Rep. Sam Johnson's "New Employee Verification Act"
ANOTHER VERSION OF THE SHULER-TANCREDO BILL

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The New Employee Verification Act of 2008 (HR 5515), introduced by Representatives Sam Johnson (R-TX), Kevin Brady (R-TX), and Paul Ryan (R-WI) on February 28, 2008, would create a mandatory electronic employment verification system (EEVS) that would require all 7 million employers in the U.S. to query a federal government database to check the work authorization status of newly-hired employees — U.S. citizens and immigrants alike. The Johnson bill has been framed as an alternative to the EEVS in the controversial Shuler-Tancredo SAVE Act (HR 4088) because it addresses some of the inadequacies of the Basic Pilot/E-Verify employment eligibility verification program upon which that act is based.[1] But it fails to address the most fundamental problems with the SAVE Act: It would rely on the same seriously flawed databases, and it would add the same strains to our economy as the Shuler-Tancredo bill would because it would not provide a path to legal status for the over 7 million undocumented workers in our economy. The Johnson bill would create additional problems because it would impose significant new administrative duties on the already overburdened Social Security Administration (SSA), which is already struggling to meet its obligations to administer retirement, Medicare, disability, and survivors' benefits.

As of May 2008, fewer than 1 percent of employers nationwide (approximately 66,000 employers) were enrolled in the voluntary Basic Pilot/E-Verify program. Virtually every entity that has reviewed Basic Pilot/E-Verify carefully has found that it relies on government databases that have unacceptably high error rates that mistakenly identify authorized workers — both immigrants and U.S. citizens — as not being employment-eligible. SSA estimates that if Basic Pilot/E-Verify were to become mandatory, SSA's database errors alone (not including errors in the U.S. Department of Homeland Security, or DHS, database) could result in 2.5 million people a year being misidentified as unauthorized to be employed in the U.S.

The implications of a mandatory EEVS that is not partnered with a legalization program are potentially devastating. Over 7 million undocumented workers and their U.S. citizen and immigrant family members are not going to leave the country because an EEVS is implemented; and if they did, it would send our already-fragile economy into a tailspin. So, what will happen? To remain competitive, many currently law-abiding employers will move off the books into the underground cash economy or misclassify workers as independent contractors, thereby avoiding detection by the system. In addition, workers who do not go into the cash economy will be forced to pay a higher price for fraudulent documents that will not be detected by Basic Pilot/E-Verify. These actions would have consequences far beyond immigration enforcement: Employers who are not engaging in lawful employment practices are not subject to government regulation and do not contribute to the federal and state tax systems, Social Security, unemployment insurance, or workers' compensation. The Congressional Budget Office recently estimated that the mandatory EEVS in the Shuler-Tancredo SAVE Act would decrease Social Security trust fund revenue by more than $22 billion over ten years because it would in-

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[1] For an analysis of the Shuler-Tancredo bill, *see* SHULER-TANCREDO EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM: POORLY DESIGNED, DANGEROUS FOR THE ECONOMY (NILC, Apr. 9, 2008), www.nilc.org/immsemplymnt/ircaempverif/shuler_EEVS_2008-02-01.pdf.

crease the number of employers and workers who resort to the black market, outside of the tax system.

The Johnson bill also contains provisions that violate the contributory principle underlying the Social Security system, transfer decision-making authority for crediting of work history away from SSA, and subject that decision-making to untested information-sharing between SSA and DHS. The bill, which purports to tie the crediting of earnings to work-authorized status, would actually deny up to a year of credit earned by newly-arrived lawful immigrant workers, such as permanent residents, even if they never worked without authorization. Over time, the Johnson bill would deny taxpaying individuals from ever being credited quarters for years or even decades of work performed and contributions made to the system. U.S. citizens unable to rely on their own Social Security earnings in old age would be forced to accept assistance from state, local, or charitable sources, unnecessarily straining community reserves.

Given the negative consequences the Johnson bill would have for U.S. workers, businesses and the economy, it should not be supported or viewed as an alternative to the Shuler-Tancredo bill.

Additional concerns with the Johnson bill include the following:

■ It overburdens SSA with the task of managing the EEVS, which takes away from its core mission of administering critical benefits programs.

If the Johnson bill were signed into law, it would shift the responsibility for managing the EEVS from DHS to SSA, distracting the latter agency from its core mission of serving elderly, disabled, and retired citizens. For example, as of January 2008, 751,676 cases were waiting for decisions on disability claims, with an average wait time of 499 days. Additionally, in 2008 the first of 78 million baby boomers are eligible for Social Security retirement benefits, and the number of claims being submitted to SSA is expected to rise by approximately 1 million a year over the next 10 years and then accelerate after that. In a March 27, 2008 letter to House colleagues, Rep. Charles Rangel (D-NY), chair of the House Ways and Means Committee, and Rep. Michael McNulty (D-

NY), chair of the Social Security Subcommittee, stated that "SSA simply cannot handle the massive new workload that expansion of [Basic Pilot/E-Verify] would impose, especially given the current backlog in disability claims processing and the impending wave of retirement claims from the Baby Boom generation." Already, over 50 percent of people who try to call a local SSA field office with inquiries receive a busy signal.

■ Flawed federal databases will deprive workers of their livelihood.[2]

While the Johnson bill would require SSA and DHS to annually certify the percent of erroneous findings in the EEVS database each year, it would not make expansion of the EEVS to the over 7 million employers in the country contingent on the system meeting any database accuracy standards. Currently, Basic Pilot/E-Verify is used by less then one percent of all employers in the country and has well-documented error rates that mistakenly identify authorized workers as not being employment-eligible. According to the Cato Institute, if these error rates were not fixed before the Johnson EEVS were implemented, they could result in a minimum of 11,000 workers per day being flagged as ineligible for employment — or slightly more than 25 people per congressional district, each day of the working week, all year long. Losing one's job, or being forced to lose out on pay while challenging government errors, is a severe price to pay for government mistakes.

■ The implementation timeline is impractical and unworkable.

The Johnson bill would require that the over 7 million employers in the U.S. be registered in the EEVS in just 3 short years from enactment (a staggering 13,000 percent increase from current users). Current Basic Pilot/E-Verify users would have to register immediately, and DHS would

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[2] For compelling examples of U.S. citizens and lawfully present immigrant workers who have been wrongly identified by Basic Pilot/E-Verify as not authorized to work, see HOW ERRORS IN BASIC PILOT/E-VERIFY DATABASES IMPACT U.S. CITIZENS AND LAWFULLY PRESENT IMMIGRANTS (NILC, April 2008), www.nilc.org/immsemplymnt/ircaempverif/e-verify_impacts_USCs_2008-04-09.pdf.

have the authority to require employers having access to locations or information that have a "direct impact on the security of the United States" to register for the EEVS on an expedited basis. On average, that would require approximately 193,000 employers to enroll in the system per month and almost 6,500 employers to enroll per day. The EEVS would also have to be able to respond to 50-60 million inquiries each year (the number of new annual hires).

Requiring such a dramatic and large-scale implementation of the EEVS — without addressing the existing data, technology, and infrastructure problems evident in Basic Pilot/E-Verify — would be a recipe for chaos and disaster. According to the Association for Computing Machinery, turning Basic Pilot/E-Verify into a mandatory program is a very "serious architectural issue," because it would have to handle at least a thousand-fold increase in users, queries, transactions, and communications volumes. Each time a system grows even ten times larger, serious new technical issues arise that were not previously significant.

■ It undermines the child support enforcement system.

The Johnson bill would have the new EEVS it proposes access the National Directory of New Hires, a database of information designed to help state agencies locate parents who owe court-ordered child support and ensure that they make their required payments. Not only is the database not configured for employment eligibility verification purposes, but it could not easily be adapted to accommodate such a task. For example, the directory does not collect certain information that is essential to any EEVS, such as information about workers' citizenship, immigration, or work-authorization status. Adding such fields to the existing directory's database would be an enormous undertaking, because not only would the directory have to be reprogrammed; every state child support agency and every employer using an automated payroll system would also have to re-program its system.

In addition, tying the child support enforcement system to immigration enforcement would seriously undermine the goals and effectiveness of the child support system. Employers may be less likely to comply with requirements to furnish this information if they believe it will be shared with DHS and could make them liable for violating immigration laws. States already report that it has been a challenge to get employers, particularly small employers, to comply with the National Directory requirements. Moreover, if parents who benefit from the child support enforcement system believe that it is linked to immigration enforcement, they may be less likely to seek help from the state agencies that rely on the directory in carrying out their enforcement efforts.

■ The documents required to prove employment eligibility are unattainable for many U.S. citizens.

In order to prove eligibility for work, U.S. citizens — both native-born and naturalized — would be allowed to present only either a U.S. passport or a driver's license (currently they may choose from a list of 24 documents). Approximately 60 percent of U.S. citizens do not have a passport, and as many as 11 percent of U.S. citizens do not have government-issued photo identification. These restrictive documentation requirements could potentially prevent people from securing their livelihood.

■ It does not protect the privacy of U.S. citizens' personal identification information.

At the same time that the Johnson bill would shift the responsibility for managing the EEVS from DHS to SSA, it also would require the creation of a new data exchange system between DHS and SSA that would give DHS the primary authority to determine whether SSA can credit work history to every non–U.S. citizen. SSA would be required to share data with DHS regarding those identified in its system as noncitizens. However, this new system would result in SSA erroneously divulging the private information of U.S. citizens (including their Social Security numbers) to DHS, because SSA is unable to accurately identify an individual's citizenship status via its databases. According to the SSA Office of the Inspector General, a conservative estimate is that at least 3.3 million noncitizen records in SSA's database contain incorrect citizenship status codes.

■ It denies crediting of work history to individuals — even to those who were work-authorized.

Newly-arrived lawful permanent residents would have to wait until the next calendar year before beginning to receive credit for their earnings and contributions to the Social Security system. Decision-making authority for crediting earnings of any noncitizen worker would also be transferred from SSA to DHS and would be based on a new information-sharing system reliant on underlying data that is error-prone.

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