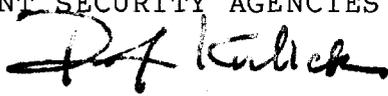


U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION
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DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 26-88

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK 
 Administrator
 for Regional Management

SUBJECT : Bases on Which Secretary Will Grant Waivers of
 Certain Participation in Alien Status Verification
 System

1. Purpose. To announce the bases on which the Secretary will make a determination to grant a waiver from participation in the Immigration and Naturalization Service's (INS) automated alien status verification system.

2. References. Section 121 of the Immigration Reform and Control Act of 1986 (IRCA, P.L. 99-603); Sections 302(a) and 1137(d) and (e) of the Social Security Act (SSA); Section 3304(a)(14) of the Federal Unemployment Tax Act (FUTA); INS's public notice of proposed procedures entitled "Verification of Immigration Status of Aliens Applying for Benefits Under Certain Programs," published in the Federal Register on September 8, 1987 (52 Fed. Reg. 33882); and Unemployment Insurance Program Letter (UIPL) Nos. 12-87, 2-88, and 11-88.

3. Background. Section 121(a)(1), IRCA, added SSA Sections 1137(d) and (e) providing that aliens applying for certain entitlement programs, including unemployment insurance (UI), shall have their immigration status verified through an automated verification system developed by the INS. This system enables States to access the INS data base (operated by a contractor) via several methods and is currently available, although State Employment Security Agency (SESA) use is voluntary in Fiscal Year (FY) 1988. Further, IRCA amended Section 302(a), SSA, to authorize funding of the reasonable expenditures of the State which are attributable to the costs of implementing and operating the INS designated alien status verification system. Section 121(c), IRCA, requires each State to utilize this system by October 1, 1988, unless the Secretary of Labor has granted a waiver

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of its participation for the UI program. Waivers may be granted by the Secretary on his/her own initiative or upon application.

Section 121(c), IRCA, also provides that the Secretary is required to report to the appropriate Congressional committees by April 1, 1988, on whether (and the extent to which) the requirements of the INS designated system are cost-effective and otherwise appropriate for the UI program and whether a waiver should be applied to participation by one or more States.

Section 121(c)(4)(B), IRCA, provides that the Secretary may waive participation by a State if: (a) the State has in effect an alternative system of alien status verification which is as timely and effective as the INS designated system or (b) the cost of administration of the INS designated system will exceed the estimated savings in the State's UI program. The cost-effectiveness criteria the Secretary must use in making the waiver decision are contained in Section 121(c)(4)(C), IRCA. The criteria includes the Secretary's estimate of:

- a. The number of aliens claiming UI benefits in relation to the total number of UI claimants;
- b. Any savings in UI benefit expenditures reasonably expected from use of the INS designated system;
- c. The labor and nonlabor costs of administration of the INS designated system;
- d. The degree to which INS is capable of providing timely and accurate information to the SESAs; and
- e. Such other factors as the Secretary deems relevant.

To date the following actions have been taken to implement the Secretary's responsibilities under Section 121, IRCA:

- a. In February 1987, all SESA Administrators were offered the opportunity to provide State UI information related to the statutory waiver criteria.
- b. In March 1987, UIPL No. 12-87 was issued to explain the new IRCA provisions.

c. In October 1987, the General Accounting Office (GAO) issued a report on the results of the 6 pilot States using an INS developed system commonly known as Systematic Alien Verification for Entitlements (SAVE).

d. UIPL Nos. 2-88 and 11-88 were issued providing additional budgetary and procedural guidance under IRCA to the SESAs.

In the meantime, INS has published for comment in the Federal Register (52 Fed. Reg. 33882) proposed alien status verification procedures for the SAVE program. INS also has developed a hand-out describing the various State access methods and "per query" cost estimates. Copies of both items are attached. (Copies of final SAVE procedures will be forwarded upon receipt in the National Office, as well as any other issuances or revised issuances of the INS.)

4. Bases on Which Secretary Will Grant Waivers. The waiver decisions will be made on a State-by-State basis, rather than a blanket inclusion or waiver of all States.

Based on the statutory criteria and on an analysis of available data, State participation will not be waived for any State whose alien UI claims workload is 3 percent or more. Participation by other States will be waived if they can demonstrate (or the Secretary on his/her own initiative determines) that:

a. The State's present system for alien status verification (mail, telephone, etc.) is at least as effective (in terms of administrative costs, benefit cost avoidance, and accurate and reliable information) and timely as the SAVE program, and the requirement of Section 121(c)(4)(B)(i)(II), IRCA, is met (see UIPL No. 12-87); or

b. The proportion of aliens to UI claims workload is so small and/or so sporadic that the administrative costs (start-up and continuing) of using the SAVE program will exceed the benefit savings, and the criteria of Section 121(c)(4)(B)(ii) and (C) are met (see UIPL No. 12-87).

The Secretary's waiver decisions can be reversed. If circumstances change in a State, or if more definitive data become available in a State, the decision with respect to waiver may be changed after FY 1989. The State may make application for a change in the waiver decision or the Secretary may act on his/her own initiative.

5. Minimum Requirements. Regardless of any waiver decision relating to UI participation in the SAVE program, the Secretary will not waive the requirements of Section 1137(d)(1)(A), SSA, which provide that all claimants must declare in writing, under penalty of perjury, whether they are a citizen or national of the United States, and, if not, whether they are in satisfactory immigration status. This is a requirement of Section 303(f), SSA, that will be effective October 1, 1988, and may be implemented earlier than that date.

Where waiver from participation is granted, States, at a minimum, are still required to verify alien status with INS in cases where the status remains uncertain in order to satisfy the requirements of Section 3304(a)(14), FUTA.

6. Timing of Secretary's Waivers Determination. The States timely applying for a waiver will be informed of the Secretary's waiver decisions by June 30, 1988, although waiver decisions on the Secretary's own initiative may be made after that date. Those States not receiving a waiver will be provided with implementation information by the end of June or, if later, when waiver is denied.

The Department has requested approval from the Office of Management and Budget (OMB) to collect State UI data and information to assist in the implementation of the Secretary's responsibilities under Section 121, IRCA. States will be notified of OMB approval and then may submit UI data and information relative to the statutory criteria contained in Sections 121(c)(4)(B)(i)(I) and (II) and 121(c)(4)(C), IRCA.

7. Action Required.

a. SESAs are requested to review the INS attachments to this directive regarding the operational alternatives and costs for the SAVE program.

SESAs are encouraged to fully consider the options offered for access to the INS data base to determine if one of these options can be utilized for less cost than current manual procedures. SESAs may find that the SAVE program offers a low cost method for verifying alien status even in those States with small alien UI workloads.

b. States currently using a mail or telephonic alien verification process, and who anticipate requesting a waiver on that basis, may wish to begin preparation of a report to the National Office containing all data and other information relative to the statutory waiver criteria as set in item 4.a of this directive.

c. SESAs who anticipate applying for a waiver under 4.b of this directive may wish to begin preparation of a report to the National Office containing the required data and information.

SESAs who do not provide complete data and information with their application for waiver may be requested to furnish additional data or information, or the waiver determination may be based on data and information available to the Department when processing the application.

8. Inquiries. Questions should be directed to the appropriate ETA Regional Office.

9. Attachments. Federal Register, pages 33882-33884, dated September 8, 1987, and SAVE program hand-out.