SHULER-TANCREDO EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM

Poorly Designed, Dangerous for the Economy

February 1, 2008 (REVISED 4/9/08)

The Secure America through Verification and Enforcement Act of 2007, or "SAVE Act" (HR 4088/S. 2368), introduced by Representatives Heath Shuler (D-NC) and Tom Tancredo (R-CO) in the House of Representatives and by Senators Mark Pryor (D-AR) and Mary Landrieu (D-LA) in the Senate, relies on a deportation-only approach to undocumented immigration that would add new strains to our fragile economy and fail to fix our broken immigration system.

Title II of the Shuler-Tancredo bill would expand the flawed Basic Pilot/E-Verify employment eligibility verification program to require participation by all employers and all workers in the country — U.S. citizens and immigrants alike. As of April 2008, fewer than 1 percent of employers nationwide (approximately 58,000 employers) were enrolled in the voluntary program. Virtually every entity that has reviewed Basic Pilot/E-Verify carefully — including those that researched and wrote two independent evaluations commissioned by the former Immigration and Naturalization Service in 2002 and by the U.S. Department of Homeland Security (DHS) in 2007, the Government Accountability Office (GAO), and the Social Security Administration's Office of the Inspector General (SSA-OIG) — has found that it has significant weaknesses, including (1) its reliance on government databases that have unacceptably high error rates and (2) employer misuse of the program to take adverse action against workers. The Shuler-Tancredo bill would mandate a 160-fold expansion of Basic Pilot/E-Verify to over 7 million U.S. employers and 160 million workers in only 4 years, without taking any steps to address the program's fundamental flaws.

Such a rapid expansion of what was created as an experimental program would be a complicated logistical challenge under the best of circumstances. But forcing every business in all economic sectors to almost immediately enroll in the system would be particularly unwise now, when our economy teeters on the edge of recession. The likely consequences of such a large-scale experiment in workplace regulation would include: unfair and unnecessary layoffs of significant numbers of authorized workers; the flight of currently marginally law-abiding businesses into the underground cash economy; a massive churning of the workforce in certain occupational sectors in a manner that would hamper economic stability and growth; and even more cynicism on the part of the public about the federal government's ability to competently manage our immigration system.

In addition to these harmful consequences, mandatory use of Basic Pilot/E-Verify would also fail to reduce the undocumented immigrant population by any meaningful amount. Seven million undocumented workers will not self-deport *en masse* if the Shuler-Tancredo bill becomes law. They and their employers will simply burrow even further into the underground economy, taking a greater share of their earnings off the tax rolls and destabilizing the playing field even more for lawful workers and employers that hire above-board. The Congressional Budget Office recently estimated that the Shuler-Tancredo bill would decrease Social Security trust fund revenue by more than $22 billion over ten years because it would increase the number of employers and workers who resort to the black market, outside of the tax system.

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Concerns with the Shuler-Tancredo bill's electronic employment verification system (EEVS) include the following:

☑ *Flawed federal databases will deprive workers of their livelihood.*[1]

If the Shuler-Tancredo bill is signed into law, every worker in the country will need to get the federal government's permission to work at any job, at any time. Unfortunately, the Shuler-Tancredo bill makes no attempt to address the well-documented error rates in the Basic Pilot/E-Verify databases that mistakenly identify authorized workers as not being employment-eligible. For example, at the SSA alone, 17.8 million (or 4.1 percent) of agency records contain discrepancies that could result in an incorrect finding from Basic Pilot/E-Verify, with 12.7 million of these records affecting U.S. citizens. According to the Cato Institute, if these error rates were not fixed before a mandatory 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 is a severe price to pay for government mistakes.

☑ *The implementation timeline is impractical and unworkable.*

Not later than 1 year after the date of enactment, all federal agencies, federal contractors, and employers with over 250 workers would have to use Basic Pilot/E-Verify for all new hires. All other employers, through a scheduled phase-in, would have to begin participating no later than 4 years after enactment to verify the employment eligibility of both new workers and their *current* workforce. 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, pointed out that this would require DHS to enroll approximately 4,000 employers per day for four years. It is doubtful that SSA and DHS will have the technological capacity to handle such a dramatic increase in program usage in just four years, including a one-time verification of over 160 million existing workers and verification of 50-60 million new hires annually.

☑ *There are no protections against misuse of the system.*

Virtually every entity that has reviewed the program carefully has found that some employers take adverse employment action against workers based on incorrect Basic Pilot/E-Verify findings. According to a 2007 independent evaluation of the program commissioned by DHS, 22 percent of employers restricted work assignments, 16 percent delayed job training, and 2 percent reduced pay while workers challenged these errors. Additionally, 9.4 percent of employers did not notify workers of the database error, and 7 percent who did notify workers did not encourage them to contest it because, they said, the process of contesting the notice takes too much time. Lastly, 47 percent of employers "pre-screened" workers by putting them through Basic Pilot/E-Verify *before* their first day at work, which is against program rules. This deprives authorized workers of employment without giving them the opportunity to correct their records, or even letting them know that there is a problem.

Also, the Shuler-Tancredo bill fails to include any safeguards against misuse of workers' personal information by employers or government employees. The House Oversight and Government Reform Committee gave a "D" to DHS in computer security for 2006 (up from an "F" for the previous 3 years). DHS's failure to comply with Federal Information Security and Management Act (FISMA) standards since its inception demonstrates that it cannot be relied

[1] For compelling examples of employment-eligible U.S. citizens and immigrants 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.

upon to make significant improvements in this area, which translates down the road into workers' private information being left vulnerable to hackers and other cyber-threats.

☑ *Making Basic Pilot/E-Verify mandatory would take SSA away from its core mission of administering benefits.*

SSA is responsible for responding to the majority of erroneous Basic Pilot/E-Verify findings, which includes fielding phone calls and responding to in-person queries at SSA Field Offices. SSA estimates that making Basic Pilot/E-Verify mandatory will result in 3.6 million extra visits or calls to SSA field offices per year, which would result in 2,000 to 3,000 more work years, the necessity of hiring more staff, and hundreds of millions of dollars more in expenses each year. In the first year alone, the Shuler-Tancredo bill would cost SSA more than $1 billion ─ about 10 percent of SSA's administrative budget.

SSA is already overburdened with its mission of administering critical benefits to the public, such as Supplemental Security Income disability benefits and retirement payments. For example, in 2007, there were 1.4 million disability cases pending at the initial claims, reconsideration, and hearing levels. The pending cases have grown 130 percent since 2001, and the average time to process a case increased by 243 days in the same time period. SSA has testified that for every one million dollars that SSA is forced to spend on other workloads, 565 more disability hearings could be held. 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.

☑ *Mandatory electronic employment eligibility verification without legalization is doomed to fail.*

A mandatory EEVS without legalization will inevitably fail. Undocumented workers are not going to leave the country because Congress makes it harder for them to work here. Rather, they and their employers will simply find a way around any immigration worksite enforcement system by not following program rules, seeking out more sophisticated fraudulent documents, or moving into the underground economy — a prospect that has serious consequences for tax revenues at the federal, state, and local levels. By refusing to deal with the undocumented workforce practically by putting them on a path to earning legal immigration status, the bill also ignores the critical place undocumented workers fill in the U.S. economy.

This bill proposes no solutions to a very real problem. It will further undermine our economy by putting authorized workers and citizens at risk of losing their jobs, and pushing undocumented workers further into the shadows. Instead of embracing and exacerbating the broken status quo, Congress needs to stand up for real solutions to the issue of undocumented immigration.

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In addition to the employment verification provisions, **the Shuler-Tancredo bill burdens SSA with additional responsibilities that undermine its ability to carry out its core functions and punishes U.S. citizen and lawful immigrant workers as follows:**

☑ *The bill would punish workers who have multiple jobs — a group that includes low-wage workers.*

The Shuler-Tancredo bill would strip workers of Social Security credit for their earnings if they work more than one job during a year — unless they document to SSA that they performed the work. If they do not do so, none of their earnings would be posted to their earnings record, which would reduce the amount of future benefits they are entitled to receive, including retirement and disability. In their March 27, 2008, letter to House colleagues, Rep. Rangel and Rep. McNulty stated that this provision would force 45 million workers a year to visit SSA field

offices. The requirement would place significant new burdens on SSA, which is already challenged in meeting its obligation to administer disability and retirement benefits. This is also an unreasonable and unfair demand on the lowest-paid workers in our economy. Many low-wage workers need to hold multiple jobs in order to make ends meet, given that the minimum wage has not kept pace with inflation and that most low-wage jobs do not offer health and other benefits.

☑ *SSA would be required to turn confidential information about U.S. citizen and lawful immigrant taxpayers over to DHS.*

The Shuler-Tancredo bill would require SSA to share confidential information with DHS about U.S. citizen and lawful immigrant workers, based on discrepancies in SSA's database that have nothing to do with immigration status. According to SSA, reasons for errors in its database include: clerical errors made by employers in completing their Wage and Tax Statements (W-2's); the fact that workers might have used one name convention (such as a hyphenated name or multiple surnames) when applying for a Social Security card and a different one when applying for a job; or name changes due to marriage or divorce. The SSA database does not contain complete information about workers' immigration status, and the limited immigration status information that does exist in the database regularly becomes inaccurate because it is not automatically updated when a worker's immigration status or work authorization status changes. According to the Office of the Inspector General at SSA, a conservative estimate is that at least 3.3 million noncitizen records in SSA's database contain incorrect citizenship status codes.

The information-sharing provisions in the Shuler-Tancredo bill are broad, sweeping, and unfettered and do not require independent review, monitoring of disclosure, privacy protections, notice to workers that their private information or records have been disclosed, or recourse if overbroad information is sought or misused. Use of certain confidential tax-related information to attempt to enforce immigration law can also have a detrimental effect on tax compliance, and has the potential to increase discrimination against workers who "look" or "sound" foreign.

☑ *Discrepancies in Social Security information will have drastic consequences for U.S. citizen and lawful immigrant workers and for SSA.*

The Shuler-Tancredo bill attempts to use SSA "no-match" letters as proof that a worker is undocumented. No-match letters, which are generated as a result of SSA database discrepancies and are sent to workers and their employers to ensure that workers are getting proper credit for their earnings, are not an indicator of immigration status. As mentioned above, many U.S. citizen and lawful workers receive these letters because of errors in SSA's database that are not a result of any wrongdoing. The Shuler-Tancredo bill requires workers to fix (not just initiate the process of fixing) any error in their SSA records within only 10 days — even though a federal judge found that the 90 days (to fix such problems) provided under a 2007 DHS rule was an unreasonably and impractically short amount of time. In order for workers to comply with the time limit, SSA will have to scramble to correct records in an unreasonably short time — a task which would divert its resources from its already existing and newly imposed responsibilities.

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