of Mr. Everson appears in the Appendix on page 79.

Levies are an important part of our enforcement activities. Let me just show you two charts which depict the recovery of levies.[1]

This first one shows levies issued. As you can see, the volume of levies now exceeds that made by the IRS before the precipitous decrease after the hearings in the 1990s and the implementation of RRA 1998. Most importantly for today's subject, the chart depicts the Federal payment[2]—this shows the growth of the Federal Payment Levy Program, this color which was nonexistent a few short years ago. We started talking about this back here. But you can see overall, the levies have recovered smartly, but now we have this nice increment due to the focus that we have brought that you have sort of obviously championed.

Let us go to the second chart.[3] This shows that the dollars, as well, the dollars now exceed what we were getting at the end of the 1990s, and again, there is a nice piece here. There is a lesser amount here. As you are familiar, there are limitations on what we get through this program, the 15 percent limitation. It is not the same thing as we get in some of the areas, relatively more lucrative work, which is the field work, the yellow.

Before taking your questions on our efforts to continue to improve this program, let me make one or two points about the President's 2008 budget proposals. We enjoyed significant increases in our enforcement results in Fiscal Year 2006, and I am pleased to report that we are making continued strides in Fiscal Year 2007. One of the things that I am proudest of is that the IRS has ramped up its enforcement programs without generating a lot of noise or increased allegations of infringement of taxpayer rights.

The President's 2008 budget builds on these results. I am pleased that the President's request provides additional monies for IRS systems infrastructure modernization as well as for enforcement and notably for increased research. There is also a modest increase for taxpayer services. This is the best budget that I have seen in my 4 years on the job.

I ask the Members of the Subcommittee, as you have done in the past, to support the President's budget and to help enact an appropriation for the IRS before Fiscal Year 2008 starts. It is very important, trying to run a big operation within the agency to get the budget on time. These requested monies will help us generate continued progress in attacking the tax gap, but they are not the only things we need to do. The Administration has made 16 legislative proposals. I would direct your attention to four that I think are particularly important.

First, reporting of credit card gross receipts.

Second, and I think we are getting at this in the earlier testimony, making willful failure to file a tax return a felony, not a misdemeanor. That explains a great deal why DOJ is not terribly interested in pursuing a misdemeanor.

Third, requiring basis reporting for sales of securities.

And fourth, lowering the threshold for mandatory electronic filing for large corporations and partnerships.

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[1] Chart referred to appears in the Appendix on page 85.
[2] Chart referred to appears in the Appendix on page 86.
[3] Chart referred to appears in the Appendix on page 87.

I would like to mention one other proposal. Not all the tax debt, as you indicated, Mr. Chairman, referred to the FPLP can be immediately levied. That is because we have not completed the notice and review process that is legally required prior to the activation of the levy. Of the $114 billion in tax debt referred to the program, $57 billion, or approximately half, is not currently available for levy. We continue our efforts to accelerate the notice process so that the debts can be levied as soon as legally possible.

In that regard, there is also a provision included in the President's budget request that would permit the IRS to issue post-levy due process notices under certain circumstances. This change could significantly increase collections for employment tax liabilities prior to a collection due process hearing in a fashion similar to levies issued to collect a Federal tax liability from a State income tax refund. This gets at the issue you were talking about a few minutes ago. Taxpayers would have the right to a collection due process hearing on these liabilities within a reasonable time, but after the levy.

I think these proposals are an important step and I hope that Congress will enact them swiftly. Thank you.

Senator LEVIN. Thank you, Commissioner. Mr. Papaj.

TESTIMONY OF KENNETH R. PAPAJ,[1] COMMISSIONER, FINANCIAL MANAGEMENT SERVICE, U.S. DEPARTMENT OF THE TREASURY

Mr. PAPAJ. Good afternoon. Chairman Levin, Ranking Member Coleman, and Subcommittee Members, thank you for inviting me here to testify today. I would like to take this opportunity to thank the Members of the Subcommittee and the staff for your ongoing support of efforts to improve and strengthen the Federal Payment Levy Program and your continued interest in ensuring that Federal contractors meet their tax obligations.

I am pleased to report that as a result of your vigilance and initiative, our combined efforts are paying off. Collections of delinquent taxes through the levy program have increased dramatically over the last several years. As the first chart illustrates, the total amount of levy collections has more than tripled, from $89 million in Fiscal Year 2003 to $303 million in Fiscal Year 2006.[2] More importantly, there has been continued growth in collections from every type of payment that is part of the levy program.

With regard to levy collections from Federal contractors, as Chart 2 illustrates, collections have increased from $7 million in Fiscal Year 2003 to $60 million in Fiscal Year 2006.[3] Through future initiatives and by working closely with IRS and other agencies, we fully anticipate that increases in levy collections will continue. In fact, FMS is on track this year to exceed last year's record tax levy collections and we are approaching the billion-dollar mark for collections since the inception of the program.

A major factor in the increase in levy collections is in the increase in the number of tax debts that IRS has made part of the levy program. As of December 31, 2006, FMS's systems had $111.9

[1] The prepared statement of Mr. Papaj appears in the Appendix on page 90.
[2] Chart referred to appears in the Appendix on page 00.
[3] Chart referred to appears in the Appendix on page 00.

billion in delinquent taxes that were eligible for matching against Federal payments. This represents an increase of $53.2 billion in tax debt since the end of 2003. Of the eligible amount, IRS had activated $55.1 billion, or 49 percent, for collection by levy. We continue to work closely with IRS so that they can activate even more debts for levy.

As Commissioner Everson said, there is an Administration proposal that would permit IRS to conduct past-due levy processes under certain circumstances and we fully support that initiative. In the meantime, systems have been put in place to identify Federal contractors who owe taxes, which enables the IRS to accelerate the collection due process in those cases.

Another significant factor increasing levy collections has been an increase in the types of payments that are being matched and levied against delinquent tax debts. The first major expansion of the program took place in January 2002 with the addition of Social Security benefit payments. By April 2005, all DOD vendor pay systems were incorporated into the program. In February 2003, salary payments issued by the Postal Service were added, and in April 2004, DOD salary payments were made available for levy. This June, FMS plans to add to the tax levy program vendor payments of the U.S. Army Corps of Engineers and the U.S. Postal Service.

Additionally, FMS has been working to ensure that our various systems for making payments to vendors—Type A, Automated Clearing House-Corporate Trade Exchange, and Fedwire—are included in the levy program. All Type A payments were included in the levy program last June, and I am pleased to report that CTX and Fedwire payments are on schedule to be brought into the program by the end of December 2007.

FMS, along with GSA and the IRS, is also in the process of implementing a task force recommendation that will prevent contractors who owe delinquent debt from being paid for contracts with the use of a purchase card. This will be accomplished by identifying and flagging in the CCR system those contractors that have debts and then using payment methods that are subject to levy. FMS's programming to implement this recommendation will be completed in the next month, and once necessary changes to the Federal Acquisition Regulations are finalized, use of the debt flag by contracting officers will begin.

With regard to Medicare payments by CMS, as GAO acknowledged, due to CMS's decentralized payment process, there are significant operational complexities with levying these payments. Additional complexities arise because of the role CMS's fiscal intermediaries play in the payment process. However, as CMS moves to consolidate its processes, it is now feasible to address the issue of levying CMS payments.

Working under the direction of the Federal Contractor Tax Compliance Task Force, a subgroup consisting of FMS, IRS, and CMS has been formed to determine how best to deal with tax-delinquent Medicare providers. I join my colleagues from the IRS and CMS in supporting the work of the task force in examining various options to ensure that payments to Medicare providers are levied in the most efficient and effective manner.

Some options that should be evaluated are improving the paper levy process already in place, establishing a matching program between CMS's fiscal intermediaries and either IRS or FMS to facilitate levies through the fiscal intermediaries, and having FMS disburse Medicare payments on behalf of CMS so that levies can be conducted using the existing program. Each of these options, however, presents logistical, operational, and technical issues that must be worked out. The task force will issue a report by the end of the year setting forth various options and making recommendations for levying payments to Medicare providers.

While it is our view that we do not currently have the legal authority to offset Medicare payments to collect non-tax debt, concurrent with examining solutions to the complexities associated with levying Medicare payments we will also examine offset options in consultation with HHS.

Mr. Chairman, I appreciate the invitation to discuss the role FMS has played and will continue to play in improving the Federal Payment Levy Program and helping to close the tax gap. FMS is proud of its accomplishments in debt collection, which in Fiscal Year 2006 resulted in record collections of over $3.3 billion, and since the inception of the program has yielded collections of more than $29.5 billion in delinquent tax and non-tax debt owed to Federal agencies and States that otherwise would not have been collected.

This concludes my remarks. I would be happy to take any questions.

Senator LEVIN. Thank you, Mr. Papaj. Ms. Norwalk.

TESTIMONY OF LESLIE V. NORWALK,[1] ACTING ADMINISTRATOR, CENTERS FOR MEDICARE AND MEDICAID SERVICES, ACCOMPANIED BY TIMOTHY B. HILL, CHIEF FINANCIAL OFFICER AND DIRECTOR, OFFICE OF FINANCIAL MANAGEMENT, CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. NORWALK. Good afternoon, Chairman Levin, Senator Coleman, distinguished Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the Centers for Medicare and Medicaid Services' efforts to recoup unpaid tax liabilities of Medicare physicians and Part B suppliers.

CMS is the largest purchaser of health care in the world, providing coverage to nearly one in three Americans. Medicare alone insures over 43 million lives. In Fiscal Year 2008, spending on Medicare benefits will exceed $454 billion. With such enormous benefit expenditures, CMS is firmly committed to ensuring the highest measure of accountability within the Medicare program. Our stewardship of taxpayer dollars requires partnership with other Federal agencies, including the Department of the Treasury, the Department of Justice, and the Office of Inspector General in the Department of HHS.

I am outraged that there are Medicare providers out there right now harming our beneficiaries. The GAO has identified 40 of them, and perhaps more, in their statement but won't share the informa-

[1] The prepared statement of Ms. Norwalk appears in the Appendix on page 100.

tion with us. Why? Because they are not legally permitted to do so. I am committed to solving this problem, but we need Congress to give IRS the authority to share this critical information with CMS so we might take appropriate action.

CMS does not take the loss of taxpayer dollars lightly. Consequently, as recommended by the GAO last year, we take a risk-based approach to fiduciary responsibility, allocating scarce resources to the highest risk/highest vulnerability areas.

I also understand from the GAO's testimony today between approximately $50 and $160 million per year over the past 12 years is reported in unpaid tax debt of Medicare providers, particularly under Part B. Let me assure you that during this same time period, CMS focused its scarce resources to reduce improper payments to providers. These efforts avoided $10.1 billion in improper payments over the last 10 years. That is over $1 billion a year. That is not enough.

For the past 2 years, CMS has been looking at innovative ways to go after those who defraud Medicare and Medicaid. Each year, unscrupulous providers fraudulently bill Medicare for billions of dollars in health care claims. However, successfully prosecuting these criminals for health care fraud requires more significant resources, so CMS has reached out to unconventional partners to help catch them for tax evasion, and once convicted, exclude them from the Medicare program.

For example, CMS and the District Attorney of Los Angeles, have been working on a unique pilot program to try and more effectively go after health care fraud through the prosecution of health care providers, both those who don't report at all and those who are under-reporters for State income tax evasion, and the L.A. project works. As of February of this year, three individuals have been convicted of tax fraud, resulting in prison sentences and restitution. Another two physicians have been arrested on suspected tax and health insurance fraud, and roughly 300 cases are under development by the tax project.

For 50 of these cases against Medicare providers, the project estimates there are over $100 million in State and local taxes that were not reported. Moreover, the project estimates that these same 50 providers may have defrauded the Medicare program for an additional $100 million in last year alone. The direct result to the Medicare program for this Al Capone approach to health care fraud is that bad providers are identified, prosecuted, and convicted of felony charges. These felony convictions may be used by Medicare and Medicaid programs to revoke the billing privileges of the Medicare provider and ultimately exclude them from the Medicare program. In addition, when restitution is ordered and collected from the provider, Medicare receives remuneration.

Because of the success of the L.A. County project, CMS is working with the California Franchise Tax Board and the State of California to implement the project statewide. In addition, we have begun to explore similar projects with New York tax authorities and prosecutors. Earlier this year, CMS initiated discussions with the Internal Revenue Service to explore the possibility of expanding this project nationally to focus on Federal tax debt.

We have been working steadily and successfully to meet the commitments we made to Congress in 2001 to address the issue of payments to delinquent taxpayers. Our integrated accounting system is on schedule. We are currently processing 50 percent of our financial transactions through this system. This system is without question the cornerstone of any effort to levy Medicare payments to delinquent taxpayers.

We have also been working with the IRS and FMS on the Federal Contractor Tax Compliance Joint Task Force, or task force, for short, to identify the most efficient methods to levy payments in the interim. In 2006, our relationship with Treasury included sending more than $110 billion in Medicare Parts C and D payments through the Treasury Continuous Levy Program designed to catch delinquent tax payments. In that year alone, over $4.5 million in unpaid tax debts were collected.

CMS is also collaborating with the task force to determine how best to address other Medicare providers delinquent in their tax obligations. CMS supports the work of the task force to examine, assess, and ultimately implement policies to ensure that payments to providers are levied in the most effective and appropriate manner.

We are committed to exploring a deeper partnership with the IRS and FMS, building on current successes in applying tax levies and our participation in the task force. Although Medicare payments made to physicians currently are not disbursed through FMS, CMS does process paper levies received from the IRS. Since its inception, the Medicare program has used private contractors to process health care claims. Right now, we are in the process of reducing the number of those contractors and working to streamline the paper levy process.

However, the most efficient way to address the issue of Medicare providers who are delinquent in their tax debts would be for Congress to change the statute to allow the IRS to share data with CMS so that we may levy their payments and write the IRS a check, much like we do in the paper levy process. This is something that our new accounting system could accommodate and that our old accounting system could accommodate today as well as our new system, and it would not jeopardize the timeliness or the accuracy of payments to a million law-abiding, tax-paying providers for a billion health care claims worth nearly half-a-trillion dollars.

Thank you. I would be happy to answer any questions you might have.

Senator LEVIN. Thank you, Ms. Norwalk. Mr. Hill is accompanying you, so thank you so much.

Ms. Norwalk, recently, as I understand it, you have joined the Federal Payment Levy Program, is that correct?

Ms. NORWALK. Well, for a long time we have worked under Medicare Part C, which is now the Medicare Advantage Program. It has always been involved in the continuous levy program, and our new prescription drug benefit program also goes through the continuous levy program. So, we have done that for both those programs for quite some time, or at least for the drug benefit since its inception and the Medicare Advantage Program for quite some time. I am not sure of the first year of that.

We have also been working with the IRS and FMS around the paper levy process so that as they would like us to offset or levy debts and pay them a check, we do that, as well.

Senator LEVIN. What parts of the program have you not been involved in?

Ms. NORWALK. Medicare A and B are the more traditional—the original Medicare program——

Senator LEVIN. What are the reasons you haven't participated in that?

Ms. NORWALK. Well, as I alluded to in my statement, in 2001, we started changing our systems for payment to go into a general accounting system, and similarly, in 2003, after the Medicare Modernization Act, we began to reduce the number of Medicare contractors we have and streamline that process across the board. And it is that streamlining that will be critically important, to have a single point of entry that will make it easier for this process to go through one place within CMS.

Now, I appreciate that this is critically important from an IRS perspective and don't want to do anything to diminish that. But from being the acting administrator of CMS, our top priority has to be to pay these million providers a half-a-trillion dollars a year as appropriately as possible and do that in a way that does not threaten access that Medicare beneficiaries have to needed care. So we have taken this accounting system change—I appreciate, Senator Coleman, that you think this is slow. I want to be prudent and be sure that we are in no way interrupting those payments to law-abiding citizens.

Senator LEVIN. Without this change being fully implemented, are you saying you could not technically have joined that system with Parts A and B? Is that what your answer is?

Mr. HILL. I think, if I might jump in, technically, to join the system, I think there are two ways to think about joining the system, as we heard from FMS. One way would be to, in effect, have the Financial Management Service make our payments for us, which right now, I think, would be technically possible although a Herculean effort to do the systems changes that we would need to make a billion dollars of payments a day out of the FMS.

The other way we could do it in the existing systems we have, or within the new system, would be to do the match that Ms. Norwalk discussed and was one of the options that we heard from the FMS.

Senator LEVIN. And you decided not to make that match under the current system?

Ms. NORWALK. Whatever it is that we can do to facilitate that——

Senator LEVIN. But you haven't until now decided to make that match under the current system?

Ms. NORWALK. Provided whatever ways it is that we have to do that. I think part of the issue has been that the IRS can't share data with us. Consequently, it makes it far more difficult for our contractors to process those claims and make those levies.

Senator LEVIN. It has been impossible for you to make the match because you haven't received the TIN numbers from the IRS, is that what you are saying?

Ms. NORWALK. That is my understanding.

Senator LEVIN. Is that correct, Mr. Hill?

Mr. HILL. Right.

Senator LEVIN. Mr. Everson, is that correct?

Mr. EVERSON. Yes. There is this limitation we discussed. As you know and I think I covered in my written testimony, one of the issues here is, with the Committee's prodding, we have done other things with other contractors where they are now going to be doing a certification as to tax compliance over the last 3 years and in the contract, the Federal Contract Registry (FCR), you have to sign on and basically waive that right, I guess, to get onto the registry. There are some things you can do without changing the statute that perhaps could be considered here.

Senator LEVIN. And that would be to have anyone who is getting a contract payment to agree that the TIN number be supplied to the IRS.

Mr. EVERSON. That is the way we have been going, as you know, in other areas. I think that is a possibility.

Senator LEVIN. So now, Ms. Norwalk, any reason why you should not have that as a condition of making a payment, that the people receiving the payment agree that their TIN number be supplied to the IRS?

Ms. NORWALK. Well, there are a couple——

Senator LEVIN. From the IRS? Is there any reason——

Ms. NORWALK. Yes, there are a couple of things I would like to point out. The first is the way that the system works is that they aren't contractors. They are not considered government contractors. They don't actually sign up every year for a contract. It is a three-part system: You have the government, you have the beneficiary, and you have the provider. Now, the 645,000 Part B suppliers and providers don't sign up every year. It is not an annual process.

Senator LEVIN. Can they not be notified when they receive payments that by cashing these checks, receiving these payments, that they are going to thereby be authorizing the IRS to supply that TIN number to you? Is there any reason why that can't be added?

Ms. NORWALK. As long as it is legally permissible.

Senator LEVIN. Have you checked whether it is legally permissible?

Ms. NORWALK. No, I haven't. I would have to ask our General Counsel's Office. But the second point that I would make——

Senator LEVIN. Well, before you get to the second point, it has been years that this has been going on. Why should that not be asked or have been asked before now?

Ms. NORWALK. Someone may have asked that question. I did not know of it going on until recently, so I personally haven't asked the question.

Senator LEVIN. OK. Will you let the Subcommittee know what the answer to that question is?

Ms. NORWALK. Absolutely. The second point that I would make is this year, for 2008, physicians are scheduled to take a 10 percent payment cut, and I am concerned that the number of providers that continue to serve Medicare beneficiaries in the future may decline simply because of that impact.

Senator LEVIN. Yes.

Ms. NORWALK. To do anything in addition, particularly for those who are law abiding, to get at those few, those 5 percent or 3.2 percent of providers who are not law abiding and possibly jeopardizing those rural areas of the country, whether it is the Upper Peninsula or elsewhere in Minnesota, for example, that may only have one or two providers, if they say, "Enough is enough, I am tired of the Medicare program," I think we also need to be cognizant of the policy change that we are suggesting here.

Senator LEVIN. Yes, we should be cognizant of that and we should be cognizant of the proposed cut, because the 10 percent cut will have a far bigger impact than just simply notifying people by cashing a check that you are thereby agreeing that a TIN number will be supplied to HHS. In any event, check it out and let us know.

Ms. NORWALK. Will do.

Senator LEVIN. But it seems to me it is kind of a stretch, it seems to me, to be suggesting that by notifying people that when you accept the taxpayers' money that you are then going to be allowing a TIN number to be supplied by IRS to your agency, that somehow or other is going to be a major addition to the problem which is being created by a 10 percent cut. I think it is a little bit disingenuous myself, but so be it. Let us have the legal opinion when you get it.

Did you join the interagency task force before this year?

Ms. NORWALK. Well, we found out about it on February 8. We went to the first——

Senator LEVIN. Of what year?

Ms. NORWALK. This year, and we went——

Senator LEVIN. That is the first time you knew about it?

Ms. NORWALK. That is the first time that we had heard about it at CMS as far as I am aware. Now, they may have been talking to our colleagues at the Department. It is quite possible that——

Senator LEVIN. All right. That seems to be——

Ms. NORWALK. The first time that we were aware at CMS, 5 days later, we attended our first meeting.

Senator LEVIN. That is quite a gap. I mean, that is quite a crack, it seems to me, that exists. Mr. Everson, the task force, should not CMS have been notified before February 2007?

Mr. EVERSON. Well, I think, as the Administrator is indicating, that there were conversations at the Department level, at the HHS level, and apparently those—within the Department, the right connections were not made.

Senator LEVIN. You mean within the Department, there wasn't notice given?

Mr. EVERSON. That is my impression. I don't know, but I am informed, sir, that there were some conversations at the Department level——

Senator LEVIN. Let me just ask, do you know whether that is true, Ms. Norwalk?

Ms. NORWALK. My understanding is that there may well have been conversations at the Department earlier than even 2006, maybe 2005 and so forth, but I wasn't aware of them at the time.

Senator LEVIN. But they never filtered down to your level?

Ms. NORWALK. Well, not as far as I am aware, and as soon as I became aware, we started on the task force 5 days later.

Senator LEVIN. I hope you would tell the higher-ups in your Department that it is unacceptable that they be given notice which relates to your agency and collection of money which is owed the government that does not filter down to the right level.

Ms. NORWALK. Absolutely.

Senator LEVIN. Can you let them know on behalf of the Subcommittee?

Ms. NORWALK. Will do.

Senator LEVIN. Thank you. Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman.

Just to have a little follow-up on the last panel, there was some concern about getting data from Ms. Norwalk. The Chairman and I sent a letter on February 1 to supply the GAO with the remaining 3 months of Medicare data for 2005. GAO, I think, has indicated they still haven't received that information. Would you explain to me why not and tell me what is being done to get them that data?

Ms. NORWALK. A couple of points. The first is the GAO Health Branch has continuous access to information on claims data for Part A and B, so I think that is really where they got their first 9 months of data. For some reason, the Health Branch wasn't able to provide them with what they needed for the rest of 2005.

We have asked them to sign a data use agreement. To my understanding, they have not signed one, but as soon as they do, we are more than happy to provide them with that information. I am sure you can appreciate that the confidentiality of Medicare information, both on beneficiaries and providers, is of our utmost importance, particularly given all that we have been hearing from the VA and other insurers who have lost provider data, and want to be sure that they appreciate the concerns that we have around data use.

Senator COLEMAN. So as I understand, going back to 2001 when the GAO recommended IRS and FMS work with the CMS to bring CMS into the Federal Payment Levy Program, now it has been 6 years. If you can walk me through a little bit. You just got involved, I think it was in February, with the task force.

Ms. NORWALK. Right.

Senator COLEMAN. Was CMS—was this something you were aware of and aware you weren't participating? Were there technical difficulties, problems, or was it something that you were not aware of? Help me understand the difficulty in moving forward.

Ms. NORWALK. I personally was not aware of it. I suspect that our CFO was, in fact, quite aware of what goes on more specifically. In looking at the 2001 report from the GAO, we did say actually during that report that we didn't anticipate actually being able to participate until our integrated accounting system went into place 5 years at the earliest. I think as it says, these payments could be included within 5 years. So, we are about at the time frame that we initially projected in 2001.

Mr. Hill, I don't know if you want to mention more specifics as to what you have known.

Mr. HILL. I think it is a fair assessment that anybody in the financial community understands the issues that are going on with

the levy and the need to have more payments going through. I mean, to the specifics of the task force and our involvement, I think as we have noted here, there may have been communications, but our direct involvement wasn't—or, I should say, lack of involvement wasn't for a lack of understanding or caring. I think it was a notion of being ready to participate in a meaningful way once the system was up and ready.

Senator COLEMAN. So as we sit here today, are there any legal reasons why you couldn't participate, any legal barriers?

Ms. NORWALK. I am not aware of any legal barriers for participating. In fact, as I said, we do so on a paper process already and I think making it more automatic makes a whole lot of sense.

Senator COLEMAN. How many paper levies were sent out last year?

Ms. NORWALK. Well, one of the things that we need to do is have a centralized process. I don't know the answer to that question because sometimes they will send the levies to our contractors. Sometimes they send it to us centrally. I think we could make this a far better process, and, in fact, starting through this hearing we will be doing just that, making the process——

Senator COLEMAN. Mr. Hill, could you tell me how many were sent out last year——

Mr. HILL. No, sir——

Senator COLEMAN [continuing]. And approximately what percent of them were successfully collected?

Mr. HILL. No. As I said, the information goes out to the contractors. It is decentralized on our end. It is decentralized on the IRS end, and that is one thing that we need to resolve on the paper side.

Senator COLEMAN. And do you know how many of these were for Medicare Part B participating physicians, paper levies?

Mr. HILL. No.

Senator COLEMAN. Would it be fair to say a relatively small number compared to the 21,000 tax delinquents that GAO has identified?

Mr. HILL. Smaller than the 21,000? Yes, I would imagine so.

Senator COLEMAN. My concern is that the paper levy is a band-aid solution. You have a system in place that the rest of the government uses. It is a pretty effective system, and with all the technical challenges that have been laid out, and there were a number of them, FMS has managed to work through the technical challenge.

Mr. Papaj, are you aware of any technical problems that are insurmountable in terms of CMS's participation?

Mr. PAPAJ. Well, I think, clearly, with the number of financial intermediaries they have, 34 currently, and just the fact that their systems don't have this information in one system, an integrated system, makes it much more difficult because there would be a voluminous change of data between the financial intermediaries and FMS to do the matching.

Having said that, we stand ready to work through those issues. I don't think it is something that can be resolved fairly quickly, but we have dealt with these issues before, but it is, I think, a complex issue, and I think that the more that CMS can do to centralize both

their payments operation, perhaps, as well as the information coming to FMS, I mean, we would prefer a single stream of information to be able to levy those payments. A single stream of the payments, if they were to continue to make those payments, as opposed to having to deal with 34 different systems with all the reconciliation issues, if there are amounts that are levied incorrectly, we would have to do reversals, it just makes it more complex dealing with those 34 entities.

Senator COLEMAN. If I may, Mr. Chairman, just two other areas of inquiry. One, Mr. Papaj, you talked about not having legal authority to offset non-tax debt in your testimony, non-tax debt. What we are talking about here is tax debt. That non-tax debt is child support. So there is no legal bar to FMS levying tax debt, is that correct?

Mr. PAPAJ. No.

Senator COLEMAN. The non-tax is a separate issue.

Mr. PAPAJ. Right.

Senator COLEMAN. I just want to say this to Ms. Norwalk. I appreciate your outrage, but I have to tell you, as I sit here, I get a sense that CMS is this very complicated system, there is no question about that. You have all these fraud issues. They are huge issues. But I get a sense that this issue has, for whatever reason, the outrage doesn't filter down, that perhaps there is a greater concern, and I understand the concern, that somehow getting involved with tax issues may scare people off from being involved if they have to supply data, have to supply information. I just don't sense a real resolve to say, watch the pennies because the dollars take care of themselves. My sense on this is that you see this as pennies and that it is not on the radar screen to the degree that it should be.

Ms. NORWALK. Well, any penny overpaid on the Medicare program or not paid in taxes is a penny too much. So, without question, we are committed to making sure that the pennies are right.

Senator COLEMAN. And these pennies are in the tens of millions.

Ms. NORWALK. Correct. I mean, I appreciate that the GAO last year suggested to us to put our resources to going after those that have the highest return on investment, and given the amount of fraud in the Medicare program and the fact that we are dealing with organized crime and all sorts of things, that what we do on a day-to-day basis in terms of going after fraud is significantly greater than the dollars that we are discussing here today. But, that is not to diminish the importance of millions of dollars in payments in any way.

The concern that I have, and perhaps the hesitancy that you are hearing, is the thought of putting the $454 billion of Medicare payments through FMS in a fairly short period of time which may jeopardize the access to health care by the 43 million beneficiaries that we serve and wanting to figure out a solution to this problem that takes into account that we have a very different payment system historically that happens to work fairly well.

Considering the number of fraudulent providers that we have, those who are abusing the tax system, and also, I might add, are likely abusing the Medicare program at the same time, we would very much like to go after them. But to do so, I think we need to

do it in partnership in a way that CMS can have access to data that we currently don't have access to so that we don't jeopardize our regular payment systems on the one hand but yet can go after this tax fraud.

And again, as I said, I do think it is something that we could do today under our current programs if we could do the match and then pay the taxes, and rather than being through FMS's continuous levy program, we could do it on an automated basis if we could have access to that information.

Moreover, the 40 providers that the GAO mentioned, we would like to know who they are and go after them, too.

Senator COLEMAN. Mr. Chairman, my time is up. I would like to get back perhaps in a second round of questions.

Senator LEVIN. Thank you. Senator McCaskill.

Senator MCCASKILL. Well, this is incredibly discouraging. I have heard that HHS didn't tell CMS about a task force whose primary purpose was to have an impact on how well you do your job of paying out taxpayer money. I have heard that you are afraid to give data to GAO and that the reason that you can't do a better job is because IRS won't give you data, but the reason that they won't give you data is because you are afraid to ask people that are providing the services for that permission to get those numbers because you are afraid if you ask for permission that they will quit the program. And you came to a hearing on how to collect unpaid taxes and you don't even know how many levies you have collected.

I think that is pretty much in the category of the dog ate my homework. I don't understand, and it seems that you are diminishing—I agree with Senator Coleman. I have just listened, and it seems to me you are diminishing the enormity of this problem by saying, we pay so much money and this is just a small amount.

What I would like to hone in on, and I will give you a chance to respond to all that, is the example you used as to the great job you are doing. And the irony in the example you used is an example of a local law enforcement official in the United States, not a Federal official, no one that gets a check from the Federal Government, decided they were going to do something about this problem and they went out and at the local level decided that they would focus in on this issue, and then you come to the hearing in the Federal Government and say, this is such a great program that the local people have done. We want to talk to people on the Federal level about doing it.

Why is this having to come up from the bottom? Why is a local prosecutor in L.A. County having to come up with a—he has gotten people to share information. He has been able to get this information shared across agencies. But yet I have heard today in several different ways that you can't share information across agencies. It is stunning.

Ms. NORWALK. In terms of the L.A. office, actually, that was an idea that was generated along with CMS and we actually have an L.A. office that does solely fraud work.

Senator MCCASKILL. And so where have you started it anywhere else?

Ms. NORWALK. We have moved to New York. We are actually looking from a State perspective. I noted in my testimony that we

have been working with the IRS to figure out how it is that we can implement this nationally. From a State perspective, we are looking at States where there are high instances of fraud where they pay State taxes, where we can submit—we actually give information on people that we think are likely to be defrauding the Medicare program and consequently also not paying taxes. So it is our information sharing that has enabled this to occur.

So in Texas, for example, last week, there were three convictions that involved 70 nursing homes, 6,000 patient beds, and they have been withholding taxes from about 4,500 employees. So this is something that is pervasive and the GAO mentioned in their testimony that the under-reporting and non-reporting issue is a big deal. I think it is absolutely a big deal, and we very much would like to work with the IRS and partners, State, local, wherever it is that we can get them to go after tax—not just people who defraud the tax program, but also those who are defrauding the Medicare program. And, if we can get them both and get them off the Medicare rolls, I think it is terrific and it is something that we thought about and, in fact, had been working with in concert with the folks in Texas, with the folks in California, different provider types, and we should continue that.

Senator MCCASKILL. How long ago did the program in California begin?

Ms. NORWALK. Two years.

Senator MCCASKILL. And how many letters have been written to local prosecutors or States Attorney Generals about the program by CMS since that program began 2 years ago?

Ms. NORWALK. We typically have been doing a lot of things through conferences, so I will have to get back to you as to the specifics of how else we have been reaching out, but I am delighted to have the opportunity hopefully for the law enforcement community here so that we can spread the word and do as much as possible.

Senator MCCASKILL. I think you understand what I am saying.

Ms. NORWALK. Absolutely.

Senator MCCASKILL [continuing]. In terms of prioritization of this issue. I mean, the example that is brought to us is one that is a local example. Let me just briefly, because I know my time is about to run out, I am especially interested in you saying that the GAO hasn't signed a data sharing agreement.

Ms. NORWALK. That is correct.

Senator MCCASKILL. I have been frustrated, I can't tell you how many times as an auditor in government, when an agency that wanted to circle the wagons and hold on to either power or information wanted us to sign an agreement to get what we were entitled to get under the law. Do you believe GAO has the legal authority to get the data they have requested?

Ms. NORWALK. Well, the Health Care Branch——

Senator MCCASKILL. That is a yes or no question.

Ms. NORWALK. The GAO Health Care Branch has automatic access to this data today. They have had automatic access to this data. That is how they got the first 9 months of this data. So, the GAO does have access to this data in their Health Care Branch.

Senator MCCASKILL. So you are saying they can get the data, they just haven't gotten it, all the Part A data——

Ms. NORWALK. The Health Care Branch has continuous access to tape Medicare Part A and Part D data.

Senator MCCASKILL. What about all of Part B?

Ms. NORWALK. Part A and B. Both A and B data.

Senator MCCASKILL. OK. So you are saying, then, your testimony is that they have no problem getting this data and the fact they haven't been able to get this data and we have had to write letters did not occur?

Ms. NORWALK. No, the GAO—I don't know if the GAO Health Care Branch talks to the GAO, the Tax Branch, whoever wrote this particular report, but the Health Care Branch, who we deal with on a regular basis, has continuous taps to Medicare Part A and B claims.

Senator MCCASKILL. OK. So you originally said they couldn't get the data because they hadn't signed a data sharing agreement. Now you say they can get the data, they are just not asking the right people?

Ms. NORWALK. No, the GAO Health Care Branch has signed a data use agreement and consequently has a continuous tap on any data they want to see for Medicare Part A and B claims. They look at it all the time. They use it on a regular basis.

Senator MCCASKILL. Do you believe——

Ms. NORWALK. That is, in fact, how the Tax Branch got the information for the first 9 months of 2005.

Senator MCCASKILL. I am confused, Mr. Chairman.

Senator LEVIN. Well, take an extra minute and let us see if we can straighten it out.

Senator MCCASKILL. Go ahead.

Mr. HILL. Let me try and clear it up. I think that the issue here, as best as we can understand from talking to the GAO, is that the tax folks have not now been able to get the data from within their own confines for whatever reason and have come to us directly, making a separate request for data. As I am sure you can appreciate, any time we are going to release disks and disks filled with beneficiary confidential information, we need to have the assurances in place that the data is going to be used the same way, just as we have those assurances in place with the other side of GAO.

Now, if the Tax Branch wants to go back to the Health Care Branch and get the data that way, that is perfectly fine, but as we understand the request that is on the table now, they have asked for the data separately in a separate request, and concurrent with the rules that we have in place, they have to sign a data sharing agreement. I understand that you believe that we may be circling the wagons, but given all that is going on lately with the release of personally identifiable data, we think prudent rules to have assurances in place about how that data is going to be used if they are going to get it separately.

Senator MCCASKILL. Do you believe that GAO is entitled to this data under the law?

Mr. HILL. Absolutely.

Senator MCCASKILL. And do you believe that they are required to sign any kind of agreement in order to get data that they are legally entitled to?

Mr. HILL. I believe that we have an obligation to get an assertion about how the data is going to be treated once they take it out of CMS, yes, I do.

Senator MCCASKILL. So you believe that you have a legal basis on which to deny GAO data?

Mr. HILL. Well, I would characterize it that the process that we give the data to GAO is not unlike the process we use to give the data to VA, to OMB, to OPM, to any Federal agency. We don't think it is onerous. We don't particularly think it is unneeded.

Senator MCCASKILL. Having gotten a lot of CMS data at the State level for audits, we didn't sign those agreements. It was our job under the law to look at that data and do our job, and the idea that—and it is particularly frustrating that the answer to the question is, well, they can get the data if they go through another part of their agency because that part of the agency signed an agreement, but this part of the agency didn't sign the agreement. Meanwhile, Senator Coleman is having to write a letter to try to get the data so that we can get to the bottom of it.

Senator COLEMAN. Will my colleague yield? I am missing something here, too. GAO had the data for the first 9 months.

Senator MCCASKILL. They got it——

Senator COLEMAN. So they had the data for the purpose intended. They are asking now for the same kind of data for 3 more months. What additional assurances are you requesting that you didn't have for the data for the first 9 months?

Mr. HILL. They didn't get the first 9 months' worth of data directly from us. I understand this sounds like a hypertechnical distinction here, but the first 9 months of data that they got, they got through the data use agreement that we have with what we are characterizing as the Health Division, the health part of the GAO. My understanding is they could not get the last quarter's worth of data that they were looking for through that Health Division of GAO so they came in to us separately. The forensic auditors came in to us separately asking for that last quarter of data.

Senator COLEMAN. So it was not sufficient to go to the health folks and say, we have already given them data for 9 months, they need the other 3 months?

Mr. HILL. I don't know why they couldn't get the data from the health folks. You would need to ask the GAO that.

Senator LEVIN. Is anyone here from the GAO that could answer that question? Is it your own Health Division that denied you access to the last 3 months? Could you come to the microphone, please? Let us see if we can straighten this out right now.

Mr. KUTZ. We have been working directly with CMS after we had the first piece of data that we have had, and so we have had difficulty since then being able to get the data. Keep in mind, unlike our health team, we can't actually use this data on their system. We have to get downloads on it loaded into our main frame and matched against IRS information because it is taxpayer records. So we can't take taxpayer records to their database.

Senator LEVIN. But Senator Coleman's question is, if you were able to do it for the first 9 months, what stopped you for the last 3 months?

Mr. KUTZ. Well, there is a whole series of stories here about requests from our health team to them, that the programs have crashed, the data hasn't come, etc. So the requests have been—the format has been the same. We have actually reduced our request to fewer data fields because the first one was such a large file to get. So we have reduced our request and, I think, sharpened it and we still don't have the data. We are not signing another agreement. GAO has an agreement, as they said, that is already in place and we are living within that agreement. It is a matter of getting the data that we have asked for.

Senator LEVIN. It is a matter of getting the data from whom specifically?

Mr. KUTZ. Them. We are working directly with them.

Senator LEVIN. "Them" being?

Mr. KUTZ. My team is working directly with CMS right now. I sent a letter last fall asking them to work directly with us to get the data because we had trouble getting it the other way. I heard nothing back about that. You sent the letter February 1, asking the same thing I asked them back last fall and we still don't have the data.

Senator COLEMAN. It is clear, though, GAO has an agreement with CMS in terms of use of data, isn't that correct?

Mr. KUTZ. Yes, and we have lived with that agreement.

Ms. NORWALK. A sub-branch of the GAO does, or a division or whatever they go by.

Senator COLEMAN. But GAO is GAO, aren't they?

Senator LEVIN. What is the relevance of a sub-branch?

Ms. NORWALK. It depends on who signed the agreement and whether or not they have the authority for the entire GAO to——

Senator LEVIN. Did you tell them that they didn't have authority?

Ms. NORWALK. Well, when the GAO—actually, I am not sure who he sent the letter to, but it never actually came up to the Office of the Administrator as far as I am aware. We became aware of this issue when the Subcommittee raised it to our attention.

Senator LEVIN. You have problems, folks. You have things that aren't coming up to your level. You have things that aren't coming down to your level, both.

Ms. NORWALK. Yes.

Senator LEVIN. I mean, that is a problem inside your agency.

Ms. NORWALK. I am happy to resolve this issue now and I will go back. If it turns out that the GAO at large has signed this data request, more than happy to give it to them. If not, I am going to presume that he would be willing to sign it so that we can move on.

Senator LEVIN. It is such a technicality——

Ms. NORWALK. It is a technicality that I am not going to take lightly, sir.

Senator LEVIN. I am not suggesting you do anything except respond to folks when you get a request and say, hey, you have got the wrong signature. Give me a different signature. But don't just

let it languish, sit, or tell us you never got it because it didn't come up to you or down to you. That is what is unacceptable.

Ms. NORWALK. I appreciate——

Senator LEVIN. If you have to follow a technical rule——

Ms. NORWALK. Absolutely.

Senator LEVIN [continuing]. Follow the technical rule, but don't just ignore it.

Ms. NORWALK. I think we have been working with them to ask to get them to sign the second data use agreement, so I don't think it is something that has been ignored.

Senator LEVIN. All right. Senator McCaskill, I guess you are——

Senator MCCASKILL. I was out of time.

Senator LEVIN. Yes, you are out of time, so I will go back and we will start a second round.

As I understand the problem, FMS's issue is that you would prefer a single stream of information in order to match the TINs, but that at least it is possible for FMS to do the match with 30 different streams of information. Your computers could do it. It is more work.

Mr. PAPAJ. While technologically possible—it is certainly theoretically possible. I mean, the concern we have is that we have a very narrow processing time frame. When agencies submit their information to update our debtor database, we have a very narrow window to update that to make sure the database is accurate and current before we then turn it over to our payments processing where they actually do the matching against the payments, and we really can't allow any more time for the debt process because then we will be shorting the time to get the payments out. We make Social Security payments, tax refund payments, veterans payments, and we really need that time to get those payments out on a daily basis. Now, having said that, we will work with them to try to work through those issues.

Senator LEVIN. All right. If you can do that, if you can work and let this Subcommittee know what the outcome of your discussions are, would you do that?

Mr. PAPAJ. Sure. Yes, sir.

Senator LEVIN. As to working through this issue of trying to get the data in one form or from one source or as few sources as possible so you can do that turnaround that is necessary for the match to be done. You, then, can do the matching, is that correct?

Mr. PAPAJ. Correct.

Senator LEVIN. You do the matching already, do you not, for other agencies?

Mr. PAPAJ. Yes, we do.

Senator LEVIN. So, Ms. Norwalk, you don't need to get IRS permission or get the IRS data. FMS will do it for you if you can work out that process where you have got one stream or a few streams of information, because FMS is already doing that match for other agencies and they are willing to do it for you if you can work out the system.

Mr. HILL. Absolutely. I mean, if FMS is willing to make the payments. I guess the only—and this gets to the deliberations of the task force, which is to say what that would mean is we would send a billion dollars a day, because that is——

Senator LEVIN. It is on a computer. I am not sure, frankly, once you got it done, I am not sure that it makes a difference whether it is a billion a day or half-a-billion a day or a hundred million a day. You are making matches for other agencies, are you not?

Mr. PAPAJ. Yes, sir.

Senator LEVIN. Including the Defense Department?

Mr. PAPAJ. Correct.

Senator LEVIN. How many billions are involved in that one?

Mr. PAPAJ. I don't have the exact number, but we have about 26 million debts in our database.

Senator LEVIN. I mean, could it be billions a week for the DOD?

Mr. PAPAJ. In terms of——

Senator LEVIN. Of that match that you are making of people——

Mr. PAPAJ. I don't think it would be billions——

Senator LEVIN. Hundreds of millions?

Mr. PAPAJ. Hundreds of millions, I would think.

Senator LEVIN. All right. So the amount of money really isn't the issue, it is the number of streams of information——

Mr. PAPAJ. Right.

Senator LEVIN [continuing]. That you have to consolidate into fewer streams or figure out a system so that you can make these matches quickly enough——

Mr. PAPAJ. Right.

Senator LEVIN [continuing]. So that you can turn this around and not slow up the whole system, is that basically it?

Mr. PAPAJ. Yes. And just to point to Mr. Hill's statement, and that is not if FMS makes the payments. If we make the payment, it would be more efficient because we would be able to make the match and take the levy right at the same time.

Senator LEVIN. Which is what you are doing for other agencies?

Mr. PAPAJ. For some other agencies, but for DOD under vendor payments, we would be using the same process with the 34 intermediaries where we take the match, send information to them, they actually do the levy, send information to us. So the match could be done even with CMS continuing to make the payments.

Senator LEVIN. OK. Would it be a fair request to let us know within 30 days what you are going to be doing in this area? Can we get that commitment?

Mr. PAPAJ. I am not——

Senator LEVIN. I am not saying, implement the system. I am saying if you can reach an agreement or give us a status of your negotiations.

Mr. PAPAJ. Sure. We can give you a status report.

Senator LEVIN. Would you do that. Ms. Norwalk, you are committed to do that?

Ms. NORWALK. Absolutely.

Senator LEVIN. OK. Let me, Mr. Everson, ask you just a question and then I will turn it back over to Senator Coleman and to Senator McCaskill.

Much of the tax debt that is assessed against taxpayers is not collected because it hasn't been designated, or I guess you use the term "turned on," or the term is used "turned on" for collection by levy. So we have about $67 billion in assessed but uncollected tax debt that was not subject to an actual levy. I think you have given

a number of reasons to us before. We understand that there are a number of reasons that is true, including that a number of notices have to be sent to the taxpayers, there is an appeal of an IRS notice of levy, there is payment going on an installment plan, fair enough, the taxpayer has an offer in compromise which is pending, the taxpayer is in bankruptcy. There are a lot of reasons, legitimately.

Mr. EVERSON. Yes, sir, there are.

Senator LEVIN. That is not going to happen. But one of the issues has to do with the number of notices that I want to ask you about.

Mr. EVERSON. Yes.

Senator LEVIN. Part of the reason that the tax debt or part of it isn't ready for levy is that you have to send three notices.

Mr. EVERSON. I think it is actually four——

Senator LEVIN. Four computer-generated notices to a taxpayer demanding payment of the tax debt before the account moves into the collection enforcement. So it is four computer-generated notices. I am going to call those demand notices. The IRS is also required by law when it gets to the point of a tax levy to send a special notice warning a taxpayer that a tax levy is going to be made and giving them a chance to request an administrative hearing and potentially a court hearing.

Mr. EVERSON. This is what I was referring to before, the collection due process notice.

Senator LEVIN. That is correct, and I am going to call it tax levy notice.

Mr. EVERSON. I get confused——

Senator LEVIN. I will call it a due process notice. [Laughter.]

Join the rest of us. [Laughter.]

Now, my question is, can the due process notice be combined with the second demand notice?

Mr. EVERSON. I would want to carefully look at that, sir. I don't know whether that is possible or not. Certainly what we have done here, I think as I mentioned in my oral statement and in the written statement, what we would like to do here is get the same kind of rights that we have with State tax refunds to allow someone a collection due process hearing but still make the levy. We think that is the cleanest way to do this. It is comparable to what we already do, as I said, with the State tax refunds, so I think that would really help us in this instance.

Senator LEVIN. What would help you?

Mr. EVERSON. If we had the same authority where we could go ahead and make the levy and then the taxpayer would still have that right. This is limited for employment taxes. One of the larger numbers, as you know from the previous hearings we have had on this subject, one of the largest pieces here is in the employment tax area. We would like to work particularly there, because when companies or providers get into trouble, they keep not making the employment tax withholding, or they make the withholding but they don't make the remittances they should. If we can get on this, we can avoid pyramiding and that would be helpful.

Senator LEVIN. All right. Has that request been made by the IRS——

Mr. EVERSON. That is in one of 16 administration proposals that we have made this year with the budget.

Senator LEVIN. Does that go to the Finance Committee on the Senate side?

Mr. EVERSON. Yes, sir, it would.

Senator LEVIN. Good. Can you look into this other question that I just raised——

Mr. EVERSON. I certainly will, sir.

Senator LEVIN [continuing]. Of the second notice, and we will check with the Finance Committee. Thank you.

Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman.

Mr. Papaj, I just want to kind of get an understanding of the scope of your system, and I think the Chairman explored it in talking about DOD, but in your written testimony, you talk about the FMS system showed almost $112 billion in delinquent taxes that were eligible for matching against Federal payments, is that correct?

Mr. PAPAJ. Correct.

Senator COLEMAN. And in that, the activated, which is the "on" tax debt, is $55 billion, so about 49 percent that is eligible for levy.

Mr. PAPAJ. Correct.

Senator COLEMAN. And then the "off" debt is what the Chairman is talking about and ways to accelerate to get more of that in the process. We are dealing with 112 with nine zeros after that is the amount of debt you deal with.

Mr. PAPAJ. Yes, just on the tax side.

Senator COLEMAN. And in terms of when you receive or post payments from agencies with their own disbursing services, then you match them against outstanding debt, return the payment information to the agency making the payments with the payments to be levied flagged, is that the way you do it?

Mr. PAPAJ. Yes. They send us their anticipated payments and then we match that against the debtor database. Where there is a match of the TIN and the name, we send that information back to the agency. They actually make the levy and then send us information on the collections.

Senator COLEMAN. And how long does it take you to send the information? How long does it take your part of that process?

Mr. PAPAJ. Well, normally, we try to do that within the same day. That is why it is compressed in a very narrow time frame. We update the debtor database by 10:30 in the morning. Then we begin the matching. We try to get those files back to the agencies so they can make those claims.

Senator COLEMAN. And how many accounts are you doing this for? Is there any way to estimate?

Mr. PAPAJ. Well, last year, the numbers we processed was about 200 and—I have got a number here somewhere if I can find it. Bear with me. We processed about 283 million debtor transactions, updating our database. I mean, there is a significant volume going through.

Senator COLEMAN. So you could handle the CMS volume. We can work out the other issues.

Mr. PAPAJ. Well, again, I think that is what we are going to work with them, to work that out. I mean, the concern we have is that we can't allow any more time for the debt update process because then it goes into our payments processing time frame to be able to get our Social Security payments and our tax refund payments out.

Senator COLEMAN. Great. Ms. Norwalk, I would like to explore the issue of screening and what is possible there. There were some pretty outrageous cases that the GAO reported about nasty characters. Can you talk a little bit about the screening process? Are there additional things that you think can be done, or do you need any legislative help to do any of that?

Ms. NORWALK. By screening process, are you focusing on the tax piece or——

Senator COLEMAN. No, I am talking about the folks participating in——

Ms. NORWALK. In the Medicare——

Senator COLEMAN [continuing]. The contractor folks who have had medical privileges revoked——

Ms. NORWALK. Absolutely.

Senator COLEMAN [continuing]. Who have other felony convictions, a whole range of issues.

Ms. NORWALK. Right.

Senator COLEMAN. What do you do now and what can you do to make it better?

Ms. NORWALK. There are two separate ways that providers are excluded from the Medicare program. There are statutory exclusions that are listed, including things that relate to health care fraud. The Office of the Inspector General at HHS has the authority to put out permissive exclusions, and those include fraud. That would be like tax evasion, for example. Permissive exclusions are a 3-year minimum exclusion from the Medicare program. Statutory exclusions are a 5-year minimum. There are other things that are included in that which would be if you don't have an active medical license, for example, you cannot obviously participate in the Medicare program. So, a number of the things that the GAO mentioned in its testimony, I think would be things where the provider could have been excluded.

A lot of the medical piece focuses on what the State board of medicine does. We leave it to them to determine what is the appropriate sanction for a provider depending on what it is they do. When those privileges are revoked, they also lose their ability to bill the Medicare program. I will note that many State board of medical directors, however, are often hesitant to actually revoke medical privileges. It is one of the reasons why we have something called the National Practitioner Databank, which is intended to share information between State medical boards so that people can't cross State lines, and if they, for example, were excluded in Minnesota, they couldn't move to Wisconsin and then practice in Wisconsin, or vice-versa.

Senator COLEMAN. Explain how that system works.

Ms. NORWALK. Well, it is a reporting system and it is basically if the State medical board is required to, although I am not sure that it always does, but is required to report to the National Practitioner Databank to let the databank know that someone has lost

their medical license in a particular State, conceptually, what will happen then is that contractors will check the database to ensure that the individual hasn't been excluded through the National Practitioner Databank or still has an existing license.

Senator COLEMAN. Thank you, Mr. Chairman.

Senator LEVIN. Thank you. Just a couple more questions. I want to talk about this issue of where there is a limited liability company which is created and so technically the tax is owing by a limited liability company, but the box has been checked so that the owners have said that they will individually be responsible for paying the taxes, as I understand it. This is not an issue which is in any way limited to the medical problems we have been discussing. This is an across-the-board issue with the use of these limited liability companies. I don't know the technical name of these professional corporations. Do you have a section in the IRS Code for that?

Mr. EVERSON. I am sure there is a section, but——

Senator LEVIN. Is this a problem? Does it create problems in terms of collection?

Mr. EVERSON. Well, I would step back and answer the question more broadly. As you know, the tax code writes in numerous provisions and special treatment and that is not necessarily consistent with either Federal law or State law as to organizational structures or other issues and makes it very complicated, obviously, to get after issues like what you are talking about today, where there are funds flowing through one vehicle but the tax obligation might be with another, yes, sir.

Senator LEVIN. Have you considered amending the regulations clearly so as to say that companies who check the box and choose to be treated as partnerships are agreeing to make those company assets subject to levy to pay the taxes of the individual owners of the company that arise out of that business? Is that something which is the subject of discussion?

Mr. EVERSON. I would want to think. I am not sure. It would be in the same sense that nobody has to be a Medicare provider but people have a tax obligation, and changing our interpretation of the law, which I am sure was done very carefully after whichever section that is was enacted, that is not a small matter, as you know.

Senator LEVIN. Has that been a subject of discussion?

Mr. EVERSON. Not that I am personally familiar with, sir.

Senator LEVIN. All right. Would you take a look at that? It is a much broader issue.

Mr. EVERSON. It is a very broad issue, you are right.

Senator LEVIN. It seems to me it does create a real dilemma.

Mr. EVERSON. We have the issue, as you know, there were recent hearings I know about millions of companies that were organized by different States without the ownership being disclosed. There are lots of issues that are comparable in some ways to this.

Senator LEVIN. This is a different issue from that, however——

Mr. EVERSON. Yes.

Senator LEVIN [continuing]. Because here, you are really saying if you choose to be taxed as an individual but the question is you are not levied as an individual——

Mr. EVERSON. Right.

Senator LEVIN [continuing]. For taxes owing, why not be levied as an individual if you choose to pay taxes as an individual? Why should we make that distinction?

Mr. EVERSON. I will certainly ask our folks to take a look at it, Mr. Chairman.

Senator LEVIN. All right.

Senator COLEMAN. Just a final line of inquiry. One of the things kind of dealing with the bad actors again and something I found disturbing, the GAO found that there was non-tax debt of a number of these 40 bad actors, and I presume then they are just a sample of others, and one area in particular of this non-tax debt was child support. CMS is in its very nature is vested in children's welfare.

Ms. NORWALK. Absolutely.

Senator COLEMAN. At this point, I think it is clear you are not obligated to do anything with child support, are you?

Ms. NORWALK. I actually think that we are not permitted to. We don't have the statutory authority to do it at all, which I think was the earlier line of questioning.

Senator COLEMAN. Because CMS, I think, comes under Social Security——

Ms. NORWALK. Yes, that is correct. We are Social Security——

Senator COLEMAN. Would you support a change in the Treasury Department offset program to provide that you could collect unpaid child support?

Ms. NORWALK. I wouldn't know why not, but I am more than happy to take it back and ask.

Senator COLEMAN. I appreciate that. Thank you.

Senator LEVIN. Ms. Norwalk, you indicated, I think, in your opening testimony that your effort to get to an integrated system is on schedule, I believe.

Ms. NORWALK. Correct.

Senator LEVIN. What was the schedule for that?

Mr. HILL. The original schedule called for us to begin implementing in 2006. We actually began implementing and transitioning transactions in Fiscal Year 2005. We are about halfway through our transitions now, doing this in a piecemeal way to mitigate our risk, and we should be done by the end of 2010.

Senator LEVIN. Two-thousand-and-ten?

Mr. HILL. Yes, sir.

Senator LEVIN. Why does it take that long?

Mr. HILL. Well, I mean, we are doing it on schedule with this Medicare——

Senator LEVIN. I know it is on schedule, but why does it take that long?

Mr. HILL. When I say on schedule, we are doing it, I should say, in concert with the transition schedule that was set up under the MMA to get rid of the number of contractors we had, to convert them to Medicare administrative contractors, and so there are many transitions going on at one time and we are trying to match those up and going in lockstep. As you know, the MMA requires the Medicare administrative contractor phase-out to be done by 2011, so we are trying to have this done in advance of that.

Senator LEVIN. It is not a budget issue?

Mr. HILL. Not per se, no. It is really a risk mitigation issue, I think. We don't want to sort of have this big bang approach where we are shoving $500 billion worth of payments through this system and then have it break. We want to do it in little chunks.

Senator LEVIN. Well, it is more important, then, than ever with this kind of a schedule that we try to work out a way of, in the interim, making this match at the FMS level work.

Ms. NORWALK. I think it is very promising.

Senator LEVIN. Thank you. Mr. Everson.

Mr. EVERSON. Yes. As sometimes happens in these situations, I have been passed a note and I understand that this matter you are raising is actually something we are actively looking at now to be able to do the levy process on the LLCs, at least in some way. We will send you a note for the record on what we are doing.

Senator LEVIN. You have a lot of company, because we get notes from our staff every 5 minutes or so. [Laughter.]

You only got one or two today, so you lucked out.

We thank you all. It has been a very helpful panel, very lively discussion, and we will stand adjourned.

[Whereupon, at 4:30 p.m., the Subcommittee was adjourned.]

APPENDIX

United States Government Accountability Office

GAO

Testimony

Before the Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate

For Release on Delivery
Expected at 2:30 p.m. EST
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MEDICARE

Thousands of Medicare Part B Providers Abuse the Federal Tax System

Statement of

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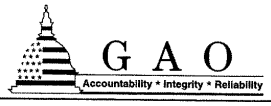


GAO-07-587T

March 20, 2007

GAO
Accountability · Integrity · Reliability

Highlights

Highlights of GAO-07-587T, a testimony before the Permanent Subcommittee on Investigations, Senate Committee on Homeland Security and Governmental Affairs, U.S. Senate

MEDICARE

Thousands of Medicare Part B Providers Abuse the Federal Tax System

Why GAO Did This Study

Under the Medicare program, the Department of Health and Human Services (HHS) and its contractors paid a reported $330 billion in Medicare benefits in calendar year 2005. Because GAO previously identified government contractors with billions of dollars in unpaid federal taxes, the Subcommittee requested that we expand our work in this area to all Medicare providers. This testimony addresses Medicare physicians, health professionals, and suppliers for services related to senior health care, who received about 20 percent of all Medicare payments.

Because of limitations in HHS data, GAO was asked to determine if Medicare Part B physicians, health professionals, and suppliers have unpaid federal taxes, and if so, to (1) determine the magnitude of such debts; (2) identify examples of Medicare physicians and suppliers that have engaged in abusive, or potentially criminal activities; and (3) assess HHS efforts to prevent delinquent taxpayers from enrolling in Medicare and levy payments to pay delinquent federal taxes.

To perform this work, GAO reviewed data from HHS and the Internal Revenue Service (IRS). In addition, GAO reviewed policies, procedures, and regulations related to Medicare. GAO also performed additional investigative activities. We plan to report on the results of our work related to other Medicare providers including any needed recommendations later this year.

www.gao.gov/cgi-bin/getrpt?GAO-07-587T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Gregory Kutz at (202) 512-7455 or Steve Sebastian at (202) 512-3406.

What GAO Found

Over 21,000 of the physicians, health professionals, and suppliers (i.e., about 5 percent of all such providers) paid under Medicare Part B during the first 9 months of calendar year 2005 had tax debts totaling over $1 billion. This $1 billion figure is understated because some of these Medicare health care providers have understated their income and/or not filed their tax returns.

We selected 40 Medicare physicians, health professionals, and suppliers with high tax debt for more in-depth investigation of the extent and nature of any related abusive or potentially criminal activity. Our investigation found abusive and potentially criminal activity, including failure to remit to IRS individual income taxes and/or payroll taxes withheld from their employees. Rather than fulfill their role as "trustees" of this money and forward it to IRS, they diverted the money for other purposes. Willful failure to remit payroll taxes is a felony under U.S. law. Further, individuals associated with some of these providers used payroll taxes withheld from employees for personal gain (e.g., to purchase a new home) or to help fund their businesses. Many of these individuals accumulated substantial wealth and assets, including million-dollar houses and luxury vehicles, while failing to pay their federal taxes. In addition, some physicians received Medicare payments even though they had serious quality-of-care issues, including license reprimands and prior suspensions from state medical boards, revocations of hospital privileges, and previous exclusions from the Medicare program.

Examples of Medicare Health Care Provider Abusive and Criminal Activity

Type of business	Unpaid tax debt	HHS payments received	Description of activity
Physician	Over $600 thousand	Up to $100,000	Physician convicted of money laundering through use of offshore accounts.
Physician	Nearly $1 million	Over $100,000	Hospital denied physician's hospital privileges due to substandard care.
Ambulance	Over $5 million	Over $100,000	Owner convicted for defrauding the U.S. government.

Source: GAO analysis of IRS, HHS, public, and other records.

HHS has not issued Medicare regulations or policies requiring Medicare contractors to consider tax debts in making a decision about whether to enroll a physician, health professional, or supplier into Medicare. Further, HHS has not established a policy to obtain taxpayer consent to obtain tax information from IRS as part of its Medicare eligibility decision-making process.

IRS can continuously levy up to 100 percent of each payment made to a federal payee—for example, a Medicare physician—until that tax debt is paid. However, HHS is not participating in the continuous levy program and thus the government has not collected unpaid taxes from Medicare payments. In the first 9 months of calendar year 2005, we estimate that the government lost opportunities to collect between $50 million and $140 million by not participating in the continuous levy program.

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss Medicare physicians, health professionals, and suppliers paid under the Supplemental Medical Insurance program, also know as Medicare Part B, who have abused the federal tax system while doing business with the federal government. This testimony provides the results of our most recent work related to identifying abusers of the federal tax system. In recent hearings held by this subcommittee,[1] we testified that federal contractors (Department of Defense, federal civilian, and General Services Administration contractors) abused the federal tax system with little consequence. Due to the significance of the issues raised during those hearings, you asked us to provide additional information about whether Medicare providers who were paid by the government for Medicare-related services were engaged in similar tax abuses. Because of limitations in the data provided to us by the Department of Health and Human Services (HHS), this testimony will cover physicians, health professionals, and suppliers who were paid under Medicare Part B and engaged in tax abuses.[2] We plan to conduct a subsequent audit and related investigations to determine whether other Medicare providers, such as hospitals, durable medical equipment suppliers, and skilled nursing facilities, have abused the federal tax system

[1]GAO, *Financial Management: Some DOD Contractors Abuse the Federal Tax System with Little Consequence*, GAO-04-414T (Washington, D.C.: Feb. 12, 2004); *Financial Management: Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence*, GAO-05-683T (Washington, D.C.: June 16, 2005); and *Financial Management: Thousands of GSA Contractors Abuse the Federal Tax System*, GAO-06-492T (Washington, D.C.: March 14, 2006).

[2]For this testimony, we are defining physician, health professional, and supplier to include the following: (1) Physician to include medicine, doctor of osteopathy, doctor of dental surgery or dental medicine, doctor of podiatric medicine, or doctor of optometry, and a doctor of chiropractic legally authorized to practice by a state in which he/she performs this function. (2) Health professional to include individuals and businesses excluding physicians who may deliver covered Medicare services if the services are incident to a physician's service or if there is specific authorization in the law. They include nurse practitioners and physician assistants, qualified clinical psychologists, clinical social workers, certified nurses, midwives, ambulances, and certified registered nurse anesthetists. (3) Supplier to include an entity that is qualified to furnish health services covered by Medicare, other than providers, physicians, and health professionals. They include ambulatory surgical centers, independent physical therapists, mammography facilities, independent occupational therapists, clinical laboratories, and portable X-ray suppliers. For purposes of this testimony, durable medical equipment suppliers were excluded, but we plan to examine them in the subsequent audit.

while receiving Medicare payments.[3] Any recommendations needed to address the issues raised in this testimony will be included as part of our planned subsequent reporting on this area.

The specific objectives of this audit and investigation were to determine, to the extent possible, if physicians, health professionals, and suppliers who receive Medicare Part B payments have unpaid federal taxes, and if so, to (1) determine the magnitude of tax debts owed; (2) identify examples of physicians, health professionals, and suppliers involved in abusive or potentially criminal activities; and (3) assess HHS efforts to prevent delinquent taxpayers from enrolling in Medicare and levy Medicare payments to pay delinquent federal taxes.

To identify the magnitude of physicians, health professionals, and suppliers with unpaid federal taxes, we obtained and analyzed Internal Revenue Service (IRS) tax debt data as of September 30, 2005, and obtained and analyzed the HHS database of Medicare Part B-approved claims paid to physicians, health professionals, and suppliers for the first 9 months of calendar year 2005.[4] We matched the list of Medicare physicians, health professionals, and suppliers with IRS tax debts using the taxpayer identification number (TIN). To illustrate examples of abuse or potential criminal activity, based on our data mining, we selected 40 Medicare physicians and suppliers for a detailed audit and investigation of the extent and nature of such activity. For these 40 cases, we reviewed copies of automated tax transcripts and other tax records (for example, revenue officer's notes) and performed additional searches of criminal, financial, health care, and public records. For these cases, we also updated the tax debt amount as of September 30, 2006, to reflect any additional tax assessments or collections that IRS recorded as of that date. To determine whether HHS prevents physicians, health professionals, and suppliers who owe tax debts from enrolling in Medicare or levying Medicare payments to pay taxes, we examined the HHS regulations, policies, and procedures for conducting determinations in the enrollment approval process. We also interviewed officials from HHS, two large HHS Medicare contractors, IRS, and the Department of Treasury's Financial Management Service (FMS)

[3]In addition to Medicare providers, we are also conducting a separate audit on Medicaid providers who have abused the federal tax system while receiving Medicaid payments.

[4]We requested the approved Medicare Part B claims to physicians, health professionals, and suppliers for calendar year 2005. HHS was able to provide us the first 9 months of calendar year 2005 claims by the end of our review.

concerning any barriers for levying Medicare payments. A more detailed description of the scope and methodology related to our audit and investigative work supporting this testimony is provided in appendix I.

We conducted our work from June 2006 through February 2007. Our audit work was performed in accordance with U.S. generally accepted government auditing standards. We performed our investigative work in accordance with standards prescribed by the President's Council on Integrity and Efficiency.

Summary

Thousands of Medicare Part B physicians, health professionals, and suppliers abused the federal tax system with little consequence.[5] Specifically, our analysis of data provided by HHS and IRS indicates that over 21,000 Medicare Part B physicians, health professionals and suppliers[6] had tax debts totaling over $1 billion.[7] This represented about 5 percent of the number of all Medicare Part B physicians, health professionals, and suppliers paid during the first 9 months of calendar year 2005. The unpaid taxes largely consisted of individual income and payroll taxes.[8] However, our $1 billion estimate of tax debts owed by Medicare Part B physicians, health professionals, and suppliers is understated because IRS data does not reflect all amounts owed by businesses and individuals. Specifically, it does not include amounts (1) owed by businesses and individuals that have not filed tax returns or that have failed to report the full amount of taxes due (referred to as nonfilers and underreporters) and (2) for which IRS has not determined that specific tax debts are owed. Further, our past audits have also indicated that IRS

[5]We considered activity to be abusive when a Medicare Part B physician, health professional or supplier's actions or inactions, though not illegal, took advantage of the existing tax enforcement and administration system to avoid fulfilling federal tax obligations and were deficient or improper when compared with behavior that a prudent person would consider reasonable.

[6]Because some Medicare Part B physicians, health professionals, and suppliers may do business with other federal agencies, some described in this report may also have been included in our reports concerning Department of Defense, General Services Administration, and civilian federal contractors that abuse the federal tax system.

[7]As of September 30, 2006, we estimate that the Medicare Part B providers had over $1.3 billion in tax debts for tax year 2005 and prior years.

[8]Payroll taxes are amounts that employers withheld from employees' wages for federal income taxes, Social Security, and Medicare as well as the related employer matching contributions for Social Security and Medicare taxes. Employers are responsible for remitting payroll taxes to IRS and are liable for any outstanding balance.

records contain coding errors that affect the accuracy of taxpayer account information—including erroneous exclusion of tax debt from IRS's collection activities.[9]

Our audits and investigations detail examples of the extent and nature of abusive and criminal activity related to the federal tax system by 40 Medicare Part B physicians, health professionals, and suppliers. These 40 cases were paid by Medicare for a variety of services, including physician, ambulance, laboratory, and imaging services. Many were established businesses (such as corporations) that owed payroll taxes withheld for their employees. Rather than fulfill their role as "trustees" of this money and forward it to IRS as required by law, these physicians, health professionals, and suppliers diverted the money for other purposes. These payroll taxes included amounts withheld from employee wages for Social Security, Medicare, and individual income taxes.[10] In one case, an ambulance owner paid employees in cash and did not report this income to the IRS. Although the ambulance owner was convicted for defrauding the U.S. government, the ambulance company continued to receive Medicare payments from HHS.

At the same time that they were not paying their federal taxes, many individuals associated with our 40 cases bought or owned significant personal assets, including commercial properties, multimillion dollar homes, and luxury vehicles. One physician gambled millions of dollars at the same time the individual owed hundreds of thousands of dollars in federal taxes. Further, several of the case studies involved physicians who were sanctioned by their state medical boards for, among other things, drug abuse and substandard care of their patients.

HHS does not have policies in place to prevent physicians, health professionals, and suppliers who have tax debts from enrolling in and receiving payments from Medicare. Further, federal law generally prohibits IRS from disclosing taxpayer data to HHS and its contractors

[9]GAO, *Financial Management: Some DOD Contractors Abuse the Federal Tax System with Little Consequence*, GAO-04-95 (Washington, D.C.: Feb. 12, 2004); and GAO, *Internal Revenue Service: Procedural Changes Could Enhance Tax Collections*, GAO-07-26 (Washington, D.C.: Nov. 15, 2006).

[10]Willful failure to remit payroll taxes is a criminal felony offense while the failure to properly segregate payroll taxes can be a criminal misdemeanor offense. 26 U.S.C. §§ 7202, 7215 and 7512 (b).

unless the taxpayer provides consent.[11] HHS has not established a policy to obtain Medicare applicant's consent to obtain information from IRS to consider in its Medicare eligibility decision making process. Specifically, HHS has not developed Medicare regulations or HHS implementing policy to require HHS or their contractors to (1) screen physicians, health professionals, and suppliers for unpaid taxes and (2) require contractors to obtain consent for IRS disclosure of federal tax debts. As a consequence, HHS has no mechanism to prevent physicians, health professionals, and suppliers who have tax debts from enrolling in or receiving payments from Medicare.

Further, HHS has not taken advantage of an available program to collect tax debts from physicians and other Medicare Part B providers. A provision of the Taxpayer Relief Act of 1997 authorizes IRS to continuously levy certain federal payments made to delinquent taxpayers.[12] However, in the 10 years since its passage, HHS has neither participated in the continuous levy program nor actively participated in a task force dedicated to improving the program's effectiveness. Thus, no tax debt owed by Medicare Part B physicians, health professionals, and suppliers has ever been collected through the continuous levy program.[13] As a result, we estimate that for the first 9 months of calendar year 2005 alone the federal government lost opportunities to collect between $50 million to $140 million in unpaid federal taxes because HHS has not worked with IRS to effectively levy Medicare payments.

[11]HHS Medicare contractors screen physicians, health professionals, and suppliers prior to enrollment into the Medicare program. Medicare contractors also process and pay the Medicare claims and are reimbursed by CMS through the Medicare Trust Fund.

[12]To improve the collection of unpaid taxes, IRS is authorized to continuously levy up to 100 percent for federal payments related to goods and services. To implement this levy authority, IRS, in coordination with the Department of Treasury's FMS, implemented the Federal Levy Payment Program (FPLP) in July 2000. The FPLP program utilizes FMS's Treasury Offset Program (TOP) for the levy of federal payments..

[13]To satisfy tax debts, IRS does have the authority to legally seize property either held by the taxpayer or owned by the taxpayer and held by a third party. This authority includes the seizure of Medicare receivables held by Medicare contractors and owed to physicians, health professionals, and suppliers. However, IRS policy is to use the levy against Medicare payments for only flagrant cases. Unlike levies from the continuous levy program, each levy is typically a one-time seizure of property (i.e., Medicare receivables) held by Medicare contractors at a specific point of time and is done on a case-by-case basis based on the particular circumstances of the case. IRS officials stated that they do not know how much in tax levies were collected from Medicare payments.

Magnitude of Unpaid Taxes of Medicare Part B Physicians, Health Professionals, and Suppliers

Our analysis of 2005 data found that over 21,000 physicians, health professionals, and suppliers[14] who received Medicare Part B payments during the first 9 months of 2005 had over $1 billion in unpaid federal taxes as of September 30, 2005.[15] This represents about 5 percent of the number of Medicare Part B physicians, health professionals, and suppliers paid during the first 9 months of calendar year 2005. Because the IRS database does not include amounts owed by taxpayers who have not filed tax returns and for which IRS has not assessed tax amounts due, the estimated amount of unpaid federal taxes is understated.

Characteristics of Medicare Part B Physicians, Health Professionals, and Suppliers' Unpaid Federal Taxes

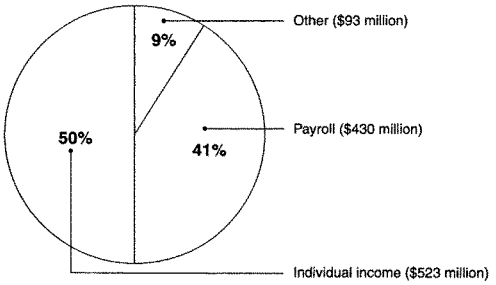
As shown in figure 1, about 91 percent of the over $1 billion in unpaid taxes was comprised of federal individual income and payroll taxes. The other 9 percent of taxes included corporate income, excise, unemployment, and other types of taxes. Unlike our previous reports and testimonies on contractors with tax debts, a larger percentage of taxes owed by these physicians, health professionals, and suppliers was comprised of federal individual income taxes, which are unpaid amounts that individuals owe on their personal income. These taxpayers are typically either sole proprietors or certain limited liability companies that report income through individual income tax returns.[16]

[14]Our estimate is for Medicare Part B physicians, health professionals, and suppliers with tax debt applicable to the 2004 tax year and prior years as of September 30, 2005. To avoid overestimating the amount owed by Medicare physician and physicians and related suppliers with unpaid tax debts and to capture only significant tax debts, we excluded (1) tax debts that have not been agreed to by the tax debtor or affirmed by the court, (2) tax debts from calendar year 2005, (3) approved Medicare claims less than $100, and (4) tax debts less than $100.

[15]As of September 30, 2006, we estimate that Medicare Part B physicians, health professionals, and suppliers had over $1.3 billion in tax debts for tax years 2005 and prior years.

[16]Sole proprietors and certain limited liability companies may file Medicare claims under their Social Security Numbers (SSNs). If these physicians and related suppliers had employees, they would typically report the payroll taxes under an employer identification number and not their SSNs.

Figure 1: Medicare Part B Physicians, Health Professionals, and Suppliers with Unpaid Federal Taxes (by Tax Type) as of September 30, 2005



Source: GAO analysis of HHS and IRS data as of September 30, 2005.

As shown in figure 1, Medicare Part B physicians, health professionals, and suppliers, which are corporations or other kinds of businesses, owed about $430 million in federal payroll taxes. Employers are subject to civil and criminal penalties if they do not remit payroll taxes to the federal government. When an employer withholds taxes from an employee's wages, the employer is deemed to have a fiduciary responsibility to hold these amounts "in trust" for the federal government until the employer makes a federal tax deposit in that amount. To the extent these withheld amounts are not forwarded to the federal government, the employer is liable for these amounts, as well as the employer's matching Federal Insurance Contribution Act contributions for Social Security and Medicare. Individuals within the business (e.g., corporate officers) may be held personally liable for the withheld amounts not forwarded and assessed a civil monetary penalty known as a trust fund recovery penalty.[17] Willful failure to remit payroll taxes can also be a criminal felony offense punishable by imprisonment of up to 5 years,[18] while the failure to properly segregate payroll taxes can be a criminal misdemeanor offense punishable

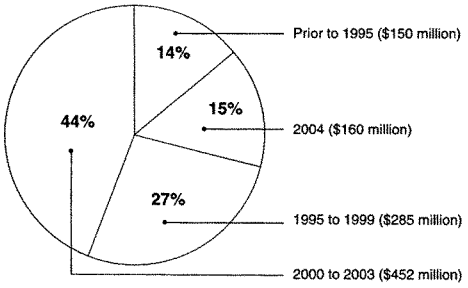
[17]26 U.S.C. § 6672.

[18]26 U.S.C. § 7202.

by imprisonment of up to a year.[19] The law imposes no penalties upon an employee for the employer's failure to remit payroll taxes since the employer is responsible for submitting the amounts withheld. The Social Security and Medicare trust funds are subsidized or made whole for unpaid payroll taxes by the federal government's general fund. Thus, personal income taxes, corporate income taxes, and other government revenues not specifically designated for the trust funds are used to pay for these shortfalls to the Social Security and Medicare trust funds.

A substantial amount of the unpaid federal taxes shown in IRS records as owed by Medicare Part B physicians, health professionals, and suppliers had been outstanding for several years. As reflected in figure 2, about 85 percent of the over $1 billion in unpaid taxes were for tax periods prior to calendar year 2004, with about 41 percent of the unpaid taxes for tax periods prior to calendar year 2000.[20]

Figure 2: Medicare Part B Physicians, Health Professionals, and Suppli rs with Unpaid Federal Taxes (by Calendar Year) as of September 30, 2005



Source: GAO analysis of HHS and IRS data as of September 30, 2005.

[19]26 U.S.C. § 7215 and 26 U.S.C. § 7512 (b).

[20]A "tax period" varies by tax type. For example, the tax period for payroll and excise taxes is generally one quarter of a year. The taxpayer is required to file quarterly returns with IRS for these types of taxes, although payment of the taxes occurs throughout the quarter. In contrast, for income, corporate, and unemployment taxes, a tax period is 1 year.

Our previous work has shown that as unpaid taxes age, the likelihood of collecting all or a portion of the amount owed decreases.[21] This is due, in part, to the continued accrual of interest and penalties on the outstanding tax debt which, over time, can dwarf the original tax obligation. The amount of unpaid federal taxes we have identified does not include all tax debts owed by physicians, health professionals, and related suppliers due to statutory provisions that give IRS a finite period under which it can seek to collect on unpaid taxes. Generally, there is a 10-year statutory collection period beyond which IRS is prohibited from attempting to collect tax debt.[22] Consequently, if these physicians, health professionals, and suppliers owe federal taxes beyond the 10-year statutory collection period, the older tax debt may have been removed from IRS's records.[23] We were unable to determine the amount of tax debt that had been removed.

Unpaid Federal Taxes of Medicare Part B Physicians, Health Professionals, and Suppliers Is Understated

Although over $1 billion in unpaid federal taxes owed by Medicare Part B physicians, health professionals, and suppliers as of September 30, 2005, is a significant amount, it understates the full extent of unpaid taxes owed by these or other businesses and individuals. The IRS tax database reflects only the amount of unpaid federal taxes either reported by the individual or business on a tax return or assessed by IRS through its various enforcement programs. The IRS database does not reflect amounts owed by businesses and individuals that have not filed tax returns and for which IRS has not assessed tax amounts due. For example, during our audit, we identified instances from our case studies in which Medicare Part B physicians, health professionals, and suppliers failed to file tax returns for a particular tax period and IRS had not assessed taxes for these tax periods. Consequently, while these physicians, health professionals, and suppliers had unpaid federal taxes, they were listed in IRS records as having no unpaid taxes for that period. Further, our analysis did not attempt to account for businesses or individuals that purposely underreported income and were not specifically identified by IRS as owing

[21]GAO, *Internal Revenue Service: Recommendations to Improve Financial and Operational Management*, GAO-01-42 (Washington D.C.: Nov. 17, 2000).

[22]The 10-year time may be suspended for a variety of reasons, including for periods during which the taxpayer is involved in a collection due process appeal, litigation, or a pending offer in compromise or installment agreement. As a result, fig. 2 includes taxes that are for tax periods from more than 10 years ago.

[23]For example, IRS wrote off over $350,000 for one of our cases because those unpaid taxes could no longer be collected by IRS because it reached its statutory extension period.

the additional federal taxes. According to IRS, underreporting of income accounted for more than 80 percent of the estimated $345 billion annual gross tax gap.[24] Consequently, the full extent of unpaid federal taxes for Medicare Part B physicians, health professionals, and suppliers is not known.

In addition to the IRS tax database not reflecting all assessed tax amounts due, our past audits have also indicated that the IRS tax database contains coding errors that adversely affect IRS's collection activities. IRS's collection process is heavily dependent upon its automated computer system and the information that resides within this system. In particular, the codes in each taxpayer's account in IRS's tax database are critical to IRS in tracking the collection actions it has taken against a tax debtor and in determining what, if any, additional collection actions should be pursued. For example, IRS uses these codes to identify cases it should exclude from the continuous levy program,[25] which is an automated method of collecting tax debt by offsetting certain federal payments made to individuals and businesses, as well as from other collection actions.

While we did not evaluate the appropriateness of IRS's exclusions for this testimony, the exclusions are only as good as the codes IRS has entered into its systems. In our previous work, we found that inaccurate coding at times prevented IRS collection action, including referral to the continuous levy program.[26] Specifically, in November 2006, we estimated that about $2.4 billion in tax debt was erroneously excluded from the continuous levy program as of September 30, 2005. IRS did not identify and correct the coding errors we found because it did not sufficiently monitor the timely updating of the status and transaction codes or the effect of computer

[24]According to IRS, nonfilers and underpayment of taxes comprised the rest of the gross tax gap.

[25]Each week IRS sends FMS an extract of its tax debt files containing updated account balances of tax debts that are already in TOP, the new tax debts that need to be added to TOP, and all taxes in TOP that need to be removed. FMS sends payment data to TOP to be matched against these unpaid federal taxes. If there is a match and IRS has updated TOP to reflect that it has completed all legal notifications, the federal payment is reduced (levied) to help satisfy the unpaid federal taxes. In addition to federal tax debts, the TOP database also includes federal nontax debts, state tax debts, and child support debts.

[26]GAO, *Financial Management: Some DOD Contractors Abuse the Federal Tax System with Little Consequence*, GAO-04-95 (Washington, D.C.: Feb. 12, 2004); and GAO, *Internal Revenue Service: Procedural Changes Could Enhance Tax Collection*, GAO-07-26 (Washington, D.C.: Nov. 15, 2006).

programming changes. In addition, we found that the design of IRS's policies for monitoring the status of financial hardship cases was not sufficient to ensure the ongoing accuracy of such designations.[27] Therefore, effective management of these codes is critical because if these codes are not accurately or appropriately updated to reflect changing circumstances, cases may be needlessly excluded from collection action, including the continuous levy program.

Examples of Medicare Part B Physicians, Health Professionals, and Suppliers Involved in Abusive and Potentially Criminal Activity Related to the Federal Tax System

For all 40 cases involving Medicare Part B physicians, health professionals, and suppliers with outstanding tax debt that we audited and investigated, we found abusive and/or potentially criminal activity related to the federal tax system.[28] Of these cases, 25 involved physicians, health professionals, and suppliers that had unpaid payroll taxes dating as far back as the early 1990s. Rather than fulfill their role as "trustees" of this money and forward it to IRS as required by law, these physicians, health professionals, and suppliers diverted the money for other purposes. IRS had trust fund recovery penalties in effect for 16 of the 25 business cases at the time of our review. In addition, as discussed previously, willful failure to remit payroll taxes can be a criminal felony offense punishable by imprisonment up to 5 years,[29] while the failure to properly segregate payroll taxes can be a criminal misdemeanor offense punishable by imprisonment of up to a year.[30] The other 15 cases involved individuals who had unpaid individual income taxes dating as far back as the 1970s.

[27]IRS grants tax debtors experiencing financial difficulty a hardship designation that excludes them from the continuous levy program and other tax collection activities until their income increases. To measure this, IRS solely uses the income reported on the tax debtor's annual tax returns. However, IRS does not monitor those tax debtors to ensure they are filing and paying current taxes. As we reported last year, for 31 financial hardship cases we examined, 24 had ceased to file tax returns.

[28]For all cases, we performed searches of criminal, financial, tax, and public records to determine whether the physicians and suppliers are involved in other related entities. For each related entity, we determined whether that entity had Medicare payments for the first 9 months of calendar year 2005 and had unpaid federal taxes as of September 30, 2005. In instances where we identified related parties with both Medicare Part B payments and tax debts, we defined a case study to include those related entities, and reported on the combined unpaid taxes and combined Medicare Part B payments for the original individual/business and all the related entities.

[29]26 U.S.C. § 7202.

[30]26 U.S.C. § 7215 and 26 U.S.C. § 7512 (b).

Our review of selected Medicare Part B physicians, health professionals, and suppliers revealed significant challenges that IRS faces in its enforcement of tax laws, a continuing high-risk area for IRS.[31] Although the nation's tax system is built upon voluntary compliance, when businesses and individuals fail to pay voluntarily, IRS has a number of enforcement tools, including the use of levies, to compel compliance or elicit payment. Our review of the 40 physicians, health professionals, and suppliers found that IRS attempts to work with the businesses and individuals to achieve voluntary compliance, pursuing enforcement actions later rather than earlier in the collection process. Our review of IRS records with respect to our 40 cases showed that IRS did not issue paper levies to the Medicare contractors to levy the payments of physicians, health professionals, and suppliers for 28 of our 40 cases. As a result, most of the physicians, health professionals, and suppliers in our case studies continued to receive Medicare Part B payments while owing their federal taxes.

Our investigations revealed that, despite owing substantial amounts of federal taxes to the IRS, some physicians, health professionals, and suppliers had substantial personal assets—including multimillion dollar homes and luxury cars. For example, one physician purchased a house for over $1 million while his business owed over $1 million in federal taxes. Another physician purchased a luxury vehicle, paid for partly with cash, and gambled millions of dollars while owing over $400,000 in taxes.

In addition to failure to pay taxes, our investigations also revealed that several physicians associated with our case studies received Medicare Part B payments even though they had significant problems related to the practice of medicine. Six physicians had been previously excluded from the Medicare program for such things as professional incompetence, financial misconduct involving a government-operated program, and failure to pay health education loans. Further, 13 physicians in our cases had also been sanctioned by their state medical boards for such things as substandard care of their patients, drug abuse, abusive prescription writing, unprofessional conduct, lack of moral character, income tax evasion, embezzlement, aiding and abetting unlicensed practice, and illegible patient records.

Table 1 highlights 15 of the 40 cases of Medicare physicians, health professionals, and suppliers with unpaid taxes. Appendix II provides

[31]GAO, *High Risk Series: An Update*, GAO-07-310 (Washington, D.C.: Jan. 2007).

details on the other 25 cases we examined. We are referring all 40 cases we examined to IRS for further collection activity and criminal investigation, if warranted.

Tabl 1: Summary Information on Unpaid Federal Taxes and Abusive and Criminal Activity Related to 15 Medicare Part B Physicians, Health Professionals, and Suppliers

Case	Nature of work / type f entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 1	Physician / Individual	Over $100,000	Nearly $1 million	• Physician has not made any federal tax payments since the early 2000s. • Hospital denied physician's hospital privileges due to substandard care. • State medical board investigated physician for disciplinary action. • HHS IG had previously excluded physician from Medicare program. • Physician delinquent on child support. • In 2 recent years, physician reported to IRS over $300,000 and $100,000 in net profit for the business. • Physician did not submit claims to Medicare contractor, sometimes for months at a time, to avoid IRS levies. • IRS reported tax debts to TOP for collection action.
Case 2	Physician / Individual	Up to $100,000	Over $600,000	• IRS generated tax returns for the physician for the late 1990s and early 2000s because the physician did not file them. Physician did not make any tax payments for those tax years. • Physician convicted of money laundering through offshore accounts. • Physician owns a related business that owes over $300,000 in taxes. • Physician recently submitted compromise offer to IRS for less than one half of individual income taxes owed. • Physician delinquent on child support for tens of thousands of dollars. • HHS IG had previously excluded physician from Medicare program.
Case 3	Ambulance / Business	Over $1 million	Nearly $11 million	• IRS assessed trust fund recovery penalty against an officer of the business. • Business officer owns several luxury vehicles. • State Medicaid Fraud Unit investigating business. • Law enforcement seized cash from business. • Business received thousands of dollars from another federal agency over a 2-year period. • IRS reported tax debts to TOP for collection action.

Case	Nature of work / type of entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 4	Ambulance / Business	Over $100,000	Over $5 million	• Owner convicted of defrauding the U.S. government. • Owner paid employees in cash and did not report their income to IRS. • Business partially paid payroll taxes while owner was in prison. Business owner stated that the business officer used company funds, in part, for a party. IRS assessed trust fund recovery penalty on business officer. • IRS established repayment agreement in 2004 with business for over $3,000 per month with possibility of increasing payment in the future. • Owner owes nearly $600,000 in individual income taxes.
Case 5	Imaging / Business	Over $1 million	Nearly $3 million	• Tax debt is primarily unpaid payroll taxes. • Business entered into installment agreement of about $6,000 a month but subsequently defaulted for failure to pay federal tax deposits. • Government agency fined business over $1 million for substandard work. • Business lost over $200,000 in adjudicated medical malpractice claim. • IRS recently issued a tax refund for tens of thousands of dollars to the owner. IRS subsequently filed a trust fund recovery penalty against the owner, thus missing an opportunity to offset the refund payment.
Case 6	Physician / Individual	Over $100,000	Over $1 million	• Physician generally has history of not paying all taxes owed since the early 1990s. • In the early 2000s, physician made compromise offer of over $200,000 but the offer was lost by IRS in the review process. Physician submitted revised offer. No decision was made on the compromise offers by IRS. • Physician has not filed an individual income tax return or paid any taxes since early 2000s. • Over $100,000 of the tax debt owed by the physician reached its statutory collection expiration period and can no longer be collected by IRS. • State medical board reprimanded physician.
Case 7	Physician / Individual	Over $100,000	Over $2 million	• Physician's tax debts are comprised of individual income tax debt and trust fund recovery penalty from another business. • Physician has extensive history of not filing individual income tax returns or payroll tax returns from another business on time. • Physician offered installment agreement of over $10,000 per month but was rejected by IRS for his failure to disclose accounts receivables. • Owner owns two other businesses that owe over $1 million in unpaid federal taxes. • State medical board sanctioned physician.

Case	Nature of work / type f entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 8	Physician / Individual	Up to $100,000	Over $400,000	• Physician entered into installment agreement of about $10,000 a month but subsequently defaulted. • HHS IG had previously excluded physician from Medicare program. • State medical board placed physician's license on probation. • Physician made multiple large cash deposits totaling tens of thousands of dollars. Many of these transactions were structured to avoid mandatory IRS reporting. • Owner recently purchased a luxury vehicle paid, in part, by a large cash transaction. • At the same time the physician was not paying taxes, the physician made millions of dollars in gambling transactions. • Physician reported about $500,000 and over $100,000 in net profit for his physician business in 2 recent years. • Physician delinquent on child support for tens of thousands of dollars. • IRS reported tax debts to TOP for collection action.
Case 9	Physician / Individual	Up to $100,000	Over $400,000	• IRS suspended collection action on physician for financial hardship. • Hospital revoked physician's clinical privileges for substandard care. • HHS IG had previously excluded physician from Medicare. • Business owes over $150,000 to another federal agency.
Case 10	Physician / Business	Over $100,000	Nearly $400,000	• Owner convicted for filing fraudulent tax returns. Owner used business accounts to pay for personal expenses. • Owner attempted to transfer large amounts of money to a country known for state-sponsored terrorism at same time the business owed taxes. • Owner owns multiple real properties, including a multimillion dollar home. • Owner's recent reported income was about $500,000. • Owner closed business and paid IRS the asset value of business, which was hundreds of thousands of dollars less than taxes owed. IRS listed business as defunct. Owner started virtually identical business to get a new start. • IRS reported tax debts to TOP for collection action.

Case	Nature of work / type f entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 11	Ambulance/ Business	Over $1 million	Nearly $2 million	• Business owns several ambulance companies owing tax debts, mostly payroll taxes. • Business officer decided to "grow the business" instead of paying federal taxes. • Business received over $100,000 from another federal agency over a 2-year period. • Business obtained contract for disaster relief efforts. • Business officer possesses multiple real properties, including house on a golf course and luxury vehicles, while owing taxes. • Company filed for bankruptcy in the 2000s. • IRS assessed trust fund recovery penalty against an officer of the business. • IRS reported tax debts to TOP for collection action.
Case 12	Physician / Business	Up to $100,000	Nearly $400,000	• Owner owes over $400,000 in individual income taxes. • Owner owns an expensive house, liquor establishment, and a plane while owing taxes. • IRS has not assessed trust fund recovery penalty for the payroll tax debts because owner owes large individual income taxes liabilities that would make the collection of trust fund recovery penalty unlikely. • IRS reported tax debts to TOP for collection action.
Case 13	Physician / Business	Over $100,000	Nearly $2 million	• Tax debt is primarily unpaid payroll taxes. • Business entered into installment agreement of about $20,000 a month but subsequently defaulted. • IRS assessed trust fund recovery penalty against owner. IRS erroneously placed the account in taxpayer claim status for about 9 months suspending certain collection activities. During this time, the owner was able to purchase a house for over $1 million and receive a tax refund on his personal taxes for thousands of dollars. • Owner receives income from a tobacco farm. • Physician lost over $1 million in adjudicated medical malpractice claims.
Case 14	Physician / Business	Up to $100,000	Nearly $1 million	• Tax debt is primarily unpaid payroll taxes. • Business has history of entering into installment agreements with IRS and defaulting on those agreements. • Owner transferred properties worth over $2 million to his spouse while IRS was pursuing collection efforts. • Owner leases luxury car while owing taxes. • IRS has not assessed trust fund recovery penalty for the payroll tax debts because business is a sole proprietor and, thus, owner is personally liable for the payroll taxes. • IRS reported tax debts to TOP for collection action.

Case	Nature of work / type of entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 15	Physician / Business	Over $1 million	Over $1 million	• Tax debt is primarily unpaid payroll taxes. • Owner recently submitted compromise offer to IRS for about one fourth of taxes owed to be paid over 2 years. The amount to be paid would cover the trust fund recovery penalty assessed on the business owner. • Owner's recent reported income was about $500,000. • Owner owns million dollar house, a pleasure boat, and several night clubs while owing taxes.

Source: GAO's analysis of IRS, FMS, Medicare claims, public, and other records.

Notes: Dollar amounts are rounded. A Medicare physician, health professional, or supplier can submit claims using either an Employer Identification Number (EIN) or Social Security Number (SSN). In our testimony, any entity submitting a claim with an EIN is referred to as a business, and any entity submitting a claim with an SSN is referred to as an individual.

[a]Medicare Part B payments are physician, health professional, and supplier claims approved by HHS for payment for the first 9 months of calendar year 2005.

[b]Unpaid tax amount as of September 30, 2006.

The following provides detailed information on three of the cases we examined.

- Case 1: Although in 2 recent years, the physician's business reported a net income of over $300,000 and $100,000, respectively, the physician has not made any federal tax payments to IRS. In addition, the physician has been delinquent in child support during this time. As a result, the physician's spouse had to sell the residence because the spouse could not afford the house. A hospital revoked the physician's hospital privileges for substandard care and the state medical board also investigated the physician. The physician received over $100,000 in Medicare Part B payments for the first 9 months of calendar year 2005.
- Case 2: A physician was convicted of money laundering through offshore accounts. In addition to owing over $600,000 in federal individual income taxes, the physician owes tens of thousands of dollars in delinquent child support and also owns a related business that owes over $300,000 in federal taxes. Even though owing significant debts, the physician owns several residential properties, including an overseas house. HHS paid the physician nearly $100,000 in Medicare Part B payments during the first 9 months of calendar year 2005.
- Case 4: An ambulance business owner paid employees in cash and did not report this income to IRS. The ambulance business owner was convicted and incarcerated for defrauding the U.S. government. While the owner was in prison, a business officer used company funds to purchase property for

the business officer instead of paying the federal payroll taxes to IRS. In 2004, the business negotiated and is paying on a repayment agreement of about $3,000 per month. These monthly payments are substantially less than the interest that would accrue on the debt. HHS paid the ambulance company over $100,000 in Medicare Part B payments during the first 9 months of calendar year 2005.

Physicians, Health Professionals, and Suppliers with Unpaid Taxes Are Not Prohibited from Enrolling or Receiving Payments from Medicare

HHS does not prevent physicians, health professionals, and suppliers with tax debts from enrolling in or receiving payments from the Medicare program. HHS has not developed Medicare regulations or HHS implementing policy to require HHS or their contractors to (1) screen physicians, health professionals, and suppliers for unpaid taxes and (2) require contractors to obtain consent for IRS disclosure of federal tax debts. However, because HHS has not participated in the continuous levy program, no tax debts owed by these physicians, health professionals and suppliers are being collected through the program. As a result, the federal government lost opportunities to collect between $50 million and $140 million in unpaid taxes in the first 9 months of calendar year 2005.[32]

HHS Medicare contractors are responsible for screening physicians, health professionals, and suppliers prior to enrollment into the Medicare program. However, as part of the screening process, neither HHS policies nor HHS regulations require Medicare contractors to consider tax debts or tax-related abuses of prospective physicians, health professionals, and suppliers. Medicare contractors are also not required to conduct any criminal background checks on these individuals. Medicare contractors are required to review the HHS Office of Inspector General (OIG) exclusion list and the General Services Administration (GSA) debarment lists; however, these lists do not include all individuals or businesses who have abused the federal tax system.[33] The basis of exclusion of certain individuals and entities from participation in Medicare programs is made

[32]The $50 million estimate is based on 15 percent rate that FMS uses to levy civilian contractors. The $140 million estimate is based on the 100 percent rate authorized by law.

[33]The OIG exclusion list provides information on health care providers that are excluded from participation in Medicare, Medicaid, and other federal health care programs because of criminal convictions related to Medicare or state health programs or other major problems related to health care (e.g., patient abuse or neglect). The GSA debarment list provides information on individuals or entities that are debarred, suspended, or otherwise excluded from participating in any other federal procurement or nonprocurement activity. Federal agencies can place individuals or entities on the GSA debarment list for a variety of reasons including fraud, theft, bribery, and tax evasion.

by statute.[34] The statute provides for both mandatory and permissive exclusions. Mandatory exclusions are confined to health-related criminal offenses while permissive exclusions concern primarily non-health-related offenses. The Federal Acquisition Regulation cites conviction of tax evasion as one of the causes for debarment; indictment on tax evasion charges is cited as a cause for suspension. Consequently, the deliberate failure to remit taxes, in particular payroll taxes, while a felony offense, will likely not result in an individual or business being debarred or suspended unless there is an indictment or conviction of the crime. Moreover, while a felony offense, the deliberate failure to remit taxes, in particular payroll taxes, will likely not result in an individual or entity being placed on the Medicare exclusion or GSA debarment lists unless the taxpayer is convicted.

Even if an individual or entity is convicted of tax evasion or other tax-related crime, the individual or business still may not be placed on the Medicare exclusion or GSA debarment lists. To be placed on these lists, federal agencies must identify those individuals and businesses and provide them with due process. As part of the due process, the agency must make a determination as to whether the exclusion or debarment is in the government's interest. None of the 40 cases that we investigated, including those involving a conviction for tax-related crimes, are currently on the Medicare exclusion or GSA debarment lists.

Further complicating HHS decision making on the consideration of tax debts for Medicare, federal law does not permit IRS to disclose taxpayer information, including tax debts, to HHS or Medicare contractor officials unless the taxpayer consents.[35] HHS has not established a policy to obtain Medicare applicants' consent to obtain tax information from IRS to consider in its Medicare eligibility decision making process. Thus, certain tax debt information can only be discovered from public records if IRS files a federal tax lien against the property of a tax debtor[36] or a record of conviction for tax offense is publicly available.[37] Consequently, HHS

[34]42 U.S.C. § 1320a-7.

[35]26 U.S.C. § 6103.

[36]For example, 8 of the 40 cases for which we performed detailed audit and investigation did not have federal tax liens filed against them. See app. III for federal and state tax liens by each case.

[37]Under section 6321 of the Internal Revenue Code, IRS has the authority to file a lien upon all property and rights to property, whether real or personal, of a delinquent taxpayer.

officials and their contractors do not have ready access to information on unpaid tax debts to consider in making decisions on physicians, health professionals and suppliers.

Further, HHS has not established policy to participate in the IRS continuous levy program, thus preventing IRS from capturing at least a portion of the Medicare payments made to physicians, health professionals, and suppliers that owe tax debts. As stated earlier, federal law allows IRS to continuously levy federal vendor payments up to 100 percent until the tax debt is paid.[38] IRS has implemented this authority by creating a continuous levy program that utilizes FMS's Treasury Offset Program system. In July 2001, we reported that HHS did not have plans to participate in the continuous levy program and we recommended that the Commissioners of IRS and FMS work with HHS to develop plans to include Medicare payments in the continuous levy program.[39] In July 2006, IRS began to pursue HHS participation in the continuous levy program through the Federal Contractor Tax Compliance (FCTC) Task Force, a multiagency group dedicated to improving the continuous levy process.[40] In response to IRS's request, HHS began to participate in the FCTC Task Force meetings in February 2007.

If HHS had previously worked with IRS to levy Medicare Part B payments, we estimate, using the conservative 15 percent rate that FMS uses to levy

[38]Of the 40 cases that we performed detailed review, IRS reported 16 of them for continuous levy.

[39]GAO, *Tax Administration: Millions of Dollars Could Be Collected If IRS Levied More Federal Payments*, GAO-01-711 (Washington, D.C.: July 20, 2001).

[40]To address issues raised by our February 12, 2004, report and testimony, this multiagency task force was established to help improve the continuous levy program. The task force includes representatives from the Department of Defense (DOD), Defense Finance and Accounting Service, IRS, FMS, General Services Administration, Office of Management and Budget, and Department of Justice. As a result of the actions undertaken by the task force, IRS reported collecting millions in taxes through the improvements in the continuous levy program.

civilian contractors,[41] the federal government could have collected about $50 million in unpaid federal taxes for the first 9 months of calendar year 2005. Using the 100 percent rate authorized by law, the federal government could have collected approximately $140 million. These estimates were based on debt information IRS has reported to TOP as of September 30, 2005.

Concluding Comments

Thousands of Medicare Part B physicians, health professionals, and suppliers have failed in their responsibility to pay federal taxes they owe as individuals and businesses residing and conducting business in this nation. Further our case studies demonstrate that physicians and other medical service providers with federal tax debts can receive Medicare Part B payments while engaging in abusive and potentially criminal activity. In addition, our case studies determined that some physicians who abused the federal tax system are also not providing quality care to all of their patients. Additionally, because HHS has failed to participate in the continuous levy process since its authorization in 1997, the federal government has missed the opportunity to collect hundreds of millions of dollars in unpaid taxes from Medicare Part B physicians, health professionals, and suppliers. The federal government cannot afford to leave millions of dollars in taxes uncollected each year in the current environment of federal deficits, nor can it continue to permit physicians, health professionals, and suppliers that have abused the federal tax system from participating in the Medicare program.

[41]In October 2004, Congress passed the American Jobs Creation Act 2004, Pub. L.108-357, 118 Stat 1418 codified as amended in scattered sections of 26 U.S.C., to increase the maximum continuous levy from 15 percent to up to 100 percent of payments to contractors with unpaid taxes. The act specifically increased the continuous levy on payments to vendors for "goods and services" sold or leased to the government. According to IRS, the legal language, which specified that goods and services be subject to the 100 percent levy provision, excludes real estate, such as rent payments, from the new levy requirement. Because civilian agencies' payment systems cannot separately identify real estate transactions from other contractor payments, FMS could not implement the new law for civilian payments and continues to levy payments at 15 percent.

Mr. Chairman and Members of the Subcommittee, this concludes our statement. We would be pleased to answer any questions that you or other members of the committee may have at this time.

GAO Contacts

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Appendix I: Scope and Methodology

To identify the magnitude of unpaid taxes owed by Medicare Part B physicians, health professionals and suppliers, we requested from Department of Health and Human Services (HHS) the related Medicare Part B claims data for calendar year 2005.[1] HHS was only able to provide us these data for the first 9 months of calendar year 2005 by the end of our review. We also obtained and analyzed the Internal Revenue Service (IRS) unpaid assessment data as of September 30, 2005. We matched the Medicare claim data to the IRS unpaid assessment data using the taxpayer identification number (TIN) field. To avoid overestimating the amount owed by Medicare Part B physicians, health professionals, and suppliers with unpaid tax debts and to capture only significant tax debts, we excluded from our analysis tax debts and paid claims meeting specific criteria to establish a minimum threshold in the amount of tax debt and in the amount of paid claims to be considered when determining whether a tax debt is significant. The criteria we used to exclude tax debts are as follows:

- tax debts that IRS classified as compliance assessments or memo accounts for financial reporting,[2]
- tax debts from calendar year 2005 tax periods, and
- Medicare Part B physicians, health professionals, and suppliers with total unpaid taxes and Medicare Part B paid claims of less than $100.

The criteria above were used to exclude tax debts that might be under dispute or generally duplicative or invalid, and tax debts that are recently incurred. Specifically, compliance assessments or memo accounts were excluded because these taxes have neither been agreed to by the taxpayers nor affirmed by the court, or these taxes could be invalid or duplicative of other taxes already reported. We excluded tax debts from calendar year 2005 tax periods to eliminate tax debt that may involve matters that are routinely resolved between the taxpayer and IRS, with the taxes paid or abated within the current year. We further excluded tax debts and Medicare Part B paid claims of less than $100 because they are insignificant for the purpose of determining the extent of taxes owed.

[1]Physician claim data consists of all Part B claims processed for physicians, health professionals, and suppliers by Medicare contractors excluding durable medical equipment. As such, durable medical equipment will be reviewed in the subsequent audit.

[2]Under federal accounting standards, unpaid assessments require taxpayer or court agreement to be considered federal taxes receivables. Compliance assessments and memo accounts are not considered federal taxes receivable because they are not agreed to by taxpayers or the courts.

To identify examples of abuse or potentially criminal activity, we selected 40 Medicare Part B physicians, health professionals, and suppliers with federal tax debts for detailed audit and investigation. The 40 cases were chosen using a nonrepresentative selection approach based on our judgment, data mining, and a number of other criteria. Specifically, we narrowed the 40 cases with unpaid taxes based on the amount of unpaid taxes, number of unpaid tax periods, amount of payments reported by Medicare Part B, and indications that owner(s) might be involved in multiple companies with tax debts.

We obtained copies of automated tax transcripts and other tax records (for example, revenue officer's notes and certain individual tax returns) from IRS, and reviewed these records to exclude physicians and suppliers that had recently paid off their unpaid tax balances and considered other factors before reducing our number of case studies to 40. We performed additional searches of criminal, financial, and public records. In cases where record searches and IRS tax transcripts indicate that the owners or officers of a business are involved in other related entities[3] that have unpaid federal taxes, we also reviewed records of the related entities and the owner(s) or officer(s), in addition to the original business we identified. For each related entity, we determined whether that entity had Medicare Part B payments for the first 9 months of calendar year 2005 and had unpaid federal taxes as of September 30, 2005. We updated the tax debt amount as of September 30, 2006, to reflect any additional tax assessments or collections that have occurred. In instances where we identified related parties that had both Medicare Part B payments and tax debts, our case studies included those related entities, combining unpaid taxes and combined Medicare Part B payments for the original individual/business as well as all related entities.

To determine the extent to which HHS officials and their contractors are required to consider tax debts or other criminal activities in the enrollment of physicians, health professionals, and suppliers into Medicare, we examined Medicare regulations and HHS policies and procedures for enrollment. We also discussed policies and procedures used to enroll physicians, health professionals, and suppliers into Medicare with officials from two Medicare contractors. As part of these discussions, we inquired whether HHS and their contractors specifically consider tax debts or

[3]We define related entities as entities that share common owner(s) or officer(s), a common TIN, or a common address.

perform background investigations to determine whether prospective physicians, health professionals, and suppliers are qualified before their enrollment to Medicare is granted.

To determine the extent to which HHS levies Medicare Part B payments to physicians, health professionals, and suppliers owing tax debts, we examined the statutory and regulatory authorities that govern the continuous levy program to determine whether any legal barriers exist. We also interviewed officials from HHS, two Medicare contractors, IRS, and Department of Treasury's Financial Management Service (FMS) officials as to any operational impediments for the continuous levy of provider payments to pay federal tax debts.

To determine the potential levy collections on the first 9 months of calendar year 2005, we used 15 percent and 100 percent of the total paid claim or total tax debt amount reported to TOP per IRS records, whichever is less. To be conservative, we used the 15 percent rate that FMS uses to levy civilian contractors. A gap will exist between what could be collected and the maximum levy amount calculated because (1) tax debts in TOP may not be eligible for immediate levy because IRS has not completed due process notifications, and (2) IRS may remove tax debts from the levy program because the taxpayer filed for bankruptcy, negotiated an installment agreement, or some other action which made the taxpayer ineligible for the levy program.

Data Reliability Assessment

To determine the reliability of the IRS unpaid assessments data, we relied on the work we performed during our annual audits of IRS's financial statements. While our financial statement audits have identified some data reliability problems associated with the coding of some of the fields in IRS's tax records, including errors and delays in recording taxpayer information and payments, we determined that the data were sufficiently reliable to address this report's objectives. Our financial audit procedures, including the reconciliation of the value of unpaid taxes recorded in IRS's masterfile to IRS's general ledger, identified no material differences.

For HHS's Medicare claims history and FMS's TOP databases, we interviewed HHS and FMS officials responsible for their respective databases. In addition, we performed electronic testing of specific data elements in the databases that we used to perform our work.

Based on our discussions with agency officials, review of agency documents, and our own testing, we concluded that the data elements used for this testimony were sufficiently reliable for our purposes.

We conducted our audit work from June 2006 through February 2007 in accordance with U.S. generally accepted government auditing standards, and we performed our investigative work in accordance with standards prescribed by the President's Council on Integrity and Efficiency.

Appendix II: Medicare Physicians, Health Professionals, and Suppliers with Unpaid Taxes

This appendix presents summary information on the abusive or potentially criminal activity associated with 25 of our 40 case studies.[1] Table 2 summarizes the abuse or potentially criminal activity related to the federal tax system for these 25 physicians, health professionals, and suppliers that also received Medicare Part B payments in 2005. The cases involving businesses primarily involved unpaid payroll taxes.

Tabl 2: Summary Information on Other Medicare Part B Physicians, Health Professionals and Suppliers with Unpaid Fed ral Taxes

Case	Nature of work / type of entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 16	Medical Imaging / Business	Up to $100,000	Nearly $900,000	• Tax debt is primarily unpaid payroll taxes covering over 15 tax periods. For most of these tax periods, business made no tax payments. • IRS assessed trust fund recovery penalty against the owner of the business. • Business filed for bankruptcy in 2000s. • State agency investigated and closed business for negligent services. • IRS reported tax debts to TOP for collection action.
Case 17	Physician / Individual	Up to $100,000	Over $100,000	• Tax debt is individual income tax debt owed from the mid 2000s. • IRS recently levied over $200,000 in investments that paid off individual income taxes owed from the late 1990s to the early 2000s. • State medical board suspended physician's license. • Physician filed for bankruptcy in 2000s.
Case 18	Physician / Individual	Up to $100,000	Over $400,000	• Physician has not filed tax returns to the IRS since late 1990s. • State medical board reprimanded physician. • HHS IG had previously excluded physician from Medicare program.
Case 19	Physician / Individual	Over $100,000	Over $400,000	• Physician's tax debt is largely comprised of individual income taxes owed for tax years in the 1990s. • HHS IG had previously excluded physician from Medicare program. • State medical board suspended physician's license. • Physician owes over $100,000 to another federal agency.

[1]Table 1 in the main portion of this testimony provides data on 15 detailed cases.

Case	Nature of work / type of entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 20	Physician / Individual	Up to $100,000	Over $3 million	• Physician has generally refused to pay federal income taxes since 1970s. • Physician is a tax protester. • Physician attempted to convey residential property to children to prevent foreclosure by IRS. • Over $350,000 of tax debt owed by the physician reached its statutory collection expiration period and can no longer be collected by IRS. • Physician owes over $1 million to another federal agency.
Case 21	Physician / Individual	Up to $100,000	Nearly $900,000	• Physician offered installment agreement of about $1,000 a month. • Physician did not make federal income tax payments for several years in 2000s. • State medical board suspended physician's license. • Physician was convicted of income tax evasion.
Case 22	Ambulance / Business	Over $100,000	Nearly $700,000	• Business offered installment agreement of about $20,000 a month but was rejected by IRS because taxpayer did not stay current with either making required payroll tax deposits or filing required payroll tax returns. • Business officer admitted to using tax money for another business. • IRS is investigating business for abusing filing requirements. • IRS is in the process of assessing trust fund recovery penalty for the payroll tax debts.
Case 23	Physician / Individual	Over $100,000	Nearly $3 million	• IRS revenue officer noted that taxpayer used compromise offers to delay collection efforts. • State medical board suspended physician's license. • Physician is under investigation for illegally transferring assets so that IRS cannot seize them. • IRS reported tax debts to TOP for collection action.
Case 24	Physician / Individual	Over $100,000	Over $1 million	• Physician's tax debt is largely comprised of individual income taxes owed for tax years in the 1990s. Physician also owes a trust fund recovery penalty for over $100,000. • Physician stated that he did not pay taxes because of purchase of businesses and payment of children's college education. • Physician owns house near a country club worth over $500,000 while owing taxes. • Physician's recent reported income was over $500,000. • IRS reported tax debts to TOP for collection action.

Case	Nature of work / type of entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 25	Physician / Business	Over $100,000	Over $2 million	• Tax debt is primarily unpaid payroll taxes. • Owner claimed that taxes were not paid because Medicare and Medicaid were slow in paying claims. • Owner owns multimillion dollar house, as well as paintings, antiques, and other collectibles worth hundreds of thousands of dollars while business owed taxes. • Owner recently closed business and started a new company. At about the same time, the business owner paid over $1 million in trust fund recovery penalty payments to pay off the personal assessment. However, even with these payments, business still owes over $2 million in unpaid taxes.
Case 26	Ambulance/ Business	Over $1 million	Nearly $2 million	• Tax debt is primarily unpaid payroll taxes. • Business has generally not made any federal tax deposits since mid-2000s. Owner stated that tax returns were not filed because owner did not have the money to pay payroll taxes. • Multiple federal and state tax liens totaling nearly $2 million filed against the business. • Business received thousands of dollars from another federal agency over a 2-year period. • IRS is in the process of assessing trust fund recovery penalty for the payroll tax debts. • IRS reported tax debts to TOP for collection action.
Case 27	Physician / Business	Over $100,000	Over $1 million	• Tax debt is primarily unpaid payroll taxes. • Owner owes over $600,000 in individual income taxes. • IRS classified account as a financial hardship. • Owner owns $2 million dollar house. • Owner made large cash withdrawals totaling hundreds of thousands of dollars during the time little or no payroll taxes were paid to IRS. • State medical board sanctioned physician. • IRS has not assessed trust fund recovery penalty for the payroll tax debts because business is a sole proprietor and thus is personally liable for the payroll taxes.
Case 28	Ambulance / Business	Over $100,000	Over $1 million	• Tax debt is primarily unpaid payroll taxes. • Business under court order to pay IRS tens of thousands per month. • Owner owns another business that owes over $400,000 in payroll taxes. • IRS assessed trust fund recovery penalty against the owner of the business. • Business obtained contract for disaster relief efforts. • Owner stated that taxes were not paid because of higher gasoline prices and insurance.

Case	Nature of work / type of entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 29	Physician / Business	Over $100,000	Over $1 million	• Tax debt is primarily unpaid payroll taxes. • IRS assessed trust fund recovery penalty against the owner of the business. • Hospital suspended physician's clinical privileges for substandard care. • State medical board sanctioned owner.
Case 30	Physician / Business	Over $100,000	Over $1 million	• Tax debt is unpaid payroll taxes. • Business made no tax payments since early 2000s and has not filed a tax return since mid-2000s. • Owner owns about $900,000 in real property. • IRS has not performed assessment for trust fund recovery penalty related to payroll tax debts. • IRS reported tax debts to TOP for collection action.
Case 31	Physician / Business	Over $100,000	Over $1 million	• Tax debt is primarily unpaid payroll taxes. • IRS assessed trust fund recovery penalty against the owner of the business. • IRS filed federal tax liens totaling nearly $1 million against the business. • Owner owns a million-dollar house and luxury car while owing taxes. • Physician delinquent on student loans for tens of thousands of dollars.
Case 32	Physician / Business	Over $100,000	Over $900 thousand	• Tax debt is primarily unpaid payroll taxes, with business only making one tax payment since the early 2000s. • IRS assessed trust fund recovery penalties against owner for this business and several other businesses totaling over $1 million. • Owner received about $90,000 in interest payments in one year from a company he owned that also owed federal taxes. • Owner owns several partnerships involved in medical services and land properties. • Physician served on the Board of Directors of a publicly held company. • IRS went to court to enforce summons order against business owner. • Owner was investigated for check fraud.

Case	Nature of work / type of entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 33	Physician / Business	Over $100,000	Over $300,000	• Tax debt is primarily unpaid payroll taxes. • Business sought to establish installment agreement with IRS for taxes owed but was rejected because business was not current of tax deposits. • Owner claims taxes were not paid when business lost health contracts after hiring a noncertified doctor. • Owner owns several real estate properties worth nearly $4 million including residence worth over $1.5 million. • IRS assessed trust fund recovery penalty against owner for the payroll tax debts. • IRS reported tax debts to TOP for collection action.
Case 34	Physician / Business	Over $100,000	Nearly $800,000	• Business recently established installment agreement with IRS for taxes owed and agreed to future increases. • Owner was convicted of obtaining controlled substances by means of deception. • IRS is in process of assessing trust fund recovery penalty for the payroll tax debts.
Case 35	Physician / Individual	Over $100,000	Over $2 million	• Physician was convicted of tax evasion after transferring funds overseas. • Physician lost over $500,000 in adjudicated medical malpractice claims.
Case 36	Physician / Individual	Over $100,000	Over $1 million	• Physician offered to compromise the debt for over $200,000 in 2004 but was rejected by IRS. • Physician reported individual annual income to IRS for over $250,000 in mid-2000s. • Physician owns residence worth over $800,000 while owing taxes. • IRS reported tax debts to TOP for collection action.
Case 37	Physician / Business	Over $100,000	Over $600,000	• Tax debt is primarily unpaid payroll taxes. • Owner owns other multiple business entities owing approximately $500,000 in federal taxes. Owner also personally owes over $1 million in individual income taxes. • IRS went to court to enforce summons order against business owner. • State medical board sanctioned owner. • IRS assessed trust fund recovery penalty against the owner of the business. • IRS reported tax debts to TOP for collection action.
Case 38	Physician / Business	Up to $100,000	Over $200,000	• Tax debt is primarily unpaid payroll taxes. • IRS assessed trust fund recovery penalty against business owner. • State medical board sanctioned owner. • Both the business and the owner filed for bankruptcy in the 2000s.

Case	Nature of work / type of entity	Medicare Part B paid claims for first 9 months of calendar 2005[a]	Unpaid federal tax[b]	Description of activity
Case 39	Medical Laboratory/ Business	Over $100,000	Over $600,000	• Tax debt is primarily unpaid payroll taxes. • Business owner possesses multiple real properties, as well as several luxury vehicles and boats while business owed taxes. • Business owner received multiple tax refunds in 2000s totaling tens of thousands of dollars because no trust fund recovery penalty was assessed against owner. In addition, business owner received $1 million dollar cash settlement.
Case 40	Physician/ Business	Over $100,000	Over $800,000	• Tax debt is primarily unpaid payroll taxes. For several tax periods, business made no tax payments. • Owner owns multiple real properties, including residence, worth over $500,000 while owing taxes. • Owner lost over $250,000 in adjudicated medical malpractice claim. • IRS plans to assess trust fund recovery penalty for the payroll tax debts if the business does not fully repay tax debts. • IRS reported tax debts to TOP for collection action.

Source: GAO's analysis of IRS, FMS, HHS, public, and other records.

Notes: Dollar amounts are rounded. A Medicare physician, health professional, or supplier can submit claims using either an Employer Identification Number (EIN) or Social Security Number (SSN). In our testimony, any entity submitting a claim with an EIN is referred to as a business, and any entity submitting a claim with an SSN is referred to as an individual.

[a]Medicare Part B payments are physician, health professional, and supplier claims approved by HHS for payment for the first 9 months in calendar year 2005.

[b]Unpaid tax amount as of September 30, 2006.

Appendix III: Medicare Physicians, Health Professionals, and Suppliers With Federal and State Tax Liens

This appendix summarizes the extent to which Medicare physicians, health professionals, and suppliers have federal or state liens filed against their property. As discussed previously, certain tax debt information can only be discovered from public records, such as credit reports, if IRS files a federal tax lien against the property of a tax debtor. Of the 40 cases, 31 had federal tax liens filed by the Internal Revenue Service and 23 had tax liens filed by the states. Table 3 provides a summary of the federal or state tax liens filed for all 40 cases.

Table 3: Summary of Federal and State Tax Liens Against Medicare Part B Physicians, Health Professionals, and Suppliers with Unpaid Taxes

Case study	Federal tax lien?	State tax lien?
1	Yes	No
2	Yes	No
3	Yes	Yes
4	Yes	Yes
5	No	No
6	Yes	No
7	Yes	No
8	Yes	No
9	Yes	Yes
10	No	No
11	No	No
12	Yes	Yes
13	Yes	Yes
14	Yes	Yes
15	No	Yes
16	Yes	No
17	Yes	No
18	Yes	No
19	Yes	No
20	Yes	Yes
21	Yes	Yes
22	No	No
23	Yes	No
24	Yes	Yes
25	Yes	Yes
26	Yes	Yes

Case study	Federal tax lien?	State tax lien?
27	Yes	Yes
28	Yes	Yes
29	Yes	Yes
30	No	Yes
31	Yes	Yes
32	Yes	Yes
33	Yes	Yes
34	No	Yes
35	No	Yes
36	Yes	No
37	Yes	Yes
38	Yes	Yes
39	Yes	No
40	Yes	No

Source: Public records.

WRITTEN TESTIMONY OF THE COMMISSIONER OF INTERNAL REVENUE MARK EVERSON BEFORE SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS PERMANENT SUBCOMMITTEE ON INVESTIGATIONS HEARING ON MEDICARE DOCTORS WHO CHEAT ON THEIR TAXES AND WHAT SHOULD BE DONE ABOUT IT MARCH 20, 2007

Good morning Chairman Levin, Ranking Member Coleman and members of the Permanent Subcommittee on Investigations. I am pleased to appear before you to discuss Medicare payments made to providers who may be delinquent on their Federal tax obligations and the IRS' ability to claim what is owed through the Federal Payment Levy Program (FPLP).

This is my fourth time before this subcommittee on issues related to FPLP. I first appeared in 2004 to respond to the Governmental Accountability Office (GAO) report on 47 Department of Defense (DOD) contractors who were delinquent on their taxes. I appeared again in 2005 to discuss 50 civilian contractors that GAO had identified as also being delinquent. At that time, I pointed out the progress that the IRS had made working with the Financial Management Service (FMS), the General Services Administration (GSA), the DoD, the Office of Management and Budget (OMB), and the Department of Justice (DOJ). Together these agencies formed the Federal Contractor Tax Compliance (FCTC) Task Force.

Last year I testified as to the continued progress we are making with the FCTC task force, and discussed actions we were taking independently of the task force as well as the status of the contractor cases cited by the GAO. Today, I want to update the committee on our continued progress and then focus my discussion on the issue that is the specific subject of this hearing --- the possibility of including Medicare payments made to providers by the Centers for Medicare and Medicaid Services (CMS) in the FPLP.

I also want to thank this Subcommittee for its continued interest in the broad issue of using the FPLP as a means of collecting tax debt. Much of the progress we have made in the past four years has been the direct result of the interest and persistence of the Subcommittee Members and its staff.

Progress Report

Perhaps the best indicator of the progress made since the creation of the FCTC task force has been the increase in the amount of tax debts that are available to the FMS' Treasury

Offset Program (TOP). On January 31, 2004, there was only $73 billion in tax debt referred to FMS. As of January 31, 2007, that number had grown to $114 billion, a 56 percent increase.

Corresponding to this increase in tax debt referred to FMS has been the decline in the number of tax debts that are excluded from the FPLP. In FY 2004, $195 billion had been excluded. By FY 2006, that number fell to $149 billion.

As the Subcommittee knows, there are both statutory and operational exclusions to tax debt being referred to the FPLP. While the statutory exclusions have actually increased between FY 2004 and FY 2006, from $61 billion to $70 billion, the operational exclusions have declined from $106 billion to $78 billion.

This increase in the overall level of tax debt referred to the FPLP and the decline in the operational exclusions has been the result of a number of actions by the IRS over the last several years. These include:

- Elimination of the one year waiting period for Deferred and Queue cases for selection into the FPLP.
- The addition of all field Revenue Officer cases, more Automated Collection System cases, and certain Criminal Investigation cases into the FPLP.
- The addition of the secondary TIN on joint income tax and sole proprietor tax liability accounts.
- The addition of historical business names to improve matching with FMS.
- Adding additional defaulted installment agreements due to programming fixes.
- Adding adjustment claims, pending installment agreements with existing levies, and certain Collection Statute Expiration Date accounts.

Total revenue collected through the FPLP has also increased substantially. In FY 2003 there was $89 million in revenues from the FPLP. This had risen to $299 million by FY 2006. The growth has continued in FY 2007 as revenues to date have been $141 million as compared to $104 million for the same period last year.

Looking at the subset of contractors, revenues collected from all contractors showed similar growth rising from $7 million in FY 2003 to $55 million in FY 2006. Defense contractor revenues have gone from $1 to $26 million over the same period.

Not all the tax debt referred to the FPLP can be immediately levied. That is because we have not completed the notice and review process that is legally required prior to the activation of the levy. Of the $114 billion in tax debt referred to the FPLP inventory, $57

billion, or approximately half is not currently available for levy. We continue our efforts to accelerate the notice process so that the debts can be levied as soon as legally possible.

In that regard, there is a provision included in the President's FY 2008 Budget request that would permit us to issue post-levy due process notices under certain circumstances. This change could significantly increase collections for employment tax liabilities prior to a Collection Due Process (CDP) hearing in a fashion similar to levies issued to collect a federal tax liability from a state income tax refund. Taxpayers would have the right to a CDP hearing on these liabilities within a reasonable time after the levy.

While the CDP rules provide important safeguards, they raise unique problems in the context of employment taxes. Frequently, an employer who fails to satisfy its Federal tax liabilities for one period will also fail to satisfy them for later periods resulting in a "pyramiding" of unpaid taxes. Some employers who request a CDP hearing or judicial review for one tax period will continue to accrue, or pyramid, their employment tax liabilities during the CDP proceedings. Liabilities for the subsequent periods cannot be collected by levy until the employer has been given notice and opportunity for hearing and judicial review for each period, thus the need for a post levy CDP hearing.

We are also making some changes in the IRS case criteria for the purposes of the FPLP. These include:

- Levying Federal employee salary payments from the Departments of Energy, HHS, and Veterans Administration, as well as Defense Department civilian employee salary and military retiree income payments beginning in January 2008.

- Keeping taxpayers who subsequently request an installment agreement (IA) or adjustment claim in the FPLP until a formal IA is established or the adjustment claim remains in a balance due status. This started in January 2007, and thus far we have been able to keep $454 million in the FPLP.

- Keeping in the FPLP levied contractor or Federal employee accounts until 30 days prior to the collection statute expiration date (CSED). Prior to this change, these accounts were removed 90 days prior to the CSED. This also started last January and the results should be known by May 2007.

- A greater number of defaulted installment agreements have been added to the FPLP. This has resulted in 105,000 accounts being eligible for the FPLP.

FCTC Task Force Addresses Key Issues

Working with FMS, GSA, DoD and other members of the task force, we have made considerable progress on a number of other key issues of interest to this Subcommittee.

- We are developing a regulatory, programming, and operational process to add a Federal debt indicator or "flag" on the Central Contractor Registration (CCR).

This "flag" will indicate that the contractor/vendor will require an alternative payment method (that is subject to the FMS' TOP) instead of the Purchase Card program. FMS will complete its programming to implement this process this month and flagging should begin when the changes to the Federal Acquisition Regulations (FAR) are finalized.

- Another proposed change to FAR will implement a 3 year Federal and state tax compliance certification clause on awarded contracts. This clause will require contractors to self certify that they have no civil tax judgment and/or conviction; no receipt of Federal or state tax lien notice; or notification of an IRS unpaid tax liability. Prospective contractors who certify falsely risk disbarment from the procurement system and, potentially prosecution for perjury.

- By the end of this month, we intend to post on the IRS Master File an indicator, which will identify all Federal contractors in our Individual Master File data base. In August 2007, this indicator will be identified in our Business Master File data base. This indicator will assist us in developing an overall collection strategy and prioritization on our entire corporate collections inventory.

- FMS is continuing to bring new payments into the TOP. For example, payments to vendors or contractors of the Army Corp of Engineers and the U.S. Postal Service will be included in the offset program by June 2007.

- Since October 2005, all CCR yearly registrants must validate their Taxpayer Identification Numbers (TINs) with the IRS. In the first full year (FY 2006) of implementation, there were 495,000 CCR registrants that went through the TIN validation process and 82 percent of those had their TINs successfully validated.

- The Defense Finance and Accounting Service (DFAS) has added all of its payment files into TOP for levy and offset. It has also implemented the 100 percent levy provision on all payment systems and centralized its locations to process paper levies issued by the IRS.

Levying CMS Payments to Medicare Providers

Another step in continuing the progress of the task force has been the inclusion of the Centers for Medicare and Medicaid Services in our work.

The GAO has estimated that Medicare physicians and related suppliers (such as ambulance companies and medical laboratories) owe approximately $1 billion in unpaid Federal taxes. GAO estimates that between $50 million and $140 million could have been collected had the payments been subject to the FPLP.

Medicare payments are, of course, property subject to levy to collect unpaid taxes. As Federal payments, they are further subject to the continuous levy provisions of section 6331(h). Currently, most Medicare payments are not part of the FPLP because they are

not processed by FMS and are excluded from the Treasury Offset Program, our only automated mechanism for levying Federal payments.

IRS, FMS and CMS are now discussing options to efficiently and systemically levy all CMS Medicare payments either through FMS' TOP or by other means. From an operational perspective, one of the things that we are working through is how CMS reimburses providers. Most payments made by CMS are paid to intermediaries, such as insurance companies, that then reimburse the provider. Whether these payments are processed through FMS in the future or FMS, as with other non-Treasury dispersing offices, serves as the agent of CMS for purposes of receipt of levies, the issues presented by this payment process are not unique and we believe they can be overcome if our three agencies continue to work together.

However, it is important to understand that even if the Medicare payments are made part of FPLP, we still face other operational issues in terms of successfully levying those payments to recover tax debts. For example, many of the providers are organized as professional corporations (PCs) and limited liability companies (LLCs) under state law. While this is a legitimate and respected business choice made by these providers for a variety of reasons, it can also serve to protect an individual from a possible levy if the payment is made by the intermediary to the PC or LLC and not directly to an individual doctor with a Federal tax debt.

It is also important to understand that even though CMS Medicare payments are not part of the FPLP, one should not assume that nothing is being done to collect this tax debt. These debts now fall into our regular collections process and are subject to a paper levy if payment is not received and all appropriate CDP notices have been sent. We have developed specific "tool kits" for our revenue officers targeted at specific groups of taxpayers. For example, the "tool kit" for doctors recommends that the revenue officer look at insurance payments received by the doctor as a possible source of a paper levy. In the past four years the number of levies issued through our paper levy program has nearly tripled going from 1.3 million in FY 2002 to 3.7 million in FY 2006.

We are unable to separate Medicare payments that have been levied from other payments made by insurance companies. When payments due a provider from an insurance company are levied, we are unsure whether the source of those payments is Medicare or another type of reimbursable payment.

Legislative Initiatives

In the President's FY 2008 Budget proposal there are 16 different legislative proposals that are designed to improve compliance, expand information reporting, strengthen tax administration and expand penalties. Collectively, these proposals will generate $29.5 billion in revenue over the next 10 years. I strongly urge your support for all of these proposals.

Included in this package is a measure that will improve the effectiveness of both the FPLP and our overall levy program. It would allow us to amend the collection due process procedures applicable to employment tax liabilities by allowing us to collect employment taxes prior to affording the taxpayer an opportunity to dispute the collection action before the IRS Office of Appeals."

We would also like to see a change to section 6331(h) of the IRC to allow the IRS to implement the 100 percent levy on all vendor payments not just those for goods and services.

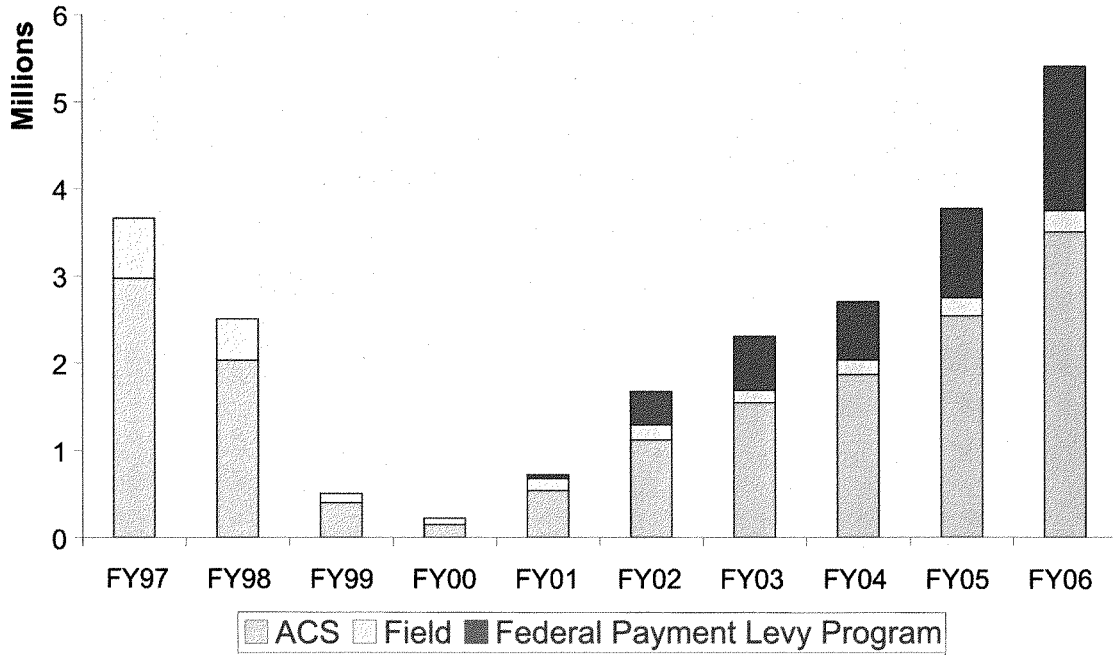
Summary

Mr. Chairman, working collectively with FMS, GSA, DoD, and DoJ, and spurred on by the oversight of this Subcommittee, we have made considerable process in expanding the amount of tax debt that is referred to the FPLP and the total collections that have resulted from those referrals. We continue to look at ways to expand even further the amount of tax debt that might be referred.

We welcome CMS to the FCTC task force and look forward to working with them to explore options that could make payments to Medicare providers subject to levy. Taxpayers have every right to expect that anyone receiving Federal payments is current on their tax payments. This applies to doctors receiving Medicare payments as much as it does to a contractor with a contract from the Department of Defense.

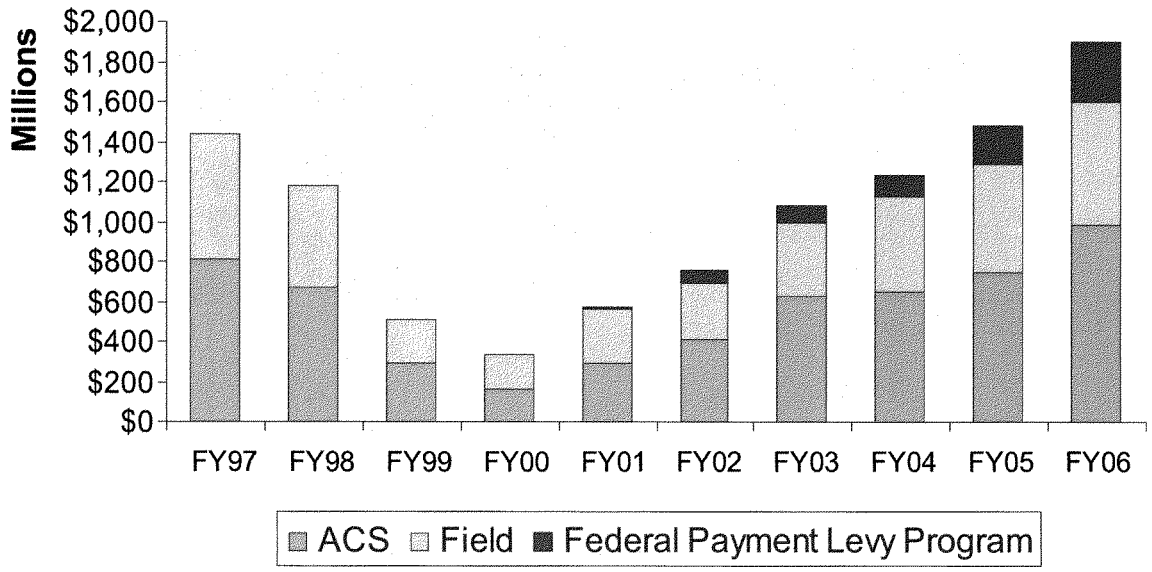
Again I thank the Members of the Subcommittee and your staff for your continued interest in the FPLP program and I am happy to respond to any questions that you may have.

Levies Issued
(in millions)

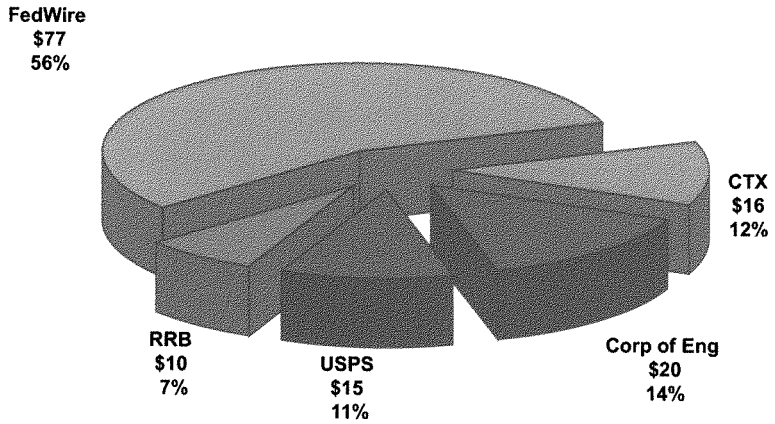


Levy Dollars Collected

(in Millions)



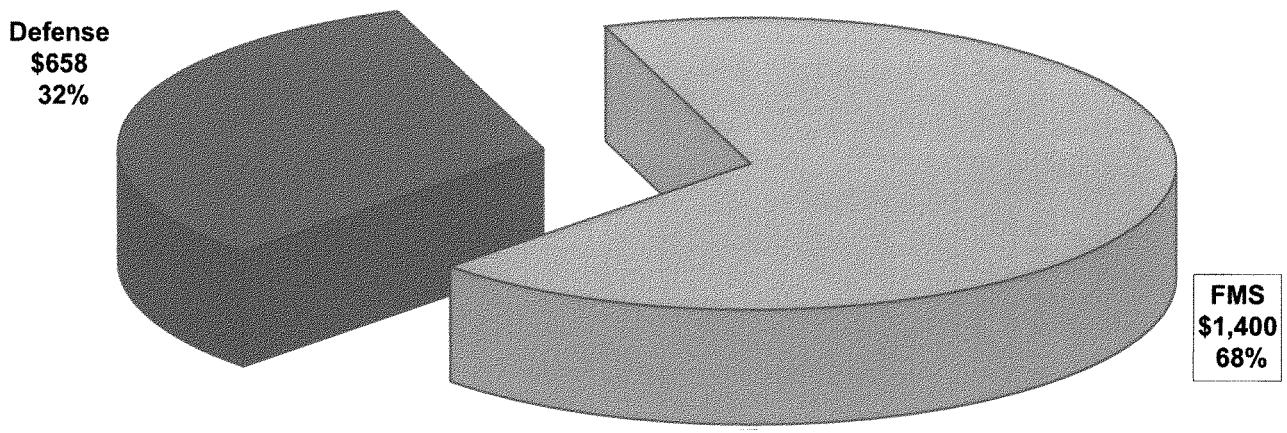
FUTURE DISBURSEMENTS SUBJECT TO LEVY
$138 Billion
(Dollars in Billions)



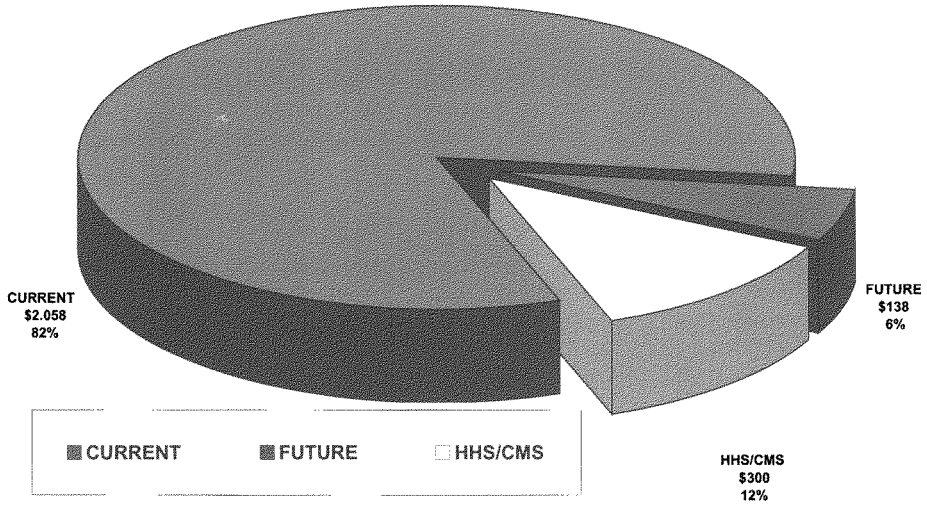
DECEMBER 2007 | JUNE 2007 | *RRB

* RRB will not be subject to levy until furth r research is completed to determine if low income taxpayers can be identified bbefor issuing a levy. RRB levy revenue would be $M/annually on 2300 r cipients.

CURRENT FEDERAL DISBURSEMENTS SUBJECT TO LEVY
$2.0 Trillion
(Dollars in Billions)



FMS/DoD DISBURSEMENTS SUBJECT TO LEVY
$2.5 Trillion
(Dollars in Billions)



1 Includes disbursements from the SSA ($512B September 2001); USPS salary ($97B February 2003). Also, Defense added payment files from February 2004-2005.

STATEMENT OF COMMISSIONER KENNETH R. PAPAJ
U.S. DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
BEFORE THE UNITED STATES SENATE
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Tuesday, March 20, 2007
Washington, DC

Chairman Levin, Ranking Member Coleman, and Subcommittee members, thank you for inviting me here to testify today. I'd also like to take this opportunity to thank the members of this subcommittee for your ongoing support of the Financial Management Service's (FMS) and the Internal Revenue Service's (IRS) efforts to improve and strengthen the Federal Payment Levy Program and for your continued interest in ensuring that federal contractors meet their tax obligations. I am pleased to report that as a result of your vigilance and initiative our combined efforts are paying off.

Levy Collections Continue to Increase

Collections of delinquent taxes through the Federal Payment Levy Program have increased dramatically over the last several years. As this first chart illustrates, the total amount of levy collections has more than tripled, from $89.3 million in fiscal year 2003 to $303.3 million in fiscal year 2006. There has been continued growth in collections from every type of payment that is part of the levy program – vendor, federal salary, federal retirement, social security benefit, and non-Treasury disbursed vendor payments. With regard to levy collections from federal contractors, as chart 2 illustrates, collections

increased from $7.0 million in fiscal year 2003 to $59.6 million in fiscal year 2006 (chart 2). These increases are due to significant improvements in the program, some of which I will discuss today. More importantly, through future initiatives, and by working closely with the IRS and other agencies, we fully anticipate increases in levy collections to continue. In fact, FMS is on track in fiscal year 2007 to exceed last year's record tax levy collections.

The Number of Tax Debts Referred to FMS has Increased

One major contributing factor to the increase in levy collections is the increase in the number of tax debts that IRS has made part of the levy program. As of December 31, 2006, FMS' system showed more than $111.9 billion in delinquent taxes that were eligible for matching against federal payments (chart 3). This represents an increase of $53.1 billion in tax debt since the end of 2003. Of this amount, IRS has activated $55.1 billion or 49% for collection by levy. Debts that have been activated for collection are those for which IRS has completed the notice and review process which is legally required prior to levy. We continue to work closely with the IRS to have them activate more tax debts for levy because as the collection trends indicate, levy collections increase as more debts are activated for collection.

In an attempt to increase the number of debts activated for collection by levy, the Administration has proposed a legislative change that would permit IRS to conduct post-levy due process under certain circumstances. We believe this change could significantly increase collections particularly with regard to payments to federal contractors. In the

meantime, however, through the hard work of the Federal Contractor Tax Compliance Task Force, systems have been put in place to identify federal contractors who owe taxes which enables the IRS to accelerate the collection due process in those cases.

More Payments are Being Levied

Another significant factor contributing to increased levy collections has been an increase in the types of payments that are being matched and levied against delinquent tax debts under the Federal Payment Levy Program. The first major expansion of the program took place in January, 2002 with the addition of social security benefit payments. In December 2002 we began adding payments made to Department of Defense contractors and by April 2005 all of the multiple Department of Defense vendor pay systems were incorporated into the program. In February, 2003, salary payments issued by the United States Postal Service were added and beginning in April 2004, Department of Defense salary payments were made available for levy. I am pleased to report that FMS is now in the process of adding the vendor payments of the U.S. Army Corps of Engineers and the U.S. Postal Service to the levy program, both of which are planned for implementation this June. Test matches show potential collections of $106.4 million from Corps of Engineers contractors and $164.5 million from Postal Service contractors.

Additionally, FMS has been working to ensure that our various systems for making payments to vendors, Type A, Automated Clearing House-Corporate Trade Exchange (ACH-CTX) and Fedwire, are included in the levy program.

Type A payments are typically made by agencies that do not have the payment volume to support sending large-scale bulk payment files. ACH-CTX payments are for multiple payments to the same payee or one payment with multiple invoices which allow transmitting complete remittance information with the payment. The Fedwire payment system is used for low-volume, high dollar transactions that are deposited into recipients' bank accounts on the same business day.

We began levying some Type A Payments in January 2006 and full implementation was completed in June 2006. I am pleased to report that ACH-CTX and Fedwire payments are on schedule for full implementation into the levy program by the end of December 2007.

We have also been working hard with federal agencies to ensure that the payments that are part of the Federal Payment Levy Program have complete information that is necessary for the levy to take place. All agencies for which we disburse are now 100% compliant with the requirement to complete the name field on payments files and most agencies are 95% to 100% compliant with the requirement to include a taxpayer identification number (TIN). We continue to work closely with those few agencies that have not yet reached a satisfactory TIN compliance rate.

One of the concerns of this Subcommittee has been the use of purchase cards by agencies to pay vendors who owe taxes. FMS, along with the General Services Administration (GSA) and the IRS, is in the process of implementing a task force recommendation that

will prevent contractors who owe delinquent debt from being paid for contracts through the use of the purchase card. This will be accomplished by identifying and flagging in the Central Contractor Registration system those contractors that have debts and paying them using payment methods that are subject to levy. We anticipate that FMS' programming to implement this recommendation will be completed in the next month. Draft changes to the Federal Acquisition Regulations (FAR) have been completed and are under review by the FAR Council. Once the changes to the FAR are finalized, use of the flag by contracting officers will begin

Reciprocal Agreements With States

Another initiative which has been of interest to this subcommittee is our efforts to enter into reciprocal agreements with states. These agreements will allow for the administrative offset of federal payments to collect debts owed to states and the corresponding offset of state payments to collect debts owed to federal agencies. An interim rule governing this program was published on January 11th 2007 and a pilot program is scheduled to begin with the three states that expressed interest in participating - Maryland and New Jersey in the Spring, followed by Kentucky later this year. We are already seeing results as the state of New Jersey has informed us that it has collected about $6.4 million in business tax debts over the last three months as a result of sending notices about the initiation of this administrative offset program. If these pilots prove successful and cost beneficial, FMS will renew its efforts to bring additional states into this program.

Levy of CMS Payments

With regard to Medicare payments issued by the Department of Health and Human Services' Center for Medicare and Medicaid Services (CMS), as GAO acknowledged both when they first began to examine the Federal Payment Levy Program and again in their most recent analysis, due to CMS' decentralized payment process there are significant operational complexities associated with adding these payments to the Federal Payment Levy Program. Additional complexities arise because of the role CMS' fiscal intermediaries play in the payment process. However, as CMS moves to consolidating its processes it is now feasible to address the issue of levying CMS payments.

Working under the direction of the Federal Contractor Tax Compliance Task Force, a subgroup consisting of FMS, IRS, and CMS has been formed to determine how best to deal with Medicare providers who are delinquent on their tax obligations. I join my colleagues from IRS and CMS in supporting the work of the task force to examine various options to ensure that payments to Medicare providers are levied in the most efficient and effective manner. Some options that should be evaluated are improving the paper levy process already in place between IRS and CMS; establishing a matching program between CMS' fiscal intermediaries and either IRS or FMS to facilitate levies through the fiscal intermediaries; and having FMS disburse Medicare payments on behalf of CMS so that levies can be conducted using the existing Federal Payment Levy Program. Each of these options presents logistical, operational and technical issues that must be worked out. Once the task force has completed its analysis it will issue a report

by the end of the year setting forth the various options and making recommendations for levying payments to Medicare providers who fail to satisfy their tax obligations. FMS is fully committed to working, through the task force, toward this important goal.

While it is our view that we do not currently have the legal authority to offset Medicare payments to collect nontax debt (including delinquent child support obligations), concurrent with examining solutions to the operational complexities associated with levying Medicare payments, we would also examine offset options, in consultation with the Department of Health and Human Services.

Mr. Chairman, once again, I appreciate the invitation to discuss the role FMS has played and will continue to play in improving the Federal Payment Levy Program and in helping to close the tax gap. FMS is very proud of its accomplishments in debt collection which, in fiscal year 2006 resulted in record collections of over $3.3 billion and since inception of the program has yielded collections of more than $29.5 billion in delinquent tax and nontax debt owed to federal agencies and states that otherwise would not have been collected.

This concludes my remarks and I would be happy to answer any questions.

Chart 1

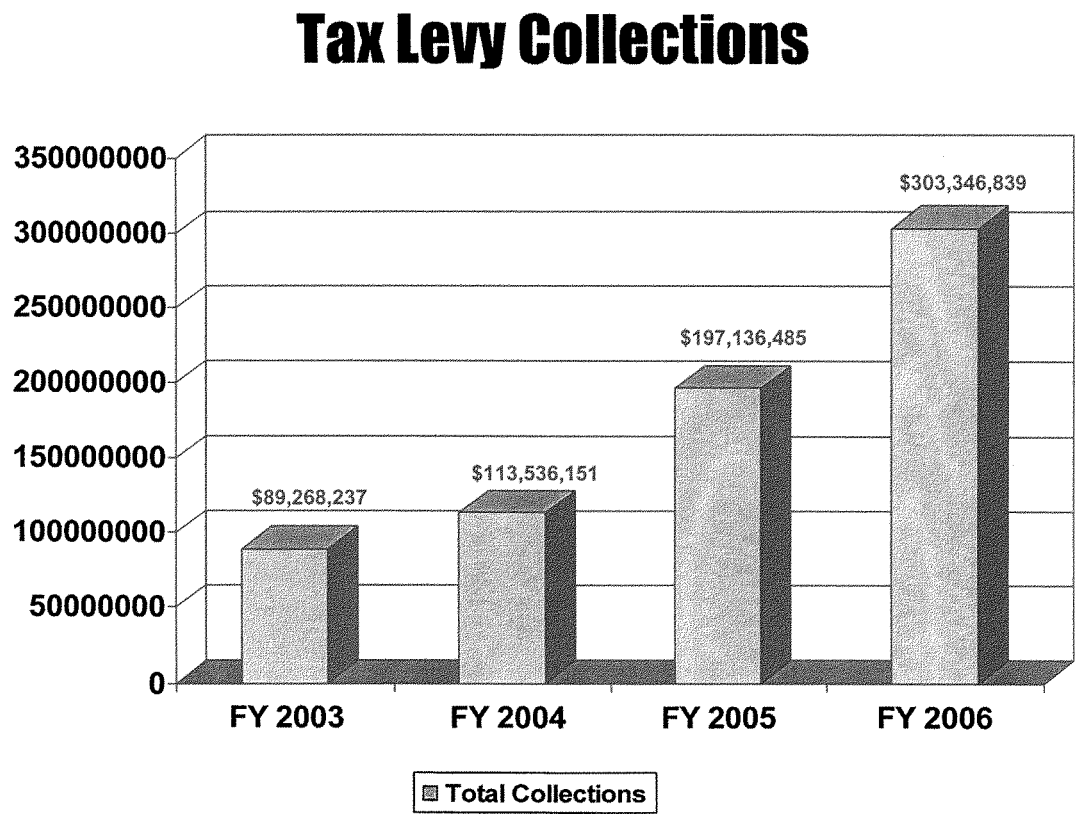
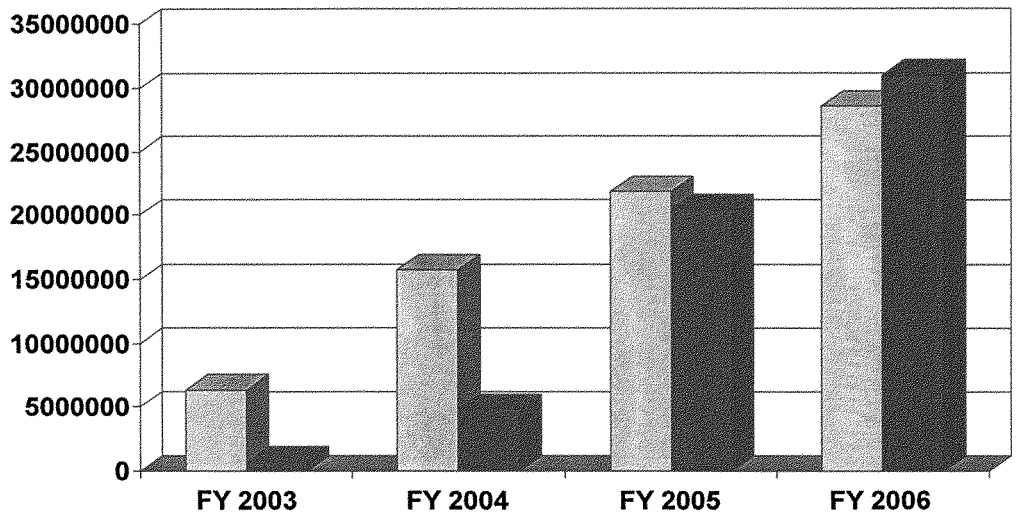

Tax Levy Collections
350000000
300000000
250000000
200000000
150000000
100000000
50000000
0
$89,268,237
$113,536,151
$197,136,485
$303,346,839
FY 2003
FY 2004
FY 2005
FY 2006
Total Collections

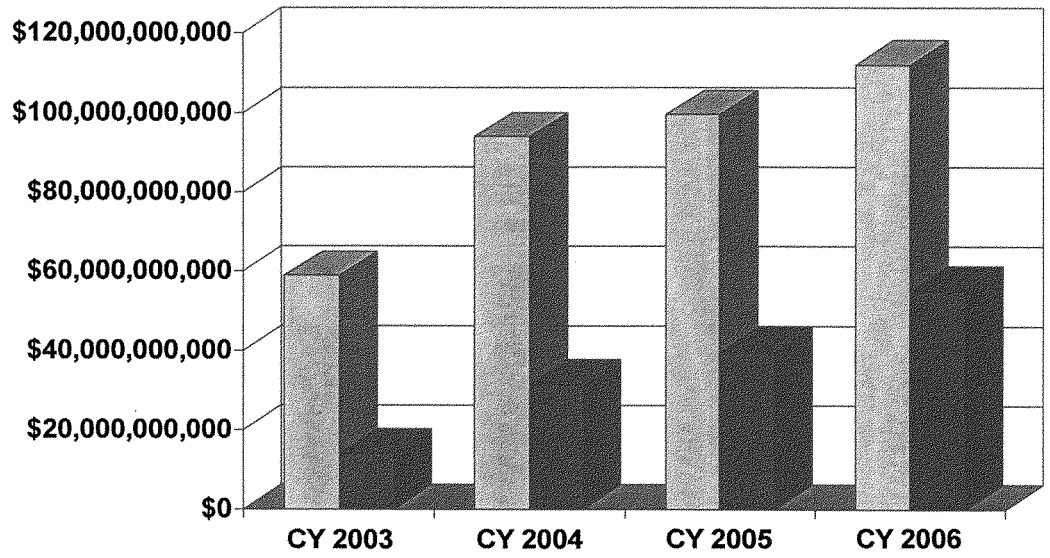
Chart 2

Vendor/DoD Vendor Collections



	FY 2003	FY 2004	FY 2005	FY 2006
Vendor	$6,356,137	$15,709,086	$21,858,013	$28,591,679
DoD Vendor	$686,888	$4,774,361	$20,424,920	$31,018,485
Total Vendor	$7,043,025	$20,483,447	$42,282,933	$59,610,164

Chart 3



	CY 2003	CY 2004	CY 2005	CY 2006
Debts Eligible for Matching	$58,713,323,574	$93,909,200,632	$99,471,193,903	$111,891,914,135
Debtors Activated for Levy	$14,060,648,969	$31,537,277,515	$39,661,414,415	$55,114,007,727
Percentage Activated	24%	33%	40%	49%

STATEMENT OF

LESLIE V. NORWALK, ESQ.

ACTING ADMINISTRATOR

CENTERS FOR MEDICARE & MEDICAID SERVICES

ON

RECOUPMENT OF UNPAID TAX LIABILITIES OF MEDICARE PHYSICIANS

BEFORE THE

SENATE HOMELAND SECURITY & GOVERNMENTAL AFFAIRS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

March 20, 2007

CMS

CENTERS for MEDICARE & MEDICAID SERVICES

Testimony of Leslie V. Norwalk
Acting Administrator, Centers for Medicare & Medicaid Services
on
Recoupment of Unpaid Tax Liabilities of Medicare Physicians
Before the
Senate Homeland Security & Governmental Affairs
Permanent Subcommittee on Investigations
March 20, 2007

Good afternoon Chairman Levin, Senator Coleman and distinguished Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the Centers for Medicare & Medicaid Services' (CMS) efforts to recoup unpaid tax liabilities of Medicare physicians.

CMS is the largest purchaser of health care in the world. We provide coverage to nearly 100 million beneficiaries – one in every three Americans, in fact. Medicare, the Federal health insurance program for individuals over age 65 and certain populations with disabilities or end-stage renal disease (ESRD), insures more than 43 million lives. In Fiscal Year 2008 (FY08), total gross spending on Medicare benefits is projected at $454 billion.

Medicare benefits fall into four categories – Parts A, B, C and the program's most recent addition, D. In short:

- **Part A** includes (and reimburses providers for) inpatient hospital care, skilled nursing facility care, qualified home health care, and hospice care.
- **Part B** includes physicians' services, outpatient hospital services, treatment for ESRD, laboratory services, durable medical equipment, certain elements of home health care, and other medical services and supplies.
- **Part C**, the Medicare Advantage (MA) program, offers beneficiaries a variety of coverage options including traditional health maintenance organizations (HMOs), preferred provider organizations (PPOs), special needs plans, and private fee-for-service (PFFS) plans paid under a capitated monthly payment from Medicare.

- **Part D**, enacted in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) offers beneficiaries a standard outpatient prescription drug benefit through private plans that contract with Medicare.

To date, roughly 645,000 physicians are assigned Medicare provider numbers, allowing them to bill the program for covered items and services provided to beneficiaries. Medicare payments to physicians in 2006, the most recent year for which data is available, totaled $58.7 billion.

CMS processes claims and reimburses for physician services through contracts with private companies, i.e., Carriers, Fiscal Intermediaries (FIs), and Durable Medical Equipment Medicare Administrative Contractors (DME MACs).[1] This year alone, CMS estimates that Medicare contractors will process well over *one billion* claims from institutional providers, physicians, and suppliers for covered items. Contractors review submitted claims to ensure payment is made solely for covered services for eligible individuals. In addition, CMS contracts with Program Safeguard Contractors (PSCs) to detect and deter Medicare fraud and abuse. Finally, Quality Improvement Organizations (QIOs) are charged with investigating beneficiary complaints about quality of care and ensuring that payment is made for only medically necessary services.

CMS Partnerships with Other Agencies Promote Accountability

CMS is firmly committed to ensuring the highest measure of accountability within the Medicare program. Appropriately, model stewardship of taxpayer dollars requires partnership with other Federal agencies. Consistent with the President's Management

[1] Medicare Contracting Reform (MCR), as stipulated in MMA, calls for consolidation of a wide spectrum of contractor functions. Heretofore, all contractors processing Medicare claims are called "Medicare Administrative Contractors" (MACs). While durable medical equipment regional carriers (DMERCs) have been fully replaced by DME MACs, the longtime designators 'Carrier' and 'FI' remain in common use for other contractors as MCR progresses further.

Agenda (PMA), a government-wide effort to improve financial management , CMS works closely with the Department of the Treasury (Treasury), Department of Justice (DOJ) and Office of the Inspector General (OIG) in the Department of Health and Human Services (HHS) to identify improper Medicare and other high-risk program payments; to establish aggressive improvement targets; and to implement corrective and remedial action as expeditiously as possible.

CMS is collaborating with the Internal Revenue Service (IRS) and Treasury's Financial Management Service (FMS) in the Federal Contractor Tax Compliance (FCTC) Task Force to determine how best to address Medicare providers delinquent in the realm of tax obligations. CMS supports the work of the Task Force to examine, assess and ultimately implement policies to ensure that payments to providers are levied in the most effective and appropriate manner.

In the case of Medicare physician payments, which currently are not disbursed through FMS, CMS processes paper levies received from the IRS. Historically, based on Medicare legislation, CMS has used private contractors to process claims. This structure has complicated the coordination of the levy program. CMS is currently in the process of reducing the number of contractors and streamlining the paper levy process, as well as evaluating the feasibility of making these payments through FMS.

Next Steps: Potential for Moving Additional Disbursements to FMS

As mentioned previously, CMS is actively engaged in discussions with FMS about the

feasibility of using the federal disbursement center for all Medicare payments. By law, Medicare physician payments can be levied, but cannot be offset by FMS to collect non-tax debt. Currently, physician payments go through the carrier system and are not subject to offset through the TOP; however, they are subject to paper levy.

CMS currently uses a decentralized banking system that relies on nine commercial banks to issue Medicare payments. Across the country, Medicare payments are issued on a daily basis using a pre-authorized draw-down of federal funds. These arrangements are not routine federal disbursements that occur on an established, periodic schedule. CMS makes 50-60 million payment transactions per year, or roughly 5 million per month. Roughly 65 percent of these are in the form of paper checks mailed primarily to physicians.

Over the years, CMS has made significant headway in streamlining and simplifying current banking arrangements, and as noted previously, reducing the number of contractors that process Medicare Part A and B claims under different claims processing systems. We are on course to have all Medicare contractors on the HealthCare Integrated General Ledger Accounting System (HIGLAS) by 2011. Such steps make it more feasible than ever before to revisit current banking arrangements, examine moving physician disbursements to FMS, and explore other options for levying payments.

CMS is working with representatives from FMS to explore legal, procedural and technical issues, and will prepare a written report by the end of the year elaborating on our solution. As we continue to assess options and realistic timelines for new payment disbursement arrangements with FMS, CMS is working with the IRS to improve the

processing of paper levies to achieve greater success in collecting the tax debts of physicians receiving Medicare reimbursement. We are working with IRS to compare 1099 data submitted each year by the Medicare contractors with IRS delinquent-tax information. This would result in the routing of paper levies to the appropriate Medicare contractor, which could then levy outgoing Medicare reimbursements for the tax debt amount.

CMS and Treasury also are working to address the concern that physicians with significant tax debts are retaining Medicare provider numbers. Current statutory authority does not allow CMS or its agents to deny or revoke provider enrollment for delinquent tax liabilities. While there is no system currently in place whereby IRS notifies CMS of such individuals before we process their enrollment, we are exploring regulatory options to build better checks into our systems.

Partnership Showing Promise: Los Angeles County Fraud Interdiction Program

The Los Angeles County Fraud Interdiction Program (Tax Project) is one of the best examples of ongoing collaborative work at the intersection of health care fraud and tax evasion. This collaboration is achieved through a partnership of more than ten State and Federal agencies including CMS, the HHS-OIG, the Federal Bureau of Investigations (FBI), major health insurance payers and other concerned organizations. Using available payment data, aberrant billing patterns and patient complaints, the partners identify questionable health care practitioners as potential suspects, whose information is then made available to the Tax Project's lead prosecutor. Accumulated payment information pertaining to the suspects is shared with a criminal investigations supervisor at the

California Franchise Tax Board (FTB), one of the Tax Project's partners, who then initiates a tax case when filing deficiencies are discovered. A substantial percentage of suspects are non-filers. Another substantial percentage of individuals involved in health care provider fraud grossly under report their incomes. Under either scenario, felony crimes have potentially been committed. Felony convictions that are within the past ten years may be used as a basis for CMS to revoke a physician's Medicare billing privileges, removing them from the Medicare program.

As a result of the Tax Project's efforts to date, three individuals have been convicted of tax fraud, with all convictions including prison sentences and restitution. Another two physicians have been arrested on suspected tax and health insurance fraud, and roughly 300 cases are under development by the Tax Project. Significantly, of these potential additional cases, CMS identified 50 Medicare physicians who were paid more than $100 million in program reimbursement, for which they failed to file a state income tax return for one or more tax years.

The District Attorney for Los Angeles County is sharing this model approach with other counties within the State of California and also with other states. Statute permitting, CMS would be interested in pursuing this on the federal level.

Conclusion

Responsible and efficient stewardship of taxpayer dollars is a critical goal of CMS and the entire Administration. The PMA and ongoing collaboration across government agencies are significant steps toward minimizing improper payments and collecting debts

owed. With respect to physician tax debt in particular, CMS is fully committed to exploring a deeper partnership with FMS and the IRS, building on current successes in applying tax levies and our participation on the FCTC Task Force.

Thank you. I would be happy to answer any questions.

United States General Accounting Office

GAO

Report to Congressional Requesters

July 2001

TAX ADMINISTRATION

Millions of Dollars Could Be Collected If IRS Levied More Federal Payments

GAO-01-711

Permanent Subcommittee on Investigations
EXHIBIT #1

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Abbreviations

CMS	Centers for Medicare & Medicaid Services
DFAS	Defense Finance and Accounting Service
DOD	Department of Defense
FMS	Financial Management Service
IRS	Internal Revenue Service
TIN	taxpayer identification number
USPS	United States Postal Service

United States General Accounting Office
Washington, DC 20548

July 20, 2001

The Honorable William M. Thomas
Chairman, Committee on Ways and Means
House of Representatives

The Honorable Amo Houghton
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

Federal agencies pay billions of dollars each year to thousands of taxpayers that owe delinquent federal taxes. The Department of the Treasury's Financial Management Service (FMS) makes payments on behalf of most agencies. However, more than $900 billion in payments are disbursed directly by other federal agencies each year.[1] These payments are not currently subject to a tax levy[2] through the continuous federal tax levy program, which the Internal Revenue Service (IRS) operates in conjunction with FMS.[3]

Authorized under the Taxpayer Relief Act of 1997[4] the continuous levy program enables IRS to continuously levy up to 15 percent of certain federal payments made to delinquent taxpayers.[5] The program provides IRS with an automated process for serving tax levies and collecting delinquent taxes through FMS, which matches federal payment data against IRS' accounts receivable data in order to identify payments that IRS could levy. For payments disbursed by FMS, the amount to be levied

[1]Non-FMS disbursements are estimated based on our analysis of FMS financial information and represent unaudited data.

[2]A levy under Internal Revenue Code section 6331 is the legal process by which IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy. Generally, a levy applies only to property possessed and obligations existing at the time of the levy. However, a continuous levy remains in effect from the date the levy is first made until the tax debt is fully paid or IRS releases the levy.

[3]In this report, we will refer to this program as the continuous levy program. IRS does levy some of the payments made by other federal agencies using its general levy authority under Internal Revenue Code section 6331.

[4]P.L. 105-34.

[5]See Internal Revenue Code section 6331(h).

and credited to IRS is deducted before FMS disburses the payment. For payments disbursed directly by other federal agencies, FMS would have to notify the respective payment agency to deduct the amount to be levied and credited to IRS before the agency disbursed the payment.

Over half of all non-FMS disbursed federal payments are made by the United States Postal Service (USPS); the Department of Defense (DOD); and the Centers for Medicare & Medicaid Services (CMS),[6] which disburses Medicare fee-for-service payments.[7] These particular payments constitute a large portion of non-FMS disbursed payments, and thus, you requested that we (1) determine the number of delinquent taxpayers receiving federal payments from USPS, DOD, and CMS that would be affected and the amount of tax debt that might be recovered if they were to be included in the continuous levy program; (2) determine whether these types of payments could be included in the continuous levy program and the timeframes for doing so; and (3) identify other actions that could be taken to enhance IRS' ability to levy federal payments to delinquent individuals and businesses that are not currently included in the continuous levy program.

To meet our objectives, we obtained and matched payments made by the three agencies to IRS' accounts receivable records; discussed whether and when these types of payments could be included in IRS' continuous levy program with IRS and FMS officials, as well as with officials from the three agencies and Medicare contractors; and discussed the general levy procedures with IRS officials and reviewed the related tax law governing these procedures. Our estimates of the tax debt that might be recovered are understated because Medicare contractors did not provide us with data on over 50 percent of the Medicare vendor payments made for the time period we reviewed. In addition, we were unable to match about $3.4 billion in DOD vendor payments against IRS' accounts receivable data because the payment records did not contain a taxpayer identification

[6]In June 2001, the Health Care Financing Administration was renamed the Centers for Medicare and Medicaid Services.

[7]Fee-for-service payments are made to individuals and businesses, such as doctors, hospitals, and nursing homes that provide health care services to Medicare beneficiaries. In this report, we will refer to these payments as vendor payments.

number (TIN).[8] Our work was done between June 2000 and May 2001 in accordance with generally accepted government auditing standards. (App. I describes our overall objectives, scope, and methodology.)

Results in Brief

About 70,400 individuals and businesses that received about $1.9 billion in federal payments collectively from USPS, DOD, and CMS owed over $1 billion in federal taxes as of June 30, 2000. We estimate that IRS could recover at least $270 million annually in delinquent federal taxes if these payments were included in the continuous levy program. However, the amount of delinquent taxes recovered annually through this program could be somewhat lower because some taxpayers might make other arrangements with IRS to resolve their tax debts. We further estimate that an additional $16 million could be recovered annually if IRS were to provide FMS with the different names vendors have used for tax purposes, such as prior business names, so that FMS could include them in the continuous levy program.

Whether federal payments made by USPS, DOD, and CMS could be included in the continuous levy program and, if so, when varied by agency and type of payment. FMS plans to receive and include USPS and DOD salary and wage payments, as well as military retirement payments, in the Treasury Offset Program within the next 3 years, thus making them available for continuous levy and enabling IRS to begin collecting about half of the $270 million in potential annual tax recoveries mentioned earlier. Vendor payments could also be included in the continuous levy program, with the full range of USPS payments possibly included in less than a year; DOD payments possibly included within about 3 years; and CMS payments possibly included within about 5 years. However, with the exception of some DOD vendor payments, officials from FMS, IRS, and the three agencies have not discussed when and how all of these agencies' vendor payments could be included in the continuous levy program and whether practical options exist to include some portion of the vendor payments in the program before all such payments are available.

Although billions of dollars in vendor payments disbursed by USPS, DOD, and CMS are not scheduled to be included in the continuous levy program

[8] A TIN is a unique nine-digit identifier assigned to each individual and business that files tax returns. For individuals, the social security number assigned by the Social Security Administration serves as the TIN. For businesses, the employer identification number assigned by IRS serves as the TIN.

at this time, IRS does have general authority under the tax law to levy such payments by issuing a levy notice directly to the agency responsible for the payments. However, IRS does not have current information concerning these agencies' vendors, which IRS needs to identify levy sources, even though the agencies could provide IRS with such information.

To aid FMS in identifying vendor payments currently included in the continuous levy program made to vendors that owe federal taxes, as well as any future vendor payments that may be included in this program, we are recommending that IRS provide FMS with a file of the different names used by these vendors for tax purposes. Since it is likely to be years before the full range of USPS, DOD, and CMS vendor payments could practically be included in the continuous levy program, we are also recommending that IRS and FMS initiate discussions with the three payment agencies on a timetable for including all such payments in the program and on options for accelerating some portion of these agencies' payments. Finally, as an interim measure for enhancing IRS' ability to levy vendor payments directly through those agencies using its general levy authority, we are recommending that IRS work individually with DOD and CMS on ways for them to periodically provide IRS with current vendor information, thus enabling IRS to identify potential levy sources.

We obtained written comments on a draft of this report from the Commissioner of Internal Revenue (see app. II) and the Commissioner of the Financial Management Service (see app. III), which are discussed at the end of this report. The Commissioner of Internal Revenue generally agreed with our recommendations. The Commissioner of the Financial Management Service disagreed with our recommendation that FMS take the lead in initiating discussions with other agencies in an effort to include federal vendor payments in the continuous levy program, and we have revised the recommendation to reflect that IRS and FMS should jointly initiate such discussions.

We also received written comments from the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (see app. IV), and oral comments from a representative of the United States Postal Service, in which they generally agreed with our recommendations. In addition, we received technical comments from the Acting Deputy Administrator of the Centers for Medicare & Medicaid Services, in which he stressed that CMS vendor payments could not be included in the continuous levy program until a new CMS integrated accounting system is completed.

Background

FMS receives payment records from and makes payments on behalf of most federal agencies. However, a number of federal agencies have their own disbursing authority. For example, USPS paid about $42 billion in salary and benefits to almost 800,000 career employees in calendar year 1999, and entered into more than 47,000 contracts with vendors in calendar year 1998, totaling almost $8 billion. DOD disbursed over $295 billion in fiscal year 2000, including about $150 billion in contractor and vendor payments and about $100 billion in salary and retirement payments. In addition, Medicare contractors processed over 900 million fee-for-service claims during fiscal year 2000, totaling nearly $175 billion.

In addition to disbursing payments for various federal agencies, FMS provides centralized debt collection services for most federal agencies. To aid in federal debt collection, FMS has in place the Treasury Offset Program, which uses a centralized database of delinquent debts that have been referred for offset against federal payments. This database includes federal nontax debts and federal tax debts, as well as state tax debts and child support debts. FMS currently matches federal tax refunds, federal retirement and vendor payments, and certain federal salary and social security benefit payments against its database of delinquent debts, and when a match of both TIN and name control[9] occurs, FMS offsets the payment, thereby reducing or eliminating the debt. FMS plans to include some non-FMS disbursed federal salary payments in the Treasury Offset Program in the latter half of 2001.

A provision included in the Taxpayer Relief Act of 1997 enhanced IRS' ability to collect delinquent federal tax debt by authorizing IRS to continuously levy up to 15 percent of certain federal payments made to delinquent taxpayers. FMS modified the Treasury Offset Program to enable IRS to electronically serve a tax levy to FMS once IRS has notified the delinquent taxpayer of the pending levy. In July 2000, IRS began adding tax debts to FMS' database of delinquent federal debts, thus initiating the continuous levy program. For this program, FMS compares federal payee information from agency payment records with IRS' accounts receivable records. When a match of both the TIN and name control occur, FMS informs IRS of the match and IRS then notifies the taxpayer of the pending

[9]The name control is the first four characters of an individual's last name or the first four characters of a business name.

tax levy.[10] If the taxpayer fails to make an effort to satisfy the tax debt within 30 days,[11] such as by payment in full or entering into an installment agreement, IRS will then instruct FMS to begin levying 15 percent of subsequent payments made to the taxpayer or the exact amount of tax owed if it is less than 15 percent of the next payment. For payments disbursed on behalf of other agencies, FMS deducts the amount to be levied before making the payment, and the levied amount is then credited to IRS.[12] In an April 2000 report, we estimated that IRS could potentially collect as much as $478 million annually through this program.[13]

IRS Could Recover at Least $270 Million Annually From Delinquent Taxpayers Receiving USPS, DOD, and CMS Payments

Based on matching federal payments made by the agencies to IRS' accounts receivable data, we estimate that including payments disbursed by USPS, DOD, and CMS in the continuous levy program could result in recovering at least $270 million annually from about 70,000 delinquent taxpayers. An additional $16 million in delinquent taxes could be recovered annually from about 656 vendors if IRS were to provide FMS with the different names these vendors have used for tax purposes when FMS matches vendor payment data against IRS' accounts receivable data.

The Number of Taxpayers Affected and Delinquent Taxes Recovered Annually Could Be Substantial

Our analysis of IRS' accounts receivable data as of June 30, 2000, showed that about 70,400 taxpayers received about $1.9 billion in payments–about $8.2 billion on a annualized basis–from either USPS, DOD, or CMS, and the TIN and name on their payment records exactly matched the TIN and name on IRS' accounts receivable records. These taxpayers owed over $1 billion in delinquent taxes at the time they received these payments and

[10]According to IRS, if a taxpayer had already received notification of a pending tax levy before the FMS match process, IRS would then immediately serve the levy to FMS, and an additional notice would not be sent.

[11]For social security payments, a second notification letter is sent to taxpayers, and they will receive an additional 30 days before a levy is imposed.

[12]When levying payments disbursed directly by other federal agencies, such as USPS and DOD, FMS plans to identify the amount to be levied and to then notify the respective payment agency to deduct this amount from the payment before it is made to the payee.

[13]See *Tax Administration: IRS' Levy of Federal Payments Could Generate Millions of Dollars* (GAO/GGD-00-65, Apr. 7, 2000).

met IRS' criteria to be included in the continuous levy program.[14] As shown in table 1, we estimate that IRS could recover as much as $277.5 million annually if these payments were included in the continuous levy program.

Almost half of the $277.5 million in delinquent taxes that could be recovered would come from vendor payments. The rest would come from wage and salary payments to employees and retirement payments.

The amount of delinquent taxes recovered annually could be somewhat lower because some taxpayers might make other arrangements with IRS to resolve their tax debts once they receive a notice of levy. For example, in an effort to avoid a pending tax levy, some taxpayers might contact IRS to arrange to pay their delinquent tax in full or through entering into an installment agreement or submitting an offer-in-compromise.[15] However, such actions on the part of the taxpayer in response to the levy notice would be an added benefit of the program.

[14]To meet the program criteria, a tax delinquent account must include a valid TIN and must not be in one of several exclusion categories, such as under criminal investigation, bankruptcy, litigation, or a pending installment agreement, or classified as currently not collectible due to hardship.

[15]An offer-in-compromise is a taxpayer proposal to settle a tax debt for less than the amount owed.

Table 1: Potential Taxpayers Affected and Potential Annual Tax Recoveries

Dollars in Millions

Type of payment	Potential taxpayers affected	Delinquent tax liability	Potential annual federal payments[a]	Potential annual tax recoveries[b]
USPS wages & salary	10,039	$100.1	$228.8	$33.8
USPS vendor pay	417	18.3	263.6	4.3
USPS total	**10,456**	**$118.4**	**$492.4**	**$38.1**
DOD military active duty pay	7,951	$28.4	$192.0	$28.0
DOD civilian pay	6,758	75.0	166.4	24.6
DOD military retirement	28,209	405.2	374.4	55.7
DOD military reserve pay	12,114	81.5	27.6	4.1
DOD vendor pay	1,445	142.2	4,206.0	49.2
DOD total	**56,477**	**$732.3**	**$4,966.4**	**$161.6**
CMS vendor pay	3,504	$172.6	$2,734.8	$77.8
CMS total	**3,504**	**$172.6**	**$2,734.8**	**$77.8**
Overall total	**70,437**	**$1,023.3**	**$8,193.6**	**$277.5**

[a]Vendor payments were for the third quarter of fiscal year 2000; USPS wage and salary payments and DOD civilian payments were for one biweekly pay period in June 2000; and DOD military active duty, retirement, and reserve payments were for the month of June 2000. These payments totaled $1,865.8 million. To annualize the potential federal payments we multiplied vendor payments by 4; USPS wage and salary payments and DOD civilian payments by 26; and DOD military active duty, retirement, and reserve payments by 12.

[b]To determine the amount that could be levied for each payment, we calculated either 15 percent of the payment amount or the actual amount of tax owed if it was less than 15 percent of the payment. To annualize the potential tax recoveries, we multiplied the amount of levied vendor payments by 4; the amount of levied USPS wage and salary payments and DOD civilian payments by 26; and the amount of levied DOD military active duty, retirement, and reserve payments by 12. The potential annual tax recoveries could vary depending on the extent to which the number of tax delinquent accounts that meet the program criteria either increase or decrease each year.

Source: GAO analysis of agency payment records and IRS' accounts receivable records.

Although the amount of delinquent taxes recovered could be somewhat lower, as noted earlier, our estimates of the amount of delinquent taxes that might be recovered are understated because we did not receive data for over 50 percent of the Medicare vendor payments made for the time period we reviewed. In addition, we were unable to match about $3.4 billion in DOD vendor payments against IRS' accounts receivable data because DOD's payment records did not contain a TIN. According to DOD officials, DOD has recently increased its emphasis on requiring vendors to provide a TIN when registering to do business with DOD.

Additional Delinquent Taxes Could Be Collected If FMS Had the Different Names Used by Vendors for Tax Purposes

Under procedures for vendor payments that are paid by FMS and currently subject to continuous levy, IRS' file of accounts receivable data provided to FMS includes only the most recent name a vendor has used for tax purposes. As a result, FMS' ability to exactly match the vendor name on payment records against IRS' tax debts is limited.

IRS already makes additional names for individual taxpayers included in its databases available to FMS for use in the existing continuous levy program. For example, if taxpayers change their name when they marry, the name used as a single person would be sent to FMS along with their married name. This is not the case for businesses. For vendor payments currently paid by FMS and thus included in the continuous levy program, if a business were to change its name on its federal tax return, IRS would provide FMS with the most current name in its records, but not the prior name.

When making our overall estimates of delinquent taxes that could be recovered if USPS, DOD, and CMS Medicare vendor payments were included in the continuous levy program, we determined the amount of additional revenue that could be raised if IRS changed its policy and provided FMS with all of the names it has for vendors. In addition to the 70,400 taxpayers whose TIN and name on the payment records exactly matched the TIN and name on IRS' accounts receivable records, we found 1,228 instances in which the TIN on the vendor payment records exactly matched the TIN on IRS' accounts receivable records, but the name on the payment records did not exactly match the name on IRS' records. For 656 of the 1,228 vendors, we found different names used by these vendors in an IRS database that showed they were in fact the delinquent taxpayers. There were no additional names in the IRS database for the remaining 572 vendors. The 656 taxpayers for which there were additional names owed about $26 million in delinquent taxes. We estimate that IRS could recover about $16 million annually if the different names it has for vendors were provided to FMS for the continuous levy program.

If IRS were to provide FMS with the different names it has for business taxpayers, this would benefit the current continuous levy program by increasing the instances in which FMS could match the name in both records, as required before a levy can be made.[16] IRS officials agreed and

[16]In our April 2000 report (GAO/GGD-00-65), we identified over 32,000 mismatches on taxpayers' names that we estimated could result in an additional $74 million annually if such mismatches were corrected.

indicated that providing such a file of additional business names to FMS could be done and would be well worth the effort. FMS officials indicated they were in favor of receiving additional business names for use in the continuous levy program.

Some Payments Could Be Included in the Continuous Levy Program Sooner Than Others

Whether federal payments made by USPS, DOD, and CMS could be included in the continuous levy program and, if so, when varied by agency and type of payment. FMS plans to receive and include USPS and DOD salary and wage payments, as well as military retirement payments, in the Treasury Offset Program within the next 3 years, thus making them available for continuous levy and enabling IRS to begin collecting about half of the $277.5 million in potential annual tax recoveries mentioned earlier. Vendor payments could also be included in the continuous levy program, with the full range of USPS payments possibly included in less than a year, DOD payments possibly included within 3 years, and CMS payments possibly included within about 5 years. However, with the exception of some DOD vendor payments, officials from FMS, IRS, and the three agencies have not discussed when and how all of these agencies' vendor payments could be included in the continuous levy program and whether practical options exist to include some portion of the vendor payments in the program before all such payments are available.

USPS Payments Could Be Included in the Continuous Levy Program Relatively Soon

FMS officials stated that their discussions with USPS have focused on including salary payments in the Treasury Offset Program rather than vendor payments. USPS plans to provide employee salary payments to FMS for inclusion in the Treasury Offset Program, and FMS is working with USPS to develop a specific implementation date. According to FMS officials, once USPS salary payments are available for the Treasury Offset program, they could be included in the continuous levy program about a month later.

USPS officials stated that, although they have not had any recent discussions with FMS about including vendor payments in the Treasury Offset Program, they do not believe any obstacles would prevent making vendor payments available to FMS, since all USPS vendor payments are disbursed from one payment center. Officials indicated that within about 4 months of FMS' requesting them to do so, they could likely be ready to provide vendor payments to FMS and to levy payments for which FMS indicates a match with IRS' accounts receivable data. USPS officials did say that levying vendor payments could present some challenges. For example, USPS vendor payments generally are not made on a particular

schedule, but rather, are controlled by terms specified in individual contracts. As a result, unlike biweekly salary payments, USPS disburses vendor payments daily throughout the business week. Therefore, vendor data exchanges between USPS and FMS would likely have to occur with greater frequency than salary data exchanges. However, USPS officials stated that the Prompt Payment Act requires that vendor payments be deferred until the pay cycle immediately preceding the payment due date. This should provide an adequate interval to offset such payments, particularly if the vendor data exchanges with FMS were to occur either weekly or biweekly.

USPS officials also stated that USPS does not currently offset vendor payments to recover debts owed to USPS,[17] and therefore, specific offset procedures would have to be developed. However, these officials were confident that they could modify the USPS system to enable them to flag any vendor payments requiring offset identified through the Treasury Offset Program. They further stated that such an offset would require manual intervention to make the offset and reconcile the vendor's account.

Although USPS officials said that they could make vendor payments available to FMS within about 4 months of FMS' requesting such data, USPS and FMS officials have not discussed specific arrangements for doing so, such as when FMS could be ready to receive USPS vendor payment data or how long it might take USPS to develop procedures for performing such offsets.

DOD Salary, Retirement, and Some Vendor Payments Could Be Included in the Continuous Levy Program Within 3 Years

FMS is working with DOD to include civilian, military retirement, and military active duty payments in the Treasury Offset Program, thus eventually making these types of payments available for the continuous levy program. According to DOD officials, the approximate timeframes that have been established for providing DOD payments to FMS are as follows:

- DOD civilian salary payments in the latter part of 2001,
- DOD military retirement payments in 2002, and
- DOD military active duty payments in 2003.

[17]USPS establishes an accounts receivable file and bills its vendors to recover debts, such as overpayments.

DOD has also initiated preliminary discussions with FMS about providing some vendor payments to FMS. These payments are all made from one payment system maintained at one DOD Defense Finance and Accounting Service (DFAS) location and accounted for about 48 percent of all DOD vendor payments made in fiscal year 2000. However, DOD officials have not specifically discussed providing other vendor payments to FMS in the near future, and they have concerns regarding the current capability to make other vendor payments available for the continuous levy program because of DOD's decentralized vendor payment systems. For example, vendors providing goods and services to three of the military branches–Army, Air Force, and Navy[18]–are paid from separate vendor payment systems maintained at various DFAS locations. In addition, there are separate vendor payment systems for processing certain specialty items, such as fuels and commissary resale products. DOD officials stated that DFAS staff do not currently have the capability to track multiple payments made from the various vendor payment systems to a particular vendor. As a result, if they were to provide vendor payments to FMS from these decentralized payment systems, DOD officials were concerned that there would be a risk of offsetting more in payments than a vendor might owe in delinquent taxes.

Although DOD officials expressed concerns about offsetting more in payments than a vendor might owe in delinquent taxes, IRS officials indicated there are controls in the continuous levy program to prevent such overpayments. For example, IRS provides FMS with a weekly file updating the balance due for each account subject to continuous levy. In addition, FMS has the capability to update the balance due for each account after each payment is levied, thus enabling FMS to identify when a tax debt has been reduced to zero. In addition, selected staff in each IRS office are authorized to directly access FMS' levy database to rescind a levy if necessary, such as for taxpayers subject to a continuous levy that decide to either fully pay the tax debt or enter into an installment agreement. FMS and IRS officials have not discussed these controls with DOD to determine whether they would mitigate DOD's overpayment concerns and pave the way for other types of vendor payments to be provided to FMS for the continuous levy program, in addition to those vendor payments currently under consideration.

[18]Marine Corps vendor payments are made from the same payment system from which Army vendor payments are made.

DOD is currently developing a centralized vendor payment system that could increase its capability to eventually provide all vendor payments to FMS. According to DOD officials, the multiple vendor payment systems currently in use are to be replaced by a single system known as the Defense Procurement Payment System. The latest DOD estimate indicates that the initial phase for implementing the new system will begin in the latter part of fiscal year 2001. DOD officials estimate that the new system may be fully operational by the latter part of fiscal year 2003 or the early part of fiscal year 2004. However, they indicated that this is a "best-case" scenario.[19]

CMS Vendor Payments Will Not Be Available to the Continuous Levy Program for Several Years

FMS and CMS have not held any discussions related to including Medicare vendor payments in the continuous levy program. CMS and Medicare contractors we spoke with agreed that including all Medicare payments in the continuous levy program would not be possible for several years owing to the decentralized payment system in which the Medicare program operates. CMS administers the Medicare program through about 50 health care contractors, which process and pay over 900 million fee-for-service claims totaling nearly $175 billion annually. These contractors are responsible for verifying the accuracy of the name and TIN used by health care providers that bill the Medicare program for reimbursement. Thus, the ability to identify and subsequently levy the payments made to Medicare providers who owe federal taxes would depend on establishing effective coordination between IRS and FMS and each of the contractors that pay the claims.

The possibility of including Medicare vendor payments in the continuous levy program is further complicated because CMS contractors currently use one of six different computerized systems to process and pay claims. Although CMS eventually plans to have all of its contractors use one of three standardized claims processing systems, this consolidation is not expected to be completed before 2004. The contractors responsible for maintaining the three standardized systems believe that integrating a continuous levy process into Medicare claims processing systems is possible, but the systems would likely have to be modified and tested before implementation.

[19]As recently as October 2000, DOD projected that the Defense Procurement Payment System was to be fully operational by the beginning of 2003.

Planned enhancements to the CMS accounting and provider enrollment systems may improve the likelihood that Medicare vendor payments could be included in the continuous levy program in the future. For example, in order to comply with federal financial management systems requirements, the agency is developing the CMS Integrated General Ledger and Accounting System. As currently envisioned by CMS, this system would contain detailed information on each Medicare claim paid, and as such, might offer FMS and IRS a central point of coordination for continuously levying Medicare vendor payments. Also, CMS is developing a centralized database of updated information on all health care providers that bill the Medicare program. This system is intended to help ensure that only qualified providers with a valid TIN enroll in and receive payments from the Medicare program. Once fully operational, this system is expected to interface with other CMS systems, thereby helping to ensure that the name and TIN used by providers have been validated by IRS. Neither system is scheduled to be fully operational before late 2006.

Although these new systems may improve the likelihood that CMS vendor payments could be continuously levied in the future, FMS and CMS officials have not held discussions to ensure this result. Medicare contractors already offset payments to vendors for various reasons, such as recovery of previously overpaid claim amounts, which could result from either inadvertent billing errors or intentional misrepresentations. However, FMS and CMS officials have not explored whether these processes for offsetting vendor payments could support including some CMS vendor payments in the continuous levy program before late 2006.

IRS Could Use Its General Levy Authority for USPS, DOD, and CMS Vendor Payments Until They Are Available to the Continuous Levy Program

In addition to the specific levy authority IRS has through the continuous levy program under section 6331(h), IRS has general levy authority under Internal Revenue Code section 6331 to collect federal tax debts by issuing a levy notice directly to a federal agency. The continuous levy program provides IRS with an automated process for serving tax levies and collecting delinquent taxes through FMS. On the other hand, in order to levy payments under its general levy authority IRS must identify that an agency is making payments to a delinquent taxpayer. Unlike the 15-percent levy amount limitation for the continuous levy program, under its general levy authority, IRS can levy up to 100 percent of a taxpayer's property and rights to property in some cases.

IRS currently uses its general levy authority to levy federal salary and retirement payments.[20] However, according to officials, IRS uses its general levy authority less frequently to levy federal vendor payments, partly because IRS has limited ability to identify and serve levies against vendor payments. According to IRS officials, almost all information IRS has on vendor payments comes from annual information returns that federal agencies and contractors are required to file for such payments. It takes IRS several months to process information returns and make them available to collection staff so they can identify potential levy sources. According to IRS officials, information return data are of little use because there is no certainty that an individual or business that received payments in a past year would receive payments in the current year. IRS officials acknowledged that obtaining current information on taxpayers that may be receiving DOD and CMS vendor payments might give IRS collection staff an opportunity to levy such payments under its general levy authority until such time as these payments could be included in the continuous levy program.

DOD and CMS have databases that could be used to provide IRS with current information concerning individuals and businesses receiving vendor payments. However, IRS has not requested such information from these agencies. According to DOD officials, a DOD Central Contractor Register currently includes information on over 160,000 vendors registered to do business with DOD, including a vendor's TIN and name, and an

[20]Internal Revenue Code section 6334(d) requires that a certain amount of salaries and wages be exempted from levy.

extract of this information could be provided periodically to IRS.[21] Medicare contractors we spoke with stated that it may be possible to provide periodic extracts of payment data on recently paid provider claims, while CMS officials indicated that extracts from centralized agency databases, such as the National Claims History File, could also be made available to IRS. Information from each of these databases could be useful to IRS for identifying a current source against which to serve a levy under IRS' general levy authority. For example, IRS could arrange to obtain information from these agencies concerning vendors that currently receive periodic payments and when such payments are made, and if such vendors have federal tax delinquencies, work out a schedule for levying subsequent payments.

As with IRS' other collection efforts, resource constraints and other collection priorities may limit the amount of delinquent taxes that IRS could recover from DOD and CMS vendors using its general levy authority. However, until all such vendor payments could be included in the continuous levy program, obtaining periodic vendor information from these agencies could enable IRS to begin collecting some portion of the delinquent taxes owed by these vendors.

Conclusions

IRS' mission includes providing taxpayers with top quality service by applying the tax law with integrity and fairness to all. Until more types of federal payments are available, the current continuous levy program results in unequal treatment of delinquent taxpayers depending on whether their federal payments are made by FMS on behalf of other agencies or directly by the agencies themselves. Delinquent taxpayers receiving payments from FMS generally are subject to the continuous levy program; those receiving payments directly from federal agencies are not and IRS is limited to using its general levy authority in order to levy some of these non-FMS payments.

Although practical issues may impede achieving similar treatment of all delinquent taxpayers receiving federal payments, progress could be made and substantial additional revenues could be collected—in fairness to those who properly pay their taxes. FMS has plans for including USPS

[21]We obtained an extract of the Central Contractor Register and matched it with IRS' accounts receivable file and found that it included about 4,300 contractors and vendors that owed IRS about $250 million in delinquent taxes as of June 30, 2000.

salary and DOD salary and retirement payments in the continuous levy program. Similar plans do not exist, however, for including all vendor payments from USPS, DOD, and CMS in the continuous levy program. Discussions among FMS, IRS, and the agencies have the potential to ensure that all of these payments are included in the continuous levy program as soon as practical, and for possibly accelerating the inclusion of certain types or categories of vendor payments.

Further, the effectiveness of the current continuous levy program and its expansion to other payments could be enhanced if IRS were to begin sharing the different names that businesses use for tax purposes with FMS. This would treat businesses more similarly to how IRS already handles individual taxpayers in the continuous levy program.

In the interim, until the continuous levy program can be extended to more of the payments made directly by agencies, IRS' use of its existing general levy authority could be improved to better ensure that all delinquent taxpayers receiving federal payments are subject to potential collection action. DOD and CMS have available data that could be shared with IRS to increase IRS' ability to identify those taxpayers' whose federal payments could be practically and effectively levied under the general levy program.

Recommendations for Executive Action

To enhance the value of agency payment data that are available for the continuous levy program, we recommend that the Commissioner of Internal Revenue provide FMS with a file of all business names that IRS has for each business taxpayer that owes federal taxes and meets the program criteria.

To increase the potential for collecting delinquent federal taxes owed by federal vendors, we recommend that the Commissioner of Internal Revenue and the Commissioner of the Financial Management Service jointly initiate specific discussions with USPS, DOD, and CMS to develop plans for obtaining vendor payments from the respective agencies for the continuous levy program. The discussions should cover plans for including all of the agencies' vendor payments in the continuous levy program, as well as options for including some of their vendor payments in the program on an accelerated basis.

To ensure that IRS has updated information on vendor payments to aid in identifying possible levy sources for use under its general levy authority, we recommend that the Commissioner of Internal Revenue work with DOD and CMS officials to develop the means for these agencies to

periodically provide IRS with vendor information that is more current than that which IRS receives now through annual information returns.

Agency Comments and Our Evaluation

We received written comments on our draft report from the Commissioner of Internal Revenue (see app. II) and the Commissioner of the Financial Management Service (see app. III). Both the IRS and FMS Commissioners offered factual updates, clarifications, or technical comments that we have incorporated throughout this report where appropriate.

The Commissioner of Internal Revenue generally agreed with our recommendations. Regarding our recommendation that the Commissioner of the Financial Management Service initiate discussions with USPS, DOD, CMS, and IRS officials to develop plans for obtaining vendor payments from the respective agencies for the continuous levy program, the Commissioner of FMS disagreed that initiating discussions with these agencies was FMS' responsibility. Rather, the Commissioner stated that it was IRS' responsibility to initiate and jointly schedule with FMS the implementation of the continuous levy program for DOD, USPS, and CMS vendor payments. The Commissioner further stated that once IRS is ready to develop this process, FMS will work with the agencies and IRS to make the necessary system changes to allow IRS to continuously levy these payments.

We agree with the FMS Commissioner's view that IRS has the responsibility to participate in leading discussions for implementing the continuous levy program for vendor payments. However, because FMS is a principal component in developing the necessary processes to effectively implement continuous levies, we also believe that FMS must be equally involved in the discussions on extending the continuous levy program to vendor payments paid by agencies other than FMS. Accordingly, we modified our recommendation to state that the IRS and FMS Commissioners should jointly initiate specific discussions with USPS, DOD, and CMS for this purpose. Having been made aware of this modification to our recommendation before providing comments, the IRS Commissioner agreed in his written comments to participate with FMS in discussions with the agencies and to assist FMS in developing plans for obtaining vendor payments for inclusion in the continuous levy program.

To enhance the value of agency payment data available to the continuous levy program, the Commissioner of Internal Revenue agreed to provide FMS with a file of all business names that IRS has for each business taxpayer that owes federal taxes and meets the program criteria. The

Commissioner stated that a draft Request for Information Services has been submitted to begin the formal process necessary to make this change, and the change is expected to be completed by January 2003.

To ensure that IRS has updated information on vendor payments to aid in identifying possible levy sources for use under its general levy authority, the Commissioner agreed to pursue the costs and benefits of securing possible levy sources from such agencies as DOD as well as pursuing more frequent levy source updates from internal IRS sources.

We also received written comments from the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (see app. IV), and oral comments from a representative of the United States Postal Service, in which they generally agreed with our recommendations.

In addition, we received technical comments from the Acting Deputy Administrator of the Centers for Medicare & Medicaid Services, in which he stressed that CMS vendor payments could not be included in the continuous levy program until a new CMS integrated accounting system is completed. Given the substantial delinquent taxes that could potentially be recovered from CMS vendors and that CMS contractors already offset vendor payments for various other reasons, we believe that discussions between IRS, FMS, and CMS should explore whether some portion of the vendor payments could be included on an accelerated basis.

As agreed with your offices, unless you announce the contents of this report earlier, we plan no further distribution until 30 days from the date of this letter. At that time, we will send copies to the Ranking Minority Member, House Committee on Ways and Means; Ranking Minority Member, Subcommittee on Oversight; and the Chairman and Ranking Minority Member, Senate Committee on Finance. We will also send copies to the Commissioner of Internal Revenue, Commissioner of the Financial Management Service, Secretary of Defense, Administrator of the Centers for Medicare & Medicaid Services, Postmaster General, and other interested parties. Copies of this report will also be made available to others upon request.

If you have any questions concerning this report, please contact Ralph Block at (415) 904-2000 or me at (202) 512-9110. Key contributors to this work are listed in appendix V.

Michael Brostek
Director, Tax Issues

Appendix I: Objectives, Scope, and Methodology

Our objectives in this report were to (1) determine the number of delinquent taxpayers receiving federal payments from the United States Postal Service (USPS), Department of Defense (DOD), and Centers for Medicare & Medicaid Services (CMS) that would be affected and the tax debt that might be recovered if they were to be included in the continuous levy program; (2) determine whether these types of payments could be included in the continuous levy program and the timeframes for doing so; and (3) identify other actions that could be taken to enhance IRS' ability to manually levy federal payments to delinquent individuals and businesses that are not currently included in the continuous levy program.

Scope and Methodology

To determine the number of delinquent taxpayers receiving federal payments from USPS, DOD, and CMS that would be affected and the tax debt that might be recovered if they were included in the continuous levy program, we obtained and matched IRS' accounts receivable records as of June 30, 2000, that met IRS' continuous levy program criteria with agency and contractor payment records as follows:

- For wage and salary payments, USPS provided payments for a biweekly pay period made on June 23, 2000; for vendor payments, USPS provided payments made during the April through June 2000 quarter.
- For DOD military salary, retirement, and reserve payments, the DOD Defense Manpower Data Center provided payments made for the month of June 2000; for DOD civilian salary, the DOD Defense Management Data Center provided payments made for the biweekly pay period ending July 1, 2000; for DOD vendor and contractor payments, the Defense Finance and Accounting Service provided payments made during the April through June 2000 quarter.
- For CMS Medicare vendor payments, Medicare contractors provided payments made during the April through June 2000 quarter.

For payments that matched on both taxpayer identification number (TIN) and name, we calculated either 15 percent of the payment or the actual amount of tax owed if it was less than 15 percent of the payment to determine the amount that could be levied. All estimates of the delinquent taxes that might be recovered throughout this report have been annualized. Although some taxpayers might take actions to avoid a continuous levy, we believe our estimates of the tax debt that might be recovered are understated because we did not receive data for over 50 percent of Medicare payments made during the April through June 2000 quarter. In addition, we were unable to match about $3.4 billion in DOD

vendor payments against IRS' accounts receivable data because the payment records did not contain a TIN.

Based on our prior work involving the continuous levy program, we were aware that problems with information contained in vendor payment records could make such records unsuitable for matching against IRS' accounts receivable file, thus reducing the amount of tax debt that might be recovered. To identify additional debt that could be collected if problems with vendor payment records were corrected, we analyzed agency payment records to identify instances of a missing or inconsistent payee TIN or name. We selected all instances in which the TIN in the payment records matched the TIN in IRS' accounts receivable records, but the name in the payment records did not match the name in IRS' records. For these instances, we then reviewed IRS' records to determine whether it had additional information to indicate that the payee was in fact the delinquent taxpayer in question.

To determine whether USPS, DOD, and CMS payments could be included in the continuous levy program and the timeframes for doing so, we interviewed IRS officials responsible for the continuous levy program. We also interviewed Financial Management Service (FMS) officials involved in recent discussions with various agencies in an attempt to include non-Treasury disbursed payments in the Treasury Offset Program. In addition, we interviewed officials from USPS, DOD, and CMS as well as selected Medicare contractors responsible for processing the various types of payments.

To identify actions that could be taken to enhance IRS' ability to manually levy federal payments from delinquent individuals and businesses that are not included in the continuous levy program, we discussed this issue with IRS officials and officials from USPS, DOD, and CMS. We identified various agency databases that could be used to provide IRS with updated vendor payment sources. We also discussed IRS' current levy procedures with IRS officials, and reviewed the related tax law governing these procedures.

We did our work at IRS, FMS, and USPS headquarters in Washington, D.C.; DOD headquarters in Arlington, VA; CMS headquarters in Baltimore, MD; Defense Finance and Accounting Service Centers in Columbus and Cleveland, OH, and Denver, CO; Defense Manpower Data Center in Seaside, CA; and the CMS Regional Office in San Francisco, CA. We also interviewed Medicare contractors located in Alabama, California, Florida, Maryland, New York, North Dakota, Pennsylvania, Texas, and Wisconsin.

Appendix II: Comments From the Internal Revenue Service

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

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

COMMISSIONER

July 16, 2001

Mr. Michael Brostek
Director, Tax Administration and Justice
U. S. General Accounting Office
Washington, DC 20548

Dear Mr. Brostek:

Thank you for the opportunity to reply to the draft report titled Tax Administration: Millions of Dollars Could Be Collected If IRS Levied More Federal Payments. We welcome your comments and are in general agreement with your recommendations, as elaborated on later in our response. We also wish to take this opportunity to further clarify several statements in the report.

See comment 1.

I am concerned that in your opening paragraph you give the impression the IRS does not have or use the authority to levy on payments disbursed directly by other federal agencies. Currently, the IRS has two continuous levy programs:

- A continuous automated levy system, the Federal Levy Payment Program (FPLP) with Treasury's Financial Management Service (FMS); and
- A paper levy program administered under the general levy guidelines.

Both levy programs have the same levy authority. We have had success with continuous paper levies that apply to federal salaries. The paper levies on other payment types have not been as successful due to timing and the age of those sources.

See comment 2.

See comment 3.

In the third paragraph of the "Background" section of your report, you said the IRS serves a levy through FMS. We serve levies "to" FMS rather than through them. Further, down in the same paragraph you say, " When an exact match of both the TIN and name occur, FMS informs IRS of the match and IRS then notifies the taxpayer of the pending tax levy." This is true only if the taxpayer has not received notification of a pending tax levy prior to the match process. When the match occurs and we have made the notification, we serve the levy immediately to FMS.

See comment 4.

Under "The Number of Taxpayers Affected and Delinquent Taxes Recovered Annually Could Be Substantial," we would like to comment on the last sentence in the third paragraph, which states, "However, such actions on the part of the taxpayer in response to the levy notice would be an indirect benefit of the program." We feel this is a direct benefit because, as a result of the continuous

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levy program, taxpayers are voluntarily contacting the IRS to make arrangements to resolve their tax liability. Resolution of the tax liability had not occurred prior to the levy.

See comment 5.

Under "IRS Could Use Its General Levy Authority for USPS, DOD, and CMS Vendor Payments until They Are Available to the Continuous Levy Program," we would like to clarify your statement in the second sentence of the second paragraph, "However, according to officials, IRS rarely uses this authority to levy federal vendor payments...." Although most IRS levies are issued through the Automated Collection System (ACS), federal vendor payments are levied less frequently due to the limited ability to identify federal vendor payments and the systemic nature of ACS. In contrast, in the field operation we levy federal vendor payments directly whenever possible.

See comment 6.

In the first paragraph under "Conclusions," we are concerned with the use of the term "disparate treatment" in the second sentence. We are limited in the use of this program until FMS brings in more paying agencies. We also are concerned with the last sentence, "Delinquent taxpayers receiving payments from FMS generally are subject to continuous levy while those receiving payments directly from federal agencies are not." As previously mentioned, we issue continuous paper levies on those payments received from federal agencies.

Our response to the Recommendations for Executive Action is as follows:

Recommendation 1:

To enhance the value of agency payment data that are available for the continuous levy program, we recommend that the Commissioner of Internal Revenue provide FMS with a file of all business names that IRS has for each business taxpayer that owes federal taxes and meets the program criteria.

We agree with your recommendation. A preliminary telephone discussion with Information Technology Services (ITS) indicates they can accomplish this change. Our Small Business/Self-Employed Division submitted a draft Request for Information Services on May 18, 2001, to begin the formal process to make this change. I anticipate the change will be completed by January 2003.

Recommendation 2:

To increase the potential for collecting delinquent federal taxes owed by federal vendors, we recommend that the Commissioner of Internal Revenue and the Commissioner of the Financial Management Service jointly initiate specific discussions with USPS, DOD, and CMS to develop plans for obtaining vendor payments from the respective agencies for the continuous levy program. The discussions should cover plans for including all of the agencies' vendor payments in the continuous levy program, as well as options for including some of their

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vendor payments in the program on an accelerated basis.

We will participate with FMS in discussions that include other federal agencies and assist them in developing plans for obtaining vendor payments from those agencies for FPLP.

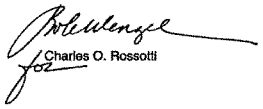
Recommendation 3:

To ensure that IRS has updated information on vendor payments to aid in identifying possible levy sources for use under its general levy authority, we recommend that the Commissioner of Internal Revenue work with DOD and CMS officials to develop the means for these agencies to periodically provide IRS with vendor information that is more current than that which IRS receives now through annual information returns.

We will conduct a cost benefit study of securing possible levy sources from other agencies such as DOD, as well as pursuing more frequent updates from internal sources.

Again, thank you for the opportunity to comment on your report. I would be happy to discuss these issues with you.

Sincerely,



Charles O. Rossotti

The following are GAO's comments on the Internal Revenue Service's letter dated July 16, 2001.

GAO Comments

1. In response to IRS' concern that our text may have given the impression that IRS does not levy any federal payments that are not subject to the continuous levy program, we modified footnote 3 to recognize that IRS does levy such payments under its general levy authority.

2. IRS' suggested change has been incorporated into the text.

3. IRS' suggested change is included in footnote 10.

4. We deleted "indirect" from our text. While it is debatable whether the benefit would be direct or indirect, levy notices do sometimes result in taxpayers making other arrangements to resolve their tax liability.

5. IRS' suggested change has been incorporated into the text.

6. In response to IRS' concern with our use of the term "disparate treatment" of taxpayers in our conclusions, we have revised our text to state that whether or not taxpayers are included in the continuous levy program is predicated in part on whether their federal payments are made by FMS or directly by other agencies. We believe that this results in unequal treatment of delinquent taxpayers who receive federal payments and that this will only be corrected when more types of federal payments are available to the program.

Appendix III: Comments From the Financial Management Service

COMMISSIONER

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

July 5, 2001

Mr. Michael Brostek
Director, Tax Administration and Justice
U.S. General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Brostek:

The Financial Management Service (FMS) has received for comment a copy of the draft report (GAO-01-711), entitled Tax Administration: Millions of Dollars Could Be Collected If IRS Levied More Federal Payments. The draft Report contains one recommendation that relates to the Department of the Treasury's Financial Management Service (FMS) and its role in the collection of delinquent tax debt.

Recommendation

To increase the potential for collecting delinquent federal taxes owed by federal vendors, we recommend that the Commissioner of the Financial Management Service initiate specific discussions with USPS, DOD, CMS and IRS officials to develop plans for obtaining vendor payments from the respective agencies for the continuous levy program. The discussions should cover plans for including all of the agencies' vendor payments in the continuous levy program, as well as options for including some of their vendor payments in the program on an accelerated basis.

FMS Comment on Recommendation

It is clearly the responsibility of the Internal Revenue Service (IRS) to initiate and jointly schedule with FMS the implementation of the continuous levy program for vendor payments. FMS has held discussions with the Department of Defense (DOD), the United States Postal Service (USPS), and the Centers for Medicare and Medicaid Services (CMS) about offsetting their vendor payments through the Treasury Offset Program (TOP). Once IRS is ready to develop the process, FMS will work with these agencies and the IRS to make the necessary systems changes to allow the IRS to continuously levy non-Treasury disbursed (NTDO) vendor payments.

Page 2- Michael Brostek

With the passage of the Debt Collection Improvement Act and the Taxpayer Relief Act, FMS has systematically developed TOP by assessing which payment streams will provide for the highest dollars collected for the Federal government and implementing them in an orderly fashion. FMS believes that it is this very approach to the development and implementation of the different phases of TOP that has allowed us to be successful.

The Taxpayer Relief Act provided for the continuous levy of Federal payments, and the first phase was implemented in July 2000. In the next several months, FMS expects to start the implementation of the continuous levy of Federal salary and Social Security Administration (SSA) Title II benefit payments. All of the implementations to date have been well planned, developed, and implemented. FMS is currently starting the requirements phase of the implementation of offset of vendor payments with DOD. FMS cannot implement the levy of those vendor payments without the working partnership of IRS.

Other Comments

Concerning your discussion regarding the scheduling of Federal salary offsets for USPS (page 9 of the draft Report), please note that USPS has delayed the September 2001 implementation date. FMS is working with USPS to develop a new implementation date. Once offsets of NTDO salary payments are implemented, IRS will be able to levy salary payments through FMS; however, as noted above, no system currently exists to levy NTDO vendor payments.

Concerning the scheduling of Federal salary offsets with DOD (page 10 of the draft Report), FMS is working with DOD to solidify the phased implementation dates.

It should be noted that once FMS implements a system to offset NTDO vendor payments, IRS will have the flexibility to levy up to 100% of such vendor payments through FMS, subject to applicable law. In addition, the system will be designed to prevent the type of over collections that concern DOD, as noted on page 11 of the draft Report.

FMS also offers the following technical comments:

On page 4, paragraph 4, second sentence, the description of the centralized database for the Treasury Offset Program should state that in addition to Federal non-tax debts, the database also includes Federal tax debt, child support debt, and state tax debt.

On page 4, paragraph 4, third sentence, the description of the matching program should state, "FMS currently matches Federal tax refund, Federal retirement and vendor payments, as well as certain Federal salary and social security benefit payments, against

Page 3 - Michael Brostek

its database of delinquent debts, and when a match of both TIN and name control occurs, FMS offsets the payment, thereby reducing or eliminating the debt."

On page 5, paragraph 2, fifth sentence, the sentence on the matching process should state, "When a match of both TIN and name control occurs, FMS informs IRS of the match and IRS then notifies the taxpayer of the pending tax levy."

Thank you for the opportunity to respond to this draft GAO report. If you have any questions or wish to discuss these comments further, please contact Dean Balamaci on (202) 874-6660.

Sincerely,

Kenneth R. Papaj for
Richard L. Gregg

cc: Donald V. Hammond, OFAS

Appendix IV: Comments From the Department of Defense

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

JUL 17 2001

Mr. Michael Brostek
Director
Tax Administration and Justice
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Brostek:

The Department of Defense has reviewed the General Accounting Office draft report, "TAX ADMINISTRATION: Millions of Dollars Could Be Collected If IRS Levied More Federal Payments," dated June 21, 2001 (GAO Code 268917/OSD Case 4026), and concurs with the recommendations in the report.

Thank you for the opportunity to comment on the subject draft report.

Sincerely,

Nelson Toye
Deputy Chief Financial Officer

Appendix V: GAO Contacts and Staff Acknowledgments

GAO Contacts

Michael Brostek (202) 512-9110
Ralph T. Block (415) 904-2000

Acknowledgments

In addition to those named above, Wendy Ahmed, Tom N. Bloom, Robert C. McKay, Ellen Rominger, James J. Ungvarsky, and Elwood D. White made key contributions to this report.

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

February 1, 2007

VIA U.S. MAIL & FACSIMILE (202/690-6262)

Leslie V. Norwalk, Esq.
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building, Room 314-G
200 Independence Avenue, S.W.,
Washington, D.C. 20201

Dear Ms. Norwalk:

As part of our ongoing investigation of tax abuse, we requested the U.S. Government Accountability Office (GAO) to (1) determine whether vendors and contractors that receive Medicare and Medicaid payments are delinquent in the payment of their taxes, and (2) identify examples of vendors and contractors that have engaged in potentially abusive, fraudulent, or criminal activities. GAO's Forensic Audits and Special Investigations (FSI) unit is performing this work at our request.

It is our understanding that, on September 29, 2005, FSI requested that the Centers for Medicare and Medicaid Services (CMS) provide all calendar year 2005 Medicare claims and payment data. However, as of February 2, 2007, CMS has provided FSI with only nine months of data covering the period January 1, 2005 through September 30, 2005. We request that you provide FSI with the remainder of the claims and payment data for the period October 1, 2005 through December 31, 2005. Specifically, we request that you provide FSI:

- Physician, Inpatient, Outpatient, Hospice, Home Health, Skilled Nursing Facility, and Regional & National Durable Medical Equipment claims data for the final three months of calendar year 2005 (October 1, 2005 through December 31, 2005);

- Managed care and all other Medicare-related payments made during calendar year 2005 that did not go through the Medicare financial intermediaries; and

- A file that links the claims and other payment information by provider number to the provider's federal tax identification number (TIN).

Permanent Subcommittee on Investigations
EXHIBIT #2

We understand that FSI has also requested claims and payment data for calendar year 2006. We would appreciate your providing that information to FSI after the remaining data for calendar year 2005 has been provided. The timely receipt of this information is essential to the Subcommittee's investigation and we would appreciate your attention to this matter.

If you have any questions, please contact Elise J. Bean, Staff Director and Chief Counsel, at 202/224-9505, or Mark L. Greenblatt, Staff Director and Chief Counsel tor the Minority, at 202/224-3721.

Sincerely,

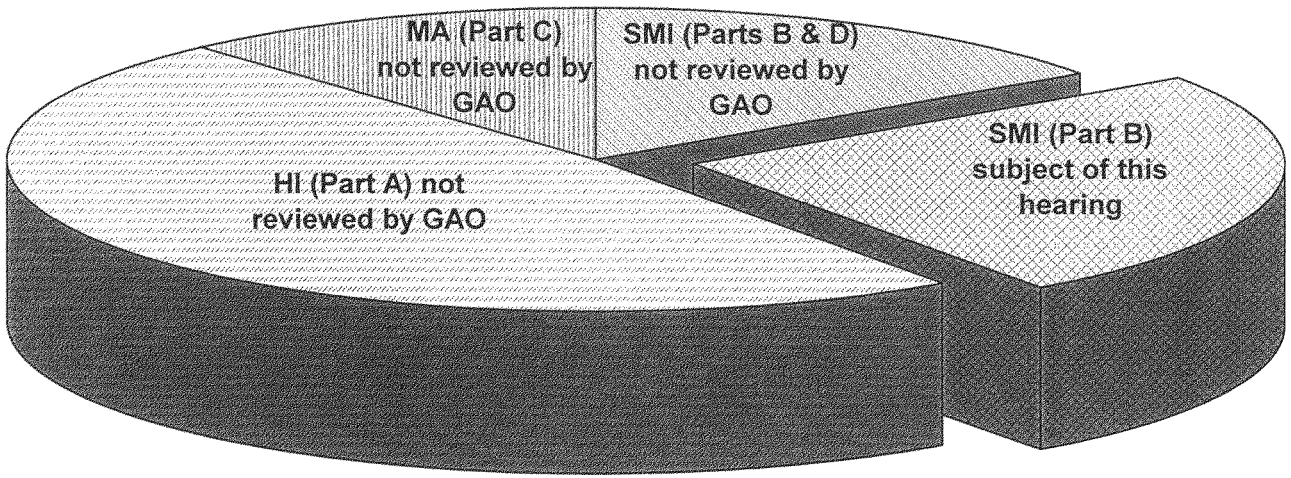
Norm Coleman
Ranking Minority Member
Permanent Subcommittee on Investigations

Carl Levin
Chairman
Permanent Subcommittee on Investigations

Permanent Subcommittee on Investigations

EXHIBIT #3

Medicare Benefits 2005



Prepared by the Permanent
Subcommittee on Investigations
Minority Staff

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD SUBMITTED BY THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

to

THE HONORABLE MARK EVERSON

Commissioner
Internal Revenue Service
U. S. Department of the Treasury

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
MEDICARE DOCTORS WHO CHEAT ON THEIR TAXES AND WHAT SHOULD BE DONE ABOUT IT
March 20, 2007

1. **Over the course of the last two years, GAO identified 163 egregious cases of Federal contractors with substantial tax debt, subsequently referring those cases to IRS for further investigation. Please describe what IRS has done to follow up on these cases.**

RESPONSE: IRS received 162 cases of Federal contractors with delinquent federal tax debt and/or delinquent federal tax returns identified by GAO as particularly egregious.

We have worked diligently to ensure that all appropriate cases are included in the Federal Payment Levy Program. Of the 162 cases, 99 (approximately 61%) will not receive further collection action. The following provides their disposition:

- 20 Full Pay closures
- 48 Currently-Not-Collectible closures
- 13 Installment Agreement closures
- 9 Bankruptcy (Chapter 11)
- 7 Criminal Investigation referrals
- 1 CDP Appeals
- 1 OIC

The remaining 63 cases are assigned to the Collection Field function and investigations to determine collectibility are on-going. Making the collectibility determination involves working with the taxpayer and using other available resources to verify information obtained from the taxpayer. If the taxpayer is uncooperative, the investigation can be more cumbersome due to the additional research necessary to determine the taxpayer's assets and liabilities. Some of the federal contractor cases involve complex issues including related entities, bankruptcy and fraud, legal

Permanent Subcommittee on Investigations
EXHIBIT #4

challenges and civil injunctions. Investigation of such issues can be very time consuming.

- GAO highlighted 40 of the 63 cases during the March 20, 2007, hearing. IRS will provide GAO with an initial disposition of the 40 cases by May 20, 2007.

We are also taking actions to improve the quality of our efforts on these contractor cases.

- Periodic reviews are conducted by Area Operations and Headquarters and we are requiring Group Managers to conduct on-going reviews.

- We have developed and issued Federal Payment Levy Program and Federal Contractors Tool Kits for field revenue officers to increase their effectiveness in dealing with these types of cases. One of the tool kits discusses collection tools available when working cases in which the taxpayer continues to accrue unpaid tax liabilities, but has little or no equity in assets from which to pursue collection.

- We have developed a new IRM subsection 5.7.9, Federal Contractors. The IRM outlines procedures to be followed by revenue officers when assigned a case involving a taxpayer who is a Federal contractor or vendor and expands the use of analytic tools to explore relationships between taxpayers who do business with the Federal government.

2. **Please provide a status report by April 30, 2007, on your efforts to work with CMS and FMS to develop a system to include Medicare providers in the Federal Payment Levy Program.**

   RESPONSE: The Federal Contractors Tax Compliance (FCTC) task force established a subgroup consisting of FMS, IRS, and CMS in order to examine the issue of how best to incorporate CMS payments to Medicare providers into the Federal Payment Levy Program (FPLP). The subgroup meets on a regular basis and after exploring various options, is focusing on two automated options. The first option would be to utilize the process used for levying Department of Defense payments, known as the Non-Treasury Disbursing Official or NTDO process. The second option would be for FMS to make Medicare payments through the Treasury Disbursing Official, or the TDO process, similar to the manner some other payments are disbursed by FMS.

NTDO Process. FMS and CMS are meeting regularly to explore the effectiveness of using a process where FMS would match information about CMS' payments, on a daily basis, against the tax debts included in the FPLP. FMS would provide information back to CMS when there was a match and CMS would levy the payments. The pilot would employ CMS' Health Care Integrated Accounting System (HIGLAS) which will provide a single source of payment information reflecting the levy and other payment detail currently required under the Medicare program. A significant challenge to this process is the fact that CMS currently disburses payments through 34 fiscal intermediaries. As Medicare contractors migrate to HIGLAS more payments will be available for levying. As soon as the necessary programming for the pilot is completed, FMS, CMS and IRS will take advantage of the progress CMS has made to date on the HIGLAS system by matching and levying payments disbursed by one or more of the fiscal intermediaries that are currently utilizing the HIGLAS system.

TDO Process. FMS and CMS are also meeting regularly to exchange information and identify issues related to the disbursement of CMS payments by FMS. As a result of these meetings FMS has been able to gather important information regarding CMS payment volumes and frequency, file formats, remittance requirements, accounting information, and legal requirements. On April 12, 2007, personnel from both FMS' headquarters and FMS' payment processing center in Philadelphia, along with CMS personnel, visited one of CMS' fiscal intermediaries to gain a better understanding of CMS' claims and payment processes. On April 19, 2007, personnel from CMS visited FMS' Philadelphia Center to observe FMS' payment process. We are continuing to gather information which, along with information learned from developing the pilot program will enable the task force to fully analyze whether or not the TDO process is the best means to incorporate CMS payments into the FPLP.

In summary, the task force has begun the necessary planning to implement an automated levy of Medicare payments and will keep the Committee apprised of its progress.

3. **If CMS establishes a process by which Medicare providers consent to CMS supplying their Taxpayer Identification Numbers (TINs) to the IRS to confirm there is no outstanding tax debt, would IRS be able to respond to such an inquiry?**

RESPONSE: IRS is working with the Center for Medicare and Medicaid Services (CMS) to identify ways to include Medicare providers in the Federal Payment Levy Program (FPLP). This would provide a systemic approach to the payment of outstanding tax debt owed by a Medicare provider.

If an additional approach is needed to address issues with Medicare providers, we would work with CMS to explore options to providing them with the information they need. With the signed consent of the taxpayer (the Medicare provider), the IRS would be able to provide CMS a historical record of the taxpayer's account which would indicate any periods of unpaid taxes. We would not, however, be able to provide information on any periods not yet filed and posted on our Masterfile.

4. **Please explain whether the IRS can combine the levy Collection Due Process notice under section 6330 with the second computer generated notice and demand, and what the ramifications of that combination would be.**

RESPONSE: The IRS can issue the CDP Notice with the second computer generated notice and demand. For business tax liabilities the second computer generated notice is also the Notice of Intent to Levy under IRC section 6331(d), Requirement of Notice before Levy. The Conference Committee report for the IRS Reform and Restructuring Act of 1998 stated: "The conferees intend that the Secretary have the discretion to provide the Notice of Intent to Levy [that is the new CDP Notice] in combination with the Notice required by present law under section 6331(d)."

Issuing the CDP notice earlier in the notice stream would allow notice time frames under IRC sections 6331(d) and 6330 to run concurrently. It would also enable the IRS to take levy action if the taxpayer doesn't request a CDP hearing. However, if the taxpayer requests a CDP hearing, levy action is suspended. This would not allow the IRS to address those taxpayers who request CDP hearings solely to delay collection while additional periods of liabilities continue to accrue, and delinquent federal contractors can continue to receive contract payments while the CDP hearing is pending.

Since the IRS issue more second notices than CDP notices, combining the two notices could result in an increase in the number of CDP hearing requests because more taxpayers will be given the opportunity to request a hearing. Taxpayers would be given an opportunity for a CDP hearing even if levy action is not planned. However, it is expected that taxpayers who resolve the liability in the notice stream will continue to do so rather than request a CDP hearing. Those taxpayers that do not resolve in the notice stream could be subject to a CDP notice under the current procedure.

The combined notice could result in more resolutions since business taxpayers will know that enforcement action can occur after the second notice. However, some small businesses and first time delinquents may feel that they have not been given

sufficient time to resolve the liability. This can be mitigated by issuing the combined notice only when the account meets certain criteria, i.e., dollar thresholds.

The President's FY 08 Budget proposal for a post-levy CDP hearing for employment taxes offers several advantages over the combined notice. It allows the IRS to take immediate action to collect employment taxes against delinquent federal contractors and enables the IRS to prevent repeat delinquents from using the CDP process to delay collection or pyramid additional employment tax liabilities. Taxpayers would be given the opportunity for a hearing when there are specific levy issues to be addressed. With the combined notice, it is possible that taxpayers will request a hearing when levy action is not intended. It would also minimize postage costs since post levy CDP notices are not required to be sent with return receipt requested. It still encourages more resolutions since taxpayers would know that the IRS could levy after the second notice. While the IRS could levy after the second notice procedures, procedures could be put into effect to provide first-time delinquents additional time before levy action was taken.

5. **Testimony at the hearing indicated that many Medicare physicians operate their practices through limited liability companies (LLCs) which are disregarded for tax purposes under IRS "check-the-box" regulations. In such cases, the individual physicians are personally liable for the tax, but the Medicare payments are legally the property of the LLC, and cannot be directly levied by the IRS. Please describe any efforts the IRS has made to resolve this issue, including whether the IRS has considered amending the "check-the-box regulations" to have a procedural requirement that companies electing to be taxed as partnerships agree to make company assets subject to levy, to pay any taxes of the individual owners or members that arise out of the companies' businesses. Please include your timetable for resolving this issue.**

RESPONSE: Only the property and rights to property of a taxpayer are subject to collection for that taxpayer's unpaid tax liabilities. Collection from payments received therefore is hindered whenever the entity receiving the payments is a different legal entity from the taxpayer whose tax liabilities the IRS is seeking to collect. Under the current Treasury regulations ("check-the-box" regulations), when a doctor doing business as a single-member LLC elects to be treated as a "disregarded entity," the doctor is liable for all federal taxes arising from his medical services business (income tax, employment tax, etc.) because the LLC is disregarded or treated as though it does not exist for tax purposes. The various State laws, however, treat payments to the LLC for medical services (including Medicare payments) as the property of and belonging to the LLC – not the individual physician. Thus, the IRS generally may not collect the individual doctor's federal tax liabilities by levying or otherwise collecting on payments made to the doctor's single-member LLC.

This "entity problem" is not limited to disregarded LLCs. For example, the majority of Medicare payments for professional medical services are made to professional corporations through which individual physicians provide services. A levy may not, however, be used to collect the tax liabilities of an individual doctor from Medicare payments for the doctor's services when the Medicare payee is the professional medical corporation that furnished the doctor's services. As with a single-member LLC, under the various State laws such a Medicare payment is the property of the professional corporation rather than of the individual doctor. Similarly, although the IRS may seize an individual partner's partnership interest to satisfy the partner's tax liability, where the Medicare payments are the property of the partnership, the payments may not be levied upon or seized to satisfy the individual tax liability of the partner.

The challenge presented where the taxpayer is an entity separate from the entity receiving payment is not easily remedied. "Piercing the corporate veil" is a tool available in certain limited circumstances, if the owners or principals of a corporation ignore the legal existence of the separate corporate identity to the detriment of creditors of the business. In those cases, a creditor may request a court "pierce the corporate veil" and hold an individual shareholder or principal liable for the debts of the corporation. In "reverse piercing of the corporate veil," the corporation may be held liable for the debts of an individual shareholder. However, these remedies are available only in egregious situations, typically involve litigation, are expensive to pursue, and would have little specific bearing on the use of an administrative program such as the federal payment levy program to levy on Medicare payments.

In the future, the problem of pursuing collection activities for individual tax liabilities from payments to single-member "disregarded" LLCs may be addressed, in part, by regulation. The IRS and Treasury Department issued proposed regulations in October 2005 that "regard" an otherwise disregarded LLC for employment and excise tax purposes. In other words, under the rules in the proposed regulations, the IRS would be able to collect employment and excise tax liabilities of the individual owner of the LLC by levying on the income or property of the LLC because the LLC would be legally liable for those taxes. The IRS and Treasury sought and have received public comments on the proposed regulations, and anticipate publishing final regulations this year.

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RESPONSE TO SUPPLEMENTAL QUESTION FOR THE RECORD
SUBMITTED BY THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

to

THE HONORABLE KENNETH R. PAPAJ

Commissioner
Financial Management Service
U. S. Department of the Treasury

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
MEDICARE DOCTORS WHO CHEAT ON THEIR TAXES AND WHAT SHOULD BE DONE ABOUT IT
March 20, 2007

1. **Please provide a status report by April 30, 2007, on your efforts to work with CMS to develop a system to include Medicare providers in the Federal Payment Levy Program either (1) by having Medicare provider payments made through FMS, or (2) by having FMS identify payees with tax debt, so CMS and its contractors can levy the payments themselves.**

   RESPONSE: The Federal Contractor Tax Compliance task force (FCTC) was established in March 2004 to address concerns raised regarding federal contractors that owe delinquent taxes. Among other things, the FCTC looks at ways to improve and expand the Federal Payment Levy Program (FPLP). The FPLP is a program that matches delinquent tax debts with federal payments disbursed by the government, including payments to federal vendors. When a match occurs and all of the requirements for levy have been met, the payment is levied and applied to the tax debt.

   The FCTC initially focused on improving the levy of Department of Defense and civilian agency contractors. More recently, the task force has turned its attention to finding the most efficient and effective way to levy payments to Medicare providers and suppliers.

   An FCTC subgroup consisting of the Financial Management Service (FMS), the Internal Revenue Service (IRS), and the Center for Medicare and Medicaid Services (CMS) is examining the issue of how best to incorporate CMS payments to Medicare providers into the Federal Payment Levy Program (FPLP). The subgroup meets on a regular basis and after exploring various options, is focusing on two automated options. The first option would be to utilize the process used for levying Department of Defense payments, known as the Non Treasury Disbursing Official or NTDO process. The second option would be for FMS to make Medicare payments similar

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to the manner other payments are disbursed by FMS. Under this option, known as the Treasury Disbursing Official or TDO process, the payments would be included in the FPLP in the same manner as other payments disbursed by FMS.

NTDO Process. FMS and CMS are meeting regularly to explore the effectiveness of using a process where FMS would match information about CMS' payments, against the tax debts in the FPLP on a daily basis. FMS would provide information back to CMS when there was a match and CMS would levy the payments. A significant challenge to this process is the fact that CMS currently disburses payments through 34 fiscal intermediaries. However, as more Medicare contractors migrate to CMS' Health Care Integrated General Ledger Accounting System (HIGLAS), which will provide a single source of payment information, more payments will be available for levy. As soon as the necessary programming is completed, FMS, CMS and IRS will begin a pilot program employing the HIGLAS system and will begin matching and levying payments disbursed by one or more of the fiscal intermediaries that are currently utilizing the HIGLAS system.

TDO Process. FMS and CMS are also meeting regularly to exchange information and identify issues related to the disbursement of CMS payments by FMS. As a result of these meetings FMS has been able to gather important information regarding CMS payment volumes and frequency, file formats, remittance requirements, accounting information, and legal requirements. On April 12, 2007 personnel from both FMS' headquarters and FMS' payment processing center in Philadelphia, along with CMS personnel, visited one of CMS' fiscal intermediaries to gain a better understanding of CMS' claims and payment processes. On April 19, 2007 personnel from CMS visited FMS' payment processing center in Philadelphia to observe FMS' payment process. We are continuing to gather information which, along with information learned from the process of developing the pilot program described above, will enable the task force to fully analyze whether or not the TDO process is the best means to incorporate CMS payments into the FPLP.

The FCTC has begun the necessary planning to implement an automated levy of Medicare payments and will keep the Subcommittee apprised of its progress. The FCTC will continue to evaluate how best to bring CMS payments into the FPLP and will make a recommendation by the end of the calendar year.

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RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD
SUBMITTED BY THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
to
MS. LESLIE V. NORWALK
Acting Administrator
Centers for Medicare & Medicaid Services

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
HEARING ON
MEDICARE DOCTORS WHO CHEAT ON THEIR TAXES AND WHAT SHOULD BE DONE ABOUT IT
March 20, 2007

1. In your testimony, you stated, "CMS has reached out to unconventional partners to help catch [Medicare providers] for tax evasion, and once convicted, exclude them from the Medicare program." Excluding contacts made in connection with the Los Angeles County Fraud Interdiction Program (Tax Project), list any third parties that CMS has contacted in this regard, in what manner, and what results, if any, ensued.

Answer

23 For the past two years, CMS has been looking at
24 innovative ways to go after those who defraud Medicare and
25 Medicaid. Each year, unscrupulous providers fraudulently

1 bill Medicare for billions of dollars in health care claims.
2 However, successfully prosecuting these criminals for health
3 care fraud requires more significant resources, so CMS has
4 reached out to unconventional partners to help catch them
5 for tax evasion, and once convicted, exclude them from the
6 Medicare program.

The specific quote that is cited was made in direct relationship to the LA Tax Project. In that context, the "unconventional partners" statement is specifically referring to "contacts made in connection with the Los Angeles County Fraud Interdiction Program (Tax Project)." The unconventional partners we have worked with are specifically the California Franchise Tax Board (FTB) and the Los Angeles County District Attorney's

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office. Prior to the Tax Project, CMS had not worked with a local tax authority or a local District Attorney's office on matters involving Medicare providers and income tax issues. This new relationship with these unconventional partners has provided CMS with a new way to remove providers from the Medicare program based upon a successful tax charge and felony conviction.

In addition to the California FTB and the Los Angeles District Attorney's office, the success of the Tax Project has led CMS to develop relationships with the California Department of Justice for the potential additional prosecution of Medicare providers engaging in state income tax evasion. Having the California Department of Justice as a partner would allow for additional prosecutorial resources beyond those currently dedicated from the LA District Attorney's office. Also, CMS' Miami Florida Satellite Office has engaged representatives in the Florida Department of Revenue for the potential identification of Medicare providers operating in Florida who have not paid appropriate business taxes based upon their Medicare earnings.

2. You testified that a tax evasion conviction would allow CMS to exclude a provider from Medicare. Describe the nature of this exclusion, including the following:
   a. the period of time a provider is actually excluded,
   b. whether the exclusion is linked to repayment of the taxes,
   c. any other offenses for which a conviction would authorize CMS to effect a similar exclusion,
   d. whether the exclusion is effected only at the time of enrollment, and
   e. how many providers have been so excluded each year for the past five years.

Answer

CMS may revoke the Medicare billing privileges of providers that have been convicted of tax evasion within the 10 years preceding the providers' enrollment or revalidation of enrollment in the Medicare program because those providers have been convicted of a felony crime. Through regulation promulgated in April, 2006, CMS established authority to revoke the billing privileges of providers and suppliers that have been convicted of a felony offense within the 10 years preceding enrollment or revalidation of enrollment. See 71 Fed. Reg. 20754 (Apr. 21, 2006); 42 C.F.R. 424.535. To be clear, this is not an exclusion from the Medicare program, since only the Department's Office of the Inspector General can exclude a provider for Medicare; however it is an effective way to stop convicted felons from billing Medicare.

a. the period of time a provider is actually excluded,

The provisions of the above referenced regulation allow for revocation of the provider's billing number for not less than 10 years from the date of the conviction. See 42 C.F.R. 424.535(3).

b. whether the exclusion is linked to repayment of the taxes,

Again, this is not an exclusion, but rather an administrative action that revokes the provider's billing privileges. This revocation is not linked to the repayment of taxes.

c. any other offenses for which a conviction would authorize CMS to effect a similar exclusion,

The regulation allows CMS to revoke the billing privileges of providers convicted of a felony offense. Such offenses include: (1) felony crimes against persons, such as a murder, rape, assault, and other similar crimes for which the individual was convicted, including guilty pleas and pretrial diversions, (2) financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes for which the individual was convicted, including guilty pleas and pretrial diversions, (3) any felony that placed the Medicare program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct, (4) any felonies that would result in mandatory exclusion under section 1128(a) of the Act. See 42 C.F.R. 424.535(3)(i).

d. whether the exclusion is effected only at the time of enrollment, and

This revocation authority is used once the provider is already enrolled in the Medicare program. If a provider reports a felony conviction at the time of enrollment, their application would be denied. See 42 C.F.R. 424.530(3).

e. how many providers have been so excluded each year for the past five years.

Again, these are not exclusions and this is a new authority for CMS. Since this authority was established in April of last year we have denied or revoked the billing privileges for at least 50 suppliers.

3. In your testimony about the Tax Project, you stated that CMS *may* use the felony convictions resulting from the Project to revoke billing privileges and ultimately exclude those providers from participating in Medicare and Medicaid.
   a. Have the three convictions of providers to date resulted in the revocation of their billing privileges and exclusion from Medicare? Indicate start dates and termination dates for the exclusionary periods for each provider.b. Describe the actions CMS is taking against the two other providers who have been arrested for tax fraud, and the status of the additional 300 providers whose cases are under development. If there has been no action on the part of CMS, explain why no action has been taken.
   c. Describe any and all other actions that CMS has undertaken to accelerate the process for determining whether these providers should have their Medicare privileges revoked.

Answer

The three Medicare providers convicted on the felony income tax evasion charges are:

Sarkis Musoyan

- Defrauded Medicare of over $5.8 million from July 2002 – November 2004
- Convicted of 37 felony counts:
  - Conspiracy to commit grand theft
  - Tax fraud
  - Money laundering

- Sentenced to 15 years in prison
- Excluded by the OIG effective March 20, 2005

Parviz Burjis
- $23 million in Medicare payments, automobile insurance, workers' compensation, and tax fraud
- Sentenced to 8 years in prison
- Ordered to pay $2.2 million in restitution to L.A. County and $2.8 million in back state taxes
- Medicare provider numbers for this individual were terminated April 22, 2006 and October 18, 2006.

Saud Salim Rayyis
- Convicted of tax fraud for failing to report $4 million (Medicare payments & other insurance)
- Sentenced to 3 years in prison
- Surrendered medical license
- Medicare provider number terminated on February 17, 2007

b. Describe the actions CMS is taking against the two other providers who have been arrested for tax fraud, and the status of the additional 300 providers whose cases are under development. If there has been no action on the part of CMS, explain why no action has been taken.
The two providers who were arrested for tax fraud have been placed on prepayment edit and all claims submitted by them are currently being reviewed by the applicable Medicare claims processing contractor to determine the appropriateness of payment based upon the medical documentation submitted by the Medicare provider. In addition, both providers are currently under investigation for healthcare fraud.

The additional 300 providers are on various claims processing edits to monitor their claims activity to ensure that Medicare payments are correct and applicable. In addition, many of the providers are under investigation for healthcare fraud for which Medicare fraud cases are being developed.

c. Describe any and all other actions that CMS has undertaken to accelerate the process for determining whether these providers should have their Medicare privileges revoked.
The suspect Medicare providers' Medicare claims are currently being closely monitored and CMS and its contractors are developing fraud cases for those providers who are suspected of engaging in the fraudulent submission of claims for services that were either not medically necessary or not rendered as billed by the provider. If appropriate based upon the investigative findings of CMS and its contractor(s), the providers will be referred to law enforcement for criminal investigation and if applicable for prosecution of alleged healthcare fraud. As appropriate and applicable, a successful criminal prosecution would likely result in an OIG exclusion. If an OIG exclusion does not occur, CMS may also revoke the provider's billing privileges.

Separate and distinct from the course of action described above is the investigation of the identified providers for possible income tax evasion. If it is determined through the successful prosecution and conviction that the income tax evasion occurred and felony convictions are the result, then CMS would move forward with revocation based solely on the felony tax convictions. In this context and until such time that the prosecution and conviction were to occur it would be premature and inappropriate for CMS to take action to revoke the billing privileges of the identified providers.

4. In your testimony, you stated that the implementation of CMS's integrated accounting system is proceeding on schedule, and is processing 50 percent of CMS's financial transactions. You further described the system as "without question, the cornerstone of any effort to levy Medicare payments to delinquent taxpayers." Provide more information about the integrated accounting system, including how it works, how long it has been in place, and whether it is capable of referring the 50 percent of payments it currently processes to FMS for pre-payment screening for tax debt.

Answer

The Healthcare Integrated General Ledger Accounting System (HIGLAS) began operations in May 2005. It is a Joint Financial Management Improvement Program compliant system, which will allow the agency to meet the requirements of the *Federal Financial Management Improvement Act of 1996* and *OMB Circular A-127* when it is fully implemented. HIGLAS pays claims after they have been priced and adjudicated by the front-end claims processing systems. It offers a single repository for all Medicare payment data and an automated mechanism for collecting tax debt owed by Medicare providers. In the past, the Centers for Medicare & Medicaid Services (CMS) data were spread out across multiple contractor sites, each with disparate systems and limited business processing capabilities. The Tax Levy process was handled in a decentralized and essentially manual manner.

With HIGLAS, transitioned contractors use the Oracle Federal Financials product, housed at one location. CMS is now able to view and access all contractor financial data from a single vantage point. Whereas in the past, it was difficult to enforce levies across all contractors, now this data only needs to be entered once and it is automatically proliferated to all contractor payment files. Also, the HIGLAS Third Party Payment (TPP) functionality automates the collection and remittance of collected monies to the Internal Revenue Service (IRS), Financial Management Service (FMS), or any other government agency.

The percentage of Medicare payments subjected to the Federal Payment Levy Process (FPLP) depends on how many contractors have been transitioned to HIGLAS. By 2011, CMS will be able to subject all payments for contractors on HIGLAS to the FPLP offset process. HIGLAS is planning to implement an FPLP solution, either through the NTDO or TDO process, by October 2008. Taking into consideration the volume of payments being issued through HIGLAS in 2008, over 50% of our Part A and Part B Fee-For-Service payments will be subject to FPLP. That percentage will increase as more Medicare Contractors transition to HIGLAS.

5. Explain whether the integrated accounting system is compatible with the Federal Payment Levy Program (FPLP), and, if not, since CMS has known about FPLP since at least 2001, why the system was not designed to be compatible with the FPLP.

Answer

HIGLAS is compatible with the FPLP because a product of the payment batch process within Oracle Federal Financials is a Treasury Disbursed compatible file. This file is in a standard format and can be sent to any of the Treasury FMS Disbursing Offices. The FMS Disbursing Office subjects the payments in the file to the FPLP and sends out the remaining amount in the form of a check or an electronic funds transfer (EFT) along with a Remittance Advice (RA).

HIGLAS does not use FMS Treasury as a Disbursing Office for Medicare payments; that function still resides with the Medicare contractors. The Medicare contractors have historically processed Medicare claims and made payments for those claims on our behalf. This relationship was carried over to HIGLAS for several reasons, including RA creation and synchronization between Treasury and the Medicare contractors. In addition, although Oracle Federal Financials creates a Treasury compliant format, the file cannot be changed outside of HIGLAS without risking the financial integrity of the integrated ledger system.

An important part of Medicare's business is the detailed explanations furnished to its providers that enable the provider to reconcile their billing and financial transactions with Medicare. The RA, which is included in either electronic or paper format with every payment sent to a Medicare provider can be numerous pages with very granular level of detail on each service billed and paid or denied. Based on years of experience and rigorous development, in collaboration with the provider community, Medicare has honed a Medicare explanation of payment that better meets provider needs. The Medicare contractors have the expertise and systems necessary to produce the RA. If Treasury were to issue the payment, the RA would have to be prepared by the Medicare contractor. The synchronization among the payment batch creation in HIGLAS, the RA creation by the Medicare contractor and the payment remittance by FMS treasury could lead to discrepancies among the three systems and a possible increase in customer service inquiries and costs. For these reasons, CMS is currently working with FMS and Treasury to determine the best way to participate in the FPLP, either through the Non Treasury Disbursed Option (NTDO) or the Treasury Disbursed Option (TDO).

Oracle Federal Financials (a commercial off the shelf product that meets the federal requirements for financial management and accounting systems) produces a payment amount for each check, which is the amount that must be disbursed. There is no functionality within Oracle that allows for a partial payment of a check amount. The entire amount must be remitted and this amount is captured during the Check Confirmation process. If for instance, HIGLAS sent a payment file to the FMS Treasury Disbursing Office and a check in that file were issued for less than the file amount as a result of FPLP offset, the check could not be successfully confirmed within Oracle without extensive application customization.

The NTDO process issues two checks, one to the provider equal to the amount of the claims being paid minus the amount of any offset. It also issues a check to the Third Party in the amount of monies withheld from the provider for offset. For this reason, there is no impact in Oracle that must be addressed to implement the NTDO process.

The NTDO process and related Third Party Payment functionality within HIGLAS offsets the payment to the provider during the payment batch. The amount of the offset is subtracted automatically from the check amount. At the same time, payable invoices are created for the Third Party, in this case Treasury FMS. A payment document (i.e. check/EFT) is subsequently issued to the Third Party. Both payments are then cleared in Cash Management and an audit trail exists in the system of monies withheld and remitted to the Third Party.

The TDO process issues one check to the provider equal to the amount of the claims being paid minus the offset. In doing this, a discrepancy is created between the amount of the check issued in HIGLAS and the amount actually presented to the provider. HIGLAS would have to customize our Oracle Federal Financials product to handle this discrepancy.

For instance, an issue that needs to be addressed if we were to adopt the TDO process is the clearing of the check/EFT in HIGLAS. The provider presents the Treasury FMS-reduced payment document to the bank and it is interfaced to HIGLAS and does not reconcile in Cash Management with the amount Oracle Accounts Payable issued.

6. You testified that CMS notified GAO in 2001 that CMS would not be able to participate in the FPLP for approximately five years, and you further testified at the hearing that CMS is now "at the time frame projected." Explain what you meant when you stated that CMS is now "at the time frame projected," in light of the fact that, other than the Medicare Parts that were created after 2001, CMS is still not participating in the FPLP and has no immediate plans to do so.

Answer
CMS is currently working with FMS and Treasury to determine the best way to participate in the FPLP, either through the Non Treasury Disbursed Option (NTDO) or the Treasury Disbursed Option (TDO). CMS is also participating in workgroups that will determine the most feasible way to automate the current paper levy process being used in today's environment by the Medicare contractors.

7. In your testimony, you stated that continuous levies could only occur if IRS turned relevant information over to CMS. However, if your agency would provide FMS with limited, non-patient specific information that CMS already has, namely providers' names, Taxpayer Identification Numbers (TINs), and the amount each is to be paid, FMS would perform the match against the IRS data as they have done on behalf of numerous other agencies and offices. Explain why it is preferable to add to the CMS workload and the complexity of CMS's systems by having CMS perform the screening process, when a highly effective process already exists, namely FPLP.

Answer
CMS, and specifically HIGLAS, is working towards participation in the FPLP within the earliest possible timeframe. We already have the necessary functionality in place to enact our own levy activities via the TPP process. All that would be necessary to complete our ability to accomplish this would be to develop files/reports to exchange our payee data, our prospective payment activity and our collected monies with Treasury FMS on a regular, electronic basis. We already have current reports available that would serve as a solid starting point for achieving integration with the Treasury FMS debtor database. This FPLP model or relationship, known as the NTDO is already in use by the United States Postal Service (USPS), another government agency using the Oracle Financials product.

There are some technical hurdles posed by the NTDO option. These technical hurdles relate specifically to the 2008 implementation date. The technical issues that must be addressed involve the automation of current functionality and the exchange of data between HIGLAS and Treasury FMS. We **do not** foresee any technical issues that would preclude the NTDO process from being a viable solution for HIGLAS. However, there are structural changes to CMS' financial systems that would have to be addressed if we allowed FMS treasury to disburse Medicare payments processed through the HIGLAS system under a TDO option. We are, however exploring both options, and will adopt the one that offers the best and quickest way to full FPLP participation.

8. Discuss the feasibility of each of the following:
   a. during the enrollment process, having Medicare providers sign a consent authorizing IRS to disclose tax debt information to CMS;
   b. informing Medicare providers that in cashing Medicare checks, they are consenting to CMS supplying the provider's TIN to IRS to confirm there is no outstanding tax debt; and
   c. informing Medicare providers that in billing Medicare, they are consenting to CMS supplying the provider's TIN to IRS to confirm there is no outstanding tax debt prior to payment.

Answer
We believe having providers sign a consent authorizing IRS to disclose tax debt information to CMS is a viable approach and are analyzing whether regulations are needed to implement this approach.

We are reviewing the feasibility of these and other changes in the enrollment process which will require physicians and other providers and suppliers of services to certify that no tax debt exists at the time of filing and to authorize Medicare contractors to verify tax debt information with the Internal Revenue Service or state taxing authorities. We are currently analyzing whether implementing regulations are necessary.

9. In your testimony, you stated that the Department of Health and Human Services' Office of Inspector General may exclude Medicare providers from Medicare on several bases, both statutory and permissive. Describe these exclusions further, including, but not limited to, the following:
   a. who is responsible for ensuring that these exclusions are upheld;
   b. how the exclusions are determined for an individual provider, e.g. through self-reporting or investigation;
   c. whether these exclusions apply only upon enrollment, or whether subsequent changes in status can result in a provider being excluded at a later date; and
   d. whether exclusion requires a conviction. For example, if there is evidence that a provider had been defrauding Medicare, could the provider be excluded from the program or otherwise disciplined before a conviction has been rendered?

Answer

a. who is responsible for insuring that these exclusions are upheld

Whether the exclusion is mandatory or permissive, when CMS and its contractors receive information from the OIG regarding an exclusion, the CMS contractors update their payment systems to reject/deny payments for items/services on or after the effective date of the exclusion unless an exception applies. One exception would be the rendering of certain emergency items or services.

b. how the exclusions are determined for an individual provider, e.g. through self-reporting or investigation;

Most OIG exclusions are as a result of investigations, and referrals from other agencies, though some providers are excluded as a result of entering into a settlement agreement.

c. whether these exclusions apply only upon enrollment, or whether subsequent changes in status can result in a provider being excluded at a later date;

Exclusions may occur after a provider has enrolled. Please note that providers who are excluded prior to applying for enrollment will not be approved based on the exclusion.

d.**whether exclusion requires a conviction. For example, if there is evidence that a provider had been defrauding Medicare, could the provider be excluded from the program or otherwise disciplined before a conviction has been rendered?**

Exclusions under section 1128(a) are mandatory and require a conviction before an exclusion is imposed. Exclusions under section 1128(b)(1), (b)(2) and (b)(3) are permissive, but also require a conviction before an exclusion is imposed. The remaining section 1128(b) exclusion authorities could be imposed before a conviction occurs. Medicare fraud does not always result in a conviction; often the government reaches civil settlement agreements instead.

Additionally, CMS administrative remedies such as pre-payment medical review and payment suspension may be imposed prior to a conviction or exclusion if there is evidence of fraud. These administrative actions help ensure that only appropriate payments are made.

10. Describe the process by which contractors for CMS check the National Practitioner Databank to confirm that providers have not been excluded from Medicare and still have a current license, as well as CMS's oversight of that process.

Answer
CMS does not utilize the National Practitioner Databank (NPD) during the enrollment process. Instead, Medicare contractors review all persons and entities listed on the CMS-855 application against Qualifier.net, which contains more comprehensive information than the NPD. The system captures data on the provider's licensure status, as well as whether the person/entity under review is excluded or debarred from Medicare. The provider is also required to submit copies of all licenses and certifications with its application, and to identify whether it (or any of its owners, partners, managing employees, etc.) has incurred any adverse legal actions.

11. Explain CMS's systems for each of the following:
    a. preventing providers that have a history of providing substandard care from providing similarly poor care to Medicare beneficiaries;
    b preventing providers with convictions for crimes of violence, elder abuse (and its variants), and similar offenses from participating in the Medicare program; and,
    c. preventing providers that have previously defrauded Medicare from continuing to do so.

Answer
CMS reviews all names listed on the Medicare enrollment application (CMS-855) against Qualifier.net. Qualifier.net will reveal the provider's licensure status, including past license suspensions, revocations, and – in some cases – reprimands. If the provider has had some sort of licensure action against it, the Medicare contractor will investigate the reason (s) (poor care, improper conduct, etc.). In addition, all providers are required to list on the CMS-855 any adverse legal actions imposed against them and to furnish documentation that outlines the adverse action.

Moreover, certified providers and certified suppliers - such as hospitals, home health agencies, and ambulatory surgical centers - must undergo an initial State survey prior to enrolling in Medicare and are subject to periodic resurveys. Such surveys will reveal whether the provider/supplier meets Medicare's Conditions of Participation.

CMS also relies on State licensing bodies to determine whether a physician or non-physician practitioner meets state licensing requirements.

Finally, CMS issued a provider enrollment regulation, 42 C.F.R. 424.500 et seq., on April 21, 2006, giving CMS the authority to deny or revoke the billing privileges of any provider or supplier that has been convicted or has an owner that has been convicted of a

felony within the past 10 years. Additionally, pursuant to this regulation, CMS has the authority to deny or revoke the billing privileges of any provider or supplier where the provider or supplier or any owner, managing employee, official, medical director, supervising physician, or health care personnel of the provider or supplier has been excluded from any Federal health care program or has been debarred, suspended or otherwise excluded from participation in any other Federal procurement or non-procurement program or activity. See 42 C.F.R. sections 424.530(a)(2) and 424.535(a)(2).

12. At the hearing, you stated that you believed CMS would support a change in the law to permit CMS to participate in the Treasury Offset Program for the collection of non-tax debt (e.g., child support and student loans), and that you were going to "take it back and ask." Whom did you ask, and what was the response?

Answer
The Administration has an established process for developing and responding to legislative proposals. After consulting with CMS staff, we conclude that a change of this nature would require the input of multiple Administration stakeholders, and would need to be handled pursuant to the established process for developing legislative proposals, which are ultimately put forth in the President's Budget.

13. Provide a status report by April 30, 2007, on your efforts to work with FMS to develop a system to include Medicare providers in the Federal Payment Levy Program either (1) by making Medicare provider payments through FMS or (2) by having FMS identify payees with tax debt, so CMS and its contractors can levy the payments themselves.

Answer
CMS is an active member of the Federal Contractor Tax Compliance task force (FCTC), and is working to identify an automated way for CMS payments to be levied. A subgroup has been formed to focus solely on this solution.

We have undertaken a joint effort with FMS to conduct two pilots to determine the best method for automating the offset of Medicare payments. One approach, the NTDO, would use HIGLAS to levy the Medicare payments based on a daily information exchange between FMS and HIGLAS. The other approach, the TDO, would redirect Medicare payment authority to FMS to disburse Medicare payments. These pilots will be conducted during the 4th Qtr of FY07.

The subgroup consisting of the IRS, FMS, and CMS meets on a regularly scheduled basis. Through these meetings, FMS and CMS have been able to share information regarding CMS payment volumes and frequency, file formats, accounting information, and legal requirements. On April 12, 2007, personnel from both FMS' headquarters and FMS' payment processing center in Philadelphia, along with CMS personnel, visited one of CMS' fiscal intermediaries to view a demonstration of CMS' claims and payment

processes. On April 19, 2007, personnel from CMS visited FMS' Philadelphia Center to observe FMS' payment process.

Additionally, the subgroup conducted a conference call on April 25, 2007 with the USPS which is in the process of implementing an NTDO process with FMS. USPS utilizes a commercial accounting software package similar to that used in the CMS HIGLAS system. Information obtained in this call will be used in the CMS NTDO pilot.

The subgroup is focusing on the first of the pilots, the NTDO process. In this pilot, FMS would match information about CMS' payments, on a daily basis, against the tax debts included in the FPLP. FMS would provide information back to CMS when there was a match and CMS would levy the payments.

Medicare Operational Background Information:

- Medicare processes approximately 1.3 billion claims yearly and the numbers are growing each year.
- 60 million payments (of which 48 million are checks) issued.
- Medicare issues detailed remittance advice notices with each payment explaining in line level detail what is being paid or not being paid with respect to each claim processed. Remittance advices can contain as many as 10,000 lines of detail.
- Medicare payments are not scheduled; they are processed as received and paid timely within statutorily mandated timeframes.

This information is being analyzed by the IRS, FMS and CMS workgroup in preparation for the implementation of the pilots.